



May 2016

A Humanitarian Call to Action: Unaccompanied Children in Removal Proceedings

Continue to Present a Critical Need for Legal Representation

The American Bar Association (ABA) is gravely concerned about the need for additional legal representation on behalf of unaccompanied children in removal proceedings. Despite a significant increase in federal and privately-funded programs, there continues to be a critical need for legal representation. The “humanitarian crisis” at the border confronting the nation in the summer of 2014 has developed into a nationwide due process crisis in our country’s immigration court system, a system that is already significantly overburdened and under-resourced.¹ The children, many of whom entered the United States during the unprecedented “surge” in 2014, are now facing adversarial removal proceedings opposed by experienced government attorneys, with only 56% represented by counsel.² It is highly unlikely that an unrepresented child will prevail in immigration court, even if he or she has a *bona fide* claim for protection. A recent study found that represented children have a 73% success rate in immigration court, as compared to only 15% of unrepresented children.³ Furthermore, studies show that children who are represented have a much higher appearance rate in immigration court, 92.5%, versus 27.5% for unrepresented children.⁴

Since last year, the Executive Office for Immigration Review (EOIR) has been prioritizing the cases of children who entered the United States during the surge period. As a result, EOIR has expedited the initial hearings after the children reunify with sponsors, leaving limited little time for the children and their families to get oriented and find counsel before appearing in court.⁵ This “perfect storm” has resulted in a total of 15,698 removal orders in cases that began in FY2014 and FY2015, a removal rate of

¹ Over 492,000 immigration removal cases are now pending in the U.S. immigration courts, with cases waiting an average of 1,071 days to be adjudicated. The caseload more than doubled between 2010 and 2016, from 223,707 to 492,978. Human Rights *first*, *Reducing the Immigration Court Backlog and Delays*, July 2016, available [here](#).

² See, Transactional Records Access Clearinghouse, *Juveniles – Immigration Court Deportation Proceedings*, available [here](#).

³ *Id.*

⁴ See, American Immigration Council, *Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court*, July 2014, available [here](#).

⁵ Brian M. O’Leary, Chief Immigration Judge, Executive Office for Immigration Review, *Docketing Practices Relating to Unaccompanied Children Cases and Adult with Children Released on Alternatives to Detention Cases in Light of the New Priorities*, Mar. 24, 2015, available [here](#). As of February 8, 2016, the EOIR began extending the period before the master calendar hearing for unaccompanied child cases from 10 days to 30 days. Print Maggard, Chief Immigration Judge, Executive Office for Immigration Review, *Revised Docketing Practices Relating to Certain EOIR Priority Cases*, February 3, 2016, available [here](#).

forty-six percent.⁶ Until Congress and the Administration recognize the need for universal representation and allocate sufficient funding to make it a reality, it is up to the legal community to respond. The ABA has worked on these issues for several years and continues to take action to address the current crisis through its Commission on Immigration (Commission) and the Working Group on Unaccompanied Minor Immigrants⁷ (Working Group), providing an avenue for interested attorneys to volunteer, as well as training materials, technical assistance and mentoring support.

1. Background:

Who is an Unaccompanied Alien Child (UAC)?

An “unaccompanied alien child” is someone under 18 who has no lawful immigration status in the United States and who has no parent or legal guardian available to care for him/her at the time of apprehension.⁸ Unaccompanied children who are apprehended at the border and in the interior of the country are placed in the custody of the Department of Health and Human Services, Office of Refugee Resettlement (DHS, ORR) rather than the enforcement-oriented Immigration and Customs Enforcement.⁹ They are generally detained for an average of 30 days and then reunified with sponsors throughout the United States.

Current Situation with Unaccompanied Children at the Border

While the number of children entering the United States at the southwest border dropped in 2015 after the “surge” during the summer of 2014, the numbers have increased again in 2016 and are on track to reach 2014 levels.¹⁰ During the height of the surge in June 2014, over 10,000 unaccompanied children entered the United States in one month, bringing the FY 2014 total to 68,541.¹¹ The Obama Administration responded with a multi-faceted approach to stopping this steady stream with cross-

⁶ American Immigration Lawyers Association, Kids in Need of Defense, *Most Recent Data on Children and Families in Immigration Courts*, February 11, 2016, available [here](#). See also Kate Linthicum, *7,000 Immigrant Children Ordered Deported Without Going to Court*, *L.A. Times*, Mar. 6, 2015, available [here](#).

⁷ www.ambar.org/ican. Attorneys willing to volunteer to represent unaccompanied children can enroll directly at this website by signing up at the “Volunteer Now” link. Those who enroll will be matched with a legal service provider in their area who will do their best to match the volunteer with a child in need of representation.

⁸ 6 U.S.C. § 279(g).

⁹ The Homeland Security Act of 2002 transferred the responsibility for care and custody of “unaccompanied alien children” from the enforcement-oriented (former) INS to the welfare-based DHHS, ORR. This major reform was applauded by national advocates who had long criticized the government for placing children in the care and custody of the same agency responsible for prosecuting their deportation cases and executing deportation orders.

¹⁰ In FY 2011, CPB apprehended 15,701 unaccompanied children, the vast majority of whom came from Mexico. The numbers in subsequent years have steadily increased: 24,403 in FY 2012; 38,759 in FY 2013; 68,541 in FY 2014; 39,970 in FY 2015; and 48,311 in FY 2016 (though July 2016). See U.S. Customs Border Protection, *Southwest Border Unaccompanied Alien Children*, available [here](#).

