

The Immigration Detention System for Unaccompanied Children

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IMMIGRANT LEGAL RESOURCE CENTER
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Immigrant Legal Resource Center



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Who is an unaccompanied child (UC)?

UC Classification

- **Who is a UC?**
- **A child who:**
 - **1) has no immigration status in the U.S.;**
 - **2) is under 18 years old; and**
 - **3) has no parent or legal guardian in the U.S., or no parent or legal guardian in the U.S. who is available to provide care and physical custody**

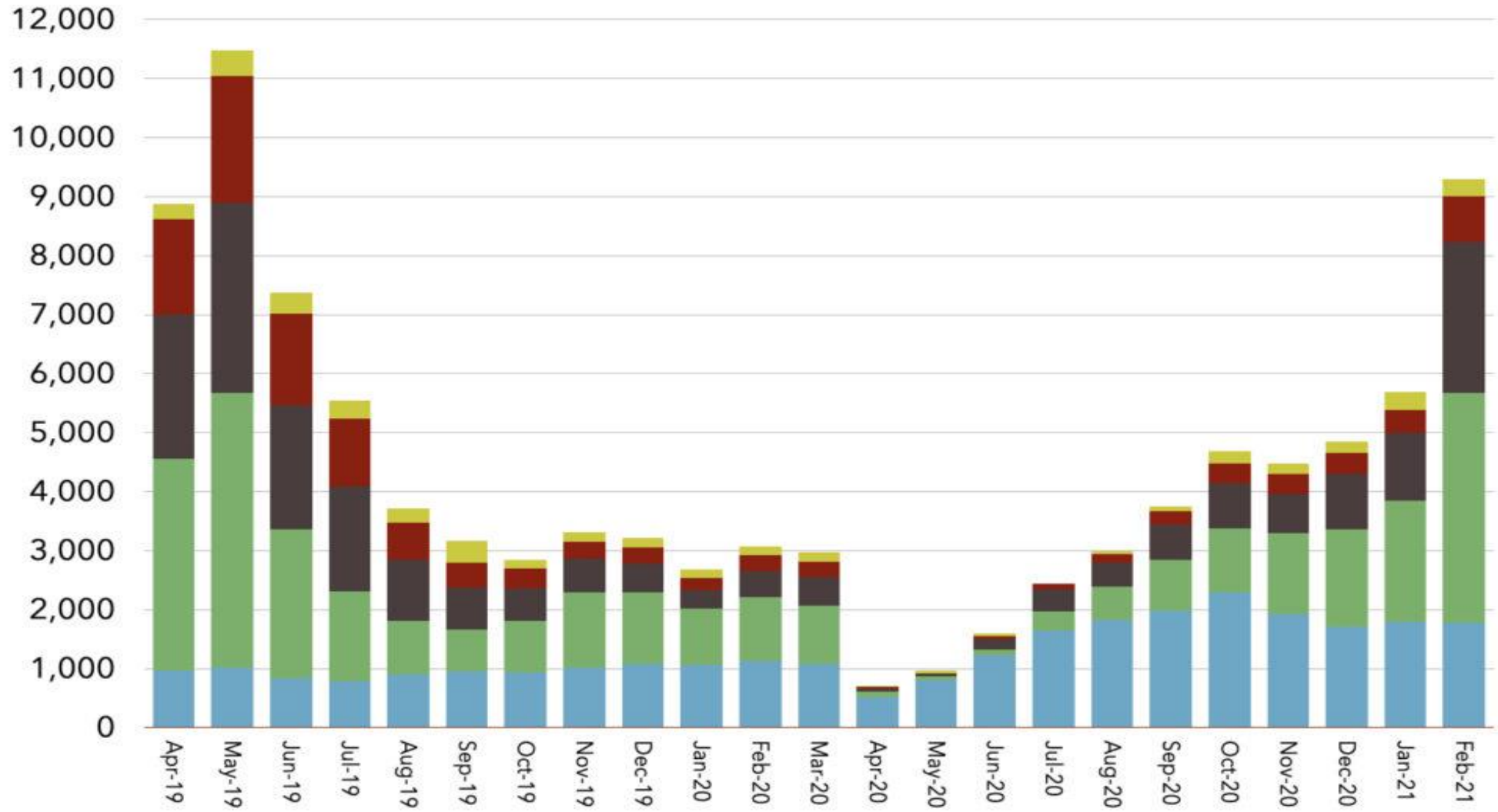
6 U.S.C. § 279(g)(2)

