



# U.S. Citizenship and Immigration Services

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WRITTEN TESTIMONY

OF

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FOR A HEARING ON

**“THE 2014 HUMANITARIAN CRISIS AT OUR  
BORDER: A REVIEW OF THE GOVERNMENT’S  
RESPONSE TO UNACCOMPANIED MINORS ONE  
YEAR LATER”**

**BEFORE  
THE SENATE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS**

**JULY 7, 2015  
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Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee: Thank you for the opportunity to testify at today's hearing on unaccompanied children (UC). I am Joseph Langlois, the Associate Director of the Refugee, Asylum and International Operations (RAIO) Directorate within U.S. Citizenship and Immigration Services (USCIS) at the Department of Homeland Security (DHS). One of the components I oversee is the Asylum Division, and my testimony today will focus on the Asylum Division's processing of asylum applications filed by UCs.

#### William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)

The TVPRA introduced a wide range of safeguards for UCs, including the current regime for processing asylum applications filed by UCs. An unaccompanied child as defined in statute is a child who: (1) has no lawful immigration status in the United States; (2) has not attained 18 years of age; and (3) with respect to whom there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody. Under the TVPRA, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) determine whether a minor is a UC upon apprehension. These agencies must transfer the custody of apprehended UCs to the U.S. Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) within 72 hours of determining that the minor is a UC, unless there are exceptional circumstances. With the exception of some UCs from contiguous countries, these UCs are issued a Notice to Appear (NTA) before an immigration judge of the Executive Office for Immigration Review (EOIR) within the U.S. Department of Justice for removal proceedings under section 240 of the Immigration and Nationality Act (INA). (UCs from contiguous countries may be allowed to withdraw their application for admission and return to their home country voluntarily if CBP determines that they have not been a victim of a severe form of trafficking and are not at risk of being trafficked in the home country, that they do not have a credible fear of persecution in the home country, and that they are able to make an independent decision to withdraw their application for admission.)

Once DHS has placed a UC in removal proceedings before an immigration judge, the UC may seek to apply for relief, including asylum, as a defense to removal. Prior to the TVPRA, UCs who wished to apply for asylum in removal proceedings were required to file their asylum applications with immigration judges in an adversarial proceeding in immigration court. The TVPRA, however, created a new role for USCIS in the processing of UC asylum applications. Under the TVPRA, while immigration judges maintain jurisdiction over removal proceedings, USCIS has initial jurisdiction over any asylum claims filed by UCs. Thus, UCs may file asylum applications directly with USCIS while they are in removal proceedings. This provision allows UCs to have their asylum claims initially heard in a non-adversarial setting by a specially-trained USCIS asylum officer. Moreover, if USCIS does not find the UC eligible for asylum, the case is sent back to the immigration judge for a *de novo* hearing on the claim.

## USCIS Processing of Asylum Applications Filed by Unaccompanied Children

UCs who indicate to an immigration judge an intention to apply for asylum in removal proceedings are instructed to file their asylum applications with USCIS instead of EOIR. As part of these instructions, the ICE attorney in immigration court provides the UC written guidance that directs the filing of the asylum application at the USCIS service center, or if extenuating circumstances warrant expeditious processing, directly at an asylum office. In the meantime, ICE generally requests a continuance with the immigration judge to provide time for the UC to file the asylum application with USCIS and for USCIS to adjudicate the asylum application.

After receiving the case, the USCIS service center verifies that the asylum application has been properly filed with USCIS, enters the application into the case management system, and forwards the file to the appropriate USCIS asylum office with jurisdiction over the applicant's address. In cases where CBP or ICE has already determined that the applicant is a UC, and that determination is still in place on the date the asylum application was filed, USCIS adopts that determination, assumes jurisdiction over the application, and proceeds with the asylum interview and adjudication. If CBP or ICE has not already made a determination that an applicant in removal proceedings is a UC, or if the prior UC determination has been terminated, an asylum officer makes an independent UC determination in order to establish whether USCIS has jurisdiction over the asylum application. In these rare instances, asylum officers determine whether the applicant was a UC on the date of the initial filing of the asylum application by examining an applicant's age, immigration status, and whether the applicant has a parent or legal guardian in the United States available to provide care and physical custody to him or her. In the uncommon case that the asylum office is the first federal entity to make a determination that the applicant is a UC, the asylum office will notify HHS as required by the TVPRA.