¹¹ See Office of Refugee Resettlement, *Unaccompanied Children’s Services, Facts and Data*, February 10, 2015, available [here](#). This represents a 77% increase from FY 2013. See U.S. Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, available [here](#).

agency coordination, additional enforcement resources, expedited child and family dockets in immigration court and intensive diplomacy efforts and concerted deterrent strategies in Mexico and Central America, strategies that resulted in making it more difficult for children to reach the United States.¹²

As a result, apprehensions in Mexico increased, with Mexico detaining over 35,000 children in 2015, 18,650 of whom were unaccompanied.¹³ Data from the Mexican government indicates that less than one percent of children apprehended in Mexico are recognized as refugees or receive other forms of protection.¹⁴ Unfortunately, the Mexican government presents a serious hurdle for children seeking protection: many children are never informed of their rights by authorities, and many are not properly screened for potential refugee status.¹⁵ Some report being deterred from making asylum claims for fear of continued detention in Mexico.¹⁶

The U.S. has supported Mexico's efforts, with U.S. Secretary of Homeland Security Jeh Johnson recognizing Mexico's actions as "important steps to interdict the flow of illegal migrants from Central America bound for the United States."¹⁷ While apprehensions of Central American children rose in Mexico during 2014 and 2015, consequently, the number of children apprehended at the U.S. border has declined.

Statistics have consistently shown that these children come primarily from Honduras, Guatemala, and El Salvador, accounting for 91% of all unaccompanied child encounters at the border in FY 2015.¹⁸ However, the administration's response to the surge, among other factors, may have affected certain regions more than others. Child arrivals from Guatemala increased from 32% in FY 2014 to 45% in FY 2015, while arrivals from Honduras decreased sharply, from 34% to 17%.¹⁹ In comparison, children from Mexico accounted for only 6% of arrivals in FY 2015.²⁰ Historically, the majority of these children have

¹² See Marc R. Rosenblum, *Unaccompanied Child Migration to the U.S.: The Tensions Between Protection and Prevention*, Migration Policy Institute, April 2015, available [here](#).

¹³ Michael Garcia Bochenek, *Closed Doors: Mexico's Failure to Protect Central American Refugee and Migrant Children*, Human Rights First, March 31, 2016, available [here](#).

¹⁴ *Id.*

¹⁵ *Id.* A 2014 UNHCR study revealed that two-thirds of undocumented Central American children apprehended in Mexico are not informed of their rights by Mexican immigration agents.

¹⁶ *Id.*

¹⁷ DHS Press Office, *Statement by Secretary Jeh Johnson About the Situation Along the Southwest Border*, September 8, 2014, available [here](#).

¹⁸ Office of Refugee Resettlement, *Unaccompanied Children's Services, Facts and Data*, February 10, 2015, available [here](#).

¹⁹ *Id.* While percentages of children from these countries increased, overall numbers of child arrivals have decreased. Compare Office of Refugee Resettlement, *Unaccompanied Children's Services, Facts and Data*, February 10, 2015, available [here](#), with U.S. Customs and Border Protection, *Southwest Border Unaccompanied Alien Statistics FY 2015*, available [here](#).

²⁰ Office of Refugee Resettlement, *Unaccompanied Children's Services, Facts and Data*, February 10, 2015, available [here](#).

been between the ages of 15 and 17 and about three quarters have been boys; more recently, however, the number of younger children and girls has risen, from 23% in FY2012 to 32% in FY2015.²¹

Once children are apprehended by Border Patrol agents they are transported to a Customs and Border Protection processing station and held for hours or days in cells during processing. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires that CBP determine whether these children are unaccompanied within 48 hours and if deemed to be unaccompanied, transferred to the Office of Refugee Resettlement custody within 72 hours.²² There are currently 106 shelters and foster care programs around the country with a total capacity of approximately 8,000 beds where the ORR houses children as they are processed for reunification.²³ At the ORR shelters, the children are finally able to shower, rest, eat a meal, make phone calls and receive medical care, counseling, education and legal services. Legal service providers meet with the children and provide a “Know Your Rights” presentation and perform individual screenings within seven to ten days of their arrival to the shelter. The screenings are used to make referrals to pro bono attorneys for some children who are identified as eligible for legal relief.

The TVPRA requires that children from non-contiguous countries be placed in removal proceedings before an Immigration Judge and provides that they have the right to apply for legal relief and receive counsel “to the greatest extent practicable.” Children from contiguous countries (Mexico and Canada) can be immediately returned to their countries after a cursory screening by a uniformed Border Patrol agent.²⁴ There have been proposals in Congress to extend this provision to children from non-contiguous countries, a proposal which is of great concern to the ABA and violates due process principles and long-standing ABA policy to the contrary.²⁵

Currently, about 90% of unaccompanied children are being reunified²⁶ with approved sponsors within an average of 34 days.²⁷ ORR helped reunify 27,520 UACs in FY2015, and 22,798 UACs have been

²¹ Office of Refugee Resettlement, Unaccompanied Children’s Services, *Facts and Data*, February 10, 2015, available [here](#).

