



ABA CILA Fact Sheet: Unaccompanied Children at the Border

March 22, 2021

Why Do Children Arrive Unaccompanied at the Border?

There are many reasons why children migrate from their home countries to the United States and other countries globally. Every migration story is unique, and reasons for the arduous journey often are multifaceted. Children migrate from all over the world. Currently, in the United States, most unaccompanied children migrate from Central America, and particularly from Guatemala, Honduras, and El Salvador. [Common reasons](#) for migration relate to uncontrolled violence in home countries, corruption, impunity, family-based violence, lack of a caregiver, gender-based harm, gang-related violence, economic need, and natural disasters. Many children also arrive with parents, adult siblings, grandparents, or other legal guardians.

LEGAL DEFINITION:

An unaccompanied child is defined as an individual who is

- under 18 years of age;
- without lawful immigration status; and
- with no parent or legal guardian in the U.S. available to provide care and physical custody.

System in Place for Unaccompanied Children

After arriving at a port of entry or crossing the border, children often are apprehended by U.S. [Customs and Border Protection](#) (CBP) agents and transferred to a temporary holding facility. There, CBP agents process the children and determine whether each child meets the legal definition of an unaccompanied child. This definition does not recognize non-parent caregivers or family members that sometimes accompany a child. The law requires that an unaccompanied child be transferred to an Office of Refugee Resettlement (ORR) shelter within 72 hours, although children are often held for longer. [ORR](#) is an agency within the U.S. Department of Health and Human Services (HHS). Since 2003, the agency has been tasked with the safety and care of unaccompanied children, as well as reunification with a suitable sponsor to care for the child while the child undergoes removal proceedings.

Under the previous administration, 15,885 unaccompanied children were expelled from March 2020 to January 2021 without an opportunity to seek protection in the United States. Single adults and family units seeking refuge in the United States continue to be [expelled](#) under the Title 42 public health law pursuant to a CDC order first issued in March 2020. Unaccompanied



At U.S. southern border in 2/21: 9,457 unaccompanied children encountered



At ORR, FY '20: 68% males & >72% age 15+



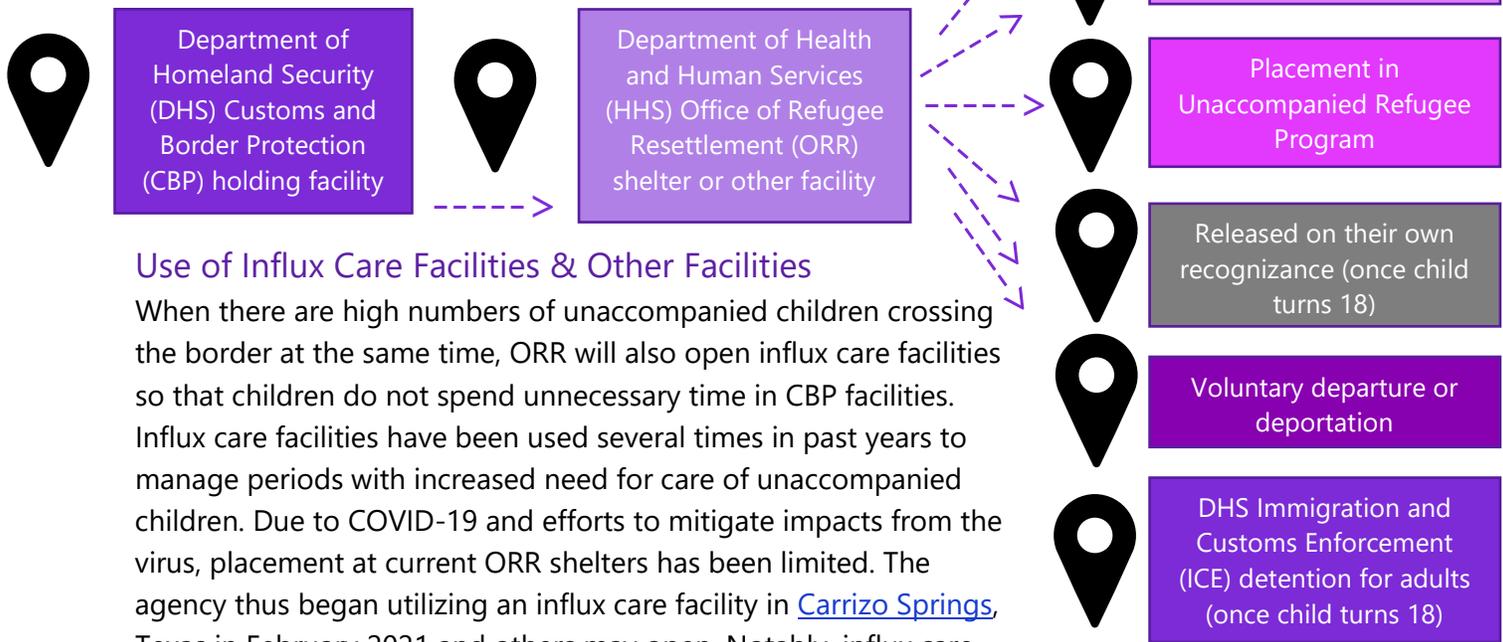
>13,450 # of ORR operational beds (including influx facilities)

children are processed at the border for humanitarian reasons and considering their vulnerability as children. There have been higher numbers of unaccompanied children entering the U.S. at the southwest border during the past two months because they are no longer being expelled and deteriorating conditions persist in Central America.