Once USCIS assumes jurisdiction, USCIS asylum officers conduct in-person, in-depth, non-adversarial interviews. USCIS has been prioritizing the scheduling of asylum interviews for UCs since Fiscal Year 2014, consistent with EOIR's expedited scheduling of UC cases. These interviews are conducted by specially trained asylum officers who fully explore the asylum claim, research country conditions, and complete required security checks. These checks include comprehensive biographic and biometric identity and background checks that are mandatory for all applicants and are used to screen for security concerns, misrepresentation, criminal and immigration history, and other factors that affect eligibility. Asylum officers then determine whether the individuals are eligible for asylum and draft a decision. Supervisors review 100% of asylum officers' decisions prior to service. If USCIS does not grant asylum, the UC is returned to immigration court, where the UC may renew his or her asylum application before an immigration judge, who conducts a *de novo* hearing of the case.

Appropriate training of adjudicators who perform this work is of paramount importance to USCIS. In addition to the basic training required of all USCIS officers, asylum officers receive eight weeks of specialized training that includes comprehensive instruction on all aspects of the job, including asylum law, fraud detection and prevention, security protocols, non-adversarial interviewing techniques, credibility analysis, and country conditions research. In addition, all asylum officers receive training on child-appropriate interview techniques and guidelines for children's asylum claims. Asylum officers are trained to conduct child-

appropriate interviews taking into account the applicant’s age, stage of language development, background, and level of sophistication.

Each USCIS asylum office has designated at least one asylum officer who serves as the point of contact for issues related to UCs. These designees are responsible for communicating with the local ICE Principal Legal Advisor Offices regarding the status of asylum applications for UCs in removal proceedings, verifying the status of removal hearings, and arranging the transfer of A-files between ICE and asylum offices. The point of contact also notifies HHS whenever the asylum office identifies a UC.

Statistics on Asylum Applications Filed by Unaccompanied Children

*Overall Trends: FY 2009 to present*

USCIS has received a total of 13,004 asylum applications filed by UCs apprehended by CBP since Fiscal Year 2009, when the TVPRA was first implemented. The table below shows that this total represents only 6% of the number of UCs apprehended by CBP during this period.

**UC asylum cases filed by apprehension year**

<b>Year</b>	<b>UC Apprehensions by CBP</b>	<b>New Asylum Cases Filed by UCs</b>	<b>Percentage</b>
<b>FY 2009</b>	19,819	431	2%
<b>FY 2010</b>	19,173	593	3%
<b>FY 2011</b>	17,786	534	3%
<b>FY 2012</b>	27,053	1,235	5%
<b>FY 2013</b>	41,908	2,753	7%
<b>FY 2014</b>	73,471	6,990	10%
<b>FY 2015 thru May 31</b>	22,869	468	2%
<b>TOTAL</b>	<b>222,079</b>	<b>13,004</b>	<b>6%</b>

In addition, since the TVPRA was implemented in Fiscal Year 2009, 92% of UCs who filed for asylum with USCIS were from Guatemala, Honduras, or El Salvador. During this time period, the USCIS asylum approval rate for all UCs was 42.6%, close to the overall approval rate of 41% for all new asylum applications received by USCIS during the same time period.

It can take a number of months for UCs to file asylum applications after their arrival in the United States. Asylum applications received by USCIS in one Fiscal Year may have been filed by UCs who arrived in a previous Fiscal Year. In Fiscal Year 2014, 69% of UCs who filed asylum applications with USCIS did so more than 300 days after their arrival in the United States. In Fiscal Year 2015, 49% filed their asylum applications more than 300 days after their arrival in the United States.

