

The Flow of Unaccompanied Children Through the Immigration System

A Resource for Practitioners,
Policy Makers, and Researchers

MARCH 2012

Olga Byrne • Elise Miller

MESSAGE FROM THE CENTER DIRECTOR

Vera's Center on Immigration and Justice was created to address the challenges of converging criminal justice and immigration systems—challenges that affect thousands of immigrants and their families every day. Our work focuses on improving access to legal services for immigrants—in particular, for detained adults and unaccompanied children—and strengthening relationships between law enforcement and immigrant communities.

Unaccompanied immigrant children are an extremely vulnerable population. Whether they enter the United States by themselves, fall prey to smugglers or traffickers, or find themselves in government custody facing deportation after many years of living in the country, they are often forced to navigate the complex immigration enforcement system without a lawyer. The thousands of children who encounter this system annually face a bewildering number of obstacles, as do the service providers whose job it is to assist them.

For the past six years, Vera has administered a nationwide program to improve legal services for unaccompanied immigrant children who are or have been in the custody of the federal Office of Refugee Resettlement. Through our work, we have learned a great deal about the path unaccompanied children take through the immigration enforcement process. This report seeks to describe the steps along the path and to disseminate that information to a wide audience.

A handwritten signature in black ink, reading "Oren Root". The signature is fluid and cursive, with the first name "Oren" and last name "Root" clearly distinguishable.

Oren Root
Director, Center on Immigration and Justice

Contents

5	Introduction
6	Background
8	Apprehension by DHS and Referral to ORR
13	Intake, Placement, and Care in ORR Custody
17	Reunifying with a Sponsor in the United States
22	Immigration Proceedings and Legal Services
28	Outcomes for Unaccompanied Children
30	Conclusion
31	Appendix

Executive Summary

Unaccompanied children placed in immigration proceedings in the United States are likely to encounter a complex web of policies and practices, numerous government agencies—each acting in accordance with a different mission and objective—and a legal process that often takes years to resolve.

Since 2005, the Vera Institute of Justice has administered the Unaccompanied Children Program, which provides access to legal services for people who are younger than 18, have no lawful immigration status, and have no parent or legal guardian in the United States available to provide care and custody. The program is funded by the Office of Refugee Resettlement (ORR), the agency within the U.S. Department of Health and Human Services responsible for these children after apprehension and referral by the U.S. Department of Homeland Security (DHS).

Vera’s work on this project has given it unique access to a national network of legal services providers with expertise in representing unaccompanied children, as well as to quantitative and qualitative information about unaccompanied children from these providers and from ORR. This report is based on project staff’s analysis of this material and their review of the most recent information about this population, including documents published by government agencies and nongovernmental organizations. It aims to demystify a sometimes daunting process by providing a thorough overview of the system—from the children’s point of apprehension by immigration enforcement authorities to their release from government custody and the end of their immigration cases—and to clearly describe the maze of government agencies, actors, and policies.

Key system characteristics revealed in the course of this analysis include:

- > Up to 15 percent of unaccompanied children enter the system as a result of being apprehended “internally” in the United States (as opposed to at a port of entry).
- > Most children referred by DHS to ORR (80 percent) are placed in a shelter setting—the least restrictive type of placement available within the ORR system.
- > Most children (75 percent) remain in ORR custody for one week to four months, with an average stay of 61 days.
- > At least 65 percent of children admitted to ORR custody are ultimately placed with a sponsor living in the United States.
- > Approximately 40 percent of children admitted into ORR custody are identified as eligible for a form of legal relief from removal (such as asylum, special immigrant juvenile status, or visas for victims of crime or trafficking).
- > Fewer than 1 percent of children are granted relief from removal during their stay in ORR custody.

Although this publication provides a comprehensive system overview, relatively little is known about the experiences of children in the system, and additional empirical research is needed. This report is intended as a resource to assist practitioners, policy makers, and researchers in their work with unaccompanied children, and to help people in the field make strides toward improving the multilayered immigration process faced by thousands of children annually.

Introduction

The U.S. legal system affecting unaccompanied children—those younger than 18 without lawful immigration status who have no parent or legal guardian in the country available to provide care and custody—is complicated and intimidating, with procedures and services that vary from one area of the country to another. Once apprehended and charged with violating U.S. immigration laws, children enter a disjointed, labyrinthine system in which they may interact with numerous agencies within several federal government departments, as well as with a host of government contractors. (See Figure 1 on page 7 for an illustration of these agencies.) Children are also likely to move between several cities and states, and thus interact with even more stakeholders for the duration of their proceedings.

In 2005, the Office of Refugee Resettlement (ORR) contracted with the Vera Institute of Justice to develop a program that would improve access to legal services for unaccompanied children in federal custody. In administering this program, Vera has benefited from extraordinary access to information about children’s movement through the system. Many stakeholders, particularly legal- and social-service providers, have said that a comprehensive account of how children move through the system would serve as a useful training tool for new staff and volunteers. Accordingly, this report is meant to be a resource for practitioners, policy makers, and researchers interested in the system that unaccompanied children encounter. It details the flow of children through the immigration detention and removal system from the point of apprehension by immigration law-enforcement authorities to the close of their immigration cases.

The information in this report comes from data provided by Vera’s subcontracted legal service providers and ORR, reports on unaccompanied children, and project staff’s observations of the system. The report provides background related to the government’s custodial authority over these children, recent legislation affecting them, and a brief discussion about the definition of an “unaccompanied child.” It then describes the phases of children’s involvement in the system: apprehension and referral by the U.S. Department of Homeland Security; ORR intake, placement, and care; release to family or other sponsors in the United States; immigration court proceedings and legal services; and outcomes.

Once apprehended and charged with violating U.S. immigration laws, children enter a disjointed, labyrinthine system.

Background

In the 1980s, the number of unaccompanied children entering the United States increased. Many of them were fleeing Central America, where civil wars caused dislocation and other hardships.¹ At that time, the U.S. Immigration and Naturalization Service (INS) held unaccompanied children in its custody.² The INS also acted as the children's prosecutor, presenting charges that they had violated immigration laws and arguing for their deportation. In response to the conflict of interest inherent in the agency's dual capacity as caretaker and prosecutor, as well as growing concerns about the conditions of detention, a broad coalition of human rights organizations, religious groups, and political leaders pushed for improvements in the care and treatment of unaccompanied children and lobbied for the transfer of their care and custody to another agency.³

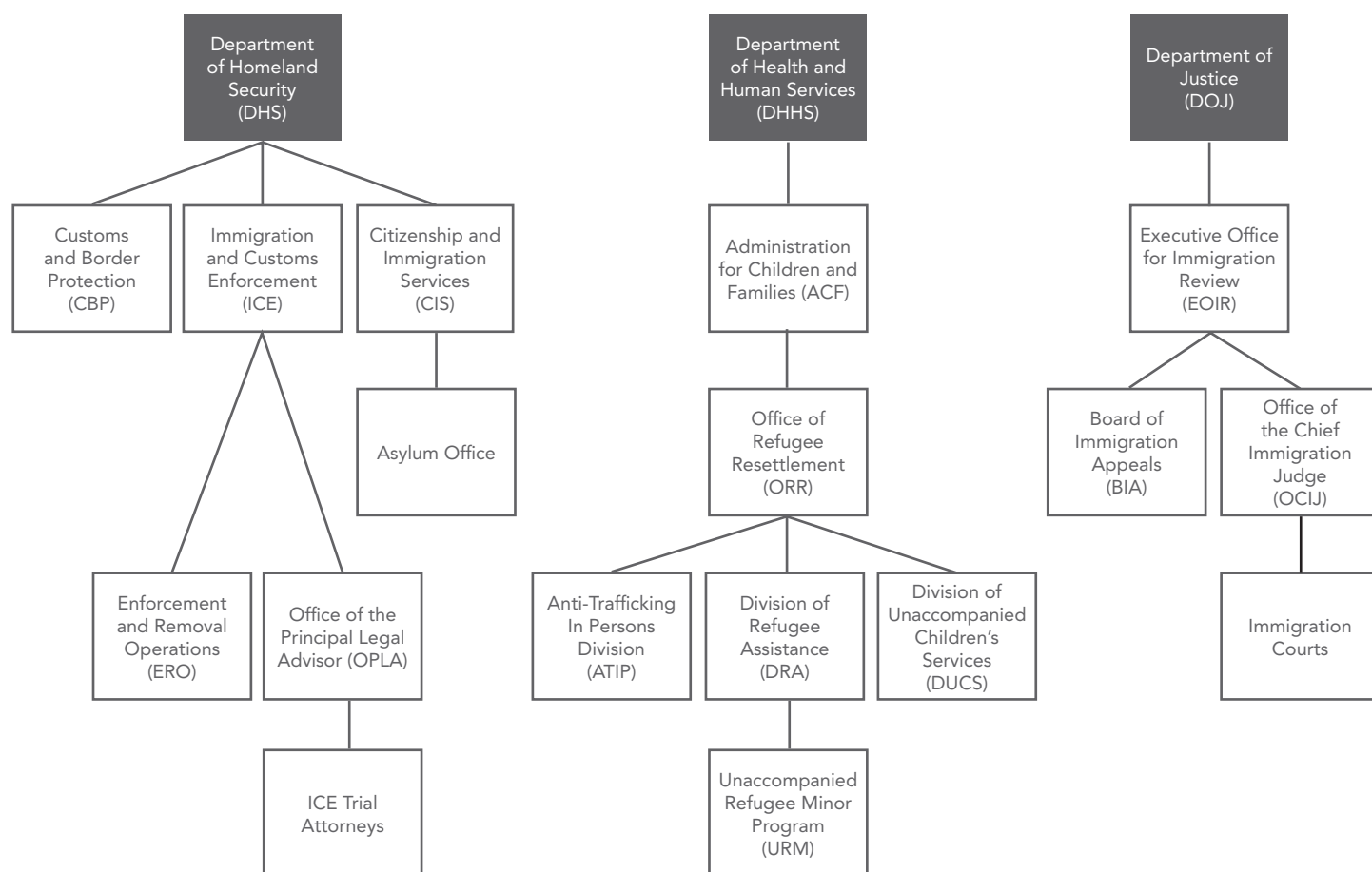
In 2002, the conflict of interest was finally resolved. After September 11, 2001, as immigration policy and border security came under increased scrutiny, Congress passed the Homeland Security Act of 2002 (HSA). The HSA eliminated the INS and transferred all immigration and enforcement functions to three divisions of the newly created U.S. Department of Homeland Security (DHS): Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP). Seeing an opportunity to achieve their goal, children's rights advocates successfully lobbied to attach an amendment to the HSA that transferred responsibility for the care, placement, and release of unaccompanied children to the Office of Refugee Resettlement (ORR), an agency of the U.S. Department of Health and Human Services (HHS).⁴ ORR assumed this role on March 1, 2003, and subsequently created the Division of Unaccompanied Children's Services (DUCS). Figure 1 shows all the federal actors involved with unaccompanied children in the immigration system at the time this report was published.⁵

EXPANDING PROTECTIONS AND SERVICES FOR CHILDREN

The movement to set minimum standards for detention conditions for children began long before INS was eliminated and custody of unaccompanied children transferred to ORR.⁶ In 1997, after several years of class-action litigation in federal court, an agreement known as the *Flores* settlement (stemming from a lawsuit called *Flores v. Meese*) imposed several obligations on the INS. First, the agency was required to release children from immigration detention to approved sponsors without unnecessary delay. Second, it was obligated to place children in the "least restrictive setting" appropriate to their ages and any special needs. Third, INS had to implement standards relating to the care and treatment of children in immigration detention.⁷ The terms of the *Flores* settlement now apply to DHS and ORR.⁸

In recent years, members of Congress have introduced a number of bills to improve the services provided to unaccompanied children in the immigra-

Figure 1: Federal Agencies that Interact with Unaccompanied Children as of December 2011



tion system, including provisions for the appointment of counsel and guardians ad litem (persons designated to act in the best interest of a child during a legal action.). This legislative activity began in 2000, at the time of the Elián González immigration and custody case.⁹ California Senator Dianne Feinstein introduced the Unaccompanied Alien Child Protection Act (UACPA) in 2000 and again every year until 2007. Although Congress did not pass these bills, early versions of the UACPA served as predecessors to Section 462 of the HSA, the provision transferring custody from the INS to ORR. The counsel and guardian ad litem provisions in the original version did not survive, but a proposed amendment charged the director of ORR with ensuring that “qualified and independent legal counsel is timely appointed to represent the interests of each [unaccompanied] child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act.”¹⁰

When the federal Trafficking Victims Protection Act was up for reauthorization in 2008, children’s rights proponents made additional legislative efforts to reform the law governing unaccompanied children. Many core provisions from the UACPA wound up in the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, including a mandate for the

An “unaccompanied alien child” is a child who has no lawful immigration status in the United States, is under 18 years of age, and has no parent or legal guardian in the country present or available to provide care and physical custody.

non-adversarial adjudication of unaccompanied children’s asylum claims and, to the extent practicable, access to legal services through pro-bono legal representatives. Other provisions of the law mandate the safe repatriation of children to their countries of origin.¹¹ The TVPRA also granted authority to HHS to appoint child advocates (guardians ad litem) to trafficking victims and other vulnerable unaccompanied children.

