

**MEMORANDUM**

July 30, 2014

**To:** Prepared for Distribution to Multiple Congressional Requesters

**From:** Michael John Garcia, Legislative Attorney, 7-3873  
Kate M. Manuel, Legislative Attorney, 7-4477

**Subject:** **Unaccompanied Alien Children: Current Law Governing Removal from the United States and Selected Legislative Proposals**

---

Recent reports about the increasing number of alien minors apprehended at the U.S. border without a parent or guardian sparked heightened attention on the treatment of “unaccompanied alien children” (UACs) under federal immigration law. In recent weeks, several legislative proposals have been introduced that variously address UACs, including by modifying current laws governing their removal from the United States and their eligibility for asylum and other types of relief from removal.

This memorandum provides a brief overview of current law governing the removal of UACs from the United States and recent legislative proposals that would modify this removal process. It begins by providing a brief overview of two of the most commonly used processes for removing non-UACs from the United States, and then discusses the specific legal requirements governing the removal of UACs from the country. It concludes with a chart comparing current law with three legislative proposals introduced in recent weeks that would make significant modifications to the treatment of UACs under federal immigration law. These proposals are: (1) **H.R.5230**, the supplemental appropriations bill for FY2014, introduced by House Appropriations Committee Chairman Harold Rogers, which was introduced on July 29, 2014; (2) **S.2619**, the Children Returning on an Expedited and Safe Timeline (CREST) Act, introduced by Senators John McCain and Jeff Flake on July 17, 2014; and (3) **H.R.5137**, the Asylum Reform and Border Protection Act of 2014, introduced by Representative Jason Chaffetz and House Judiciary Committee Chairman Bob Goodlatte on July 17, 2014.<sup>1</sup>

### **Current Law Concerning the Removal of Aliens Who Are Not UACs**

The Immigration and Nationality Act (INA) provides several administrative and judicial processes by which an alien may be removed from the United States, when it is determined that he or she either has not been or may not be lawfully admitted into the country (i.e., is inadmissible), or has violated the terms

---

<sup>1</sup> A number of other legislative proposals have been introduced which include provisions that resemble those found in one or more of the proposals discussed in this memorandum. *See, e.g.*, H.R. 5053 (Salmon), H.R. 5079 (Calvert), H.R. 5143 (Carter), H.R. 5163 (Cassidy), and S. 2632 (Vitter). Many of the substantive provisions of H.R.5230 concerning the removal of UACs originated in the companion bills of H.R.5114 (Cuellar) and S.2611 (Cornyn), the Helping Unaccompanied Minors and Alleviating National Emergency (HUMANE) Act. Other bills have been introduced that address issues concerning UACs, but would not change substantive law relating to removal proceedings against them or their eligibility for relief from removal.

governing his or her admission or continued presence in the United States (i.e., is deportable). The following paragraphs describe two of the most commonly used processes for alien removal.

### *Formal Removal Proceedings*

In general, aliens found within the interior of the United States who are subject to removal –because they are either inadmissible or deportable – are placed in **formal removal proceedings under INA §240** (8 U.S.C. §1229a). These proceedings are conducted before an immigration judge within the Executive Office of Immigration Review (EOIR) of the Department of Justice (DOJ), who determines whether the alien is removable, whether the alien is eligible for asylum or other types of relief from removal, and whether such relief is warranted, when any such relief is discretionary.<sup>2</sup> The proceedings are adversarial in nature, with attorneys from U.S. Customs and Immigration Enforcement (ICE) within the Department of Homeland Security (DHS) generally tasked with arguing the case in favor of the alien’s removal. An alien placed in such proceedings is afforded certain rights and privileges, including the right to submit evidence and cross-examine witnesses and the privilege of being represented by counsel at no expense to the government.<sup>3</sup> Decisions by the immigration judge may be appealed to EOIR’s Board of Immigration Appeals (BIA), the highest administrative body responsible for interpreting and applying U.S. immigration laws,<sup>4</sup> and then, as authorized by statute, to federal court.<sup>5</sup>

