

Vulnerable Children Face Insurmountable Obstacles

Many Americans take for granted our children's right to happy childhoods and the laws and social programs intended to ensure their safety. But thousands of immigrant children enter the United States alone every year, fleeing violence and insecurity, only to be confronted by an immigration system that exhibits little concern for their wellbeing. Children seek refuge here for many reasons: to escape war, gangs, or violence; flee abuse; or reunite with family. Others enter involuntarily as labor or sex trafficking victims. In the past two years, the number of unaccompanied children migrating to the United States has tripled. In fiscal year 2013, 24,668 unaccompanied children were apprehended in the United States. Government officials have speculated that this number could more than double in fiscal year 2014.



To better understand this emerging humanitarian crisis, Heartland Alliance's National Immigrant Justice Center (NIJC), a nongovernmental organization that provides legal services to unaccompanied children, compiled information from hundreds of recent intake interviews with unaccompanied children held in government custody in the Chicago area. The survey analyzed the driving forces behind the children's migration, the treatment the children received upon arrival, and the challenges they encountered in the U.S. immigration system. Upon apprehension, the Department of Homeland Security (DHS) subjects many children to inappropriate treatment such as detention in extreme temperatures and shackles. Once they reach a Department of Health and Human Services Office of Refugee Resettlement (ORR) shelter for children, they are in a race to receive legal services to help them understand their rights and responsibilities. When released from custody, they must find lawyers or navigate the court system alone. This policy brief calls on the U.S. government to act to ensure that the immigration system protects children's due process and human rights.

Custody and care

- 1. Apprehension by DHS:** The majority of unaccompanied children are apprehended when they cross the U.S.-Mexico border, although some are detained once they already are in the United States.² From this point until their cases are resolved, they face an adversarial system in which DHS seeks to deport them. Although *Flores v. Reno* and the Homeland Security Act set forth standards for their treatment, DHS lacks adequate oversight to ensure they are cared for according to child-appropriate protocols.
- 2. Transfer to ORR custody:** Unaccompanied children must be transferred to ORR within 72 hours.³ In ORR shelters, children have access to classroom education, health care, mental health services, social and recreational activities, vocational training, and legal orientation.
- 3. Release or continued detention:** When possible, ORR reunites children with their families or sponsors in the United States. Immigration court proceedings continue during and after reunification. When reunification is not an option, children who are eligible for immigration relief can be transferred to foster care. Unaccompanied children who are ineligible for relief remain in ORR custody until their court proceedings are resolved. If children turn 18, they often are transferred to adult detention facilities.