TERMINOLOGY AND DEBATE OVER LEGAL PROTECTIONS

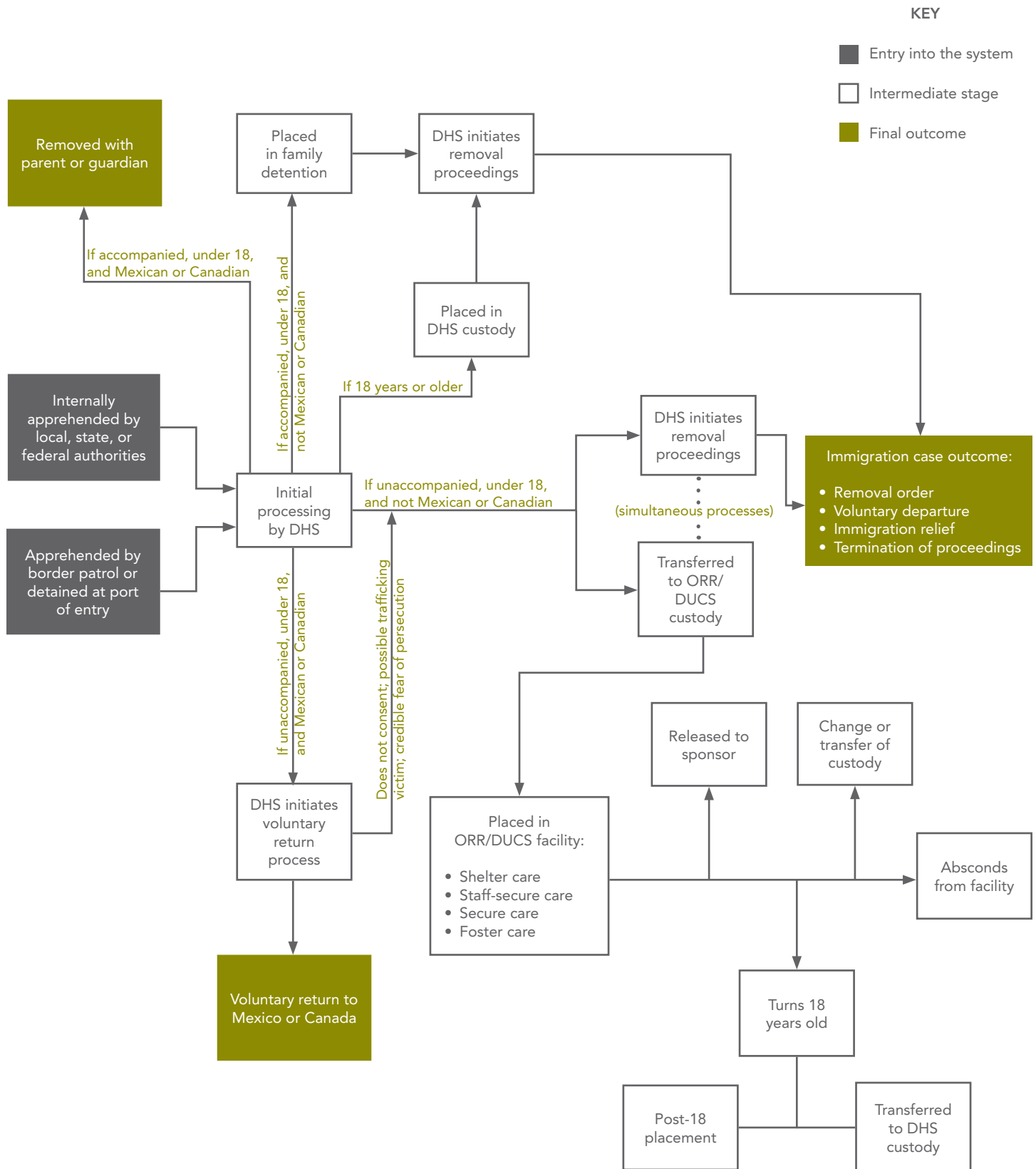
Academics, international organizations, and advocates use various terms and definitions to describe undocumented unaccompanied children. Both ORR and DHS apply the statutory definition explicit in the Homeland Security Act, which states that an “unaccompanied alien child” is a child who has no lawful immigration status in the United States, is under 18 years of age, and has no parent or legal guardian in the country present or available to provide care and physical custody.¹² The procedures and practices outlined in this report apply to children classified as “unaccompanied” using this definition.¹³

Soon after passage of the TVPRA, which provides special protections for unaccompanied children, debate grew over terminology and the applicability of the law’s protections.¹⁴ The TVPRA, for example, allows unaccompanied children to apply for asylum through the affirmative, non-adversarial process with the Asylum Office, a division of USCIS, rather than defensively in immigration court.¹⁵ (For more information about the asylum process, see “Legal Options for Children,” page 24.) Advocates argue that the crucial date for determining whether the TVPRA protections are relevant is the date when the government initiates proceedings against a child, and that such protections should not be rescinded throughout the course of the proceedings. They maintain that children classified as unaccompanied should be allowed to apply for asylum with the Asylum Office, even if they wait until after their 18th birthday or after they reunify with a family member. The Asylum Office has rejected this position and in March 2009 the agency issued a policy that it will not accept applications from children living with their parents or legal guardians or from individuals who are older than 18, even if applicants were classified as unaccompanied children when placed into immigration proceedings.¹⁶

Apprehension by DHS and Referral to ORR

The process by which unaccompanied children enter the U.S. immigration system begins when they are apprehended by federal authorities—one of the subsidiary agencies of DHS, such as CBP, the U.S. Coast Guard, or ICE—on suspicion of violating immigration law.¹⁷ The Office of Border Patrol, a division of CBP, apprehends most of these children when they try to cross the border from

Figure 2: The Flow of Unaccompanied Children Through the Immigration System



In fiscal year 2009, a total of 6,092 unaccompanied children were admitted to ORR custody after referral by DHS. In 2010, this number was 8,207 children, reflecting a 35 percent increase.

Mexico into the United States. Immigration enforcement authorities, acting through ICE's Enforcement and Removal Operations (ERO), apprehend other children in the United States during worksite enforcement actions or through operations to combat smuggling and human trafficking.¹⁸

Other unaccompanied children are first arrested by a state or local law enforcement agency, and when these so-called "internal apprehensions" occur, an immigration arrest may take place at various points during the juvenile or criminal justice process. Sometimes, before initiating any charges in the state system, local law enforcement will contact ICE to report that a child who may be an undocumented immigrant is in its custody.¹⁹ Other children go through juvenile delinquency or criminal court proceedings and serve time in a state or county facility, after which authorities contact ICE. Depending on ICE's determination about immigration status, children may be transferred to DHS custody. When ICE authorities decide to arrest someone in state or local custody, they typically place a detainer on the child so that the local agency holds the child in custody until ICE arranges for a transfer to a DHS detention facility.²⁰ Finally, in some circumstances, state or local authorities may dismiss the state court proceedings to expedite transfer of the child to DHS custody.²¹

After a person who appears to be an unaccompanied child is taken into DHS custody, CBP or ICE places the child in a temporary DHS detention facility, ensuring that he or she is not housed with unrelated adults.²² The DHS officer then determines whether the person is younger than 18 and unaccompanied.²³ In cases of doubt about age, DHS sometimes requests a dental or skeletal radiograph, though radiographs have been criticized as unreliable in determining age.²⁴ If neither a parent nor a legal guardian is with the child at the time of apprehension—or within geographical proximity—DHS classifies the child as unaccompanied.²⁵ Once DHS makes this determination, an ICE or CBP officer interviews the child and fills out a series of immigration forms.²⁶ The CBP or ICE officer then refers the case to the ICE juvenile coordinator for that district, who reports to a national juvenile coordinator in Washington, DC, contacts ORR, and arranges for the child's transfer to the ORR/DUCS facility designated by the ORR intake team.²⁷ DHS has the authority to release a child if the agency can locate a parent or other adult relative. Given the fear of deportation, however, undocumented family members living in the United States may not come forward when the child is apprehended.²⁸

In fiscal year 2009, 6,092 unaccompanied children were admitted to ORR custody after referral by DHS. In fiscal year 2010, this number was 8,207 children, reflecting a 35 percent increase. During this two-year period, ICE field offices in Phoenix (5,673 referrals), San Antonio (4,835), Miami (814), and San Diego (455) apprehended and referred the greatest number of children to ORR.

Under the TVPRA, special rules apply to children who come from the "contiguous countries" of Mexico and Canada. When CBP or ICE apprehends Mexican or Canadian children at the border or another port of entry (such as an airport), they provide them with a notice of rights and request for disposition (Form I-770), which allows them to request a hearing before an immigration

judge in the United States or elect to return immediately to their home country through a process called voluntary return.²⁹ If a child chooses the latter option, CBP must first conduct a screening to verify that the child is not a victim of trafficking or at risk of being trafficked upon return to the home country, that the child does not have a credible fear of persecution in that country, and that he or she is capable of making an independent decision to withdraw an application for admission into the United States.³⁰ If the child does not meet these criteria or if DHS cannot make this determination within 48 hours of apprehension, the child must be transferred to the care and custody of ORR according to the same process that applies to children from other countries.³¹ The vast majority of unaccompanied Mexican children apprehended at the southern border elect to go back to Mexico through the voluntary return process.³² A U.S. Border Patrol land vehicle usually transports the children to Mexico within one business day.³³

In an attempt to classify and quantify the types of DHS apprehensions (whether they are considered border apprehensions or internal apprehensions), Vera project staff reviewed ORR's data about children who were admitted to its custody from October 1, 2008, through September 30, 2010. By subtracting the date of entry into the United States from the date of DHS apprehension, researchers were able to make certain assumptions about children's experiences.

As Figure 3 illustrates, in fiscal year 2010 the majority of children were apprehended within 24 hours of entering the United States. These immediate apprehensions happen most often at the Mexican border or at an airport or other port of entry. Approximately 80 percent of children were apprehended within one week of entering the United States. Approximately 5 percent were apprehended within one month (but after more than one week) of entering the country. Two percent were apprehended between one month and one year after entering the United States, 1 percent were apprehended between one and two years after entry, and 3 percent were apprehended more than two years after entry.

In fiscal year 2010, 524 children (6 percent) were apprehended more than one month after entry. One may infer that these were "internal apprehensions" and that local law enforcement referred many of the children to ICE. The ICE field offices responsible for the greatest number of these apprehensions were Phoenix (158 referrals), Los Angeles (64), San Antonio (34), Miami (30), and Seattle (28).

The ORR data did not list an entry date for 765 children (9 percent of children admitted to the agency's custody in fiscal year 2010). Vera subcontractors report that children who have lived in the United States for many years often do not remember the exact date they entered the country, and immigration authorities would have a record of the entry date only if a child previously entered with a visa.³⁴ Thus, many of the children without a documented entry date may have lived in the United States for a considerable amount of time and may have been apprehended by ICE internally, either through contact

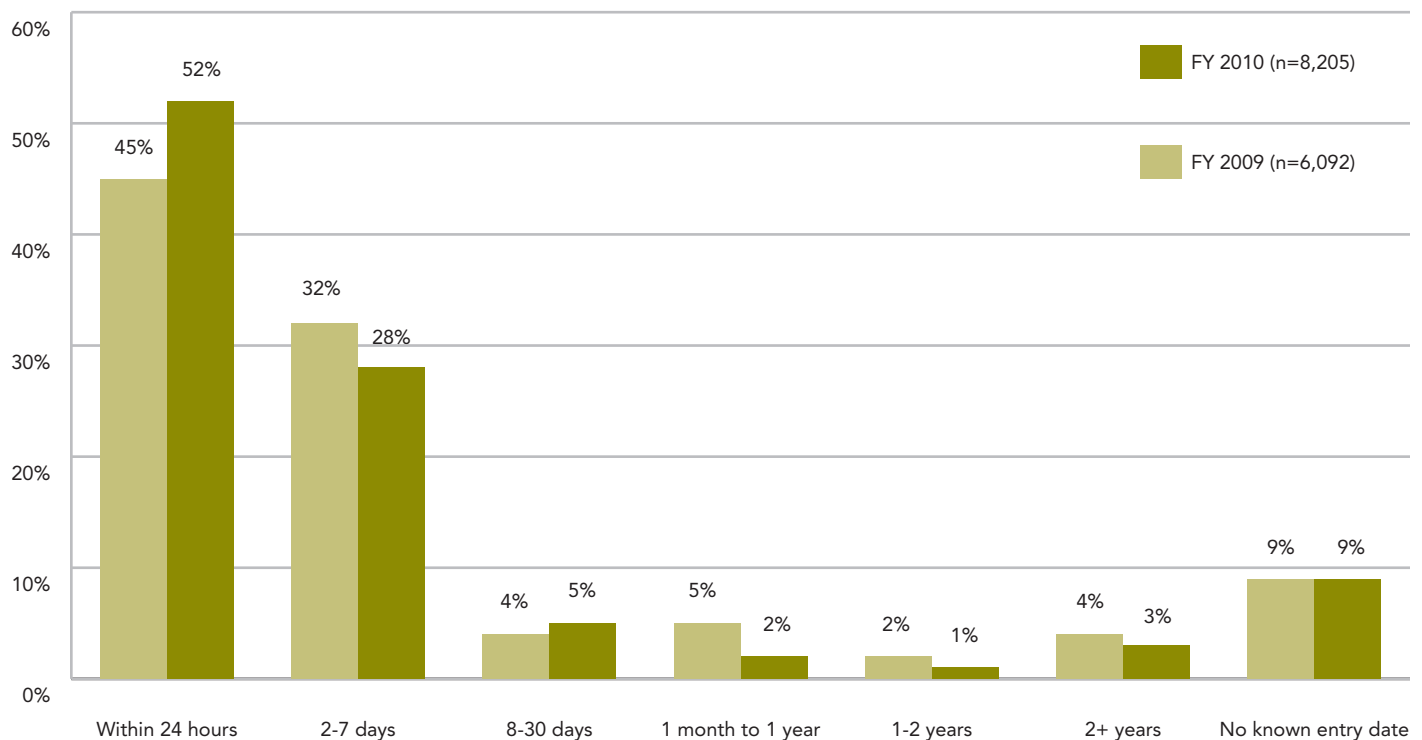
In fiscal year 2010, the majority of unaccompanied children were apprehended within 24 hours of entering the United States, typically at the Mexican border or another port of entry.

with local law enforcement or as the result of an ICE worksite raid or anti-trafficking effort.³⁵ In 2010, most children without a known entry date were referred to ORR by ICE field offices in San Francisco (106 referrals), Los Angeles (92), Houston (85), Phoenix (73), or New York (60).