### *Expedited Removal*

Since 1997, certain arriving aliens who have not been lawfully admitted to the United States are subject to a streamlined process under INA §235(b)(1) (8 U.S.C. §1225(b)(1)) known as **expedited removal**. The expedited removal process is generally required by law to be used for specified categories of arriving aliens, including those who lack valid documents authorizing their admission.<sup>6</sup> Under this process, when an immigration officer within U.S. Customs and Border Patrol (CBP) or U.S. Immigration and Customs Enforcement (ICE) comes into contact with an arriving alien at a U.S. port of entry or land border and determines the alien is inadmissible on a ground for which expedited removal is available, the immigration officer may order the alien’s removal from the United States.<sup>7</sup> Unlike in formal removal proceedings, an alien ordered removed via expedited removal cannot appeal the ruling to the BIA, and judicial review is extremely limited in scope.<sup>8</sup>

However, if an alien placed in expedited removal claims an intention to apply for **asylum** or espouses a more generalized fear of persecution, the alien is referred to an asylum officer within U.S. Citizen and Immigration Services (USCIS).<sup>9</sup> The asylum officer conducts an interview to determine whether the alien has a **credible fear of persecution**, which is defined to mean a “significant possibility” that the alien will qualify for asylum or related relief.<sup>10</sup> If the asylum officer determines that the alien has a credible fear, the

---

<sup>2</sup> 8 C.F.R. §1240.1 (describing functions of immigration judges).

<sup>3</sup> INA §240(c)(4), 8 U.S.C. §1229a(c)(4).

<sup>4</sup> 8 C.F.R. §1003.1(b)(defining appellate jurisdiction of the BIA).

<sup>5</sup> INA §242 (judicial review of orders of removal), 8 U.S.C. §1229a.

<sup>6</sup> INA §235(b)(1), 8 U.S.C. §1225(b)(1).

<sup>7</sup> INA §235(b)(1)(A)(i), 8 U.S.C. §1225(b)(1)(A)(i).

<sup>8</sup> INA §242(e), 8 U.S.C. §1229a(e).

<sup>9</sup> INA §235(b)(1)(A)(i), 8 U.S.C. §1225(b)(1)(A)(i).

<sup>10</sup> INA §235(b)(1)(A)(v), 8 U.S.C. §1225(b)(1)(A)(v). An alien who is found to have a credible fear of persecution is not guaranteed to be found eligible for asylum by an immigration court in formal removal proceedings. A credible fear determination (continued...)

alien is referred to formal removal proceedings under INA §240, during which his or her claims for asylum or other relief from removal may be adjudicated (and where determinations concerning the alien's removability or eligibility for relief could potentially be appealed to the BIA and federal court).

## Laws Relating to Removal of Aliens Who Are UACs

Since the enactment of the **William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (2008 TVPRA)** (P.L. 110-457, §235),<sup>11</sup> federal law has established specific requirements for the removal of UACs from the United States. **The 2008 TVPRA states that UACs are to be placed in formal removal proceedings under INA §240**, regardless of whether such aliens are found in the interior or are encountered at the border attempting to enter the United States without authorization.<sup>12</sup>

### *Distinction Between Arriving UACs from Contiguous and Non-Contiguous Countries*

The 2008 TVPRA provides that certain arriving UACs from contiguous countries (i.e., Mexico or Canada) may be given the option of **voluntary return** in lieu of being placed in formal removal proceedings.<sup>13</sup> For an arriving UAC from Mexico or Canada to be offered the opportunity to be voluntarily repatriated, an immigration officer must determine within 48 hours of the UAC's being apprehended that the UAC: (1) does not have a credible fear of persecution if repatriated; (2) is not a victim of trafficking or a likely victim of trafficking if returned; and (3) is capable of agreeing to voluntary return.<sup>14</sup> Unlike the credible fear assessments in the expedited removal process, which are conducted by USCIS asylum officers, the screening of UACs to assess whether they are eligible to be voluntarily returned is typically done by immigration enforcement officers within CBP. If this screening cannot be completed within 48 hours, the UAC shall be treated like UACs from non-contiguous countries and placed in formal removal proceedings under INA §240.<sup>15</sup> UACs from contiguous countries who do

---

(...continued)

merely results in the alien avoiding being immediately removed from the country through the expedited removal process, and instead being permitted to have his or her claim for asylum or other relief from removal litigated through formal removal proceedings under INA §240. In order to be eligible for asylum, an alien must satisfy the more rigorous burden of establishing that he or she is unable or unwilling to return to his or her home country because of a *well-founded fear of persecution* on account of race, religion, nationality, political opinion, or membership in a particular social group. INA §208(b)(1), 8 U.S.C. §1158(b)(1).

