



# ABA CILA Fact Sheet: Unaccompanied Children at the Border

September 22, 2023

## Why Do Children Arrive Unaccompanied at the Border?

There are many reasons why children migrate from their home countries to the United States and to other countries globally. Each child's 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—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. While numerous unaccompanied children arrive at the U.S. border, a large number of 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 children arrive at a port of entry or crossing the border, oftentimes U.S. [Customs and Border Protection](#) (CBP) agents apprehend the children and transfer them 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 legal definition does not recognize nonparent caregivers or family members that sometimes accompany a child to the United States. The law requires that an unaccompanied child be transferred to an Office of Refugee Resettlement (ORR) shelter within 72 hours, although children are often in the temporary holding facilities for longer before going to an ORR shelter. [ORR](#) is an agency within the U.S. Department of Health and Human Services (HHS). Since 2003, HHS has tasked ORR with the safety and care of unaccompanied children, as well as reunification of the child with a suitable sponsor to care for the child while the child undergoes removal proceedings.

Under the previous administration, unaccompanied children were expelled from the United States under the Title 42 public health law, pursuant to a CDC order first issued in March 2020. For example, 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 continued to be [expelled](#) under the Title 42 public health law, until the current administration [terminated](#) the COVID-19 public health emergency on May 11, 2023, thereby ending the use of Title 42 at the border. The end of Title 42 led to the revival of



At U.S. southern border in 07/23: 10,648 unaccompanied children [encountered](#)



At ORR, FY 2022: 64% males & 72% age 15+



On 9/15/2023, 10,419 children [in ORR care](#)

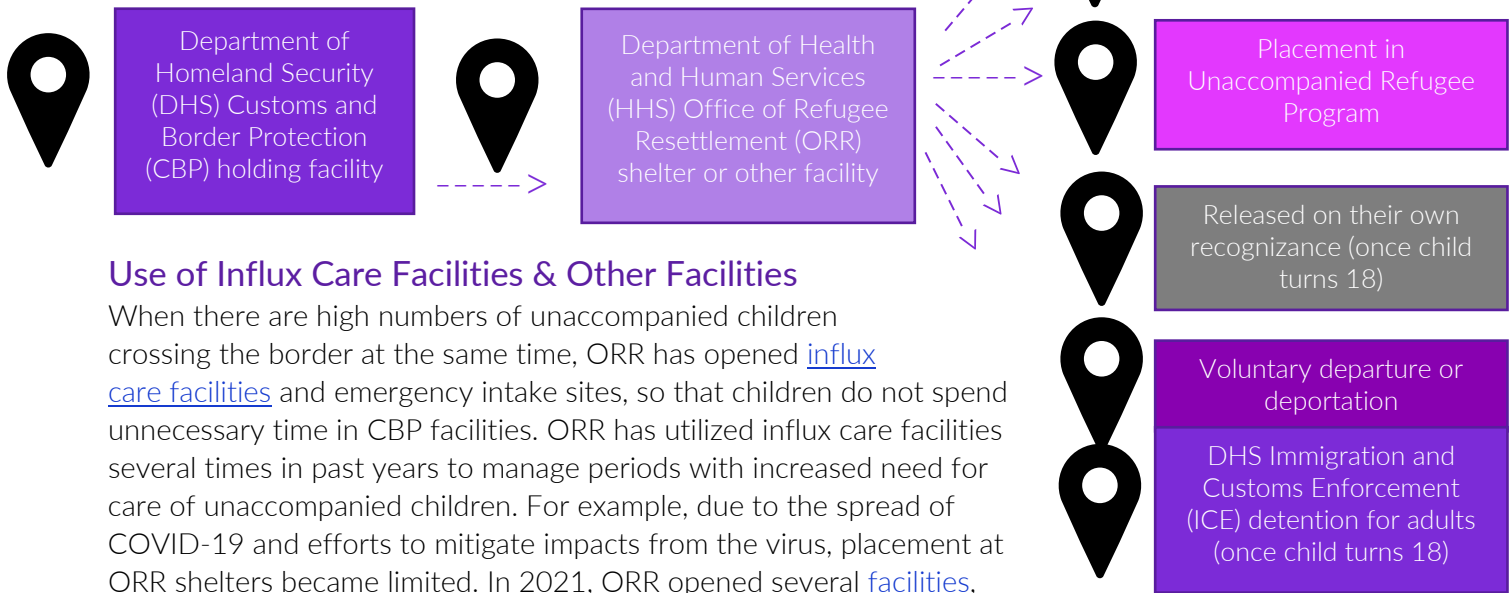
processing arrivals to the United States beneath Title 8—as was the policy prior to the COVID-19 public health emergency. Along with Title 8, the current administration also put in place narrow [asylum regulations and restrictions](#) that limited access for individuals to seek asylum in the United States—though, it is important to note that there are exceptions to these asylum changes, including that they do not apply to unaccompanied children. These asylum regulations [remain in place today](#) while they are challenged in the courts.

CBP processes unaccompanied children at the border to consider humanitarian reasons and their vulnerability as children. There were higher numbers of unaccompanied children entering the United States at the southwest border in FY 2021 and FY 2022, with this number decreasing in FY 2023.

**LEARN MORE**

- CILA [blog post](#): “Frequently Asked Questions: Who Regulates the Detention of Children Facing Deportation?”
- U.S. HHS [“Unaccompanied Children Information”](#)
- U.S. CBP [“Southwest Land Border Encounters”](#)

ORR shelters are designated as safe places to provide for children’s basic needs while the U.S. government locates an appropriate family member or adult to sponsor and care for 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—such as health and education services, case management, and recreation, as well as Know Your Rights presentations and legal screenings—should be provided to the youth. Children spend time in ORR until they reunify with a sponsor, and in 2022, the [average time](#) that a child spent in ORR was 30 days. Most children can reunify with a sponsor—typically a parent, other family member, or close friend within the United States. Children’s 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 has opened [influx care facilities](#) and emergency intake sites, so that children do not spend unnecessary time in CBP facilities. ORR has utilized influx care facilities several times in past years to manage periods with increased need for care of unaccompanied children. For example, due to the spread of COVID-19 and efforts to mitigate impacts from the virus, placement at ORR shelters became limited. In 2021, ORR opened several [facilities](#), including Fort Bliss and Pecos, to increase capacity for unaccompanied children. Notably, influx care facilities and emergency intake sites may be unlicensed or exempt from state and local licensing requirements, unlike other state-licensed ORR facilities. The Federal Emergency

Management Agency (FEMA) sometimes also assists HHS to develop further capacity to help receive, shelter, and transfer unaccompanied children during times with increased needs. However, as of September 2023, Fort Bliss was placed in “warm status,” which means that there are limited services and staff available at this site, and there are no children there. Pecos was in warm status for several months but came back into active status in September 2023. HHS secured an additional site, Greensboro Piedmont Academy, to serve as an influx care facility, but this site does not have an activation date and will open depending on various factors—including capacity and the number of unaccompanied children referred.

## Legal Protections for Unaccompanied Children

Unaccompanied children have certain legal protections, which create significant procedural and substantive differences from adults in the legal 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 (TVPRA) of 2008. Notably, unaccompanied children are not subject to [expedited removal](#) and are instead 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. 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.



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

## GET INVOLVED



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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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