As mentioned, the number of unaccompanied children DHS apprehended and referred to ORR was greater in fiscal year 2010 than in 2009. The number of children apprehended within 24 hours of entry increased by 7 percent, and the number of children apprehended within two to seven days after entry decreased by 4 percent. (See Figure 3.) Overall, the percentage of children apprehended more than eight days after entry decreased slightly. The percentage of children without a known entry date remained constant from fiscal year 2009 to 2010.

After a child is transferred to ORR custody, DHS continues to play a role in immigration proceedings. Through ICE's Office of the Principal Legal Advisor, DHS prosecutes the case on behalf of the government. If an immigration judge orders the child's removal, ICE, acting through ERO, is responsible for returning the child to his or her home country.

Figure 3: Length of Time Between Entry into United States and DHS Apprehension of Unaccompanied Children Referred to ORR, by Fiscal Year, October 1, 2008 Through September 30, 2010



Data source: ORR case file data

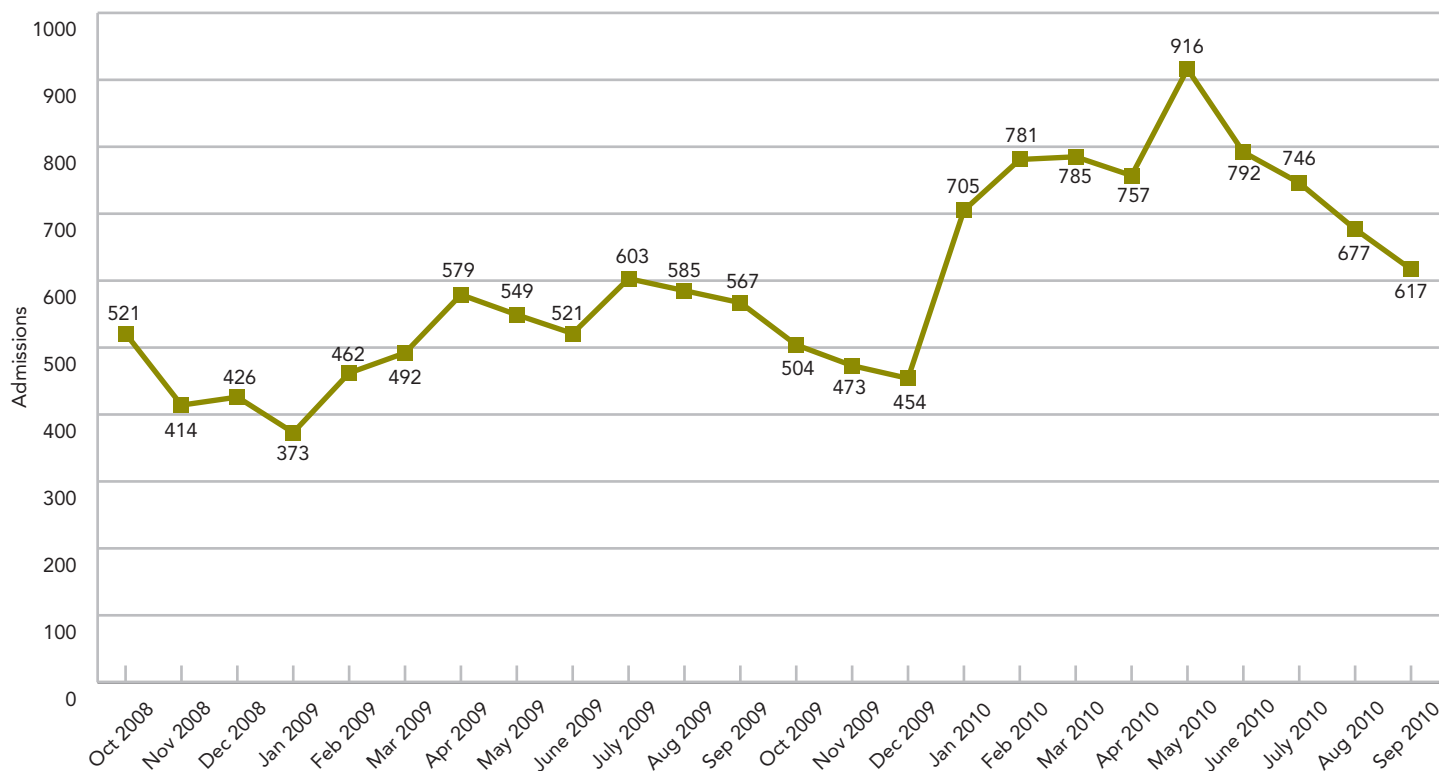
*Two records were excluded from analysis because no valid apprehension date was listed.

Intake, Placement, and Care in ORR Custody

From October 1, 2008, through September 30, 2010, ORR had 14,299 admissions into its Division of Unaccompanied Children's Services (DUCS) for 13,945 children. (Because DHS apprehended several hundred children again after their release from ORR custody, resulting in multiple admissions, the number of children admitted into DUCS care is smaller than the total number of admissions.) Admissions fluctuated greatly from month to month, with an average monthly rate of 596 new admissions, a low of 373 in January 2009, and a high of 916 in May 2010. New admissions peaked in the spring and summer and declined in the fall and winter of both years. (See Figure 4; also see Appendix I for demographic information about children admitted into ORR custody.)

Most children in ORR custody receive care through a network of local providers, including private and nonprofit organizations, as well as governmental

Figure 4: Monthly Admissions to DUCS Care, October 1, 2008 Through September 30, 2010



Data source: ORR case file data

*As of July 2011,
approximately
50 ORR/DUCS-
funded facilities
and programs were
operating in
12 states.*

juvenile justice agencies. As of July 2011, approximately 50 ORR/DUCS-funded facilities and programs were operating in 12 states. The facilities, providing services under cooperative agreements and contracts, vary in size and structure. Pursuant to the *Flores* settlement, however, all facilities must provide children with classroom education, health care, socializing/recreation activities, vocational training, mental health services, case management, and, when possible, assist with family reunification.

INTAKE AND INITIAL PLACEMENT

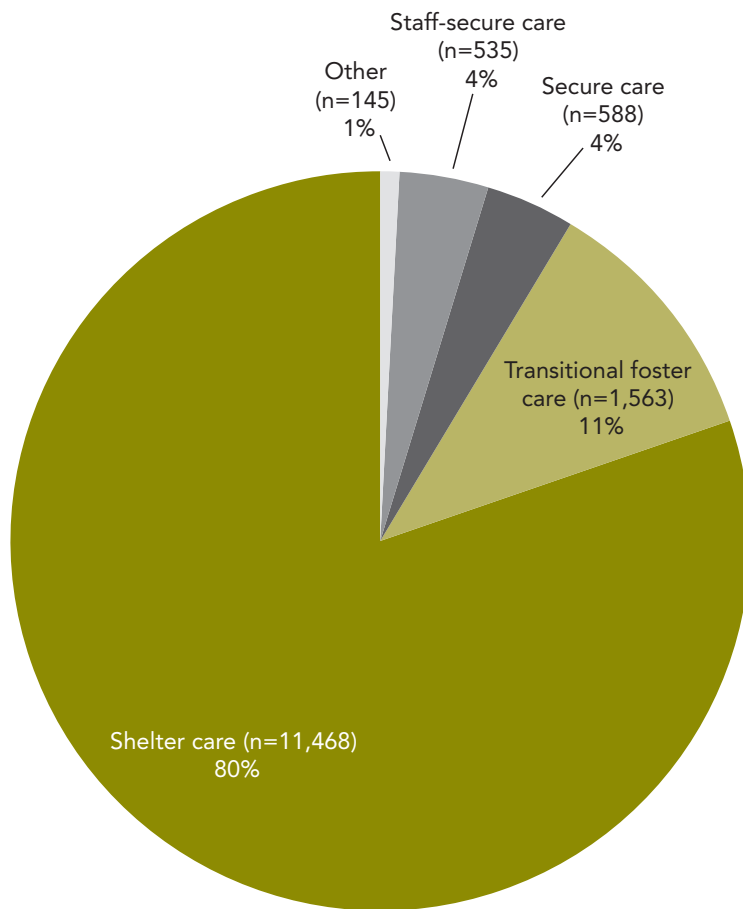
The ORR intake process begins when an ICE juvenile coordinator contacts ORR's centralized intake team, which is on call around the clock. To determine the category of placement, the team tries to gather as much information as possible from ICE about the child—including gender, age, country of origin, date and location of apprehension, medical and psychological condition, and previous contact with the juvenile or criminal justice system. Using this information, the intake team classifies the child according to security level and needs, evaluates which DUCS-funded facilities have available capacity, and makes a placement decision. Intake staff contact the selected facility to arrange for placement. After sending the facility information ICE obtained, the intake team contacts ICE to arrange for transport.

ORR has the following four categories of initial placements for children:

- > **Shelter care.** Children who are eligible for a minimally restrictive level of care are placed in shelters. Most children in shelter care do not have special needs or a history of contact with the juvenile or criminal justice system.
- > **Staff-secure care.** Children with a history of nonviolent or petty offenses or who present an escape risk are placed in staff-secure care.
- > **Secure care.** Children with a history of violent offenses or who pose a threat to themselves or others are placed in secure care.³⁶
- > **Transitional (short-term) foster care.** Children younger than 13, sibling groups with one child younger than 13, pregnant and parenting teens, and children with special needs are prioritized for short-term placement with a foster family.

Although most children are automatically placed in shelter care, certain children—those who have a history of contact with the juvenile or criminal justice system, gang involvement, or prior escapes or acts of violence while in government custody—are evaluated by the ORR intake team for placement using a standardized placement screening questionnaire developed by ORR with assistance from the Vera Institute of Justice. The tool is implemented in two stages. The first stage determines the initial placement, one of the four types of care described above, and is based on information the referring ICE juvenile coordinator gives to the ORR intake team. Children who score at certain levels during the first stage are subject to a post-placement review, known as Further Assessment Swift Track (FAST), within 30 days of the initial place-

Figure 5: Initial Placements, by Type, October 1, 2008 Through September 30, 2010



Data source: ORR case file data

ment. Typically, all children who are placed in secure care and some who are placed in staff-secure care receive a FAST review. During the second stage, ORR staff administer the placement tool again, incorporating additional information that DUCS-contracted care providers and federal field staff have gathered since the child's arrival in custody. The FAST process is designed to encourage the transfer of children to less-restrictive settings—from secure to staff-secure care or from staff-secure to shelter care.

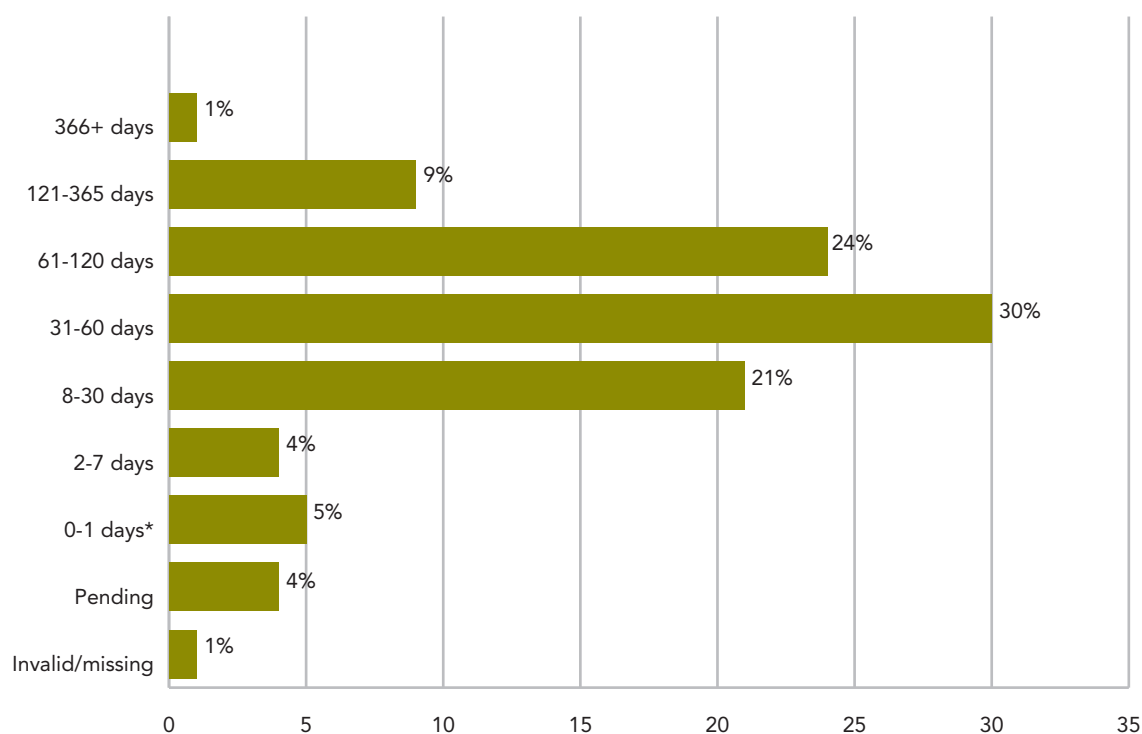
In the two-year period Vera analyzed, the vast majority of children admitted into DUCS care (80 percent) were initially placed in shelter care. Another 11 percent were initially placed in transitional foster care, 4 percent in secure care, and 4 percent in staff-secure care. (See Figure 5.)