<sup>11</sup> The 2008 TVPRA also required that, other than in exceptional circumstances, any child in the custody of DHS or another federal agency must be transferred to the Department of Health and Human Service's Office of Refugee Resettlement (ORR) within 72 hours of the agency having made the determination that the child is a UAC. The Homeland Security Act of 2002 (P.L. 107-296, §462) generally transferred responsibility for the care of UACs (but not accompanied children) from immigration enforcement authorities to HHS's ORR. Once UACs are transferred to its custody, ORR is responsible for their care, including by placing UACs in state-licensed care facilities and foster care, or reuniting them with a parent or guardian within the United States. The transfer of a UAC to ORR custody does not preclude DHS from removing the alien from the United States.

<sup>12</sup> Even prior to enactment of the 2008 TVPRA, it was the general policy of immigration authorities not to place UACs in expedited removal. As mentioned previously, arriving aliens who lack necessary admission documents are generally subject to expedited removal. However, immigration authorities would generally charge arriving UACs who lacked proper documents with a ground of inadmissibility for which expedited removal is *not* required, so that they could be placed in formal removal proceedings. See Immigration and Naturalization Service, Office of Programs, Memorandum, *Unaccompanied Minors Subject to Expedited Removal*, Aug. 21, 1997, reprinted in 74 INTERPRETER RELEASES 1377 (Sept. 8, 1997).

<sup>13</sup> 8 U.S.C. §1232(a)(2). An alien who has not been lawfully admitted into the United States is treated as an applicant for admission under federal immigration law. The INA permits immigration authorities in certain circumstances to allow such aliens to withdraw their application for admission and immediately depart in lieu of being placed in removal proceedings. INA §235(a)(4), 8 U.S.C. §1225(a)(4).

<sup>14</sup> 8 U.S.C. §1232(a)(2).

<sup>15</sup> 8 U.S.C. §1232(a)(3).

---

not satisfy the criteria for repatriation, or who do not consent to repatriation, are also subject to proceedings under INA §240.

UACs from non-contiguous countries (along with other aliens) who have not been admitted may also be permitted to voluntarily return to their home countries after having been placed in removal proceedings.<sup>16</sup> However, such return is pursuant to other provisions of federal law, not the 2008 TVPRA, and there is no statutory requirement that any alien (including UACs) be given the option of voluntary return after removal proceedings commence. UACs placed in formal removal proceedings may also be eligible for **voluntary departure**, an alternative to removal that involves the repatriation of the UAC in lieu of formal removal (UACs granted voluntary departure will be repatriated at no expense to themselves, in contrast to other aliens who typically have to pay for their travel back to their home countries<sup>17</sup>). Voluntary departure is distinct from voluntary return, and aliens who violate an order of voluntary departure may face immigration and other legal consequences if they fail to comply with that order.<sup>18</sup>

### *Consideration of Asylum Claims*

The 2008 TVPRA also contains other provisions concerning UACs that may be relevant to the removal process; in particular, provisions concerning asylum claims by UACs. In general, an alien can either apply for asylum “affirmatively” with USCIS or “defensively” in the context of removal proceedings before an immigration judge. In the case of non-UACs, only defensive asylum claims may be raised after an alien is placed in removal proceedings. However, pursuant to the TVPRA, USCIS asylum officers have “initial jurisdiction” over any asylum claim made by a UAC, even if the UAC is in removal proceedings.<sup>19</sup> If USCIS determines the UAC is not eligible for a grant of asylum, the removal proceedings against the UAC may proceed, during which the UAC may seek asylum from an immigration judge.

UACs also differ from other asylum applicants in that they may be eligible for asylum even if they could be removed, pursuant to a bilateral or multilateral agreement, to a third country where they would not face persecution and could obtain asylum-like protections. Additionally, UACs’ asylum applications are not subject to the time bar that normally requires aliens to apply for asylum within one year of arriving in the United States.<sup>20</sup>

---

<sup>16</sup> 8 C.F.R. §1240.1(d)(providing that immigration judge may permit arriving alien to withdraw application for admission during formal removal proceedings if alien demonstrates intent and means to immediately depart, and “establishes that factors directly relating to the issue of inadmissibility indicate that the granting of the withdrawal would be in the interest of justice.”).