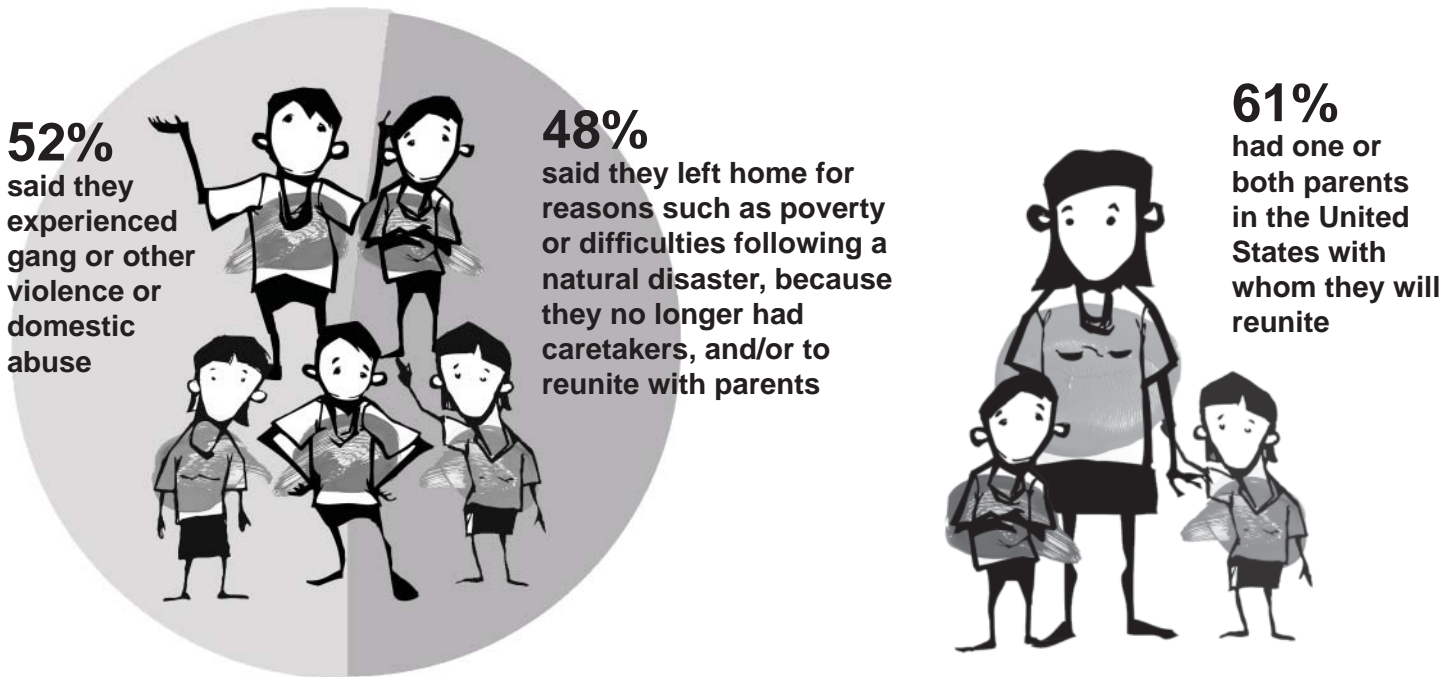
Key custody laws

***Flores v. Reno*¹:** This 1997 class-action settlement established standards for the Immigration and Naturalization Service (predecessor to DHS) regarding the treatment of unaccompanied immigrant children.

Homeland Security Act of 2003: This law created DHS and gave jurisdiction over the care and custody of unaccompanied children to ORR. The law set certain standards, originally developed in the *Flores* settlement, for the care of children in ORR custody.

Who they are and why they come

Between December 23, 2013, and January 10, 2014, NIJC's Immigrant Children's Protection Project provided legal consultations to 224 children in Chicago-area ORR shelters. The children ranged in age from two to 18 years old; 70% were male and 30% were female.



Fleeing for her life

Nine-year-old Beatrice* left El Salvador because gang violence plagued her life. After her sister was murdered in 2010, her family moved within El Salvador to escape the gang, but they never felt she was safe. Beatrice's mother, who lives in New York and sends money to the family, wanted Beatrice to join her because gangs were threatening to kill Beatrice unless the family paid "protection" fees. Beatrice crossed the border on New Year's Day and was detained by immigration officers. Once she is reunited with her mother, she will need to find legal representation to help her apply for asylum.

Alone & afraid

Francisco*, a 13-year-old from Honduras, lived alone before he made the journey to reunite with his mother in the United States. His brothers, who had cared for him, had moved away for work. Francisco is afraid to return to Honduras because there is no one there to care for him and he does not want to be alone anymore.

*Names changed to protect children's privacy

After they leave home

16% faced danger on their journeys to the U.S.

2 children said their train was attacked and people were murdered in front of them.

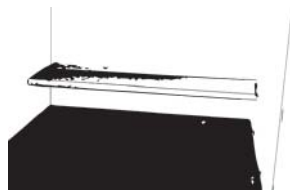


Several reported having to bribe Mexican officials to continue their journeys.

Women and young girls were especially vulnerable to abuse: A 15-year-old was raped twice by a man while waiting to cross the border. Her assailant told her that if she left, immigration agents would arrest her.

Once in the United States, children often faced harsh treatment in DHS custody

56% (all between ages 12 and 17) said they were placed in three-point shackles, which restrain individuals at the wrists, waist, and ankles.



71% were held in cold cells, including *hieleras*, a type of room so cold migrants have dubbed it with the Spanish word for “ice box.”

29 children reported being held in DHS custody beyond the 72-hour limit set by the *Flores v. Reno* settlement. Many said it was difficult to know the length of time because the lights in their cells were never turned off.

Some children said they went hungry while in DHS custody. Several said they were “barely fed” and one reported he was only given bread.



44% were eligible for immigration relief such as asylum, Special Immigration Juvenile Status, U visas for victims of crime, and T visas for victims of human trafficking. **Another 14% presented strong cases for prosecutorial discretion.**⁴

Many children are released to areas with limited legal services. Although the majority of children were not yet released at the time of publication, some already had been released to sponsors in Oklahoma and Tennessee, states where NIJC frequently cannot find attorneys to accept these cases.