Most children in ORR custody are placed at DUCS-contracted facilities close to the United States–Mexico border.³⁷ As of July 2011, ORR had a funded capacity of 1,649 shelter, staff-secure, secure, and short-term foster care beds; 1,273 of these were shelter beds.³⁸ Of the shelter beds, 864 (68 percent) were within 250 miles of the Mexican border; 268 of these (21 percent) were in facilities in the Rio Grande Valley in Texas.

TRANSFERS AND DUCS LONG-TERM CARE

ORR-contracted care providers and ORR field staff are instructed to continually assess each child to determine whether transfer to an alternative placement, including a less-restrictive setting, would better meet his or her needs.³⁹ In addition to the four types of placements already described, children may also be transferred to long-term care. One option is long-term foster care, which is a family-style living environment for children who have no viable family reunification options in the United States and are identified by an attorney as eligible for relief from removal. (For more information about legal relief, see “Legal Options for Children,” page 24.) Another long-term option is an extended-care group home, intended for children who have demonstrated the potential to live in a community-based environment and attend public school. Other placement options include residential treatment centers, for children who have psychiatric or psychological issues that staff cannot adequately address in an outpatient setting, and specialized therapeutic staff-secure programs, which may focus on a specific population, such as children who have been charged or adjudicated with committing sex offenses. In emergencies,

Figure 6: Length of Stay in DUCS Care, October 1, 2008 Through September 30, 2010 (n=14,299)



Data source: ORR case file data

*Approximately 86 percent (592) of children in this category are Haitian children who arrived in the United States shortly after the earthquake in Haiti in January 2010. These children were admitted into DUCS care and immediately released.

children who are actively suicidal or homicidal may be admitted to a hospital for acute psychiatric care.

Most children (91 percent) admitted to ORR custody from October 1, 2008, through September 30, 2010, had one placement per ORR admission.⁴⁰ Seven percent of children had two placements per admission into ORR custody, 2 percent had three placements, and 0.1 percent had four or more placements. Children apprehended by DHS and referred to ORR multiple times were sometimes placed in five or more DUCS facilities over the course of their stays in ORR custody.

During the two-year period Vera analyzed, the length of stay per DHS referral to ORR ranged from less than a day to 710 days. (See Figure 6.) Most children (75 percent) remained in DUCS care for one week to four months, with an average stay of 61 days. Length of stay was calculated by subtracting the date admitted into ORR custody from the final discharge date, including any transfers.

Of children admitted to ORR custody in fiscal years 2009 and 2010, 75 percent remained in care for one week to four months, with an average stay of 61 days.

Reunifying with a Sponsor in the United States

One of ORR's principal responsibilities is to implement the *Flores* settlement's guidelines favoring timely release of unaccompanied children to an approved sponsor unless continued custody is necessary to ensure their appearance before DHS or in immigration court. The process of release to a sponsor is called reunification, even if the child did not previously live with this individual, family, or program. At least 65 percent of children admitted to DUCS care are ultimately placed with a sponsor.⁴¹

The process of searching for a sponsor typically begins within 24 hours of a child's arrival at the facility. An intake form assesses the individual's basic and immediate care needs and helps determine whether the child may be safely released to a sponsor in the United States. Within three to seven days of admission, a social worker completes an admissions assessment, which includes biographic, family, legal/migration, medical, and/or any substance use or mental health history. Finally, a master's level social worker (or equivalent)—often referred to as the clinician—completes a psychosocial assessment and an individualized service plan within 21 days of admission.⁴²

The facility where a child is detained has primary responsibility for assessing a potential sponsor, under the oversight of ORR field staff. When possible, a child will be released to a parent living in the United States. Some children, however, may not have living parents, may have parents who reside outside of the country, or may have parents who are unavailable or unable to care for them. In these situations, a child may be released to a legal guardian, adult relative, or another ORR-approved individual or entity. In accordance with the

Flores settlement, the following order of preference is used when releasing a child to a sponsor:

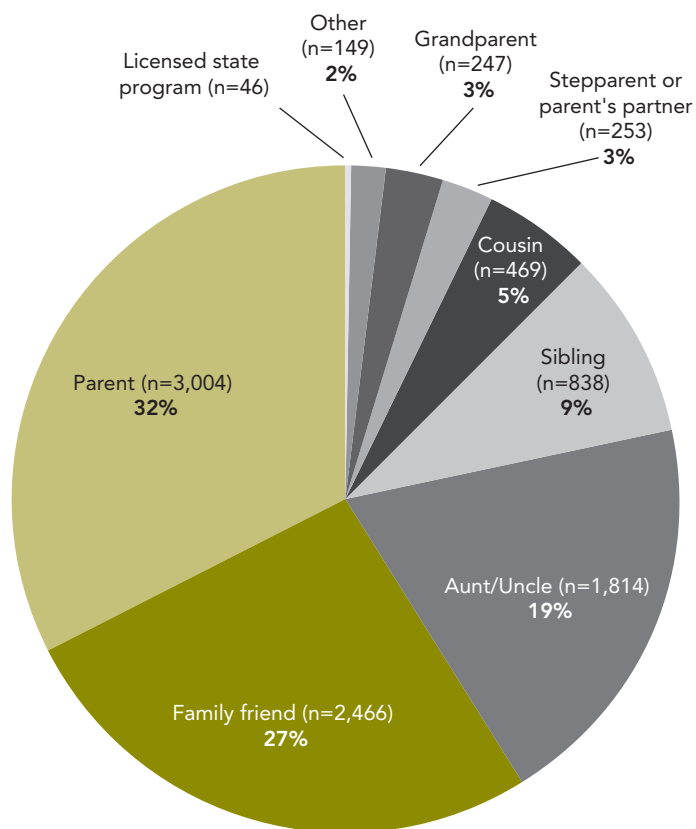
1. a parent;
2. a legal guardian;
3. an adult relative (brother, sister, aunt, uncle, or grandparent);
4. an adult individual or entity designated by the child's parent or legal guardian as capable and willing to provide care;
5. a licensed program willing to accept legal custody (such as a shelter for homeless youth); or
6. an adult or entity approved by ORR, when another alternative to long-term detention is unlikely and family reunification does not appear to be a reasonable possibility.⁴³

ORR requires documentation establishing the sponsor's relationship to the child. In 2008, it issued a policy clarification about releasing children to adults who are not relatives. For a sponsor in the fourth category, the parent or legal guardian must provide documentation establishing his or her relationship to the child and a notarized letter designating the adult who will care for the unaccompanied child upon release. ORR does not allow release to a child's adult boyfriend or girlfriend, even if the child's parent consents. The sixth category, an adult sponsor not designated by the parent or legal guardian, is to be used only as a last resort, when likely alternatives to long-term care in ORR custody do not exist.⁴⁴

Once the facility identifies a potential sponsor, staff sends that person or program a family reunification packet, which includes requests for information such as verification of the relationship to the child, age, gender, address, household composition, employment, and immigration status. A facility staff member verifies the potential sponsor's relationship to the child; explores the motivation for sponsorship, the ability to address the child's needs, the home environment, and support system; and verifies the potential sponsor's legal status and financial and employment status. ORR also requires a fingerprint background check of potential sponsors to investigate any criminal record or history of child abuse, factors that often disqualify them. Before approving such a placement, a facility case manager interviews the unaccompanied child, the potential sponsor, and parents or legal guardians, if available. After the packet is completed, the facility makes a recommendation for or against release. Ultimately, ORR staff must approve all release decisions.⁴⁵

ORR provided data to Vera about all potential sponsors the agency considered during this period for all children who were ultimately released.⁴⁶ Figure 7 shows that of the 9,324 potential sponsors ORR considered for children who were eventually released to a sponsor, 32 percent were the children's parents, 27 percent were family friends, 19 percent were their aunts or uncles, and 9 percent were siblings. The category "Other" included step-siblings and godparents. Forty-six children were released to licensed state programs, such as

Figure 7: Release to Sponsors by Type,* October 1, 2008 Through September 30, 2010



Data source: ORR sponsor data

*Thirty-eight sponsors were excluded from this figure because of missing information regarding sponsor relationship to the child.

homeless youth programs or other specialized entities that provide care for children who are on their own.

Under the TVPRA of 2008, HHS is required to commission a home study (which assesses the suitability of a custodial placement) of a potential sponsor in the following four situations:

- > the child is a victim of a severe form of human trafficking;
- > the child has a disability, as defined under the Americans with Disabilities Act of 1990;
- > the child has been a victim of physical or sexual abuse under circumstances indicating that the child's health or welfare has been significantly harmed or threatened; or
- > the proposed sponsor clearly presents a risk to the child of abuse, maltreatment, exploitation, or trafficking.⁴⁷

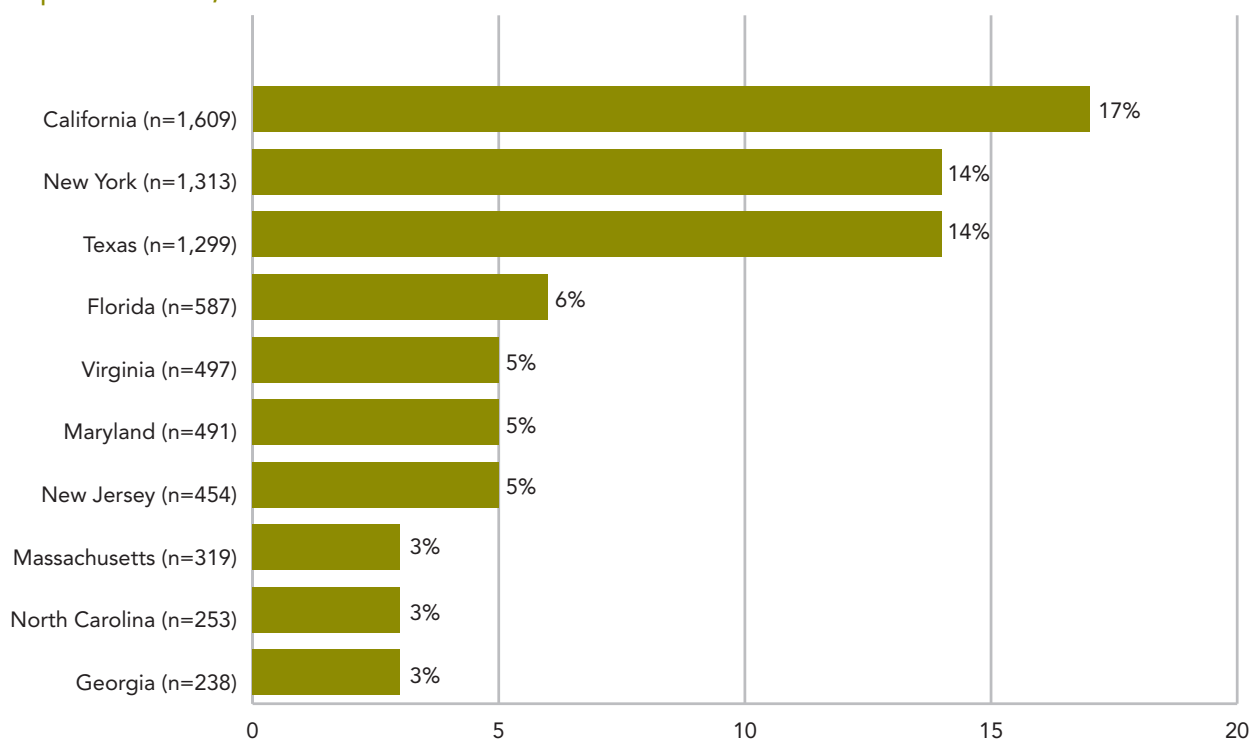
Home studies can delay a child's placement with a sponsor. ORR has recently made efforts to reduce the time home studies take; however, the process may still take several months from the time the study is ordered until the final release decision.⁴⁸ ORR may also provide post-release follow-up services when

a provider determines that additional assistance is needed to connect a child and sponsor to community services (such as mental health care) to meet the child's needs. Whenever a child's sponsor has undergone a home study, ORR requires that post-release follow-up services are provided until the child finishes removal proceedings or turns 18 years old.⁴⁹

If providers recommend release, release with post-release follow-up services, or referral for a home study, they must notify the ICE juvenile coordinator.⁵⁰ At the same time, the provider also forwards the family reunification packet to the ORR-contracted case coordinator for review.