*Recent Arrivals: Entered United States between 10/01/13 and 7/31/2014*

Of the UCs who arrived in the United States between 10/01/13 and 7/31/14, 7,041 have applied for asylum with USCIS under the TVPRA initial jurisdiction provision. Of these 7,041 applicants, USCIS has:

- adjudicated 3,887 of their cases, approving 1,616 for an approval rate of 41.6%;
- administratively closed 161 cases;
- 2,993 cases pending, of which 61% were filed in the last three months.

While USCIS has seen significant increases in asylum applications from UACs in the last two Fiscal Years, these receipts still constitute only a fraction of the number of UACs apprehended by CBP during the same timeframe.

Special Immigrant Juvenile Status Program

UCs may be eligible to apply for programs or relief other than asylum. One such program is the Special Immigrant Juvenile (SIJ) status program, which is administered by the Field Operations Directorate within USCIS. SIJ classification is an immigration protection for foreign-born, non-U.S. citizen or lawful permanent resident children present in the United States who have been abused, neglected, or abandoned by a parent. SIJ status is an immigration classification that may allow these children to immediately apply for lawful permanent resident status if otherwise eligible and a visa is available. SIJs are subject to the employment-based fourth preference (EB-4) visa quota limits and share these visas with other categories of special immigrants (e.g., religious workers).

The TVPRA expanded eligibility for SIJ by adding children placed under the custody of an individual or entity, which could include a custodial parent. The TVPRA also removed the need for a juvenile court to determine the child eligible for long term foster care and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable.

The SIJ program is unique in that only children who have been subject to court proceedings under state law are eligible to apply. The role of the state is to make certain child-welfare related findings based on state law about a child's dependency on the court or custody, the non-viability of parental reunification, and the best interests of the child. USCIS does not have a role in these determinations. The role of USCIS is to determine if the child meets the statutory requirements for SIJ classification under immigration law; thus, USCIS must determine that the appropriate state court has made the necessary declaration pertaining to the child's dependence on the court, or the child's placement under the custody of a state agency, a private agency, or a private individual or entity appointed by a State or juvenile court, consistent with a finding that reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis under applicable state law, and that it would not be in the child's best interest to be returned to his or her previous country of nationality or last habitual residence. If a child in the custody of HHS seeks a juvenile court order that also alters his or her HHS custody

status or placement, HHS must consent to the juvenile court’s jurisdiction. HHS consent is not required if the order simply restates the child’s current placement.

Some UCs may be eligible for SIJ status. However, because the UC designation is not germane to the adjudication of an SIJ case as it is for determinations regarding asylum jurisdiction, USCIS does not gather information on a petitioner’s unaccompanied child status as part of the SIJ petition. Therefore, USCIS cannot provide statistics as to the number of SIJ petitions filed by UCs specifically. USCIS does track overall trends in SIJ petitions, and has seen a steady increase in the total volume of SIJ petitions filed with the agency.

**SIJ Status—Receipts, Approvals, Denials—FY 14 – FY 15 (through May)**

<b>FISCAL YEAR</b>	<b>RECEIPTS</b>	<b>APPROVALS</b>	<b>DENIALS</b>
<b>2014 Totals</b>	<b>5,817</b>	<b>4,605</b>	<b>245</b>
<b>2015 Totals</b>	<b>6,814</b>	<b>5,257</b>	<b>198</b>

Conclusion

The TVPRA established a new, multifaceted system for providing care for UCs and addressing their immigration status, assigning responsibilities to various agencies across the federal government. USCIS plays a limited but important role in taking initial jurisdiction of asylum applications filed by UCs, conducting their asylum interviews in a non-adversarial setting, and adjudicating their claims. To date, while a relatively small percentage of UCs apprehended at the border have applied for asylum with USCIS, the number of filings has increased over the last two years and may continue to do so. USCIS continues to monitor trends and stands ready to meet future challenges with a well-trained workforce dedicated to quality and integrity.

Thank you for the opportunity to testify. I look forward to answering any questions.