

IMMIGRATION

Youth Justice and Unaccompanied Children



Introduction

Federal Immigration laws have become one of the most contentious and unsettled areas of policy in the life of the nation ¹ in the past two years. “Many Americans take for granted our children’s right to happy childhoods and the laws and social programs intended to ensure their safety”. ² Unfortunately, hundreds of thousands of children seek refuge in the United States for many reasons: to escape war, gangs or violence; flee abuse; or reunite with family. Others enter involuntarily as labor or sex trafficking victims. ³ To compound their situation, they flee from violence and insecurity, “only to be confronted by an immigration system that exhibits little concern for their wellbeing”. ⁴ To understand the issue of immigration of unaccompanied minors, we need to understand the experiences of immigrant children. An interdisciplinary perspective – psychological, sociological, anthropological, and historical - is important to meeting the needs of immigrant children and “their adjustment to American society”. ⁵

Children migrating to the US

Immigrant children are defined as those who have at least one foreign-born parent. First generation immigrant children are foreign born children with at least one foreign born parent. Second-generation are any US born child with at least one foreign born parent. ⁶ Children with immigrant parents can be both first and second generation immigrant children. ⁷ From 1994 to 2017, the population of immigrant children in the US grew by 51%, becoming one quarter (19.6 million) of all US children. ⁸ Twenty-one percent of the 44.5 million immigrants in the US in 2017 entered in 2010 or later, 26% arrived between 2000 and 2009, 22% from 1990 – 1999 and 31% before 1990. Immigrants and their US born children represent 28% of the overall US population. In 2017, approximately 18.2 million children under age 18 lived with at least one immigrant parent.

From 2006 – 2017, the proportion of first-generation immigrant children who were Mexican-born decreased from 37 – 18%. In 2017, other more common birthplaces for first-generation children were India (8%), China (5%) and Philippines (4%). ¹⁰ Recent immigrants are more likely to be Asian than Mexican. The size of unauthorized population appears to be on the decline. ¹¹ The composition of the arriving migrant population has shifted from one of young Mexican males seeking work in the US to one of primarily families and children from Central America migrating for mixed reasons. In 2018, 40% of those detained at the border were either migrant families or unaccompanied children, compared to 10% in 2012. In the first six months of 2019, they accounted for 61%. ¹²

Immigrants detained at the US-Mexico border are primarily asylum-seekers from Guatemala, Honduras and El Salvador; “chronically destabilized regions plagued by grave levels of human rights violations, insecurity, poverty, drug cartel infiltration, violence and corrupt justice systems”. Criminal gangs target children and exploitation is notoriously brutal. ¹³ “Nearly one in five residents of these countries was a victim of a crime in 2012.” ¹⁴ Honduras is the murder capital of the world and Guatemala and El Salvador close behind. ¹⁵



What's the process?

Immigrant children seeking safe haven in the United States, whether arriving unaccompanied or with a family, face a complicated process from the point of arrival through permanent resettlement in communities. The conditions in which children are detained and the support services that are available to them are of great concern to pediatricians and other advocates for children.¹⁶ Each child is charged with breaking the law and placed in deportation proceedings. This requires them to go before an immigration judge and face a government attorney in a formal courtroom. There are no requirements that judges consider what's best for the child.

Children first detained at the time of entry to the United States, whether they are unaccompanied or with family, are held by the Department of Homeland Security (DHS) in CBP processing centers. After processing, unaccompanied immigrant children are placed in shelters or other facilities operated by the US Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), and the majority are subsequently released to the care of community sponsors. Children detained with a parent or legal guardian are either repatriated back to their home countries under expedited removal procedures, placed in Immigration and Customs Enforcement (ICE) family residential centers, or released into the community to await their immigration hearings.¹⁷

Processing centers are secure facilities of various sizes with locked enclosures to detain children and families. The conditions in many of the centers are egregious, including lack of bedding (e.g., sleeping on cement floors), open toilets, no bathing facilities, constant light exposure, confiscation of belongings, insufficient food and water, lack of access to legal counsel, and a history of extremely cold temperatures. At times children and families are kept longer than 72 hours, denied access to medical care and medications, separated from one another, or physically and emotionally maltreated.¹⁸

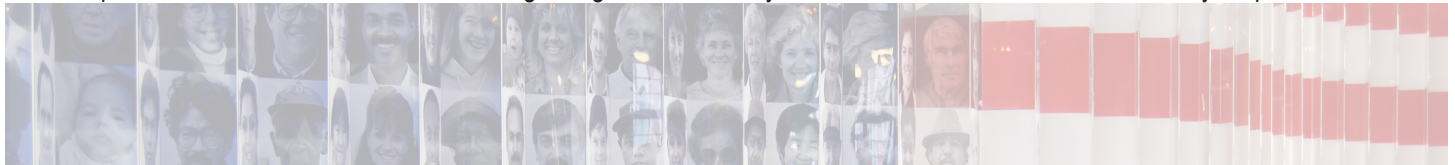


What immigration laws have changed since 2017?