Once approved, a sponsor must sign an agreement with ORR that obligates the person or entity to care for the child's physical, mental, and financial well-being. The sponsor is also responsible for ensuring that the child makes all scheduled immigration court appearances and complies with any immigration court orders. The sponsor must inform DHS of a change of address and notify DHS if the child disappears.⁵¹ ORR maintains that once a child is released from the agency's care, its statutory mandate to the child ends.⁵² It is not clear, however, which government agency is responsible for ensuring the safety of children once they are released to sponsors or for ensuring their compliance with the signed ORR agreement.⁵³ In its 2008 report, the Office of the Inspec-

Figure 8: Release to Sponsors by Sponsor's State,* October 1, 2008 Through September 30, 2010



Data source: ORR sponsor data. Twenty-four percent (2,231 individuals) of potential sponsors lived in states other than those listed.

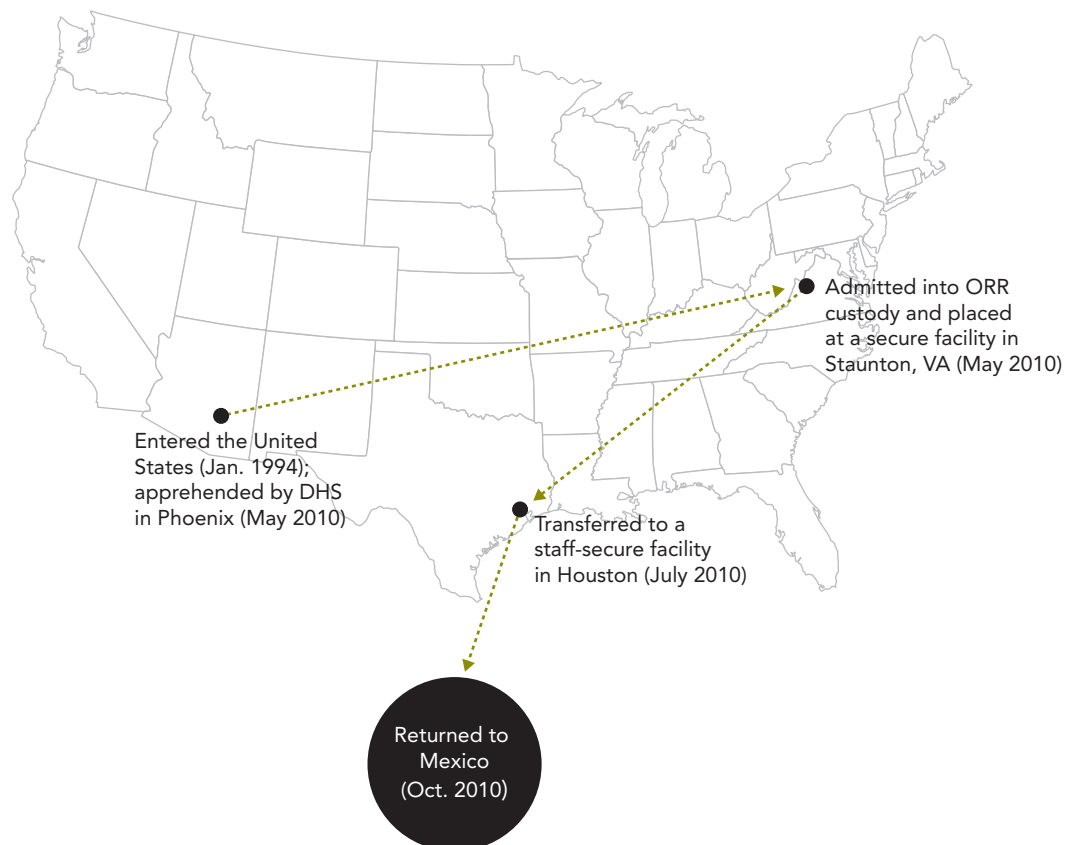
*Thirty-three sponsors were excluded from this figure because of missing or invalid information regarding the sponsor's state.

tor General at HHS recommended that a memorandum of understanding between DHS and ORR help clarify responsibility for post-release monitoring.⁵⁴

Figure 8 shows the 10 states where 76 percent of potential sponsors resided, and thus where reunifications took place, in fiscal years 2009 and 2010. The greatest number of these individuals resided in California, followed by New York and Texas. Twenty-four percent (2,231 individuals) of potential sponsors lived in states other than those listed.

All of these processes—placement, possible transfer, and family reunification—take time. Although a majority of children have only one ORR placement, many are moved from place to place, often resulting in more time in federal custody. Figure 9 depicts one example of a child’s movement through the system. The boy was born in Mexico, entered the United States as an infant in January 1994, and was apprehended by DHS in Phoenix in May 2010. He entered ORR custody and was admitted into a secure DUCS facility in Virginia a few days after his apprehension. In July 2010, he was transferred to a staff-secure facility in Texas. In October 2010, five months after apprehension and almost 17 years after entering the United States, the boy was returned to Mexico.

Figure 9: An Unaccompanied Child’s Movement Through the System



Immigration Proceedings and Legal Services

When an unaccompanied child is apprehended, DHS typically initiates what are known as “240 removal proceedings,” referring to the Immigration and Nationality Act’s Section 240, which outlines immigration court procedures. DHS files a notice to appear with the U.S. Department of Justice’s Executive Office for Immigration Review (EOIR), at the immigration court nearest to the initial ORR placement. The court then schedules the child for an initial master calendar hearing.

In many areas of the country, immigration courts have developed specialized juvenile dockets, which consolidate children’s cases for master calendar hearings. This allows ORR/DUCS facility staff to transport a group of children to court at the same time.⁵⁵ Juvenile dockets may convene several times a week, once a week, biweekly, or monthly, depending on the number of detained children’s cases in a particular court. In most immigration courts, one judge or several judges are designated (or volunteer) to cover these dockets. At a typical juvenile docket, the majority of detained children appear before a judge to ask for a continuance (rather than pleading to the charges and presenting a legal case).⁵⁶ This allows extra time for children to find pro bono representation or to wait for ORR to approve a sponsor reunification application. When children reunify with sponsors, most of them request that the immigration court change venue so that their cases can proceed nearer to the location where they will live. Some children appear before the immigration judge pro se (on their own behalf); others benefit from representation by legal counsel.

In many areas of the country, immigration courts have developed specialized juvenile dockets, which consolidate children’s cases for master calendar hearings.

LEGAL AND CHILD ADVOCATE SERVICES

Given concerns about the lack of legal representation for unaccompanied children—and the Homeland Security Act’s mandate that ORR develop a plan to ensure provision of counsel for them—the agency contracted with the Vera Institute of Justice in 2005 to administer the Unaccompanied Children Pro Bono Project. This three-year pilot was created to develop and test pro bono models to meet the legal needs of unaccompanied children.⁵⁷ ORR and Vera designed a program that subcontracts with nonprofit legal services providers to educate children about the legal process, screen their cases for potential relief from removal, and recruit and train volunteer attorneys to represent children in immigration court. Subcontractors participating in the project were not allowed to use government funds to provide direct representation, although many had other (albeit limited) funding to represent unaccompanied children in immigration court or before the U.S. Citizenship and Immigration Services (USCIS).

As the pilot concluded in 2008, Vera provided recommendations to ORR. Although volunteer pro bono attorneys alone could not meet the legal rep-

representation needs of all children in HHS custody, the model was effective at increasing representation rates, particularly for those who remained in ORR custody throughout their immigration proceedings. (Most direct representation was provided—using nongovernment funds—by staff members at subcontracted organizations.) The report also recommended that ORR appoint child advocates, particularly for children who may not be able to act in their own best interests. After the pilot concluded, HHS continued the pro bono representation and child advocate programs under a new name: the DUCS Access to Legal and Child Advocate Services Project (commonly referred to as the DUCS Legal Access Project).

> **LEGAL SERVICES FOR DETAINED CHILDREN:** Vera coordinates the DUCS Legal Access Project, which serves approximately 7,000 children per year. In 2010, unaccompanied children in federal custody received the following legal services at 69 facilities and programs throughout the country:

- **Know Your Rights (KYR) orientations.** These presentations by attorneys and paralegals inform children about immigration court proceedings and their rights throughout the detention and removal processes. KYR orientations seek to empower children to participate meaningfully in their legal cases as well as relieve their anxiety about the immigration system.
- **Legal screenings.** One-on-one meetings usually follow the KYR orientation so that project staff can answer questions about a child's situation and determine whether legal relief from removal may be available—and if so, what kind. According to the contract with Vera, legal services providers are required to conduct at least one individual legal screening with each child, although many hold follow-up meetings as well.
- **Court preparation and assistance in immigration court.** In addition to the initial KYR orientation and legal screening, legal services providers conduct subsequent meetings with children individually or in groups, to prepare them for their first immigration court hearing. Some providers conduct these orientations in the courtroom to increase children's understanding of the process and foster realistic expectations. Several organizations also provide pro se assistance to children as a "friend of the court." This model is a loose arrangement that typically involves a legal services provider assisting a child in court and even speaking on the child's behalf, but not acting as attorney of record. This has been a useful way to make the most of limited resources.
- **Pro bono legal representation.** Subcontractors recruit, screen, train, and mentor pro bono volunteer attorneys for children. Subcontractor organizations also provide in-house direct representation through

ORR and Vera designed a program that subcontracts with nonprofit legal services providers to educate children about the legal process, screen their cases, and recruit and train volunteer attorneys to represent them in immigration court.

nongovernment funding. In 2010, for example, 28 percent of detained children served by the DUCS Legal Access Project received in-house direct representation or pro bono representation from a volunteer attorney or a nongovernmental organization. A much greater percentage of children whose cases conclude while they are in ORR custody obtain legal representation through the project. In 2008, Vera conducted an extensive analysis, combining program data with data from ORR and EOIR, and found that 70 percent of children whose immigration cases concluded while they were in ORR custody received legal representation. Many of those cases involved removal or voluntary departure as the final outcome.

> **LEGAL SERVICES FOR RELEASED CHILDREN:** Vera also subcontracts with organizations that provide pro bono matching services to children who have been released from ORR custody and are living with sponsors. In 2010, the DUCS Legal Access Project screened 906 released children and matched 507 released children with pro bono representation. Although most detained children receive services through Vera's project, only a fraction of released children are screened and then matched with pro bono legal representation. Thus, a considerable service gap exists for children who have been released from ORR custody.

> **CHILD ADVOCATE SERVICES:** Child advocates provide information, help children make important decisions, and promote their best interests—safety, permanency, and well-being—regarding care and custody, placement, legal representation, release, repatriation, immigration proceedings, and any state or federal court proceedings. Only one child advocate program exists in the United States: the Immigrant Child Advocacy Project (ICAP), based at the University of Chicago. In 2010, ICAP made 169 new child advocate assignments, mostly to children detained in Chicago-area DUCS facilities, but also through a small pilot program in Harlingen, Texas.⁵⁸ The project recruits, trains, and supervises bilingual and bicultural volunteers to work with children individually. The project's attorneys develop recommendations about a child's best interests based on principles set forth in state child welfare law and the UN Convention on the Rights of the Child, and on guidelines promulgated by the UN High Commissioner for Refugees. Children's attorneys, advocates, researchers, and government officials have uniformly identified a need to expand these services to more unaccompanied children.

