

The Surge:

The Tale of Unaccompanied
Immigrant Children in Ohio



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Definition of Unaccompanied Alien Child (UAC)

Person in the US who:

- ❖ Has no lawful immigration status;
- ❖ Is under 18 years of age; and
- ❖ Has either:
 - ❖ no parent or legal guardian in the US; or
- ❖ no parent or legal guardian in the US available to provide care and physical custody.

See 6 U.S.C. § 279(g)(2) adopted by TVPRA § 235(g)



Who are the children crossing the border?

❖ Gender:

- ❖ Mostly male (about $\frac{1}{4}$ female)

❖ Age:

- ❖ Mostly between 15-17
- ❖ 24% below the age of 14

❖ Countries of Origin:

- ❖ Small percentage from Mexico,
mainly Central America



Why are they coming to the US?

❖ Formerly:

- ❖ Reunification
- ❖ Secondary reasons (work or fleeing gang or local violence, poverty, abuse)

❖ Current:

- ❖ Fleeing violence, poverty, abuse
- ❖ Reunification is secondary



❖ In Ohio:

- ❖ Sponsors: family member v. non-family member

- ❖ **Total Number of UACs Released to Sponsors in Ohio**

- ❖ **FY 2014: 635**

- ❖ **FY 2015: 483**

- ❖ **FY 2016: 693**

- ❖ **FY 2017 (October 2016 – December 2016): 254**

What happens when they arrive?

- ❖ **Processed by Border Patrol**
- ❖ **Contiguous countries v. non-contiguous countries**
- ❖ **“Voluntary returns” (8 USC 1232) face no administrative or other legal penalties in the US**

What happens when they arrive?

Border Patrol



Immigration and Customs Enforcement



Office of Refugee Resettlement

(HHS) See 6 U.S.C. § 279(g)(2)



Released and placed in Immigration Proceedings



Relief

OR



Removal by ICE

Government Response

- ❖ Procedures on housing in ORR or BP custody
- ❖ Provision of legal counsel
- ❖ Surge docket
- ❖ What may change...



Barriers to Education and Survival

- ❖ **Lack of economic resources forcing them to work**
- ❖ **Lack of adult supervision**
- ❖ **Educational deficiencies**
- ❖ **Language barriers**
- ❖ **Psychological trauma**
- ❖ **Lack of family support**
- ❖ **Lack of a safety net**
- ❖ **Lack of valid identification**
- ❖ **Complex legal issues such as deportation, juvenile court proceedings, family law problems, and administrative hurdles**

- ❖ **Immigration Court**
- ❖ **Department of Homeland Security: check-ins with Immigration and Customs Enforcement**
- ❖ **Department of Homeland Security: U.S. Citizenship and Immigration Services**
- ❖ **Juvenile Court**
- ❖ **Public School Systems**
- ❖ **Transportation Systems**
- ❖ **Medical Care**

Types of Relief

- ❖ **SIJS**
- ❖ **Asylum**
- ❖ **U-Visa**
- ❖ **T-Visa**
- ❖ **Miscellaneous Types of Relief**



Special Immigrant Juvenile Status (SIJS)



Eligibility:

- ❖ Child is under 21 and unmarried
 - ❖ NOTE: Ohio juvenile jurisdiction ends at 18
- ❖ Received a state court order finding:
 - ❖ Cannot reunify with one or both parents due to abuse, abandonment, or neglect, and
 - ❖ Return to the child's home country is not in the child's best interest
- ❖ Child remains under the jurisdiction of the state court and the order remains in effect until the decision from USCIS*

~ INA 203(b)(4)

Benefits

- ❖ Protection from removal
- ❖ Path to lawful permanent residency and eventually citizenship

Limitations

- ❖ Recipient cannot petition for permanent residence for parents
- ❖ Does not grant status to custodian/sponsor

- ❖ **Must meet the definition of a refugee under 8 U.S.C. §1101(a)(42):**
 - ❖ any person “who is unable or unwilling to return to and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

- ❖ **What is the benefit?**
 - ❖ Work authorization while application is pending
 - ❖ Permanent resident status if approved
 - ❖ Eventually citizenship

❖ Well-Founded Fear

- ❖ **Standard is “reasonable possibility” that the applicant will experience or has experienced persecution**

(INS v. Cardoza Fonseca, 480 U.S. 421 (1987))