<sup>17</sup> 8 U.S.C. §1232(a)(5)(D)(ii).

<sup>18</sup> See INA §240B(d).

<sup>19</sup> INA §208(b)(3)(C), 8 U.S.C. §1158(b)(3)(C).

<sup>20</sup> See INA §208(a)(2)(E), 8 U.S.C. §1158(a)(2)(E), as added by Section 235(d)(7)(A) of the 2008 TVPRA (P.L. 110-457).

---

**Table I. Comparison of Current & Proposed Law as to Removal of UACs & Other Aliens**

Category	Current Law		Legislative Proposals		
	Adults	UACs	H.R.5230 (Rogers)	S.2619 (McCain/Flake)	H.R.5137 (Chaffetz/Goodlatte)
<b>Definition of unaccompanied alien child</b>	n/a	Child who (1) has no lawful immigration status in U.S.; (2) has not attained 18 years of age; & (3) has no parent or legal guardian in U.S., or has no parent or legal guardian in U.S. who is “available” to provide care & physical custody. 6 U.S.C. §279(g)(2).	No change to current law.	Would define UAC, for purposes of the bill, as a child who (1) has no lawful immigration status in U.S.; (2) has not attained 18 years of age; & (3) attempts to enter or has entered U.S. unaccompanied by parent or guardian. §2. <sup>a</sup>	Would redefine UAC, in part, as child with no parent or legal guardian in U.S. available to provide care & physical custody, or no adult sibling or cousin, aunt, uncle, or grandparent who could do so.  Would specify that UAC definition would cease to apply to a child once a parent or guardian is found who is available to provide for custody & care. §9.
<b>Treatment of UACs from contiguous and non-contiguous countries</b>	n/a	UACs from contiguous countries may be given option of voluntary return if immigration officer determines child (1) lacks credible fear of persecution; (2) is not victim or likely victim of trafficking; & (3) is capable of agreeing to return.  If voluntary return is not possible (i.e., UAC does not meet criteria, determination cannot be made in 48 hours, or UAC does not consent), UAC is placed in formal removal proceedings, like UACs from noncontiguous countries.  State Dep’t may enter agreements as to repatriation to contiguous	Would amend TVPRA to make provisions concerning UACs from contiguous countries applicable to UACs from non-contiguous countries.  Would authorize Secretary of State to enter repatriation agreements with “Canada, El Salvador, Guatemala, Honduras, Mexico, and any other foreign country that the Secretary determines appropriate.” §101.	Would make similar changes as H.R.5230. However, amendments would apply to any UAC apprehended on or after October 1, 2013. §6.	Eliminates current provisions specifically addressing when UACs from contiguous countries may be offered voluntary return.  Would revise provision in current law concerning agreements as to UAC repatriation to more broadly cover repatriation of alien children. §2.