LEGAL OPTIONS FOR CHILDREN

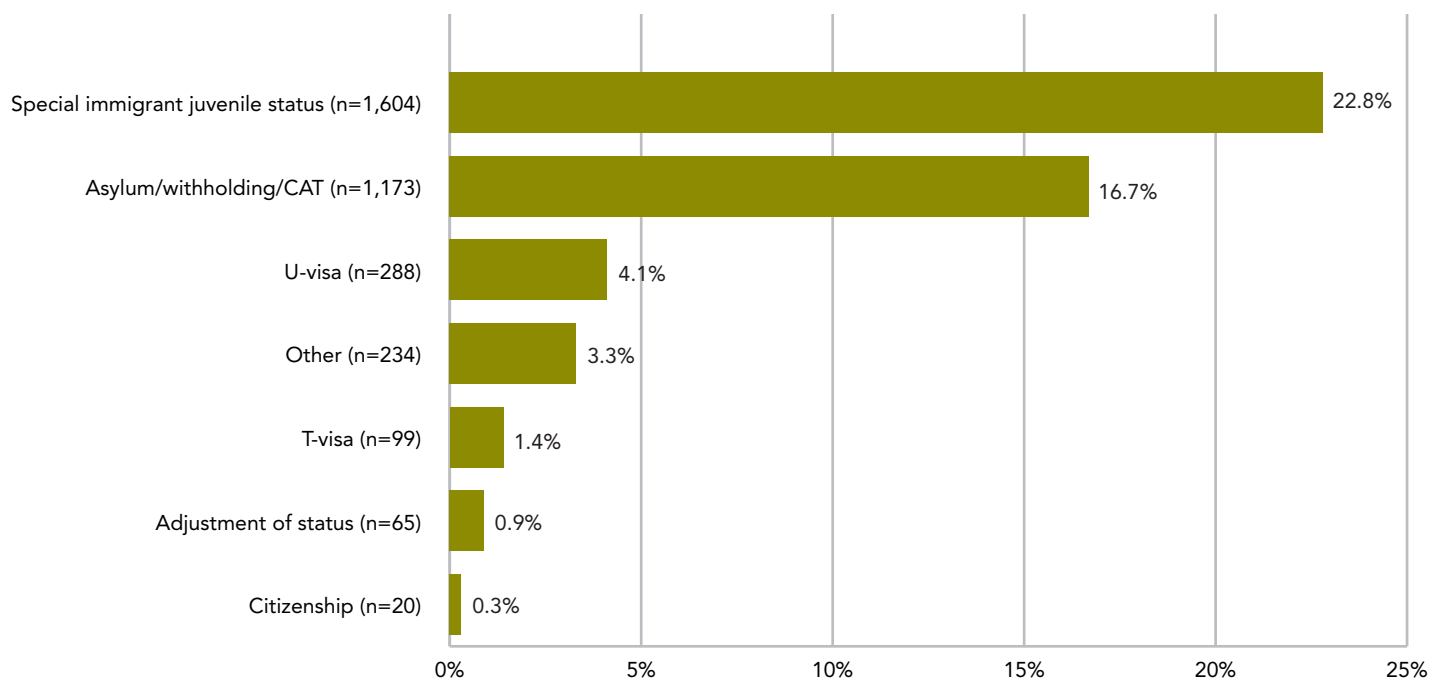
The most common forms of legal relief available to unaccompanied children are asylum, special immigrant juvenile status (SIJS), U-visas for crime victims, T-visas for trafficking victims, and family-based petitions for legal permanent residence.⁵⁹ Occasionally, Vera subcontractors identify children in ORR custody who are U.S. citizens.⁶⁰ In 2010, 2,830 children (40 percent of children the DUCS

Legal Access Project served) were identified as potentially eligible for some form of relief from removal. Some children may be eligible for more than one type of relief. (See Figure 10.) Common legal options for unaccompanied children are as follows:

> **ASYLUM:** Individuals may seek asylum “defensively” before an immigration judge or “affirmatively” through the USCIS Asylum Office. Until recently, all individuals in immigration removal proceedings had to file for asylum before an immigration judge. Advocates argued for years that children’s asylum cases should be heard by a USCIS asylum officer in a non-adversarial setting, regardless of whether the child was in removal proceedings. The TVPRA of 2008 amended the procedure for unaccompanied children seeking asylum and transferred initial jurisdiction of their cases to the Asylum Office.⁶¹ A case is referred to the immigration court for review only if this office denies an asylum application. In such cases, unaccompanied children may argue to the immigration judge that their application was wrongly denied.

According to statistics from the Asylum Office, the total number of affirmative asylum applications submitted by children decreased from 557 in fiscal year 2001 to 215 in fiscal year 2008.⁶² In fiscal year 2010, the first full

Figure 10: Types of Potential Relief from Removal for Children Screened by DUCS Legal Access Project Providers, January 1 Through December 31, 2010*



Data source: Vera subcontractor data from Vera’s DUCS Legal Access Project

* Among 7,020 unique children the project served in 2010, 2,830 were eligible for some type of potential relief from removal. Because many children were eligible for more than one type of potential relief, the number of instances of potential relief was greater than the number of eligible children. The percentages shown are based on the number of unique children served.

Advocates have referred to repatriation as a “black hole where unaccompanied children easily fall through the cracks.”

year after TVPRA’s implementation, unaccompanied children in removal proceedings submitted 773 asylum applications.⁶³ (Similar to the numbers in previous years, 244 additional children who were accompanied by a parent or legal guardian and were in removal proceedings applied for asylum through the affirmative process in 2010.)

> **SPECIAL IMMIGRANT JUVENILE STATUS (SIJS):** Undocumented children who have been abused, neglected, or abandoned by one or both parents may be eligible for a form of relief that can lead to legal permanent residence. SIJS involves a two-step process. First, children must obtain an order from a state court declaring that they are dependent on the court; that they have been abused, abandoned, or neglected; and that it is not in their best interest to return to their home country. Notably, court procedures for establishing jurisdiction and obtaining this “special findings” order differ in every state; in certain parts of the country, legal services providers have had little or no success securing this status in state court for eligible children. Thus, placement in a particular ORR facility may affect the child’s ability to succeed at obtaining this type of relief. Once a juvenile or state court issues such an order, the child may petition USCIS for special immigrant juvenile status and, simultaneously, for adjustment of status to legal permanent residency. SIJS is currently the only substantive provision in U.S. immigration law that incorporates the principle of the child’s best interests.

> **U-VISAS AND T-VISAS:** Victims of certain crimes, including human trafficking, may apply for visas that allow them to stay in the United States for a specified time. Individuals may apply for a U-visa if they have “suffered substantial physical or mental abuse as a result of having been a victim of... criminal activity” and obtain certification from a law enforcement agency that they have been helpful or are likely to be helpful in investigating or prosecuting the crime.⁶⁴ Children applying for a T-visa must prove that they have been victims of a “severe form of human trafficking” as defined in federal trafficking legislation.⁶⁵ Unlike adults, children need not prove that they have assisted law enforcement in the investigation of the trafficking crime.⁶⁶ Both U-visa and T-visa recipients are eligible to obtain lawful permanent residency status if certain conditions are met; moreover, children who qualify for either type of visa can petition for their legal status to be extended to their nuclear family, a benefit otherwise rarely available to children.⁶⁷

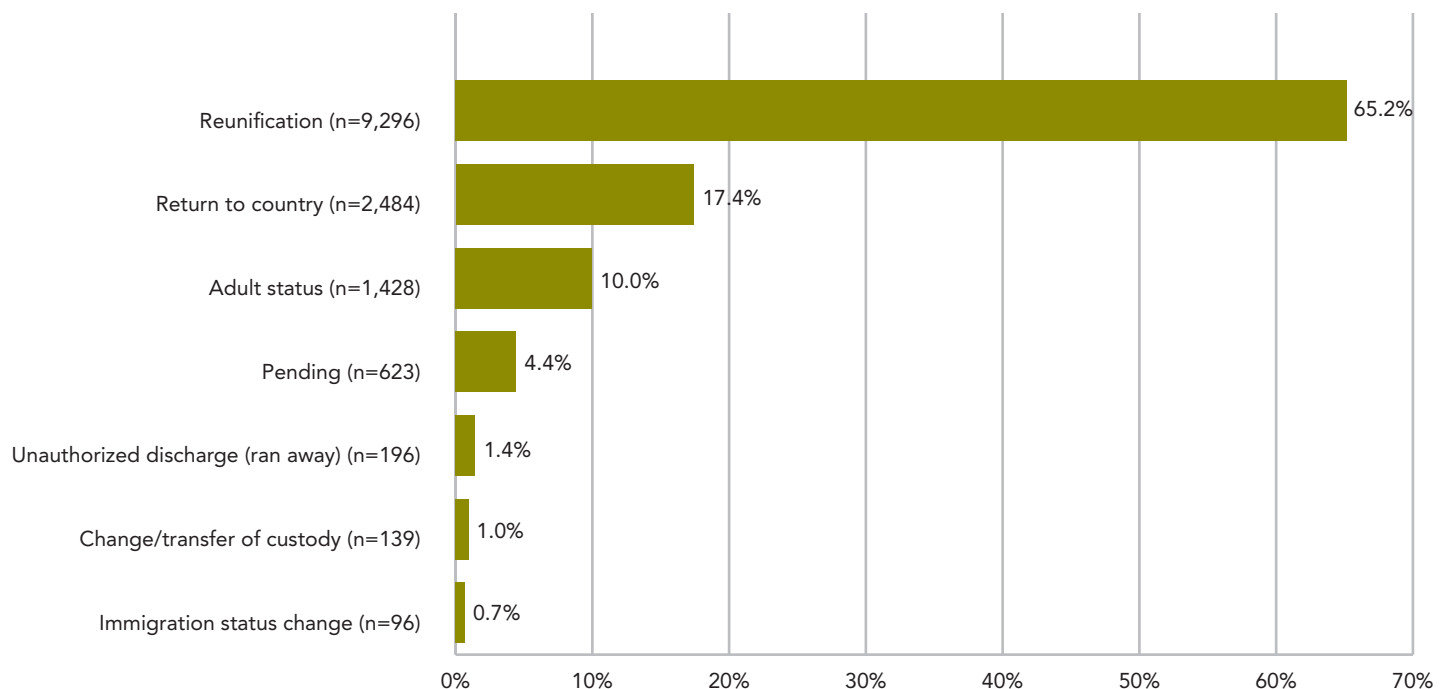
> **VOLUNTARY DEPARTURE:** Most unaccompanied children who return to their country of origin do so by requesting voluntary departure. This form of relief allows individuals who are otherwise removable to leave the United States without facing the consequences associated with an order of removal. Most unaccompanied children are eligible for voluntary departure under the TVPRA and need not pay for transportation to their home country.⁶⁸

THE PROCESS OF RETURNING TO THE HOME COUNTRY

DHS is responsible for the physical removal of a child from the United States. Once a detained child has received a final order of removal or voluntary departure, the standard procedure is that DHS initiates the repatriation process by contacting the consulate of the child's home country, and then the ORR facility, to inform staff that DHS is in the process of obtaining travel documents from the consulate. Both DHS and ORR have noted that this process is frequently problematic because consulates may change their documentation requirements or raise objections to a juvenile transfer.⁶⁹ Once travel documentation is in order, the child is transferred back into DHS custody and the agency arranges for transportation.⁷⁰ In some regions, consulates visit and interview children in DUCS shelters to obtain information that will facilitate processing of travel documents and, potentially, notification of relatives in the home country. In other regions, however, these interviews are typically conducted by telephone.

Little is known about what happens to children after they are returned to their home countries. Advocates have referred to repatriation as a "black hole where unaccompanied children easily fall through the cracks."⁷¹ In 2010, pursuant to the mandate under Section 235(a) of the TVPRA, the U.S. Department of State (DOS) provided a report to Congress on behalf of DOS, DHS, and HHS that reflected its own guidelines on the repatriation of unaccompanied

Figure 11: Discharge for Children Admitted into ORR Custody by Type, October 1, 2008 Through September 30, 2010*



Data source: ORR case file data

*Thirty-seven records were excluded from the analysis because they had missing or invalid case outcome information.

*Approximately
65 percent of
unaccompanied
children reunify
with a sponsor
and proceed with
their legal case in
immigration court
after release.*

children. Although the report described basic policies and procedures related to DHS's apprehension of unaccompanied children, it did not specifically describe the process of repatriating those ordered to return to their country of origin.⁷² The report did note, however that DOS, through the Bureau of Population, Refugees, and Migration, in collaboration with the International Organization for Migration, had established a pilot program for the safe and sustainable repatriation of unaccompanied El Salvadoran children.⁷³

Outcomes for Unaccompanied Children

Given the complexity of the immigration system for unaccompanied children, it is no simple task to describe their outcomes comprehensively. Figure 11 presents information about children's discharge from ORR custody. Approximately two-thirds (65 percent) of children admitted into the agency's custody from October 1, 2008, through September 30, 2010, reunified with a sponsor and proceeded with their legal case in immigration court after release. Seventeen percent of children were returned to their home country, either through a grant of voluntary departure or a removal order. Thus, about half of the children who are not placed with a sponsor return to their home countries. Ten percent (1,428 individuals) of the population Vera analyzed attained adult status. Typically, if immigration removal proceedings are pending when children turn 18 while in ORR custody, they are transferred to ICE custody and placed in an ICE detention facility for adults. In the past few years, however, legal services providers, child advocates, and DUCS care providers have been working with ICE and other stakeholders to develop "post-18" placements, which often involve releasing an 18-year-old to the care of a local licensed entity.

Another 1 percent (196) of children admitted from October 1, 2008, through September 30, 2010, absconded from ORR custody, and 139 children underwent a change or transfer of custody to another government agency (such as the Unaccompanied Refugee Minor program).⁷⁴ Less than 1 percent of children (96) had an immigration status change. (These children were granted immigration relief and were thus no longer "unaccompanied alien children" as defined by the Homeland Security Act.) As of June 2011, when Vera received the ORR data, 623 children, or 4 percent of the population analyzed, were still in ORR custody.