²² In practice, especially during the height of the surge in 2014, the children were often held much longer, up to 15 days, or more, in multiple holding facilities. CBP communicates with ORR to identify a short-term placement for the children. Once a placement is confirmed, officers from Immigration and Customs Enforcement (ICE) transport the children from CBP stations to the ORR shelters.

²³ DCS Capacity Report, March 18, 2016.

²⁴ A confidential report from the United Nations High Commissioner for Refugees (UNHCR), leaked to the media, found these Border Patrol screenings to be woefully inadequate and concluded that they fail to protect Mexican children. The UNHCR concluded that Border Patrol agents are not equipped to recognize signs of victimization and should not be charged with screening children for risks of trafficking, persecution or voluntariness of return. Vox, *The Process Congress Wants to Use for Child Migrants is a Disaster*, July 15, 2014, available [here](#).

²⁵ See Standards For the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children In the United States, Section VIII, A, Adjudication of Claims of Children, American Bar Association Comm. on Immigration, Aug. 2004, available [here](#).

²⁶ ORR may release unaccompanied children to a sponsor – usually a family member – while they await their immigration proceedings, provided the sponsor provides a safe environment and ensures the child attends all immigration proceedings and complies with removal orders. See U.S. Department of Health and Human Services,

reunified thus far in FY2016, with California, Texas, Florida, and New York reporting the highest number of reunifications.²⁸ When the number of child migrants and refugees began to surge at the southwest border in 2014, accelerated reunification in as little as 7 days without access to traditional legal screenings began occurring. Children are released to sponsors through the United States. About half of the sponsors are the parents of these children and others are extended family members or family friends. The Department of Homeland Security (DHS) places these children in removal proceedings and contends they have no right to appointed counsel or *guardians ad litem*. The children are reunifying in states all over the United States. According to a recent report from ORR analyzing data from January through July 2014, the top six states for reunification include New York, Texas, California, Florida, Maryland and Virginia.²⁹ Looking more closely at this information by county, it appears that the top six cities for reunification include Baltimore, Dallas, Houston, Miami, Los Angeles and New York.³⁰

Once the children are reunified, there is no one agency coordinating their legal representation although a few non-profit groups run dedicated pro bono projects in some of the major cities.³¹ In addition, ORR coordinates a legal access project to provide children with presentations about their rights, individualized legal screenings, and limited access to pro bono legal representation.³² In an effort to meet the need of legal services for children, ORR has also expanded funding to enable attorneys to provide legal representation to approximately 2,600 unaccompanied children.³³

At a February 2015 meeting between government officials, law firms and legal advocacy groups, the Deputy Director of the Executive Office for Immigration Review, shared statistics reflecting immigration courts with the highest number of UAC “surge” cases in the nation. The information revealed New York City as the court with the largest number of pending UAC “surge” cases, over 2,000, with Baltimore,

Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Children Released to Sponsors By State, available [here](#).

²⁷ See U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program, *Fact Sheet*, May 2014, available [here](#).

²⁸ Office of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, March 25, 2016, available [here](#). In FY2015, 3,576 children were released to sponsors in California, 3,209 in Texas, 2,885 in Florida, and 2,615 in New York. *Id.* Of the 33,726 children referred to ORR in FY2015, 27,520 were reunified – a reunification rate of 81.5%. See ORR, *Unaccompanied Children Fact Sheet*, January 2016, available [here](#).

²⁹ Unaccompanied Children Released to Sponsors by State, Office of Refugee Resettlement, available [here](#).

³⁰ Unaccompanied Children Released to Sponsors by County, Office of Refugee Resettlement, available [here](#).

³¹ For example, Kids in Need of Defense (KIND), has offices in ten major cities including Atlanta, Baltimore, Washington DC, Boston, Houston, Seattle, San Francisco, Los Angeles, New York and Newark. See KIND’s website [here](#).

³² Office of Refugee Resettlement, *About Unaccompanied Children’s Services*, September 10, 2015, available [here](#).

³³ *Id.* The Office of Refugee Resettlement awarded two additional non-profit agencies, the U.S. Committee for Refugees and the U.S. Conference of Catholic Bishops, with grants of over \$2 million each for post-release legal services serving reunified children in removal proceedings throughout the country. See announcement [here](#). Additionally, in June 2014, the Department of Justice and the Corporation for National and Community Service announced “justice AmeriCorps” a grant program intended to enroll 100 lawyers and paralegals throughout the country to provide additional legal services to vulnerable children in removal proceedings who meet certain criteria. See, Department of Justice press release [here](#).

Arlington, Miami, Houston and Los Angeles, following closely behind.³⁴ Again, only about 40% of these children are currently represented by counsel.³⁵ In July 2014, several groups headed by the American Civil Liberties Union Foundation of Southern California joined forces to file a nationwide lawsuit challenging the lack of government appointed counsel on behalf of children in removal proceedings.³⁶ The lawsuit is currently pending. A lack of legal representation leads to court inefficiencies and results in an inordinate number of *in absentia* removal proceedings. The EOIR provided information to legal advocates demonstrating the courts with the highest number of UAC *in absentia* cases, with the highest in FY2015 being in Houston, Texas with 1,450 *in absentia* removal orders and 163 *in absentia* removal orders with a motion to reopen filed.³⁷ Legal representation and access to and by counsel are paramount issues of concern for the American Bar Association.