Navigating the immigration system

Access to counsel: Like all immigrants, unaccompanied children do not have the right to appointed counsel. Unless they can afford attorneys or secure *pro bono* counsel, they appear in court without legal representation. With children now being released from custody in an average of 30 days, often before they can obtain full legal assessments, expanded access to Legal Orientation Programs for Custodians and court-appointed counsel are critical so that children and their sponsors understand and comply with immigration system requirements.

The courts: Typically, deportation proceedings begin in the jurisdiction where children are in ORR care. Once a child is released to a sponsor or foster care, the court and DHS must be advised of his new address so the case can be moved to the court nearest his residence. If DHS and the court are not aware of the child’s change of address and the child does not receive notification of his court hearing, he could be ordered deported *in absentia* for failing to appear. Furthermore, because of processing delays by DHS and the immigration courts, the Notice to Appear, a charging document that initiates proceedings, often is not filed until weeks or months after release. Children must determine on their own when deportation proceedings have begun so they can request a change of venue to a court closer to their new homes.

Prosecutorial discretion: DHS has issued a series of memoranda recommending closure of cases for certain immigrant populations who are designated as low priorities for removal. The agency has yet to provide clear guidelines on how such exercise of prosecutorial discretion should apply to children, particularly those with family members in the United States. Expanded prosecutorial discretion would help provide relief for many children with strong ties to the United States.

Policy Recommendations

Congress and the Obama administration must take steps to provide critical safeguards to unaccompanied children who all too often navigate the U.S. immigration system alone:

For Congress

- **Pass immigration reform legislation so families can legally and safely reunify.** Undocumented family members in the United States need a mechanism to safely and legally reunite with their children. Immigration reform must include provisions that allow parents to obtain lawful immigration status and petition for their children and other family members.
- **Provide counsel to unaccompanied children.** Children face insurmountable challenges and experience a denial of due process when navigating the U.S. immigration system without attorneys. Access to legal representation is critical for children to be able to exercise their rights.
- **Increase funding for Legal Orientation Programs at ORR shelters.** As unaccompanied children move more rapidly through the ORR system, the government must ensure that all children receive basic information about their rights and responsibilities, and individualized legal assessments to understand whether they might be eligible for immigration relief.
- **Increase funding for Legal Orientation Programs for Custodians.** As children have increasingly less time to learn about their rights and potential relief while in ORR custody, it is important that families and sponsors receive information about how to help children navigate the legal system.

For the Department of Homeland Security

- **Enact protocols to end abusive treatment at the border.** NIJC's survey demonstrates DHS border officers often held unaccompanied children in extreme temperatures, provided them with little food, and/or placed them in shackles. DHS must develop legally binding regulations, in collaboration with nongovernmental organizations who serve this population, to ensure officers treat children humanely.
- **Evaluate unaccompanied children for prosecutorial discretion (PD).** DHS should clarify its interpretation of PD memoranda to recognize that unaccompanied children are eligible and may merit the favorable exercise of discretion, particularly when return to the country of origin is not in a child's best interest.
- **Reform the Notice To Appear (NTA) process for unaccompanied children.** DHS should promptly file NTAs, or charging documents, before children are released to their families and sponsors, and the immigration court should delay children's first hearings until they have arrived at their long-term placements. Such protocols would alleviate the likelihood of children receiving deportation orders because they missed court hearings scheduled in the places where they were detained and before they have time to request changes of venue.

Endnotes

1. *Reno v. Flores*. 507 U.S. 292 (1992). Available at: <http://supreme.justia.com/cases/federal/us/507/292/case.html>
2. Byrne, O. & E. Miller. "The Flow of Unaccompanied Children Through the Immigration System." Vera Institute of Justice. Mar. 2012. Available at: <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>.
3. Children may remain in custody for a longer period of time with notice.
4. Memo from U.S. Immigration and Customs Enforcement Director John Morton. "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens." July 17, 2011. Available at: <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>

NATIONAL IMMIGRANT JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

NIJC and its network of 1,500 *pro bono* attorneys provide legal counsel and representation to nearly 10,000 immigrants each year, including thousands of unaccompanied children detained in the Chicago area. NIJC's Immigrant Children's Protection Project provides services to unaccompanied children held in eight Chicago-area shelters run by Heartland Alliance. NIJC visits all of these facilities on a weekly basis to interview the children, conduct legal assessments, and deliver "Know Your Rights" presentations that provide an overview of the immigration court process.

***For more information visit
immigrantjustice.org***