Category	Current Law		Legislative Proposals		
	Adults	UACs	H.R.5230 (Rogers)	S.2619 (McCain/Flake)	H.R.5137 (Chaffetz/Goodlatte)
<b>Removal process</b>	<p>Many arriving aliens who have not been admitted into U.S. are subject to expedited removal under INA §235(b)(1) and may be ordered removed by an immigration officer without further review. Expedited removal is required for arriving aliens inadmissible on certain grounds (e.g., lacking entry documents).</p> <p>Arriving aliens who indicate an intention to apply for asylum or fear of persecution are referred to a USCIS asylum officer for further screening. Aliens found to have a credible fear of persecution are placed in formal removal proceedings. 8 U.S.C. §1225(b)(1)(A)(i).</p> <p>Many aliens apprehended within the interior of the U.S., along with certain arriving aliens (e.g., those found to have a credible fear of persecution) are subject to formal removal proceedings before an immigration judge under INA §240. Decisions by an immigration judge in these proceedings may generally be appealed to the Board</p>	<p>countries. 8 U.S.C. §1232(a)(2)-(5).</p> <p>UACs encountered by immigration authorities (other than those from contiguous countries who are permitted to voluntarily return) are to be placed in formal removal proceedings under INA §240. Such aliens (regardless of whether arriving or found in the interior) are eligible for voluntary departure at no expense to themselves. 8 U.S.C. §1232(a)(5)(D).</p>	<p>Would establish a new removal process required for <i>all</i> UACs – whether apprehended at the border or in the interior of U.S. Moreover, UACs who had received notice to appear in formal removal proceedings between Jan. 1, 2013 and the bill’s date of enactment would have 60 days following enactment to request an opportunity to instead undergo the new removal process. §103.</p> <p>New proceeding would have many features like formal removal proceedings under INA §240. The immigration judge would assess whether the UAC is likely to be found admissible or eligible for “relief for removal” (a term whose scope is not defined by the bill). A UAC who fails to appear at the proceeding could potentially be ordered removed in absentia. UACs deemed likely to be found admissible or eligible for relief would then be placed in formal removal proceedings under INA §240.</p> <p>If, however, the immigration judge in the initial proceeding finds the UAC unlikely to be admissible or eligible for relief from removal, the judge would either (1) order the UAC removed, without further administrative review or (except in</p>	<p>Would permit UACs to be placed in expedited removal proceedings “in accordance” with INA §235(b)(1). §7.<sup>d</sup></p>	<p>Would eliminate provisions in current law requiring UACs to be placed in formal removal proceedings, and would amend INA §235(b)(1) to make clear that alien children, including UACs, may be subject to expedited removal to the same extent as other aliens. §2.</p>

Category	Current Law		Legislative Proposals		
	Adults	UACs	H.R.5230 (Rogers)	S.2619 (McCain/Flake)	H.R.5137 (Chaffetz/Goodlatte)
	<p>of Immigration Appeals, and then to federal court.</p> <p>Arriving aliens may, under certain conditions, be permitted to withdraw applications for admission and immediately leave U.S. (“voluntary return”). 8 U.S.C. §1225(a)(4). Qualifying aliens placed in formal removal proceedings may also be permitted to voluntarily depart in lieu of being ordered removed (“voluntary departure”).<sup>b</sup></p>		<p>limited cases) judicial review; or (2) refer the UAC to an asylum officer if the UAC claimed persecution or an intent to apply for asylum. UACs found not to have a credible fear of persecution would be ordered removed (subject to review by an immigration judge), while those found to have a credible fear would be detained for further consideration of asylum claim. §102.<sup>c</sup></p>		
<b>Time frames for removal proceedings</b>	No prescribed time frame for the initiation or conclusion of formal removal proceedings.	No prescribed time frame for the initiation or conclusion of formal removal proceedings.	<p>Would require immigration judges to conduct a proceeding no later than 7 days after UAC’s initial screening &amp; issue decision no later than 72 hours after proceeding’s conclusion.<sup>e</sup></p> <p>If an asylum officer reviews the alien’s claims &amp; finds no credible fear of persecution, an immigration judge would be required at UAC’s request to review this determination “expeditiously” (in no case later than 7 days).</p> <p>Would require that the most recently arrived UACs be prioritized in proceedings &amp; removals under bill. §102.</p>	Would set goal for Executive Office of Immigration Review (which conducts formal removal proceedings, but not expedited removal) to resolve immigration cases within 30 days (beginning with the issuance of a notice to appear at a proceeding through the exhaustion of appeals). §10.	No prescribed time frame for the initiation or conclusion of removal proceedings.
<b>Credible fear and asylum</b>	Arriving aliens subject to expedited removal who express an intention to	UACs from contiguous countries may be offered the option of voluntary	Would require, as part of the new removal proceedings established by the bill, that the immigration	No change to current law.	Would amend definition of <i>credible fear of persecution</i> that applies with expedited removal to