In response to the “surge” in the summer of 2014, the Administration became determined to stem the flow of unaccompanied children and families entering the country from Central America and responded with a multi-pronged approach which includes expediting the processing of these children and families through the system; dedicating additional enforcement and detention resources; coordinating among all relevant federal agencies and engaging with foreign governments to discourage and deter illegal immigration to the United States.³⁸ . These efforts have apparently had an impact, since the number of unaccompanied children entering the United States at the Southwest border dropped sharply in FY 2015 compared to FY 2014.³⁹ More recently, in February 2016, Vice President Joe Biden met with the Presidents of El Salvador, Guatemala, and Honduras to address the underlying causes of migration and discuss plans for the Alliance for Prosperity, the initiative between the four countries to improve security and economic issues in the Northern Triangle.⁴⁰ The leaders of the Northern Triangle agreed to facilitate the return of migrants who do not qualify for U.S. protection and improve returned migrant care protocols.⁴¹

³⁴ White House meeting on February 3, 2015, information provided by EOIR Deputy Director Ana Kocur, courts with the largest UAC “surge” dockets, pending cases, both represented and unrepresented: New York City (over 2,000); Baltimore & Arlington (over 1,500); Miami, Houston and Los Angeles (over 1,400); Charlotte, New Orleans, Newark, Memphis, San Francisco (over 600); Boston and Orlando (over 500); Dallas (over 400); Atlanta and Chicago (over 300); Cleveland, Omaha, San Antonio, Philadelphia and Kansas City (over 200).

³⁵ See Mary Meg McCarthy & Wendy Young, *Immigrant Children Desperately Need Lawyers*, New York Times (March 10, 2016), available [here](#).

³⁶ See ACLU press release [here](#).

³⁷ National Stakeholder Coordination Call on Access to Counsel for Unaccompanied Minors & Detained Family Cases, February 26, 2016.

³⁸ Written testimony of FEMA Administrator Craig Fugate, CBP Commissioner Gil Kerlikowske, and ICE Principal Deputy Assistant Secretary Thomas Winkowski for a Senate Committee on Homeland Security and Governmental Affairs hearing titled “Challenges at the Border: Examining the Causes, Consequences, and Responses to the Rise in Apprehensions at the Southern Border,” July 9, 2014, available [here](#).

³⁹ See Marc R. Rosenblum, *Unaccompanied Child Migration to the U.S.: The Tensions Between Protection and Prevention*, Migration Policy Institute, Executive Summary, April 2015, available [here](#).

⁴⁰ White House Press Release, *The Blair House Communique: Joint Communique Of The Presidents Of El Salvador, Guatemala, And Honduras, And The Vice President Of The United States Of America In Relation To The Plan Of The Alliance For Prosperity In The Northern Triangle*, February 24, 2016, available [here](#).

⁴¹ *Id.*

Reasons for the Recent Exodus

As previously mentioned, the vast majority of the children who arrived in the 2014 surge came from three countries: El Salvador, Honduras and Guatemala, a region in Central America known as the “Northern Triangle.” In contrast, the number of children entering from Nicaragua is minimal and the number from Mexico has remained relatively constant over the past several years. Why have so many children left the Northern Triangle countries of Central America and for what reasons? The answers are complicated and multi-faceted; although there is no doubt that the extraordinarily high incidence of violence from gangs and international criminal organizations is a major factor.⁴² Sonia Nazario, an award-winning journalist who has researched and written extensively on the conditions that spur Central American children to travel to the United States, published an Op-ed piece in the *New York Times* claiming that violence, not poverty, is the main reason for the recent exodus of children.⁴³ When comparing the numbers of children arriving annually by nationality, it is clear that the decrease in numbers in FY 2015 is made up almost exclusively in a drop in arrivals of children from El Salvador and Honduras, but not Guatemala or Mexico.⁴⁴ This is an interesting observation that most likely has more to do with effective prevention, interdiction and deportation efforts in Central America and Mexico than any improvement in county conditions in El Salvador and Honduras. On the contrary, the Northern Triangle countries remain among the most violent countries in the world, with El Salvador recently surpassing Honduras and reporting the world’s highest homicide rate.⁴⁵

ABA Pro Bono Project: Serving Unaccompanied Children on the Texas-Mexico Border

Since 1989, the ABA has operated a pro bono project on the Texas/Mexico border called ProBAR, the South Texas Pro Bono Asylum Representation Project, located in Harlingen, Texas. ProBAR provides legal information and pro bono representation to indigent, detained adults and unaccompanied children in the Rio Grande Valley of lower South Texas. Many of the children represented by ProBAR describe having been assaulted, threatened and recruited by gangs or drug cartels and ordered to participate with these groups under the threat of death. Others have been extorted and ordered to pay large sums of money or face threats of violence or murder. Young girls are claimed as “girlfriends” by gang members and told they will be killed if they don’t surrender. Children describe how gang members wait for them outside of their schools in order to recruit new members and/or charge regular “fees.” Entire neighborhoods are controlled by violent gangs and innocent families and small business owners must pay a “war tax” or “rent” to the controlling gang. The authorities either cannot or will not control the gang violence and so the gangs have effectively gained control over large parts of these countries, especially poor, urban areas. While large numbers of children are targeted personally for gang violence, even those who have not been targeted individually, fear they will be targeted in the future. Other

⁴² Frances Robles, *Fleeing Gangs, Children Head to U.S. Border*, N.Y. Times, July 9, 2014, available [here](#):

⁴³ Sonia Nazario, Op-Ed., *A Refugee Crisis, Not an Immigration Crisis*, N.Y. Times, July 11, 2014, available [here](#).