- ❖ **Established by showing:**

1. Past persecution OR
2. Fear of future persecution

❖ Persecution

❖ **Three types of persecution:**

(Stanojkova v. Holder, 645 F.3d 943 (7th Cir. 2011))

1. Significant physical force
2. Infliction of comparable physical harm without direct application of force
3. Non-physical harm of equal gravity

❖ Not persecution:

- ❖ Poverty, discrimination, general violence or delinquency, and harassment

❖ Protected Grounds

❖ Race = ethnic group

❖ Religion

❖ Nationality = ethnic/linguistic group

❖ Political Opinion = actual or imputed opinion

❖ Particular Social Group = most common and most complex basis

- ❖ Common, immutable characteristic that members cannot or should not be required to change
(Matter of Acosta 19 I&N Dec. 211, 233 (BIA 1985))

❖ On Account Of:

- ❖ Must establish a nexus between the persecution and the protected ground
- ❖ Second most difficult element

❖ Government Actor: Two possibilities

1. Persecution is perpetrated by a government actor; OR
2. Government cannot protect against persecution

Asylum: Jurisdiction for UACs



- ❖ **If a UAC determination is made at the border, the Asylum Office has original jurisdiction over the asylum claim of a UAC under 18 regardless of whether the child is in removal proceedings.**

Trafficking Victims Protection Reauthorization Act 2008

- ❖ This interpretation is in flux
- ❖ **If UAC is >18, child can still file an affirmative case with the Asylum Office so long as the application is filed before the 19th birthday.**

U Nonimmigrant Visas

- ❖ **Victims of certain crimes in the U.S. that cooperate with law enforcement**
- ❖ **Requirements:**
 1. Victim of crime under U.S. law
 2. Suffered substantial physical/mental harm as a result of the crime
 3. Possesses information that helps police
 4. Provide assistance to police in the detection, investigation, or prosecution of the crime
 5. Be admissible (most grounds are waived)
- ❖ **Benefit: leads to permanent resident status and pathway to citizenship**

U Nonimmigrant Visas: Victimhood

- ❖ **Can be direct or indirect victim**
- ❖ **Suffers substantial mental or physical harm**
- ❖ **Child victims:**
 - ❖ Suffer and experience trauma differently than adults
 - ❖ May need a mental evaluation or medical experts to corroborate the claims

U Nonimmigrant Visas: Law Enforcement Agency (LEA) Certification



- ❖ **Can be a police department, prosecuting attorney, or judge**
- ❖ **Must certify that the application is “helpful” to the investigation**
- ❖ **No requirement that the perpetrator be prosecuted or convicted**

T Nonimmigrant Status

❖ **Generally, visa status granted to victims of human trafficking**

❖ **Requirements:**

1. Victim of a severe form of trafficking in persons
2. In U.S. as a result of the trafficking
3. Victim complies with Law Enforcement Agency (LEA)
4. Victim suffers extreme hardship

❖ **Benefit: permanent resident status and pathway to citizenship**

INA §101(a)(15)(T)

T Nonimmigrant Status: Severe Form of Trafficking



Sex trafficking:

- ❖ Commercial sex act that is induced by force, fraud, or coercion
- ❖ If the person induced to perform such act is under 18 years of age, then unlawful inducement is inferred

Labor trafficking:

- ❖ Recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

22 USC 7201(9)

T Nonimmigrant Status: LEA Cooperation

- ❖ **No certification requirement**
- ❖ **No duty to assist if the victim is under 18 years**
- ❖ **Anti-Trafficking in Persons (government agency) can certify the minor through an eligibility letter**

❖ **Violence Against Women Act (VAWA)**

- ❖ Victims of domestic violence committed by a U.S. citizen or Lawful Permanent Resident
- ❖ May file for Permanent Resident status or Cancellation of Removal (need 3 years of U.S. presence)

❖ **Adjustment of Status**

- ❖ Immigrant Visa available (through close family relationship – most likely a parent)
- ❖ Results in Permanent Residency (green card)

❖ **Prosecutorial Discretion**

- ❖ Immigration and Customs Enforcement (ICE) may exercise discretion to close or terminate proceedings
- ❖ Must show supporting factors

❖ **Voluntary Departure**

- ❖ Voluntary return to home country

How can you help?

- ❖ **Records**
- ❖ **Transportation**
- ❖ **Absences**
- ❖ **Communication**
- ❖ **Support**

Questions?



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