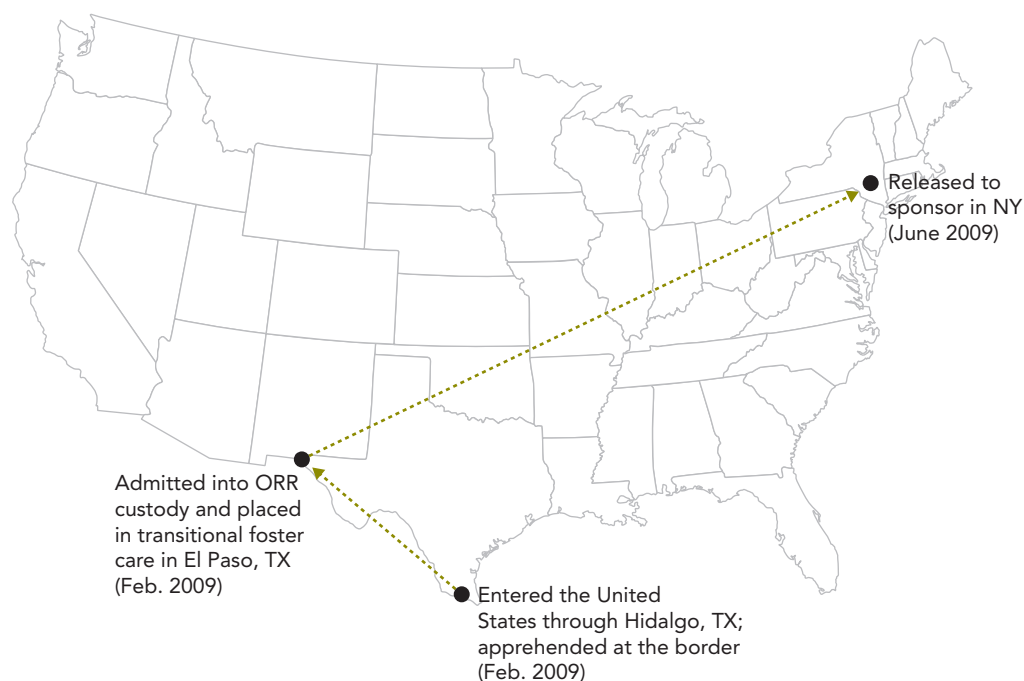
Of the ORR discharge types described above, most are not final outcomes in a child's immigration case. Only children who were returned to their home country and those who had an immigration status change have by definition completed their immigration court cases at the time of their discharge from ORR custody. It is likely that the others—those who reunified, attained adult status, ran away, or were transferred to the custody of another government

agency—had pending removal proceedings at the time of their discharge from ORR custody.

Through its administration of legal services programs for released children, Vera has access to some data on immigration cases that continue after children have been discharged from ORR custody and released to a sponsor. As mentioned, however, services are provided to only a fraction of the released population. In addition, immigration court cases may take years to reach a final outcome, particularly when children seek relief from removal.⁷⁵ For example, roughly 600 to 700 children reunify with a sponsor in New York State annually. From January 1 through December 31, 2009, 240 released children who reunified with a sponsor in New York were referred to a Vera subcontractor that provides pro bono matching services for released children.⁷⁶ Of these 240 individuals, 150 children (62 percent) were matched with a pro bono attorney at the time of Vera's analysis in July 2011. At that time, a final decision was still pending for approximately 75 percent of the children matched with a pro bono attorney.

Figure 12 depicts a case study of a girl from El Salvador who was apprehended in February 2009 in Texas, near the city of Hidalgo, and spent four months in DUCS care in El Paso. In June 2009, she was released to a sponsor in New York, after the sponsor passed a home study. In August, she was referred to and screened by a Vera subcontractor that provides pro bono matching services. She was matched with representation by a law firm in November 2009. In June 2011, more than two years after DHS apprehension, she obtained legal status.

Figure 12: An Unaccompanied Child's Movement Through the System



Conclusion

Trained practitioners, researchers, and policy makers struggle to understand the ins and outs of the complex, disjointed system for unaccompanied immigrant children. The difficulty of navigating this system is greatest for the children themselves. They often interact with a daunting number of government agencies, and each one has its own policy goals and objectives. As described in this report, children often move from one city or state to another, sometimes unfamiliar with anything in the country beyond the grounds of a federally contracted detention facility.

Empirical research is needed to improve our understanding of children's experiences throughout each stage of the process, particularly the point when actors from a state juvenile or criminal justice system refer them to DHS, as well as the period after reunification with a sponsor. As policy developments and programs aim to improve conditions and services for children, perhaps the process will be modified in ways that make it less overwhelming and disruptive—and more streamlined, effective, and just.

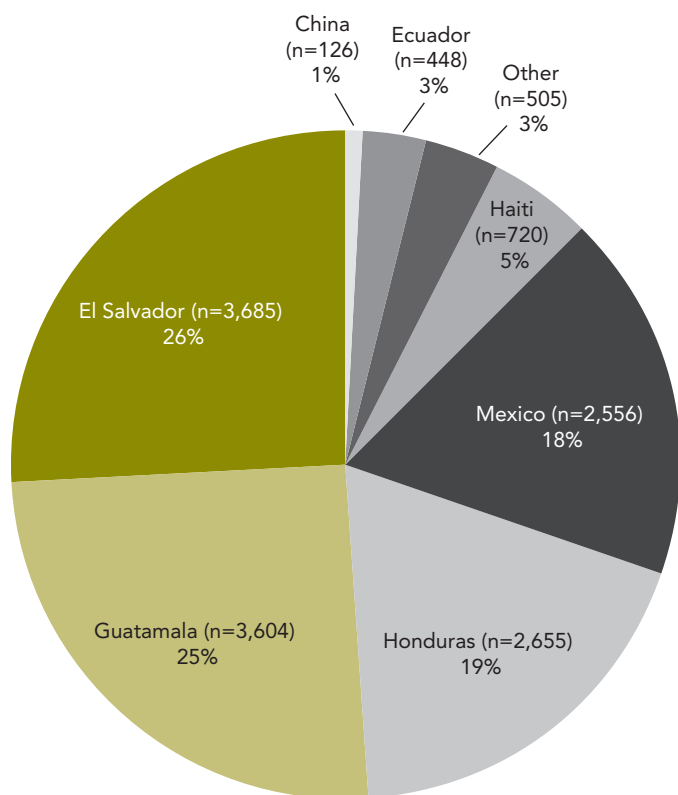
Appendix

DEMOGRAPHICS OF CHILDREN IN ORR CUSTODY

This section presents statistics about the population of children apprehended by DHS and admitted into ORR custody from October 1, 2008, through September 30, 2010.

Country of Birth. During this period, ORR had children from 77 countries in custody. Figure I-1 shows that approximately 70 percent of the children in ORR custody came from three Central American countries: El Salvador (26 percent), Guatemala (25 percent), and Honduras (19 percent). An additional 18 percent came from Mexico, 5 percent from Haiti, 3 percent from Ecuador, and 1 percent from China.¹

Figure I-1: Country of Birth of Children Apprehended by DHS and Admitted into ORR Custody, October 1, 2008 Through September 30, 2010

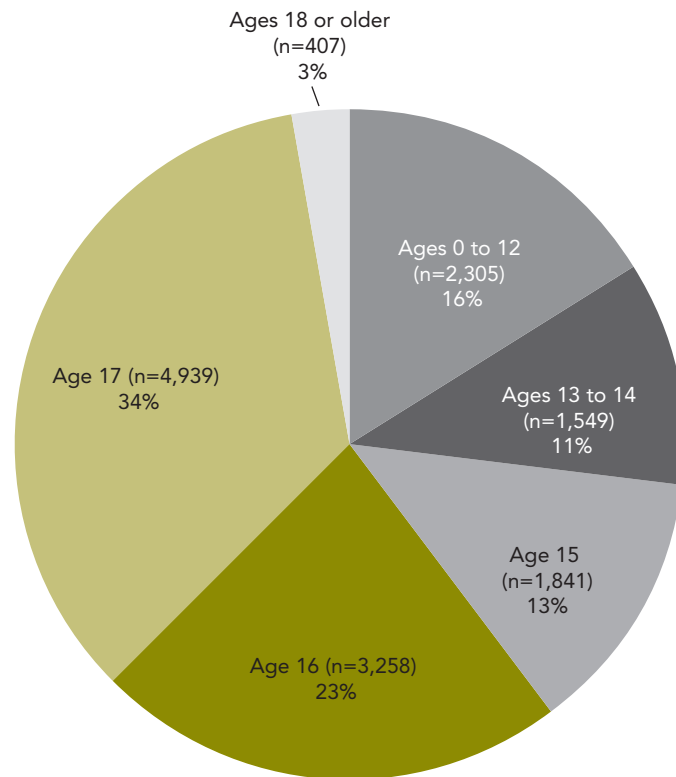


Data source: ORR case file data

¹ Approximately 82 percent (592) of Haitian children in this chart arrived in the United States shortly after the earthquake in Haiti, were admitted into DUCS care, and immediately released.

Age. Figure I-2 shows that the vast majority of children admitted into ORR custody were 13 years or older (84 percent) and 3 percent were 18 or older. Sixteen percent were 12 or younger. Roughly one-third (34 percent) were within 12 months of their 18th birthday.

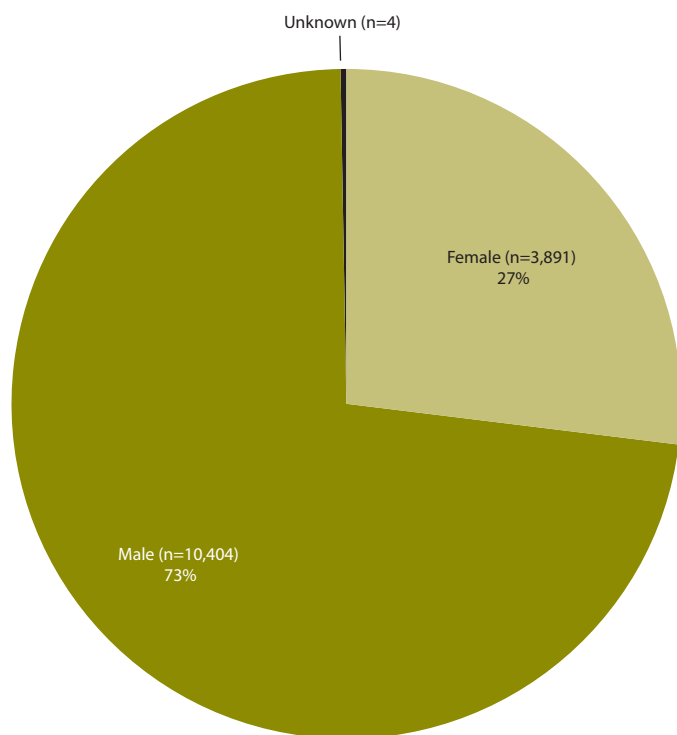
Figure I-2: Age of Children Apprehended by DHS and Admitted into ORR Custody, October 1, 2008 Through September 30, 2010



Data source: ORR case file data

Gender. Boys in ORR custody significantly outnumbered girls. As shown in Figure I-3, 73 percent of the children were male and 27 percent were female. Gender was unknown for four children.

Figure I-3: Gender of Children Apprehended by DHS and Admitted into ORR Custody, October 1, 2008 Through September 30, 2010



Data source: ORR case file data

ENDNOTES

- 1 Jacqueline Bhabha and Susan Schmidt, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.* (Cambridge, MA: Harvard University Committee on Human Rights Studies, 2006), 14.
- 2 See Human Rights Watch, *Slipping Through the Cracks: Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service* (New York: Human Rights Watch, April 1997), Appendix D.
- 3 Amnesty International, *Why Am I Here? Children in Immigration Detention* (New York: Amnesty International USA, June 2003). Organizations that lobbied for a change in the custodial authority of unaccompanied children included the American Bar Association, Amnesty International, Human Rights Watch, Lutheran Immigration and Refugee Service, the United States Conference of Catholic Bishops, and the Women's Refugee Commission.
- 4 Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 745, 25 November 2002; 6 U.S.C., Section 279(a).
- 5 ORR is implementing a structural reorganization in 2012.
- 6 Women's Refugee Commission, *Halfway Home*, (New York: Women's Refugee Commission, 2009), 5.
- 7 The text of the *Flores v. Meese Stipulated Settlement Agreement*, signed in January 1997, is available at <http://www.aclu.org/immigrants-rights/flores-v-meese-stipulated-settlement-agreement> (accessed on August 9, 2011).
- 8 Women's Refugee Commission, 2009, p. 5.
- 9 *Alien Children Protection Act of 2000*, S 2383, 106th Cong., 2d sess., *Congressional Record* (April 11, 2000): S 2527; *Alien Unaccompanied Minor Adjustment and Protection Act of 2000*, HR 4354, 106th Cong., 2d sess., (May 2, 2000); and *Young Immigrant Protection Act of 2000*, HR 4590, 106th Cong., 2d sess., (June 6, 2000); and Jacqueline Bhabha and Susan Schmidt, "From Kafka to Wilberforce: Is the U.S. Government's Approach to Child Migrants Improving?" *Immigration Briefings*, no. 11-02 (February 2011).
- 10 Section 292 of the Immigration and Nationality Act states, "in any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose." In the past, some in the executive branch have interpreted the language in parentheses—"at no expense to the Government"—as prohibiting the government from funding legal counsel in removal proceedings. In recent years, many advocates and legal scholars have held that the statute does not preclude government-appointed representation for people in removal proceedings, nor does it prevent the government from establishing programs to increase legal representation. Section 292 merely affirms that the government is not legally required to provide counsel in all cases, as it is in the criminal justice system. See, for example, Donald Kerwin, *Revisiting the Need for Appointed Counsel*, (Washington, DC: Migration Policy Institute, 2005).
- 11 For an overview of the legal relief options for unaccompanied children under the TVPRA, see Deborah Lee et al., "Legal Relief Options for Unaccompanied Alien Children: Update Since the Enactment of the 2008 Trafficking Victims Protection Reauthorization Act," American Immigration Lawyers Association (2009).
- 12 Homeland Security Act of 2002, Section 279(g)(2). Recognizing the vulnerability of child migrants who may be accompanied by an adult who is not their parent or legal guardian, UNHCR encourages the usage of the additional term "separated children," defined as "children separated from both their parents or from their previous legal or customary primary caregivers but not necessarily from other relatives." UN High Commissioner for Refugees, *Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, December 22, 2009, 5.
- 13 Criticism has emerged over how DHS applies the definition of unaccompanied. Critics claim that some children are erroneously classified as unaccompanied and have been separated by DHS from parents or other relatives in the United States. See Chad C. Haddal, *Unaccompanied Alien Children: Policies and Issues*, (Washington, DC: Congressional Research Service, 2009), 26.
- 14 Women's Refugee Commission, 2009, p. 36.
- 15 *Trafficking Victims Protection Reauthorization Act of 2008*. Public Law 110-457, 122 Stat. 5044, 110th Cong., 23 December 2008, Section 235(d)(7).
- 16 Joseph E. Langlois, *Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, (Washington, DC: U.S. Citizenship and Immigration Services, March 2009).
- 17 Immigration authorities typically apprehend more than 80,000 juveniles annually (including accompanied and unaccompanied children). See Chad C. Haddal, 2009, p. 1.
- 18 Some of these children may be held as witnesses in pending federal or state criminal prosecutions that result from the enforcement action (e.g., as witnesses of smuggling activity or child labor-law violations).
- 19 This process is not unique to children. Vera has learned, through anecdotes from its legal services provider subcontractors, that increasing numbers of local and state authorities contact ICE when any noncitizens have been apprehended or detained, whether adults or children. See Haddal, 2009, p. 6.
- 20 *Ibid.*, p. 14.
- 21 *Ibid.*
- 22 *Flores v. Meese Stipulated Settlement Agreement*, 1997, p. 8.
- 23 Critics and advocacy groups have argued that DHS has misclassified accompanied and unaccompanied children. If DHS finds that an individual is either *not* under the age of 18 or *not* unaccompanied, that person may remain in the custody of DHS. For example, an accompanied child will be placed in a family shelter, along with his or her relatives, if space is available. See Haddal, 2009, p. 26.