⁴⁴ Migration Policy Institute webinar March 31, 2015,

⁴⁵ Alan Gomez, *El Salvador: World’s new murder capital*, USA Today, January 8, 2016, available [here](#). See also Danielle Renwick, *Central America’s Violent Northern Triangle*, Council on Foreign Relations, January 19, 2016, available [here](#).

children represented by ProBAR describe being victims of domestic violence, trafficking, exploitation and abandonment. Some children leave their countries with the expectation of supporting their parents and siblings living in abject poverty back home; families may even mortgage the only home or piece of land they own to finance the child's trip. Currently, there are very few safety nets for vulnerable children and families in Central America and traveling to the United States is perceived as one of the only ways to escape danger, poverty and violence.

These Central American countries all were impacted by civil wars in the 1980s and 1990s and continue to be plagued with insecurity, impunity, devastated economies and a weak and corrupt law enforcement system. Honduras was long considered to be the world's murder capital, with 66 murders per 100,000 residents in 2014, as compared to 5 murders per 100,000 residents in the United States.⁴⁶ Honduras's second largest city, San Pedro Sula, where many unaccompanied children come from, has been dubbed the "world's murder capital" at 169 murders per 100,000 residents.⁴⁷ However, El Salvador has recently surpassed Honduras's murder rate, reporting a rate of 104 murders per 100,000 people in 2015.⁴⁸ This is largely attributed to the dissolution of El Salvador's two-year gang truce, which violently unraveled in 2014, causing a homicide spike and making El Salvador the deadliest peace-time country in the world.⁴⁹ Furthermore, economic conditions are dismal: in Honduras, more than 63% of the population was living in poverty in 2014.⁵⁰ As a result of these conditions and natural disasters including Hurricane Mitch in 1998 and an earthquake in El Salvador in 2001, many individuals including parents fled for the United States seeking safety, protection and employment and have remained in the U.S. for 5, 10, or 15 years and more, working and sending money back home while their children are left behind, being raised by aging grandparents and other extended family members.

The failure of comprehensive immigration reform is another factor that has led to increased migration of children. Many Central American parents who came to the United States more than a decade ago continue to live in the United States without legal status. The failed effort at immigration reform has caused some parents to lose hope that they will ever be able to travel back to their countries legally and out of desperation some have paid smugglers thousands of dollars to bring their children to the United States. Sometimes elderly caregivers in the home country can no longer properly care for the children or have passed away. Children without adequate adult supervision are often targeted by gangs and drug cartels. In other cases, children make the decision to leave on their own, determined to join their parents and U.S.-born siblings in the United States.

The human smuggling industry also plays an important role in the continued flow of children entering at the Southwest border. Human smuggling is a lucrative business and smugglers are quick to recognize

⁴⁶ [Compare Honduras 2015 Crime and Safety Report](#), U.S. Department of State Overseas Security Advisory Council, April 21, 2015, available here with [2014 Crime in the United States](#), Federal Bureau of Investigation, available here.

⁴⁷ Jeremy Relph, *Dispatch from Honduras: What It's Like To Live In The Murder Capital Of The World*, October 30, 2014, available [here](#).

⁴⁸ Alan Gomez, *El Salvador: World's new murder capital*, USA Today, January 8, 2016, available [here](#).

⁴⁹ Marcos Aleman and Alberto Arce, *Homicides in El Salvador Reach Record as Gang Violence Grows*, Yahoo.com, April 9, 2015, available [here](#).

⁵⁰ The World Bank, *Honduras*, last updated April 4, 2016, available [here](#).

the patterns in detention and reunification policies and use them to their advantage. They often portray “reunification” as a “permiso,” or “permit” to enter the United States, although the “reunification” process is only a temporary authorization to allow children to remain in the United States during the pendency of their removal proceedings. Children released through the reunification process have no right to work and no automatic right to any permanent status. Children, like adults, who fail to appear for their removal proceedings will receive an *in absentia* removal order and eventually ICE will process their removal.

Access to Counsel and Due Process Concerns

While there are limited options for children to remain legally in the United States when they enter without authorization, it is widely understood that an individual is much more likely to prevail in immigration court if he or she is represented.⁵¹ Unfortunately, recent statistics show that 57% of UACs do not have legal representation in immigration court.⁵² A recent study focusing on the success rates of children in removal proceedings demonstrated that 73% of represented children were granted the right to remain in the United States as compared to 15% of unrepresented children.⁵³ On the other hand, the Immigration Court system is so severely backlogged and under-resourced that it often takes years to complete a single case. In FY2014, immigration judges handled an average of 1,400 cases, with some reporting over 3,000 cases on their dockets.⁵⁴ Congress has continually funded increased enforcement efforts but has failed to increase resources needed to adequately adjudicate these cases in a timely and efficient manner. While Customs and Border Protection and Immigration and Customs Enforcement spending increased 105% from FY2003 to FY2015, immigration court spending increased only 74%, despite the fact that court backlogs increased 163% during this time.⁵⁵

Recently, as an additional effort to prioritize the processing of children’s cases, the Executive Office for Immigration Review began to expedite the cases of unaccompanied children who were released from detention and reunified beginning in May 2014.⁵⁶ As of February 2016, the EOIR requirements hold that children’s cases be set for an initial master calendar hearing within 90 days of release from detention.⁵⁷ While the latest 2016 requirements have extended the master calendar hearing date deadlines, these expedited proceedings raise significant due process concerns and have resulted in confusion for the

⁵¹ See New York Immigrant Representation Study, *Accessing Justice the Availability and Adequacy of Counsel in Immigration Proceedings*, Dec. 2011, available [here](#).