LEARN MORE

- CILA [blog post](#): "Frequently Asked Questions: Who Regulates the Detention of Children Facing Deportation?"
- CILA's [Pro Bono Guide](#): Section II.A. Working with Unaccompanied Children
- U.S. HHS "[Unaccompanied Children Information](#)"
- U.S. CBP "[Southwest Land Border Encounters](#)"

ORR shelters are designed to be safe places to provide for children's basic needs while the government locates an appropriate family member or adult to sponsor the unaccompanied child while they go through the immigration process. There are several types of ORR placements for children, including shelters, transitional foster care, staff secure, secure, and residential treatment centers. Once a child is at an ORR shelter, services should be provided to the youth such as health and education services, case management, and recreation, as well as Know Your Rights presentations and legal screenings. Most children can reunify with a sponsor—typically a parent, other family member, or close friend within the United States. Children's legal immigration cases continue regardless of whether a child is detained at an ORR shelter or living in the community.



Use of Influx Care Facilities & Other Facilities

When there are high numbers of unaccompanied children crossing the border at the same time, ORR will also open influx care facilities so that children do not spend unnecessary time in CBP facilities. Influx care facilities have been used several times in past years to manage periods with increased need for care of unaccompanied children. Due to COVID-19 and efforts to mitigate impacts from the virus, placement at current ORR shelters has been limited. The agency thus began utilizing an influx care facility in [Carrizo Springs, Texas](#) in February 2021 and others may open. Notably, influx care facilities may be unlicensed or exempt from state and local licensing requirements, unlike other state-licensed ORR facilities. The Federal Emergency Management Agency (FEMA) is also assisting HHS to develop further capacity to help receive, shelter, and transfer unaccompanied children during this time.

Legal Protections for Unaccompanied Children

Unaccompanied children have certain legal protections which create significant procedural and substantive differences from adults in the system they navigate after entering the United States. Predominantly, these protections stem from the *Flores* Settlement Agreement, Homeland Security Act of 2002, and the Trafficking Victims Protection Reauthorization Act of 2008. Notably, unaccompanied children are not subject to [expedited removal](#), and are entitled to go through removal proceedings, where they can present their case before an immigration judge and seek any legal relief for which they are eligible. Additionally, unaccompanied children are exempt from certain recent border policies, such as [metering](#) and the [Migrant Protection Protocols](#) (MPP) program, although unaccompanied children were impacted by these policies in a number of ways. Moreover, unaccompanied children who apply for asylum should be able to seek asylum in the first instance in a non-adversarial process before the Department of Homeland Security's Asylum Office rather than in an adversarial immigration court hearing.

Advocacy Needs for Unaccompanied Children

Many unaccompanied children qualify for humanitarian legal relief and protection to stay in the United States; however, the immigration system is complex and processes often are lengthy. Immigrants, including children, are not appointed attorneys to represent them in their cases, and about half of the children in removal proceedings do not have an attorney to represent them. Not surprisingly, it is difficult for children to navigate the legal system alone. Every child should be appointed legal counsel to ensure a just opportunity to seek protection in the United States. In the meantime, there is a need for pro bono representation to fill the gap because the need for representation is great.

Moreover, there are significant necessary legislative and policy changes that must be made so children and youth have meaningful access to legal protections and safety. The American Bar Association (ABA) provides top policy recommendations for the immigration system including issues affecting unaccompanied children in [Achieving America's Immigration Promise](#). The ABA also drafted the [Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States](#) to provide guiding principles for children's immigration law. The Commission on Immigration's blog dives into additional policy changes and legislative action needed in "[A Long Wait for Special Immigrant Juveniles Means a Risk of Deportation](#)."

We encourage you to [stay tuned](#) to these issues, advocate for change with your local leaders, volunteer, and donate as you can. Follow the Commission on Immigration's [blog](#) and advocacy requests to learn more.

GET INVOLVED



Join CILA's quarterly [e-newsletter](#) to follow the issues.



Check out CILA's [platform](#), **Pro Bono Matters for Children Facing Deportation**, to view children's cases across the country that need a pro bono attorney.



Check out CILA's "Get Involved" [webpage](#).



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