UC Classification

Youth from non-contiguous countries: when apprehended by immigration, they must transfer the child to Health & Human Services within 72 hours of determining them to be a UC

Youth from contiguous countries: same rules apply, *so long as* youth trigger trafficking or asylum concerns, or are unable to make an independent decision to withdraw their application for admission

Unaccompanied Minor Apprehensions/Encounters by Country



■ Mexico
 ■ Guatemala
 ■ Honduras
■ El Salvador
 ■ Other Countries

Source: CBP - <http://bit.ly/2mDr1fQ>



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What are the pros & cons of being designated a UC?

Pros

- **Right to be placed in regular removal proceedings and not expedited removal**
 - 8 U.S.C. § 1232(a)(5)(D)(i).
- **Right to apply for asylum initially with Asylum Office, which is considered a non-adversarial setting**
 - INA § 208(b)(3)(C).
- **Eligibility for voluntary departure at no cost to the child**
 - TVPRA § 235(a)(5)(E)(ii).
- **Placement in ORR custody (versus ICE custody), and related rights and services**
 - TVPRA § 235(b)(1), e.g.:
 - Access to services in ORR custody
 - Eligibility for legal representation programs for UCs
 - Access to “post-release” services in certain circumstances
- **Not subject to current Title 42 expulsions**

Cons

- Separation from parent or other family member/adult, if child arrived at the border accompanied
- Few rights and lack of transparency while in ORR custody. Examples include:
 - Not being provided information about reasons for level of detention and “step-ups”
 - Being denied reunification with a parent or other sponsor without adequate information or right to challenge denial
 - Being administered psychotropic medicine, placed in inappropriate facilities, etc.

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Which federal agencies interact with UCs?

Key Player: The Office of Refugee Resettlement

- **U.S. Department of Health and Human Services (HHS)**
 - **Administration of Children and Families (ACF)**
 - **Office of Refugee Resettlement (ORR)**
 - **Division of Unaccompanied Children's Services (DUCS)**