⁵² Paulette Brown, *Immigrant Children Desperately Need Lawyers*, New York Times, March 10, 2016, available [here](#).

⁵³ See, Transactional Records Access Clearinghouse, *Representation for Unaccompanied Children in Immigration Court*, Nov. 25, 2014, available [here](#).

⁵⁴ American Immigration Council, *Empty Benches: Underfunding of Immigration Courts Undermines Justice*, May 2015, available [here](#).

⁵⁵ *Id.*

⁵⁶ In the 2014 memo, UAC cases must be set for a master calendar hearing within 21 days of release from detention. See Brian M. O’Leary, Chief Immigration Judge, Executive Office for Immigration Review, *Docketing Practices Relating to Unaccompanied Children Cases and Adult with Children Released on Alternatives to Detention Cases in Light of the New Priorities*, Mar. 24, 2015 available [here](#).

⁵⁷ Print Maggard, Chief Immigration Judge, Executive Office for Immigration Review, *Revised Docketing Practices Relating to Certain EOIR Priority Cases*, February 3, 2016, available [here](#).

children and their families and problems related to proper notice and lack of access to counsel in immigration court.⁵⁸ While the initial master calendar hearings are required to be expedited, the Chief Immigration Judge recently clarified that the Immigration Judges are free to use their discretion to allow adjournments in subsequent hearings as necessary.⁵⁹

UAC Population: Refugee or Immigrant?

There has been much debate in the media about whether these individuals are refugees or simply migrants. A refugee is someone who is outside of his or her country of nationality and is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁶⁰ An immigrant generally migrates for economic, family or other reasons. This distinction is important because someone who meets the definition of refugee qualifies to be granted asylum, but besides asylum, there is limited legal relief for migrants who enter the country without authorization.

The UNHCR, in a 2014 report, found that 58% of the children interviewed in a 2013 study raised actual or potential legal protection concerns.⁶¹ In a 2014 study, the Refugee and Immigrant Center for Education and Legal Services (RAICES) found that 63% of the children interviewed in HHS custody were likely to be eligible for relief in an immigration court.⁶² This signifies that more than half of the children have personal situations of danger, abuse or neglect that may make them eligible to apply for asylum or another form of relief such as the Special Immigrant Juvenile visa. This does not mean that 58% of the children will ultimately win legal relief. The United States does not always interpret its asylum laws as broadly as recommended by the UNHCR. It is difficult to win an asylum case, especially in the adversarial Immigration Court system (unaccompanied children have the right to apply for asylum before the Asylum Office in a non-adversarial process⁶³). Many of the gang cases are ultimately denied by Immigration Judges and Courts of Appeal, finding that they do not meet the legal standard for asylum. Indeed, in order to qualify for asylum an applicant must show that he or she suffered past persecution or has a well-founded fear of future persecution based on race, religion, nationality, political opinion or social group.⁶⁴ If someone presents a fear that is not based on one of these five protected grounds, it will be denied, even if credible. That is often what happens with many of the

⁵⁸ John Fritze, *Immigration Court Speeds Review of Cases Involving Children*, The Baltimore Sun, August 20, 2014, available [here](#).

⁵⁹ See, Brian M. O'Leary, Chief Immigration Judge, Executive Office for Immigration Review, *Docketing Practices Relating to Unaccompanied Children Cases and Adult with Children Released on Alternatives to Detention Cases in Light of the New Priorities*, Mar. 24, 2015 available [here](#)

⁶⁰ 8 U.S.C. § 1101(a)(42)(A).

⁶¹ See United Nations High Commissioner for Refugees, *Children on the Run*, Mar. 2014, available [here](#).

⁶² RAICES, *Letter to President Barack Obama*, July 18, 2014, available [here](#).

⁶³ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, enacted January 1, 2008, available [here](#).

⁶⁴ 8 U.S.C. § 1158(b)(1).

gang-based cases; they are found credible, but the judges hold that the fear is not based on one of the five protected grounds, and therefore the applicant is not eligible for relief.⁶⁵

Some advocates have called for the granting of Temporary Protected Status (TPS) for Central Americans who are in the United States without authorization.⁶⁶ TPS is a status designated by the executive branch to authorize a temporary stay in the United States due to ongoing armed conflict, a natural disaster or other extraordinary conditions that temporarily prevent foreign nationals from returning safely.⁶⁷ This would be one way to relieve the courts of having to adjudicate the majority of these cases and give individuals the opportunity to support themselves while they remain in the United States. Other advocates have argued for the creation of legal vehicles including humanitarian visas that would allow imperiled children with family in the United States to travel legally to the United States.⁶⁸