Significant changes in legislation around immigration to the United States began in 2017, undoing many of the protective laws enacted in response to reports of inappropriate and inhumane activities, especially for unaccompanied immigrant children. Much of the legislation that provided oversight to the process and ensured children were treated in their best interest has been overturned or phased out.

The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), which applied to all "unaccompanied alien children" under the age of 18,¹⁹ was an important source of statutory rights and government obligations.²⁰ The 1996 settlement agreement in *Flores v. Meese* ("Flores Settlement") covered all children (whether accompanied or not) under the age of 18 who are in federal government custody. Other sources of law, including statutes, regulations, injunctions, and provisions of the U.S. Constitution, afforded further safeguards to immigrant children who are taken into government custody and subjected to removal proceedings.

Deferred Action for Childhood Arrivals (DACA), an immigration policy announced on June 15, 2012, allows some individuals with unlawful presence in the United States after being brought to the country as children to receive a renewable two-year period of deferred



action from deportation and become eligible for a work permit in the U.S. To be eligible for the program, recipients cannot have felonies or serious misdemeanors on their records. U.S. Citizenship and Immigration Services began accepting applications for the program on August 15, 2012. Another important resource for immigrant children was the availability of legal services to help them navigate the complex and confusing process.

In June 2017, an AmeriCorps program to provide free attorneys for unaccompanied minors was stopped.²¹ By some estimates, nearly 45% of unaccompanied children in deportation proceedings do not have attorneys in immigration court.²² Also in June, 2017, the family case management program was eliminated. It was started in January 2016 and through June 2017, it had served 954 families who were approved for release from family detention. 99% attended their court appearances and ICE check ins. A 2019 law restarted the program with \$30.5 million in funding.²³

On September 5, 2017, the Deferred Action for Childhood Arrivals (DACA) program was eliminated.²⁴ An injunction was filed in January 2018 to continue granting DACA to individuals who had received it prior to the administration's rescission.²⁵ Currently the injunction is still in place.

In April 2018, the US government introduced a 'zero tolerance' illegal immigration control strategy at the US-Mexico border resulting in the detention of all adults awaiting federal prosecution for illegal entry and the subsequent removal of their children to separate child shelters. Between April and June 2018, over 2,300 immigrant children, reportedly including breastfed infants were removed from their parents and placed in separate child detention shelters to await resolution of their parent's case and hopeful, but not guaranteed,

reunion. For-cause separations (criminal history, medically necessary, welfare of the child) were happening at twice the rate as they occurred in late 2016.²⁶ In late June 2018, after extensive public and political outrage, an executive order was signed ending the policy of separating children from their parents. By August 2018, reports estimated that 700 children, including 40 children under the age of 4 years remained separated from their parents.²⁷

Amid significant reduction in services and protections, immigration enforcement agencies have become the top recipients of federal law enforcement dollars. That spending level is 34% more than the \$17.9 billion allocated for all other principal federal criminal law enforcement agencies combined. In addition, new laws would increase the number of cases the attorney general would be allowed to rule on by 700%, an average up from 33,000 to 247,000.²⁸

In February, 2019, the President declared a national emergency at the border, as a “record number” of Central American families and unaccompanied minors surged across the southern border. Most of the minors are teenagers seeking asylum after fleeing violence and poverty in Guatemala, Honduras and El Salvador. Most recently, this month, the President’s administration is canceling English classes, recreational programs and legal aid for unaccompanied minors staying in federal migrant shelters nationwide, saying the immigration influx at the southern border has created critical budget pressures.²⁹

“The Office of Refugee Resettlement (ORR) has begun discontinuing the funding stream for activities — including soccer — that have been deemed “not directly necessary for the protection of life and safety, including education services, legal services, and recreation,” said U.S. Health and Human Services spokesman Mark Weber. “The move — revealed in an email an HHS official sent to licensed shelters last week, a message that has been obtained by The Washington Post — could run afoul of a federal court settlement and state licensing requirements that mandate education and recreation for minors in federal custody.”³⁰