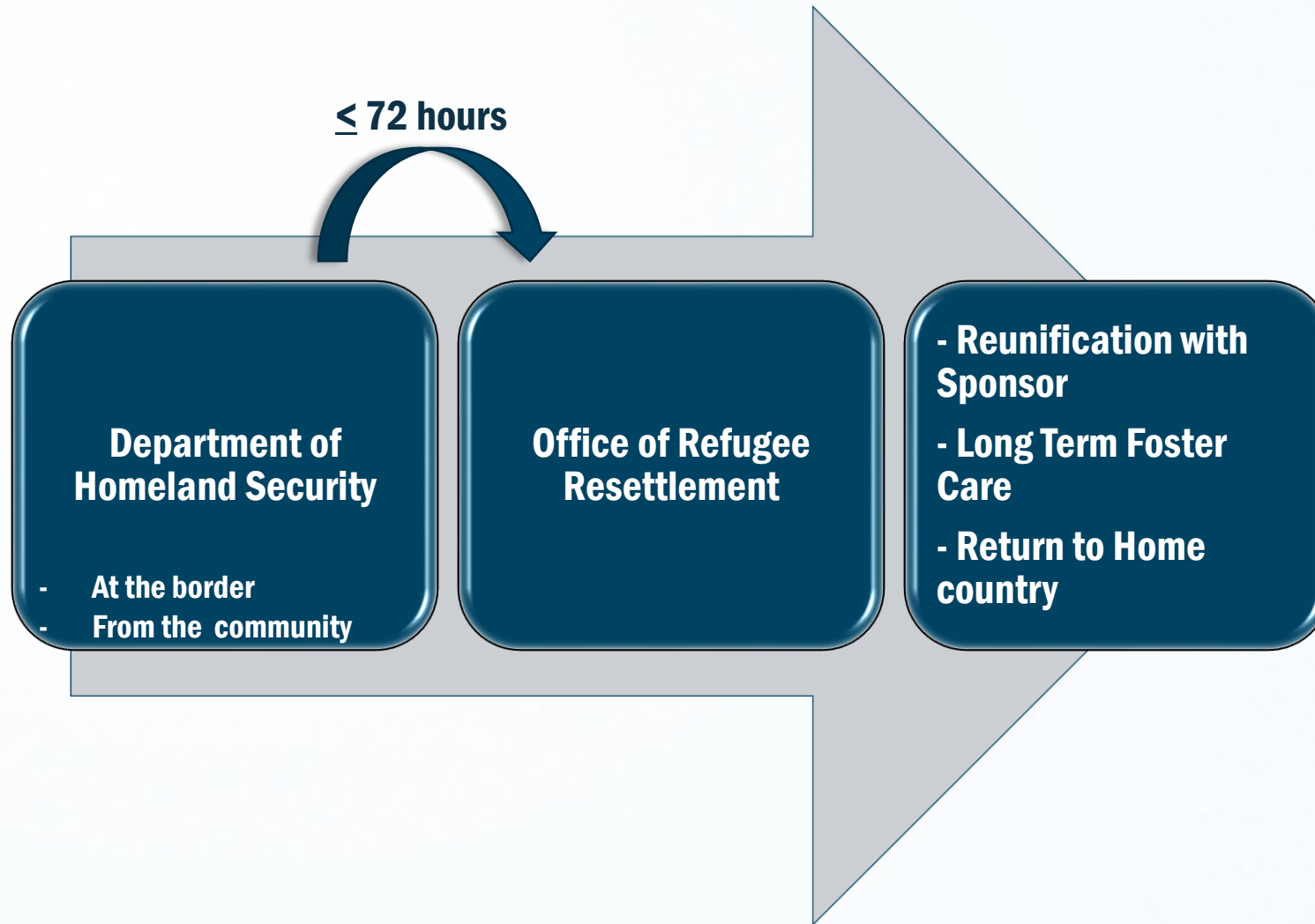
Other Government Agencies

- U.S. Department of Homeland Security (DHS) is divided into three departments:
 - Immigration & Customs Enforcement (ICE)
 - U.S. Citizenship & Immigration Services (USCIS)
 - Customs & Border Protection (CBP)
- U.S. Department of Justice (DOJ)
 - Executive Office for Immigration Review (EOIR)
 - a.k.a. “Immigration Court”

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Detention System for Unaccompanied Children

Apprehension & Custody



***All kids are placed in removal proceedings.**

Detention System for Children

- Children detained by immigration are treated differently than adults
 - *Flores Settlement* (1997)
 - Homeland Security Act of 2002
 - The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)
- All children entitled to:
 - Least restrictive setting while in federal custody
 - All placements must meet state licensing standards, not commingled with adults, provided education, medical care, etc.
 - Consideration of release from custody to an ORR-approved sponsor
- But even once released, children are in removal (deportation) proceedings in Immigration Court

ORR Detention Setting

ORR detention has three security levels

- **1. Shelter**
- **2. Staff Secure**
 - **Stricter security measures in order to control disruptive behavior and prevent escape. Should still reflect a home-like setting**
- **3. Secure**
 - **Physically secure structure and staff able to control violent behavior. Most restrictive placement option for a UC who poses a danger to self or others or has been charged with a crime**

ORR Detention Setting

ORR also operates several specialized types of detention settings

- Temporary Foster Care (TFC)
- Residential Treatment Center (RTC)
- Long Term Foster Care (LTFC)
- Unaccompanied Refugee Minors (URM)

Conditions of Detention

- Various legal challenges have been brought to the conditions of ORR detention through *Flores* and other suits
- Problematic conditions include access to basic needs, use of psychotropic medicine, access to counsel, prolonged detention with arbitrary denials of release to family, etc.
 - Limited bed space has also led to the use of influx care facilities not suitable for children