In January 2016, the Obama administration announced a plan to establish refugee processing centers in several Latin American countries in an effort to stem the flood of migrants before they reach they begin the journey to the United States.⁶⁹ The administration plans to work in conjunction with the U.N. to implement the resettlement program in nearby safe countries, where the U.N. will make refugee status determinations.⁷⁰ Announcing the plan in January, Secretary of State John Kerry said it would “offer [refugees] a safe and legal alternative to the dangerous journey that many are tempted to begin, making them instant easy prey for human smugglers who have no interest but their own profits.”⁷¹

2. ABA Response: Past and Present

Establishment of ABA Working Group on Unaccompanied Minor Immigrants

In July 2014, in response to the compelling humanitarian situation occurring at the southwest border, the Commission on Immigration organized a tour for ABA leadership to the Lackland Air Force Base in San Antonio, Texas, where 1,200 children were being held and processed for reunification.⁷² ABA President William Hubbard and Past-President James R. Silkenat joined former Commission Chair Christina Fiflis and fourteen others to visit this emergency facility as well as several traditional children’s shelters and the San Antonio Immigration Court. Subsequently, in August 2014, President William Hubbard established a Working Group on Unaccompanied Minor Immigrants to address the urgent crisis

⁶⁵ Lisa Frydman and Neha Desai, *Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution By Organized Gangs*, October 2012, available [here](#).

⁶⁶ RAICES, *It’s Time for Temporary Protected Status*, March 2, 2016, available [here](#); National Immigrant Justice Center, *270+ Organizations Send Letter Urging President Obama to Offer Temporary Protected Status for Immigrants from El Salvador, Guatemala, and Honduras*, January 25, 2016, available [here](#).

⁶⁷ 8 U.S. C. § 1254a(b)(1).

⁶⁸ Donald Kerwin, *Why the Central American Child Migrants Need Full Adjudication of Their Protection Claims*, The Huffington Post, July 19, 2014, available [here](#).

⁶⁹ Julia Preston, David M. Herszenhorn, and Michael D. Shear, *U.N. to Help U.S. Screen Central American Migrants*, New York Times, January 12, 2016, available [here](#).

⁷⁰ *Id.*

⁷¹ John Kerry, *Remarks on the United States Foreign Policy Agenda for 2016*, January 13, 2016, available [here](#).

⁷² As of August 2014, this facility is no longer being used to detain unaccompanied children.

presented by these children and to mobilize the full resources, talent and experience of ABA members to meet this challenge. The Working Group is comprised of ABA members representing a broad cross-section of ABA Sections, Divisions, Committees and Commissions who are working to address this crisis. The Working Group is tasked with developing and implementing an immediate response to the need for trained lawyers to take on these immigration cases on a pro bono basis, as well as developing a collaborative and effective plan for how the ABA can contribute to coordination of the efforts among the various entities already committed to this issue and developing new service opportunities and resources as needed.⁷³

ABA Background on Serving Immigrants and Asylum-Seekers on the Texas Border

In 1989, the ABA, in collaboration with the State Bar of Texas (SBOT) and the American Immigration Lawyers Association (AILA), created ProBAR, the South Texas Pro Bono Asylum Representation Project, in Harlingen, Texas. This effort arose out of a response to a similar crisis when there were over 5,000 Central American adults and families detained in South Texas fleeing from war-torn nations in Central America and seeking safety and protection in the United States. At that time, the ABA, SBOT and AILA joined forces in order to recruit and train pro bono lawyers to represent detained Central American asylum-seekers in South Texas. Initially, the project was comprised of just one attorney and a volunteer paralegal. Today, ProBAR has over 60 staff members in two offices in Harlingen that focus on providing “Know Your Rights” presentations, legal screening services and pro bono representation to adults and unaccompanied children in detention throughout the Rio Grande Valley.

In 2015, ProBAR served 10,403 detained unaccompanied children and 1,981 detained adults. In 2011, there were 369 beds for unaccompanied children in the Rio Grande Valley and each child was detained an average of 45 to 60 days. Today there are over 1,600 beds in South Texas, and children rotate in and out an average of every 7 to 30 days. ProBAR is charged with providing “Know Your Rights” presentations to detained children and adults, individual screenings and pro bono representation and referrals for those with identifiable relief. Approximately 90% of the children will be reunified with family or friends in the United States pending their hearings, but they must return to immigration court and defend against a removal order. They travel all over the United States in order to reunify and according to the government, have no right to appointed counsel in the immigration court process. If they don’t return to immigration court when scheduled, they will receive an *in absentia* removal order.

ProBAR “Know Your Rights” and Screening Video

The Commission, through the ProBAR project, has produced multiple training videos for attorneys and paralegals who are serving unaccompanied children in the initial detention setting. ProBAR staff members have years of experience providing specialized “Know Your Rights” presentations and

⁷³ Since that time, about 200 lawyers have volunteered to represent an unaccompanied child. The ABA also established CILA (the Children’s Immigration Law Academy), an expert legal resource center in Houston, TX to provide training, technical assistance, and legal resources to attorneys representing UACs. More information is available [here](#).

screening services to detained children. In 2014, ProBAR staff filmed four videos related to working with Central American children. These videos are currently available at the Commission on Immigration website.⁷⁴

ABA Advocacy Efforts

Additionally, the ABA is engaged in advocacy efforts with the Administration and Congress. The ABA has adopted numerous policies that address unaccompanied alien children.