The White House had attempted to attach a \$4.5 billion emergency spending request for the border — which includes \$2.9 billion for HHS — to the disaster bill that passed this week, but lawmakers were unable to reach an agreement.³¹

In a positive step, in March, 2019, the “Dream and Promise Act of 2019,” was introduced. It addresses beneficiaries of the DACA program and two other programs, - Temporary Protected Status and Deferred Enforced Departure - that offer temporary relief. It provides some reprieve to “Dreamers” by allowing those who qualify to gain lawful permanent resident status, which is usually out of the question for many undocumented immigrants who came to the US as minors. To obtain legal status, immigrants must have a qualifying petitioner -- for example, a family member or employer -- who can sponsor them. This can be a problem however, as he or she is already hindered by the fact that they are deemed to have entered the country illegally.

The bill would grant DACA recipients with conditional permanent resident status for up to 10 years. The criteria is similar to what DACA recipients have to meet, including not having been convicted of a felony. Similarly, TPS or DED holders would also be given the opportunity to gain lawful permanent resident status as long as they have resided in the US for at least three years and don’t have a felony conviction or more than one misdemeanor conviction.³²



What is the impact on immigrant children?

Migration through Mexico to the USA is equally grueling and perilous with immigrants reporting violence, kidnapping, sexual and physical abuse, human trafficking, extortion and ill treatment by officials. Access to adequate shelter, nourishment and medical care is precarious. As immigrant children reach the US-Mexico border, their compounding exposures to detrimental social determinants of health and cumulative adverse experience places them at eminent risk of developmental, mental and physical harm.



³³ Since 2016, doctors and service providers have reported anecdotally that they have seen more children exhibiting toxic stress symptoms of depression, anxiety, and severe psychological distress due to a family member being deported.³⁴

Developmental concerns such as language regression (50%), attachment problems (30%) and enuresis (30%) were reported in children under 5 years of age, whereas symptoms of PTSD (100% above clinical cut off), depression with suicidal ideation (100% above clinical cut-off), self-harm (80%) anxiety (70%), and somatic symptoms (50%) were more common in older children (aged 6–17).³⁵ Similarly, a study comparing detained children to child asylum seekers in the community found detained children to have significantly impaired social-emotional wellbeing as measured by conduct disorder, emotional problems and hyperactivity than their non-detained counterparts.³⁶ A study of Latino citizen children from 2013 – 2015 found that PTSD

was significantly higher for children who had a least one detained or deported parent.³⁷

The separation of children from their parents threatens the attachment bond, forming an additional root of fear and lack of safety. This deep, enduring affectional bond between a child and caregiver begins in infancy and is critical to the child's inherent sense of safety and protection. Neurologically, attachment relationships drive the brain development foundational for subsequent physical, emotional, social and cognitive maturation.³⁸ Recent reports of conditions for detained children also include indiscriminate use of the 'no touch' rules designed to prevent inappropriate physical contact. While such rules may have their place in safeguarding unaccompanied adolescents, depriving very young children of physical comfort serves to significantly heighten distress.³⁹

Another factor important to note is that during the 2016 – 2017 school year, there were 125,000 unauthorized immigrant students reaching high school graduation age and 98,000 unauthorized immigrant students graduating from high school.

⁴⁰ Administrator leaders of secondary and high education institutions, immigrant rights advocates, state policy makers and more recently members of the business community have expressed interest in this population, viewing them as current and potential students on their campuses, members of the community, and workers. However, the 98,000 unauthorized immigrant students who have not received previous DACA status are ineligible to apply and are at risk of deportation and will face severely limited opportunities to pursue further work and education. Each of these factors contribute to the traumatic behaviors of youth, which may lead them into the juvenile justice system, complicating and compounding their situation.



What's Next?

Lawmakers in 44 states, District of Columbia and Puerto Rico enacted 175 laws and 222 resolutions related to immigration, for a total of 397.⁴¹ Much of the legislation in these states across the country are focused on putting into place protections and services for immigrant children and families. While much of the same legislation is being considered in multiple states, federal legislation is slow in reacting. State legislators are seeking better communication and consultation with federal authorities regarding oversight, accountability, and how to effectively reunite children with their families and provide them with the care and resources they need.