Services Available at ORR Facilities

Room and board

Case Management

Individual and Group Counseling*

Medical Services*

Educational Services

Recreation

Acculturation

Access to religious services

Legal Services Orientation

Prison Rape Elimination Act (PREA)

- **The Prison Rape Elimination Act (PREA) addresses rape and sexual abuse in federal, state, and local prisons, including ORR.**
- **All children in shelters will receive a PREA talk within 24 hours of arrival.**
- **ORR shelters have a designated PREA phone to report incidents.**
- **PREA reports go through the Office of Inspector General (OIG).**
- **State reporting, and state agency response, differ from state to state.**

ORR Incident Reporting

Significant Incident Reports

- **SIRs include all incidents occurring in ORR custody which child was involved**
 - **Can be shared with DHS**
 - **You should check SIRs to see if an incident affects the child's eligibility for relief**
- **May also include serious incidents that occurred outside ORR custody that a child disclosed to shelter staff**

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What is the process for UCs to be released from detention?

Release from Detention: Sponsor Preferences

- Release Preferences under *Flores*:
 - Parent/Legal Guardian;
 - Adult Relative;
 - Individual/entity designated by Parent/Guardian;
 - Licensed program willing to accept legal custody; or
 - Other adult or entity when no alternative to long-term detention

ORR must determine that the proposed sponsor is capable of providing for the child's physical and mental well-being.

ORR must verify sponsor's identity and relationship to the child, if any, and make an independent finding that the sponsor has not engaged in any activity that would indicate a potential risk to the child.

Release from Detention

- **ORR's Release Assessment:**
 - Interview of the child, sponsor, and child's family, if applicable
 - Child assessments
 - Sponsor criminal and child abuse and neglect background checks
 - Sponsor assessment
- **Sponsor must complete Family Reunification Packet ("FRP"):**
 - Proof of Sponsor's identity, relationship to child, residence and employment
 - Letter of consent from Parent/Guardian
 - Application with background information on Sponsor and household members (fingerprints often required)
 - Signed Sponsor Care Agreement

Release from Detention

- **Home Studies:** Conducted for any case in which the safety and well-being of UC, Sponsor's family unit or community are questionable
- **TVPRA mandates home studies for:**
 - Victims of severe forms of trafficking in persons
 - Youth with special needs
 - Victims of physical or sexual abuse
 - Proposed Sponsor who presents risk of exploitation or child trafficking
- **Home studies are happening much less often with the increase in numbers of UCs**

ORR & ICE Collaboration under Prior Administration

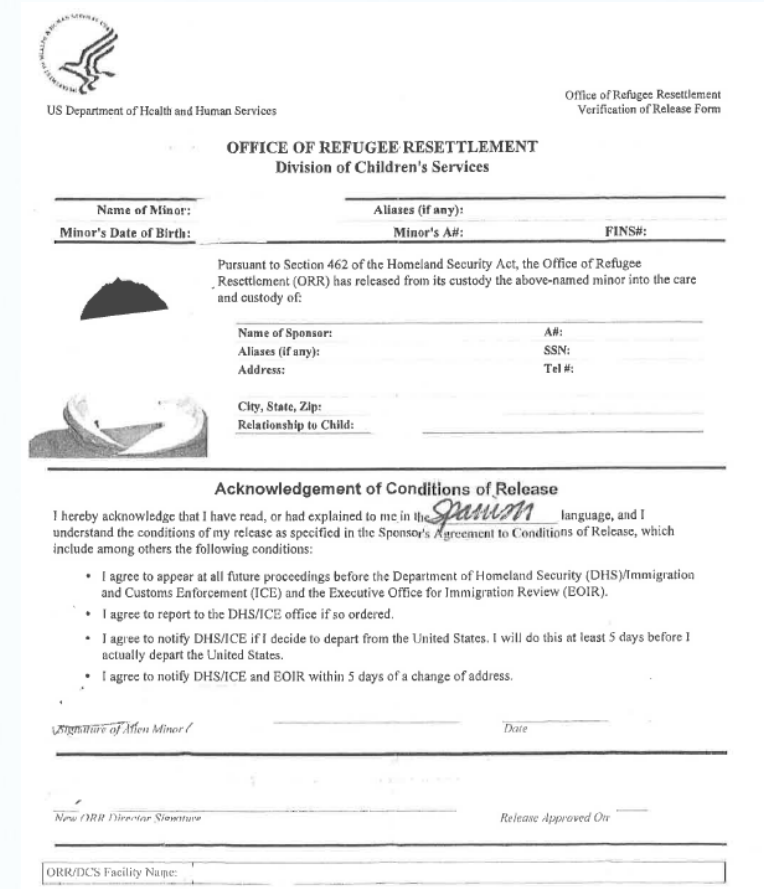
- In May 2018, ORR and ICE entered into agreement mandating information sharing between the two agencies.
 - ORR will provide background information on sponsor and anyone living with sponsor to ICE
 - ICE will run background check on sponsors and anyone living with sponsor and provide that information to ORR
 - No limitation on how the information will be used
 - Fewer undocumented family members stepping forward has caused increased and prolonged detention for children
 - Children being returned to home country because of no sponsor
 - This also affects Release on Recognizance (ROR) requests for children aging out of the shelter.

