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Recent Developments and Updates on Representing Youth

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Introduction

Throughout the past several years, constantly changing policy has affected many groups of immigrants, and children are no exception. This paper¹ provides recent developments and updates on immigration law and policy, and how those changes have affected youth and the landscape of their legal representation.

Number of Youth Entering United States

In fall of 2020, the numbers of asylum seekers at the U.S. border spiked as countries began to lift COVID-19 lockdowns.² Reports of overcrowded Border Patrol holding cells and the delay by Customs and Border Protection (CBP) to transfer children to the Department of Health and Human Services (HHS) created a new challenge for the Biden Administration.³

In March 2021, CBP encountered 18,872 unaccompanied minors, which was 9,469 more than the prior month.⁴ The significant increase in unaccompanied minors at the U.S. border led the Biden Administration to open fourteen HHS Emergency Intake Sites (EIS) facilities between March and May of this year. According to Secretary of Homeland Security Alejandro N. Mayorkas, 19,987 beds were created between all EIS facilities located in Texas, California, and Michigan.⁵ Unlike the standard Office of Refugee Resettlement (ORR)-funded state licensed facilities that include case management services, education services, and recreational services, EIS facilities are only encouraged to provide these services to unaccompanied children to the extent possible.⁶

¹ Thank you to those who have contributed to this paper. Some content in this paper is adapted from CILA resources, including *Navigating Asylum Law Changes: What are the Impacts on Unaccompanied Children?* posted on the *Additional Resources* page of CILA's website, available at: <https://cilacademy.org/resources/additional-resources/> and *CILA's Pro Bono Guide: Working with Children and Youth in Immigration Cases*, available at: <https://cilacademy.org/resources/online-library/>. Email CILA at cila@abacila.org to obtain the password to access the *Additional Resources* page. Additional thanks to Molly Chew of VECINA, Taylor Levy, a VECINA mentor, Vanessa Rivas, Immigrant Justice Corps Fellow at RAICES, Carolina Rivera, UT Law Student and Intern at RAICES, Diana Tafur and Bianca Aguilera of RAICES, for their contributions and advice.

² *Rising Border Encounters in 2021: An Overview and Analysis*, Am. Immigration Council (Aug. 2, 2021), <https://www.americanimmigrationcouncil.org/rising-border-encounters-in-2021>.

³ Vanessa Romo, *Number of Unaccompanied Minors Entering U.S. Soared in February*, NPR (Mar. 11, 2021), <https://www.npr.org/2021/03/11/975916980/number-of-unaccompanied-minors-entering-u-s-soared-in-february>.

⁴ *Southwest Land Border Encounters*, U.S. Customs and Border Protection (Sept. 15, 2021), <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

⁵ *DHS Actions to Address Unaccompanied Minors at the Southern Border*, U.S. S. Comm. on Homeland Sec. & Gov't Affairs, 5 (2021) (statement of Alejandro N. Mayorkas, Sec'y of Homeland Sec.).

⁶ Fact Sheet: Unaccompanied Children (UC) Program, Health and Human Services (Sept. 17, 2021), <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.

However, the quick increase in beds resulted in a shortage of case managers, who are tasked with the prompt and safe reunification of unaccompanied children.⁷ In a complaint, volunteers at the Fort Bliss EIS holding reported witnessing “poor planning and miscommunication endangering and harming the children due to failures in case management and health care” on a daily basis.⁸ At the end of August 2021, ORR reported 14,100 unaccompanied minors remained in the agency’s five EIS facilities. The Biden Administration claims the need for temporary emergency beds is decreasing due to its implementation of policies such as the termination of the 2018 information sharing agreement between ICE and ORR, providing disaster aid funds to groups at the border assisting migrants, adding more agents at the southern border, ORR’s waiver of certain background checks for purposes of reunification, and paying travel costs associated with the reunification of unaccompanied minors to an approved sponsor.⁹

Unaccompanied Afghan Minors

In August 2021, Unaccompanied Afghan Minors (UAMs) were taken in by the U.S. as American troops withdrew from Afghanistan. Early news coverage of UAMs entering the U.S. indicate most children were under the care or in the process of being transferred to the care of ORR, with the exception of four minors who had been placed with a close family member with whom they arrived.¹⁰

On September 4, 2021, ORR provided additional information in its Field Guidance regarding Unaccompanied Afghan Minor Processing. The Guidance indicates UAMs may be transferred to an ORR care provider with culture and linguistic services or placed in a Long Term Foster Care (LTFC) program. Unlike the processing of other unaccompanied minors, ORR requires the use of family tracing organizations when necessary. As of September 16, 2021, there are 180 UAMs in ORR care, and of the reported 500 UAMs the U.S. government has encountered, 300 of them have been reunified.¹¹

⁷ Eileen Sullivan, *Biden Administration is Still Struggling to Care for Migrant Children*, N.Y. Times (Aug. 6, 2021), <https://www.nytimes.com/2021/08/06/us/politics/migrant-children-shelters.html>.

⁸ Press Release, More Whistleblowers Step Forward with New Complaints of Gross Mismanagement, Waste and Abuses of Authority at the Fort Bliss Site for Unaccompanied Immigrant Children (July 28, 2021), <https://whistleblower.org/press-release/press-release-more-whistleblowers-step-forward-with-new-complaints-of-gross-mismanagement-waste-and-abuses-of-authority-at-the-fort-bliss-site-for-unaccompanied-immigrant-children/>.

⁹ See CONG. RESEARCH SERV., UNACCOMPANIED ALIEN CHILDREN: AN OVERVIEW 29-35 (2021), <https://sgp.fas.org/crs/homsec/R43599.pdf>.

¹⁰ Ted Hesson, *Dozens of Unaccompanied Afghan Children Evacuated to the United States*, REUTERS (Aug. 27, 2021), <https://www.reuters.com/world/dozens-unaccompanied-afghan-children-evacuated-united-states-2021-08-27/>.

¹¹ Press Release, Infographic Resources on 180 Unaccompanied Afghan Children in U.S. Custody (Sept. 16, 2021), https://www.cair.com/press_releases/cair-community-advisory-update-and-infographic-resources-on-180-unaccompanied-afghan-children-in-u-s-custody/.

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