Six states adopted resolutions on child migrants in 2018 that urge Congress to take supportive action or condemn the federal policy of separating migrant children from their parents. Also, 37 states introduced more than 120 bills on the issue of sanctuary jurisdictions and immigration detainees.⁴²

California called on Congress to recognize the detriment of family separation to the short- and long-term physical and mental well-being of the children. They further requested that Congress issue a formal apology to all children detainees who were separated from their parents and legal guardians. New York introduced legislation that would require reports from the federal government on unaccompanied children, including the kind of services they received and where they are placed after discharge.



Governors of eight states declared their National Guard resources will not be deployed along the Southwest border as a response to the family separation policy. In addition, in 2018, nine states passed eight laws and one resolution to address barriers in occupational licensing for immigrants with work authorization.⁴³ Seventeen states added portions of the federal naturalization exam to high school civics curricula and testing requirements and some laws address enhanced learning for refugees or English learners.⁴⁴ Congress is currently considering two pieces of legislation, the Keep Families Together Act which would outlaw family separations except in the case of trafficking or parental abuse, and the Protect Kids and Parents

Act that would authorize new temporary shelters that would keep families together as adults await prosecution, double the number of federal immigration judges to help expedite cases, and require asylum cases to be adjudicated within 14 days.

You may recall a year ago, two children fleeing with their families from murder and mutilation of family and friends, were separated from their families, one of them while the child was sleeping. After being locked in a cage and shipped to Connecticut, these two children had the benefit of receiving legal representation and were eventually reunited with their families. This is not the case for most. In 2017, deportation cases were opened on 295 children in Hartford's immigration court, and 181 of them without legal representation.⁴⁵ During this legislative session, Connecticut passed two bills amending the protections Connecticut provides to undocumented immigrants by further limiting when law enforcement can hold those individuals for U.S. Immigration and Customs Enforcement. The first bill strengthens The Trust Act, which helps prevent undocumented immigrants from being deported if they seek help from police or other agencies.

⁴⁶

The second bill includes two exceptions for when a judicial order is required to detain someone for ICE. Without a judicial order, state

law enforcement and court officials still can detain any undocumented immigrant who is on a federal terrorist watch list or has been convicted of a major felony.⁴⁷ The bill also limits law enforcement from disclosing a person's confidential information to federal immigration authorities in certain cases. The updates to the bill are intended to help Connecticut laws match other states' protections for undocumented immigrants. With so many reforms for youth in the juvenile justice system already in place in Connecticut, our State is in a position to be a leader in justice for immigrant children by ensuring every child has legal representation.⁴⁸