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What happens once a UC is released from detention?

Release from ORR Detention

- Upon release, children will receive a packet of information. Typically includes:
 - A copy of the Notice to Appear
 - A motion to change venue for child to file pro per, if necessary
 - A list of legal services providers
 - A change of address form for child to file pro per
 - An ORR verification of release form



The image shows a form titled "OFFICE OF REFUGEE RESETTLEMENT Division of Children's Services" with the subtitle "Office of Refugee Resettlement Verification of Release Form". It includes fields for "Name of Minor", "Aliases (if any)", "Minor's Date of Birth", "Minor's A#", and "FINS#". A paragraph states: "Pursuant to Section 462 of the Homeland Security Act, the Office of Refugee Resettlement (ORR) has released from its custody the above-named minor into the care and custody of:". Below this are fields for "Name of Sponsor", "Aliases (if any)", "Address", "City, State, Zip", "Relationship to Child", "A#", "SSN", and "Tel #". A section titled "Acknowledgement of Conditions of Release" contains a statement: "I hereby acknowledge that I have read, or had explained to me in the Spanish language, and I understand the conditions of my release as specified in the Sponsor's Agreement to Conditions of Release, which include among others the following conditions:". This is followed by three bullet points: "I agree to appear at all future proceedings before the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR).", "I agree to report to the DHS/ICE office if so ordered.", and "I agree to notify DHS/ICE if I decide to depart from the United States. I will do this at least 5 days before I actually depart the United States." and "I agree to notify DHS/ICE and EOIR within 5 days of a change of address." The form also has lines for "Signature of Alien Minor" and "Date", and "New ORR Director Signature" and "Release Approved On". At the bottom, there is a field for "ORR/DCS Facility Name".

Follow up After Release

- **What information do sponsors receive?**
 - **Legal Orientation Program for Custodians (“LOPC”) in limited locations**
 - **Designated legal services provider receives information about children released from ORR custody in their area**
 - **Contacts children’s sponsors and provides group orientation regarding court and legal relief**
 - **Many LOPC providers also offer legal screenings of youth and make referrals for legal representation**

Follow up After Release

- Does ORR have contact with children after release?
 - Shelters refer UC who are released to family members (or other approved sponsor) to one of the HHS/ORR-funded agencies providing post-release services.
 - Not all children receive post-release services.
 - Required for children for whom a home study was conducted (trafficking, disability, abuse, proposed sponsor presents risk)
 - These are generally case management services to help them access services provided locally
 - Federal government relinquishes custody upon release

Follow up After Release

- Percentage of released children who receive post-release services fluctuates and is subject to allocation of funding.
- If family breakdown occurs (e.g. between child and parent, child and other adult sponsor), ORR does not take children back into custody
 - Any issues at this point will be handled by local systems, e.g. county Child Protective Services, local school, etc.
- Youth may end up in delinquency system for a variety of reasons (e.g. struggling with assimilation, do not understand laws in U.S., etc.)
- There is a dearth of culturally and linguistically appropriate services for UCs, e.g. mental health services

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What legal options are available for UCs to fight deportation and gain lawful status in the U.S.?