	<u>Current Law</u>		<u>Legislative Proposals</u>		
<u>Category</u>	<u>Adults</u>	<u>UACs</u>	<u>H.R.5230 (Rogers)</u>	<u>S.2619 (McCain/Flake)</u>	<u>H.R.5137 (Chaffetz/Goodlatte)</u>
	apply for asylum or fear of persecution receive a credible fear interview with USCIS immigration officers. If found to have such a fear, the alien is placed in formal removal proceedings under INA §240, during which an immigration judge considers any claims for asylum or other relief. 8 U.S.C. §1225(b)(1). <sup>f</sup>	return in lieu of being placed in removal proceedings if certain criteria are satisfied, (e.g., UAC does not have a credible fear of persecution if repatriated). 8 U.S.C. §1232(a)(2).	judge refer UACs found unlikely to be deemed admissible or eligible for relief, but who claim to fear persecution, to a USCIS asylum officer. If the officer finds the alien lacks a credible fear of persecution, the UAC would be ordered removed (subject to review by an immigration judge). However, if the officer determines the UAC has a credible fear of persecution, the UAC would be detained for consideration of asylum claim. §102. <sup>g</sup>		require it be more probable than not that the alien’s statements are true. §5.  Would establish quality assurance requirements for expedited removal & credible fear interviews. §6.  Would require UACs referred to formal removal proceedings due to a credible fear of persecution be detained pending consideration of asylum claim. §17.
<b>Asylum claim adjudication</b>	Asylum is discretionary relief from removal available to qualifying aliens unable or unwilling to return to their home country because of a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. Aliens can apply for asylum “affirmatively” with USCIS or “defensively” in removal proceedings before an immigration judge. Non-UACs may only raise defensive claims once they are in removal proceedings.	USCIS has initial jurisdiction over asylum claims brought by UACs, even if the UAC is in removal proceedings.  UACs are not subject to the time bar that normally requires aliens to apply for asylum within one year of arriving in the U.S.  Unlike other applicants, UACs may be eligible for asylum even if they could be removed, pursuant to a bilateral or multilateral agreement, to a safe third country. 8 U.S.C. §1158(a)(2)(E) & (b)(3)(C).	Would not change current law, including provisions concerning initial consideration of UAC asylum claims by USCIS. The new removal process established by bill would provide for administrative review of a UAC’s asylum claims following immigration judge’s determination that UAC is unlikely to be found eligible for relief from removal. §102.	Would not change current law.	Would eliminate provisions in current law establishing special requirements for asylum claims raised by UACs. §11.
<b>Right to counsel in removal</b>	Aliens in removal proceedings have a right to counsel at their own	Same statutory right to counsel as adults. Secretary of HHS must, to the	UAC would have the privilege of being represented by counsel at no expense of government in new	Would not change current law.	Would amend current law to expressly bar the government from paying for counsel for aliens



	<u>Current Law</u>		<u>Legislative Proposals</u>		
<b>Category</b>	<b>Adults</b>	<b>UACs</b>	<b>H.R.5230 (Rogers)</b>	<b>S.2619 (McCain/Flake)</b>	<b>H.R.5137 (Chaffetz/Goodlatte)</b>
<b>proceedings</b>	expense, but generally have no right to counsel at government's expense. 8 U.S.C. §§1229a(b)(4), 1362.	greatest extent possible, and consistent with statutes limiting provision of counsel at government expense, ensure UACs have counsel to represent and protect them. 8 U.S.C. §1232(c)(5).	removal proceedings established by bill. §102.		(not simply UACs) in removal proceedings. §3.
<b>Other notable provisions</b>			<p>UACs placed in the new removal process would remain in government custody until they had either been repatriated or, if found likely to be deemed admissible or eligible for relief from removal, referred to formal proceedings under INA §240. Qualifying UACs who had been placed in formal removal proceedings prior to bill's enactment &amp; opt to undergo the new removal process would be placed in HHS custody. §§102-103.</p> <p>Would require designation of up to 40 immigration judges to screen UACs under new removal procedure. §104.</p> <p>Would bar release of UACs to human traffickers or sex offenders &amp; require criminal background check of sponsors. §105.</p> <p>Would bar aliens convicted of "drug-related offense punishable by a term of imprisonment greater than 1 year" from asylum. §106.</p> <p>Would authorize use of National Guard to support border security operations. Title II.</p> <p>Would bar Secretaries of</p>	<p>Would require UACs in removal proceedings to remain in federal custody for their duration, with limited exceptions. §10.</p> <p>Would require establishment of a national juvenile docket for immigration courts and the appointment, within 14 days of enactment, of 100 temporary immigration judges. 150 immigration litigation attorneys &amp; 100 asylum officers would also be required to be hired (though 14 day deadline doesn't apply). §10.</p> <p>Would authorize in-country processing of refugee applications from El Salvador, Guatemala, and the Honduras, as well as admission of up to 5,000 refugees from each country. Non-security foreign assistance would be tied to cooperation in deterring migration of UACs. §3.</p> <p>Would establish new criminal penalties for organized human smuggling or impeding border security &amp; enforcement activities. §5.</p>	<p>Would extend deadline for federal agencies to notify HHS of UACs in custody from 48 hours to 7 days, &amp; that for transferring UACs to HHS custody from 72 hours to 30 days. §12.</p> <p>Would require, subject to appropriations, hiring of no less than 50 additional immigration judges for each of FY2014-2016, above the number allotted for FY2013, &amp; 60 additional trial attorneys. §15.</p> <p>Would require HHS to share information about a UAC sponsor, including immigration status, at DHS's request. §13.</p> <p>Would eliminate certain requirements relating to DHS treatment of former UACs transferred from HHS to its custody upon reaching the age of 18. §13.</p> <p>Would heighten eligibility requirements for special immigrant juvenile status, &amp; establish more stringent guidelines for "parole" of inadmissible aliens into U.S. for urgent humanitarian</p>