Footnotes

- 1.ACLU Immigrants' Rights Project, The Rights of Children in the Immigration Process, July 2014
- 2.Young Center for Immigrant Children's Rights, www.theyoungcenter.org
- 3.The Opportunity Agenda
- 4.BMC Psychiatry, The impact of immigration detention on mental health: a systematic review, Werthern, M., Robjant, C., Schon, R., Ottisova, L., Mason, C., Katona, C., 2018
- 5.BMJ Paediatrics Open, Impact of punitive immigration policies, parent-child separation and child detention on the mental health and development of children, Wood, L., August 30, 2018
- 6.American Academy of Pediatrics, Detention of Immigrant Children, Council on Community Pediatrics, Linton, J., Griffin, M, Shapiro, A., April 2017.
- 7.Child Trends, Racial and Ethnic Composition of the Child Population, December 13, 2018
- 8.Child Trends, Immigrant Children, December 28, 2018
- 9.American Immigration Council, U.S. Citizen Children impacted by Immigration Enforcement, May 2018
- 10.Harvard Educational Review, Children of Immigration Abstract,C. and M. Suarez-Orozco, 2019
- 11.Migration Policy Institute, Unaccompanied Child Migration to the United states, the Tension between protection and prevention, Rosenblum, M., April 2015
- 12.Migration Policy Institute, Immigration-related policy changes in the first two years of the trump administration, Pierce, S., May 2019
- 13.Migration Policy Institute, Fact Sheet, How many unauthorized immigrants graduate from U.S. High schools annually?, Zong, J., Batalova, J., April 2019
- 14.Migration Policy Institute, What is the right policy toward unaccompanied children at U.S. borders
- 15.Migration Policy Institute, Rising child migration to the United States
- 16.Migration Policy Institute, Trends in Unaccompanied Child and Family Migration from Central America
- 17.Migration Policy Institute, Frequently requested statistics on immigrants and immigration in the United States, Migration Information Source, Zong, J., Batalova, J., Burrows, M., March 14, 2019
- 18.Migration Policy Institute, Eight key U.S. Immigration policy Issues, State of Play and Unanswered Questions, Meissner, D., Gelatt, J., May 2019
- 19.Migration Policy Institute, Dramatic Surge in the Arrival of Unaccompanied children has deep roots and no simple solution, Policy Beat, June 13, 2014
- 20.National Immigrant Justice Center, Unaccompanied immigrant children, Policy Brief from Heartland Alliance's National Immigrant Justice Center, January, 2014.
- 21.Undocumented and unaccompanied: Facts, figures on children at the border, NBC
- 22.Washington Post, Trump administration cancels English classes, soccer, legal aid for unaccompanied child migrants in US shelters, Sacchetti, M., June 5, 2019
- 23.CNN Politics, US immigration: DACA and Dreamers explained, Shoichet, C., Cullinane, S., Kopan, T., October 26, 2017
- 24.CNN Politics, House passes bill that would provide a pathway to citizenship for many undocumented immigrants, Alvarez, P. CNN, June 4, 2019
- 25.National Conference of State Legislators, <http://www.ncsl.org/research/immigration/report-on-state-immigration-laws.aspx>
- 26.Migration Policy Institute, Immigration-related policy changes in the first two years of the trump administration, Pierce, S., May 2019
- 27.BMJ Paediatrics Open, Impact of punitive immigration policies, parent-child separation and child detention on the mental health and development of children, Wood, L., August 30, 2018.
- 28.Migration Policy Institute, Eight key U.S. Immigration policy Issues, State of Play and Unanswered Questions, Meissner, D., Gelatt, J., May 2019
29. Washington Post, Trump administration cancels English classes, soccer, legal aid for unaccompanied child migrants in US shelters, Sacchetti, M., June 5, 2019
30. ibid
31. ibid
32. CNN Politics, House passes bill that would provide a pathway to citizenship for many undocumented immigrants, Alvarez, P. CNN, June 4, 2019
33. BMJ Paediatrics Open, Impact of punitive immigration policies, parent-child separation and child detention on the 34. American Immigration Council, U.S. Citizen Children impacted by Immigration Enforcement, May 2018
35. BMC Psychiatry, The impact of immigration detention on mental health: a systematic review, Werthern, M., Robjant, C., Schon, R., Ottisova, L., Mason, C., Katona, C., 2018
36. ibid
37. American Immigration Council, U.S. Citizen Children impacted by Immigration Enforcement, May 2018
38. BMJ Paediatrics Open, Impact of punitive immigration policies, parent-child separation and child detention on the mental health and development of children, Wood, L., August 30, 2018
39. ibid
40. Migration Policy Institute, Fact Sheet, How many unauthorized immigrants graduate from U.S. High schools annually?, Zong, J., Batalova, J., April 2019
- 41.National Conference of State Legislators, <http://www.ncsl.org/research/immigration/report-on-state-immigration-laws.aspx>
- 42.National Conference of State Legislators, <http://www.ncsl.org/research/immigration/sanctuary-policy-faq635991795.aspx#federal%20and%20state%20law>
43. ibid
44. ibid
- 45 Immigrant Children Face Deportation Alone, Perry, J., Zucco-Himmilstein, M., Connecticut Legal Services, Op-Ed, Hartford Courant, <https://www.courant.com/opinion/op-ed/hc-op-perry-immigrant-children-in-court-20180726-story.html>
46. Hartford Courant, <https://www.courant.com/politics/hc-pol-trust-act-update-undocumented-immigrant-protections-20190531-yof4ohdsqjerdj5mqilleybqg4-story.html>
47. ibid
- 48.Immigrant Children Face Deportation Alone, Perry, J., Zucco-Himmilstein, M., Connecticut Legal Services, Op-Ed, Hartford Courant, <https://www.courant.com/opinion/op-ed/hc-op-perry-immigrant-children-in-court-20180726-story.html>

This Issue Brief is a collaboration with Steven Hernandez, Esq., Executive Director for the Commission on Women, Children and Seniors. Tow Youth Justice Institute is grateful for his content and expertise!

The Tow Youth Justice Institute is a university, state and private partnership established to lead the way in juvenile justice reform through collaborative planning, training, research and advocacy.

Please visit our website at newhaven.edu/towyouth and follow us on social media [@towyouth](https://twitter.com/towyouth) or call 203-932-7361 with questions or for more information.



Click or scan
QR code
for previous
Issue Briefs.