- 24 Department of Homeland Security Office of the Inspector General, *Age Determination Practices for Unaccompanied Alien Children—Update* (Washington, DC: U.S. Department of Homeland Security, September 2010). On March 23, 2009, in compliance with section 235(b)(4) of the TVPRA, which requires that HHS develop policies for age determinations, ORR issued instructions for age determinations of aliens in custody of HHS or DHS. ORR's guidance applies to both HHS and DHS. See Trafficking Victims Protection Reauthorization Act of 2008, Section 235(b)(4).
- 25 Haddal, 2009, p. 6.
- 26 Ibid. Apprehended unaccompanied children must be informed of their rights, including information about free legal services in the area.
- 27 The TVPRA requires that unaccompanied children be transferred to ORR within 72 hours of identification by DHS. See Section 235(b)(3). The *Flores v. Meese* Stipulated Settlement Agreement allowed DHS three to five days to transfer an unaccompanied child to ORR. See *Flores* Settlement, 1997, V, 12.A.
- 28 Haddal, 2009, p. 6. DHS also has the right to continue to detain unaccompanied children (and others) it considers a "security threat." Little has been written about children held in ICE or DHS detention facilities (whether during the three- to five-day holding period or for a more extended time), so not much is known about this population. See Haddal, 2009, p. 26.
- 29 Betsy Cavendish and Moru Cortazar, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, (Washington, DC: Appleseed, 2011), 24.
- 30 *Trafficking Victims Protection Reauthorization Act of 2008*, Section 235(a)(2)(A).
- 31 *Trafficking Victims Protection Reauthorization Act of 2008*, Section 235(a)(4).
- 32 Cavendish and Cortazar, 2011, p. 16.
- 33 Amy Thompson, *A Child Alone and Without Papers*, (Austin, TX: Center for Public Policy Priorities, September 2008), 25.
- 34 Angie Junck, telephone interview by authors, August 9, 2011.
- 35 In some instances, missing data for date of entry into the United States may be the result of data entry errors.
- 36 The *Flores* settlement lists the criteria ORR may use to place a minor in secure detention, limiting such placement to children who 1) have been charged, are chargeable, or have been convicted of a crime, or are the subject of a delinquency proceeding, have been adjudicated a delinquent, or are chargeable with a delinquency offense, except for certain limited criminal offenses that did not involve violence against a person or the carrying of a weapon, and petty offenses such as "shoplifting and joy riding"; 2) have committed, or have made credible threats to commit, a violent or malicious act while in custody; 3) have engaged in disruptive conduct in the facility that jeopardizes the child or other children's welfare; 4) are an escape risk; 5) or must be held in secure custody for their own safety.
- 37 From HHS's fiscal year 2011 budget justification to Congress: "ORR will make efforts to increase the proportion of shelter capacity within a 250-mile radius of the border in order to limit travel time for [unaccompanied children] and better control federal costs by easing the transportation burden on DHS." The budget justification is available at <http://www.acf.hhs.gov/programs/olab/budget/2011/ORR.pdf> (accessed on August 9, 2011).
- 38 ORR Capacity Report, July 12, 2011. ORR had a total funded capacity of 1,912 beds, including 1,273 shelter beds, 164 staff-secure, 72 secure, 140 transitional (short-term) foster-care beds, 40 residential treatment center, and 223 long-term federal foster-care beds.
- 39 ORR/DUCS Transition Policy and Procedures, "Transfers," revised November 24, 2010.
- 40 During the period Vera analyzed, some children were admitted into ORR custody more than once after being re-apprehended by DHS and subsequently referred to ORR.
- 41 See the section "Outcomes for Unaccompanied Children" (p. 28 of this report).
- 42 Daniel R. Levinson, *Division of Unaccompanied Children's Services: Efforts to Serve Children*, (Washington, DC: U.S. Department of Health and Human Services Office of Inspector General, March 2008), 6.
- 43 *Flores v. Meese* Stipulated Settlement Agreement, 1997, p. 10.
- 44 Brent Orrell, "Policy Clarification: Release of a Child to an Unrelated Adult," memorandum to DUCS-funded care provider facilities administrators, DUCS field coordinators, and DUCS staff (Washington, DC: U.S. Department of Health and Human Services, January 2008), available at <http://www.acf.hhs.gov/programs/orr/programs/DUCS-ORRPolicy1.14.08.pdf> (citing *Flores* settlement, 1997, p. 9).
- 45 ORR/DUCS Transition Policy and Procedures, "Reunification," revised December 1, 2010.
- 46 Vera analyzed ORR sponsor data available for children who were released to a sponsor from October 1, 2008 through September 30, 2010. This population overlaps with, but is not identical to, the population of children admitted into ORR custody during the same period. For certain unaccompanied children (n=298), ORR sponsor data lists multiple sponsors. For some of these children, the original sponsor may not have been approved or may have withdrawn the application. In other instances, a child may have been released to a sponsor and later re-apprehended by DHS, readmitted into ORR custody, and subsequently released to a different sponsor. Vera has included all additional sponsors listed by ORR in its analysis.
- 47 *Trafficking Victims Protection Reauthorization Act of 2008*, Section 235(c)(3)(B).
- 48 ORR contracts with General Dynamics Information Technology to provide recommendations about family reunification. Previously, this role was filled by a nonprofit agency, the Lutheran Immigration and Refugee Service (LIRS), which staffed positions around the country with child welfare experts. LIRS field staff were known as field coordinators.
- 49 *Trafficking Victims Protection Reauthorization Act of 2008*, Section 235(c)(3)(B).
- 50 Once ORR has approved a release, the care provider will not release the child from the facility for 24 hours to allow DHS sufficient time to comment on the release. Based on Vera's experience administering the DUCS Legal Access Project, DHS rarely challenges the release.
- 51 *Flores v. Meese* Stipulated Settlement Agreement, 1997, p. 10.

- 52 Women's Refugee Commission, *Halfway Home* (2009), p.20.
- 53 The *Flores* settlement, which now applies to both DHS and ORR, states that "The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15." *Flores v. Meese Stipulated Settlement Agreement*, 1997, p. 11.
- 54 Levinson, 2008, p. 20.
- 55 In a few jurisdictions, children appear before a judge via teleconference from a DUCS-contracted facility.
- 56 For example, Vera staff observed a juvenile docket master calendar hearing at Arlington Immigration Court on April 6, 2011, when 13 children from a DUCS-contracted secure facility in Virginia had cases scheduled. Of those children, six requested a continuance; three had already reunified with family or been transferred to another DUCS facility (and, therefore, an attorney acting on their behalf requested a change of venue to an immigration court in their new locations); and four requested and were granted voluntary departure.
- 57 Several studies have shown that adults and children in removal proceedings benefit from legal representation. For example, Jaya Ramji-Nogales, Andrew Schoenholtz, and Philip Schrag found that legal representation by an attorney is the single most important factor affecting asylum outcomes in the United States. See Jaya Ramji-Nogales, Andrew Schoenholtz, and Philip Schrag, "Refugee Roulette: Disparities in Asylum Adjudication," *Stanford Law Review* 60 (2007): 295-412.
- 58 In 2009, ORR asked the Vera Institute of Justice, in partnership with ICAP, to develop a plan for a national child advocate program. Vera and ICAP submitted a national plan in July 2010.
- 59 Withholding of removal and relief under the United Nations Convention Against Torture are often described collectively with asylum as a category of potential relief. Family-based immigration relief is often referred to as "245 Adjustment of Status" after Section 245 of the Immigration and Nationality Act.
- 60 Although subcontractors reported that 20 children the DUCS Legal Access Project served in 2010 were potential U.S. citizens, Vera does not have data on how many of those children pursued a claim for U.S. citizenship.
- 61 *Trafficking Victims Protection Reauthorization Act of 2008*, Section 235(d)(7)(B).
- 62 Bhabha and Schmidt, 2011, p. 20.
- 63 Ibid.
- 64 *Immigration and Nationality Act*, Section 101(a)(15)(U); 8 U.S.C., Section 1101(a)(15)(U).
- 65 *Trafficking Victims Protection Act of 2000*, Public Law 106-386, 114 Stat. 1464, 106th Cong., 28 October 2000, Section 103(8).
- 66 *Immigration and Nationality Act*, Section 101(a)(15)(T)(i); 8 U.S.C., Section 1101(a)(15)(T)(i).
- 67 David B. Thronson, "Thinking Small: The Need for Big Changes in Immigration Law's Treatment of Children," *UC Davis Journal of Juvenile Law & Policy* 14 (2010): 258.
- 68 *Trafficking Victims Protection Reauthorization Act of 2008*, Section 235(a)(5)(E)(ii).
- 69 Haddal, 2009, p. 28.
- 70 Ibid., p. 25.
- 71 Christopher Nugent, "Whose Children Are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children," *Boston University Public Interest Law Journal* 15 (Spring 2006): 234.
- 72 Richard R. Verma, *Report to Congress on the Provision of P.L. 110-457 Regarding Repatriation of Unaccompanied Alien Children and Government Efforts to Protect Them from Human Trafficking*. (Washington, DC: U.S. Department of State, August 2010).
- 73 Ibid, p. 4.
- 74 A small number of children who are granted relief may be transferred to the Unaccompanied Refugee Minor (URM) Program, which is funded and operated by ORR's Division of Refugee Assistance. The URM program provides foster care and independent living services to refugee children and other special populations of children, including those who have been granted asylum or special immigrant juvenile status and those identified as victims of trafficking. Contracted care providers run 20 URM programs in 15 states. Children must enter URM care before their 18th birthday for the program to secure legal responsibility for them through a local court. Individuals may stay in URM care until they are 21 years old.
- 75 The average time for completion of all immigration court cases (adults and children) decided in fiscal year 2010 was 280 days; for cases in which relief was granted to remain in the United States, the average time was 696 days. See Transactional Records Access Clearinghouse, "Immigration Courts Taking Longer to Reach Decisions," available at <http://trac.syr.edu/immigration/reports/244/> (accessed August 11, 2011).
- 76 Vera does not have information about released children who were not referred to a Vera subcontractor. Some of these children may find legal counsel on their own; others may appear in immigration court pro se; other children may abscond from their immigration court hearing, resulting in an order of removal in absentia.

ACKNOWLEDGMENTS

The authors would like to thank Oren Root, Jessica Pulitzer, and Pradine Saint-Fort for their help with this report. They also wish to thank the DUCS Legal Access Project subcontractors for their insight and ongoing efforts to serve unaccompanied children nationwide.

© Vera Institute of Justice 2012. All rights reserved.

Additional copies are available from the Vera Institute of Justice, 233 Broadway, 12th Floor, New York, NY 10279, (212) 334-1300. An electronic version is posted on Vera's website at www.vera.org/resources.

For more information about the Unaccompanied Children Program, contact its director, Anne Marie Mulcahy at ammulcahy@vera.org.

The Vera Institute of Justice is an independent nonprofit organization that combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

Suggested Citation

Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers*. New York: Vera Institute of Justice, 2012.