<u>Current Law</u>		<u>Legislative Proposals</u>			
<u>Category</u>	<u>Adults</u>	<u>UACs</u>	<u>H.R.5230 (Rogers)</u>	<u>S.2619 (McCain/Flake)</u>	<u>H.R.5137 (Chaffetz/Goodlatte)</u>
			<p>Agriculture &amp; Interior from impeding or restricting CBP operations on federal lands within 100 miles of the border and give CBP immediate access to such lands to construct &amp; maintain roads, barriers, &amp; other infrastructure.</p> <p>Would construe Secretary of DHS's prior waiver of various laws impeding construction of a border fence &amp; related infrastructure along the southern border to apply to federal lands within 100 miles of the border. Title III.</p>		<p>reasons or significant public interest. §§4 &amp; 7.</p> <p>Would make association or membership in a criminal gang a ground for inadmissibility &amp; ineligibility for certain relief from removal (e.g., asylum.) §9.</p> <p>Includes similar provisions as H.R.5230 concerning CBP access to federal lands &amp; waiver of laws impeding construction of a border fence &amp; related infrastructure. §16.</p>

**Source:** Congressional Research Service, based on various sources cited in **Table I**.

**Notes:** a. S.2619 would not amend the TVPRA's provisions governing the removal and transfer of custody of UACs, which expressly rely on the definition of UAC found in current law. 8 U.S.C. §1232(g). Accordingly, that definition would appear to remain controlling for certain purposes.

b. Arriving aliens placed in formal removal proceedings are generally ineligible to receive voluntary departure. 8 U.S.C. §1229c(a)(4), (b)(1).

c. Some components of the new removal process under H.R.5230, including their interplay with current law, are not entirely clear. For example, the bill provides that UACs placed in the new removal proceeding who are found to have a credible fear of persecution shall be detained pending further consideration of their asylum claim. However, the bill does not specify how such claims are to be considered (e.g., in formal removal proceedings, the new removal process established under the bill, or some other process).

d. The use of the phrase "in accordance" with INA §235(b)(1) suggests that S.2619 contemplates the use of expedited removal in the same situations in which it applies under current law. In situations where expedited removal is not normally used (e.g., with respect to aliens found within the interior of the United States), such UACs could presumably be placed in removal proceedings under INA §240.

e. Although H.R.5230 would require that proceedings be conducted within 7 days of the initial screening of a UAC, it does not expressly require the proceeding to be *completed* within that time frame. Moreover, the bill does not eliminate the current statutory requirement that asylum claims raised by UACs be initially considered by USCIS.

f. To establish eligibility for asylum, the alien must show a "well-founded fear" of persecution – a more stringent standard than "credible fear." 8 U.S.C. §1158(b)(1).

g. As previously mentioned, H.R.5230 does not specify the process by which asylum claims will be considered if a reviewing officer finds a credible fear of persecution.