Common paths to immigration status for UCs

Special Immigrant Juvenile Status (SIJS)

Asylum

T visa

U visa

VAWA

Family immigration

Resources

- **ILRC, Immigrant Youth**

- <https://www.ilrc.org/immigrant-youth>

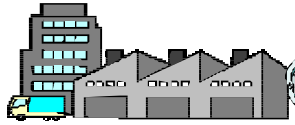
- **Women's Refugee Commission, Unaccompanied Children**

- <https://www.womensrefugeecommission.org/rights/unaccompanied-children>

- **KIND**

- <https://supportkind.org/resources/>

ICE/CBP Arrest



- Vast majority of child apprehensions occur at the border.
- Internal apprehensions:
 - ICE may coordinate with local police, juvenile probation or detention officers;
 - Detainers: immigration hold while juvenile is completing sentence;
 - Denial of applications for immigration benefits.

ICE/CBP Processing Station

- At the border, CBP screens all children for fear of return/human trafficking.
 - If child is from a contiguous country (Mexico, Canada) and is determined not to be in need of protection, they are voluntarily returned.
 - Children from non-contiguous countries, e.g., Central America, are usually transferred to ORR custody.
- Both CBP & ICE must make a determination at arrest whether the child is “unaccompanied.”
 - Unaccompanied means a child who has no lawful imm status in the U.S., is under 18 years of age, & has no parent or legal guardian in the country present or available to provide care & physical custody.
 - If determined to be a UAC, the child must be transferred to ORR within 72 hours (as req’d by TVPRA).
- Charged with immigration violations.
- No counsel provided and if you have counsel, not typically allowed at this stage.
- Risk of losing right to hearing.
 - Pressured to sign documents giving up right to hearing.
- Consular assistance - Vienna Convention.

Juvenile or Criminal Prosecution

- Deportation process happens simultaneously or after prosecution/adjudication.

Detention: ICE or ORR



- Facilities can be federal, local/county, private.
 - Little is known about ICE facilities and they are generally secure.
 - ORR facilities include shelters, staff secure, secure, or therapeutic.
- Very little control over transfer.
- Juvenile delinquency, drugs, suspected gang affiliation, or any indication that minor is a flight risk increases likelihood of detention in secure setting.
- UACs should receive KYR and legal screening while detained.
- If child turns 18, will likely be transferred into ICE custody.

Release

- Process may happen concurrently w/ imm court.
- While in ORR custody, a parent, relative or friend fills out reunification packet and is approved or denied.
- Option of federal foster placement if no sponsor is identified and legal services provider confirms eligibility for imm relief.



Deportation

If immigrant has a final administrative order of deportation/removal, and no stay of deportation, ICE may deport him/her. Consulate usually issues travel documents first.

Immigration Court System

- No right to counsel at the gov’t expense at Immigration Court or Appeals Court.
- Immigration Judge makes decision to deport and/or grant relief (lawful imm status), but USCIS has initial jurisdiction to consider Special Immigrant Juvenile Status (SIJS) and asylum applications.
- If granted voluntary departure, UAC not req’d to pay own return.
- Immigration Judge is DOJ employee.
- Appeal to Board of Immigration Appeals within 30 days.
 - Can be detained throughout appeal.

Federal Courts

- Circuit Courts of Appeal are extremely limited as to what immigration cases they can review.

Immigrant Legal Resource Center
www.ilrc.org

Adapted from Deportation 101 by Families for Freedom, National Immigration Project of the NLG, NYSDA Immigrant Defense Project, and Detention Watch Network (March 2007) Revised September 2014.

Thank you for attending!

- Please remember to complete survey
- Make sure you received all materials

MCLE forms will be emailed to qualifying attendees within a day of the webinar.

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