In 2001, the ABA adopted a [policy](#) that urges: 1) government appointed counsel for unaccompanied children at all stages of immigration processes and proceedings; 2) creation within the Department of Justice of an office with child welfare expertise that would have an oversight role and ensure that children's interests are respected at all times; 3) that children in immigration custody who cannot be released to family or other sponsors should be housed in family-like settings, and not detained in facilities with or for juvenile offenders.

In 2004, the ABA adopted the [Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States](#). These Standards were developed by the Commission on Immigration's predecessor entity and cover myriad issues related to specific rights of child respondents, representation of children, and the standards for the custody, placement and care of unaccompanied alien children, rights of children in custody and adjudication of child claims.

On June 25th, 2014, Past President Silkenat submitted a [statement](#) to the Judiciary Committee of the U.S. House of Representatives regarding the surge of unaccompanied children.

On March 26, 2015, Past President William Hubbard sent a [letter](#) to DHS Secretary Jeh Johnson expressing concern about expansion of immigration detention, including detention of women and children seeking protection as refugees.

On March 10, 2016, President Paulette Brown wrote an op-ed published in the New York Times entitled "Immigrant Children Desperately Need Lawyers," urging Congress and the administration to increase efforts to provide representation to unaccompanied minors.

GPSolo/KIND Pro Bono Training Sessions

A significant effort to support legal representation of unaccompanied minors was commenced in June, 2011 when the ABA Board of Governors authorized GPSolo Division to partner with Kids in Need of Defense (KIND), a private non-profit that helps provide competent and compassionate legal counsel to unaccompanied minors in the US immigration system. The ABA-KIND partnership has developed over the years, with the ABA providing training venues, on-line resource materials and a pool of volunteers, and KIND matching up trained volunteers with cases, mentors and guidance.

⁷⁴ The training videos are available [here](#).

Since starting in 2011, the ABA-KIND partnership has trained lawyers in numerous cities, during stand-alone meetings conducted by ABA GPSolo, Tort Trial and Insurance Practice Section and Business Law Section. The ABA-KIND partnership website is hosted by GPSolo but is open to all and includes a free (open access) 2-hour CLE accredited webinar and 6 x ½ hour podcasts, along with written training materials: <http://www.americanbar.org/groups/gpsolo/initiatives/kind.html>. That site also has a short information video about KIND and a direct link to volunteer with KIND to take on a case. This partnership and more information from KIND is described in Laura Farber's January 2012 article for GPSolo Magazine, see:http://www.americanbar.org/publications/gp_solo/2012/january_february/chairs_corner_helping_kids_need_defense.html

3. How to Help Now

For ABA members and others who want to help now, there are a number of options:

Volunteer to Represent an Unaccompanied Child through the ABA Immigrant Child Assistance Network

If you would like to help by representing a child who is currently in removal proceedings, you can enroll at the ABA website at: www.ambar.org/ican. Attorneys who register will be matched with a legal service provider in their geographical area to be paired with a child client. Training videos and other resources are available at this site and at the ABA partner site www.UACresources.org.

Volunteer with or Donate to ProBAR in Harlingen, Texas or the IJP in San Diego, California

ProBAR is in the process of hiring additional attorneys and paralegals for temporary and permanent assignments. If you or someone you know might be interested in a position, contact Kimi Jackson or Meghan Johnson listed below. At this time, ProBAR's Children's Project can only accept volunteers who are proficient in Spanish, can commit to staying at least one month and are available to help screen and represent children at one of the 15 shelters in the area. To contact ProBAR you may e-mail the Director, Kimi Jackson at kimi.jackson@abaprobar.org or the Manager of the Children's Project, Meghan Johnson at meghan.johnson@abaprobar.org. For more information visit ProBAR's Children's project website link: www.ambar.org/probarchildren.

If you do not meet the criteria to volunteer, you may still support this work by making a contribution to ProBAR through the ABA's Fund for Justice and Education at the following link:

<https://donate.americanbar.org/immigration>

Attend Trainings on Representing Unaccompanied Minors Presented Throughout the Country

For a list of upcoming live trainings see the "Training" link at the Unaccompanied Children Resource Center website [here](#). You can watch a six-part training entitled "The ABCs of Representing Unaccompanied Children in Removal Proceedings" at the Commission website [here](#).

Donate Toward Social Service Efforts

If you would like to donate toward serving those who have been released you can review the following websites of agencies that are providing support to newly arrived Central Americans in the Rio Grande Valley, the area where ProBAR is located.

La Posada Providencia, a shelter run by the Sisters of Divine Providence:

<http://lppshelter.org/>

The Sacred Heart Church in McAllen is serving released families:

<http://sacredheartchurch-mcallen.org/immigrant-assistance/>

Share Your Ideas

The Commission and the Working Group are interested in working collaboratively with ABA entities and other stakeholders. Please feel free to contact us with your ideas and plans to address this compelling situation.

For more information, contact:

Mary Meg McCarthy, Chair, ABA Commission on Immigration, MMccarthy@heartlandalliance.org.

Meredith Linsky, Director, ABA Commission on Immigration, Meredith.Linsky@americanbar.org,
202-662-1006.

Mary Ryan and Christina Fiflis, Co-Chairs, Working Group on Unaccompanied Minor Immigrants,
christinafiflis@me.com; MRyan@nutter.com.