

## Detention and Deportation System for Unaccompanied Minors



August 28, 2018



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### Presenters



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### Questions During the Webinar

**Chat Box:** You can enter your questions in the chat box, and instructors will answer them, if time permits.



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### ILRC Attorney of the Day

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- All CDSS Contractors and Subcontractors
- IOLTA Legal Services Programs in California
- All San Francisco Bay Area Non-Profits
- All NAC Partners with Naturalization questions

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- Hourly rate pro-rated (6 minute minimum), or
- One-time consultation fee

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### Special Immigrant Juvenile Status

**Special Immigrant Juvenile Status and Other Immigration Options for Children & Youth:**

- Background and guidance on the protections, procedures, and options for immigrant children, including unaccompanied minors under the TVPRA.
- Special focus on Special Immigrant Juvenile Status ("SIJS"), with an in-depth discussion of the legal requirements for SIJS eligibility, including "one-parent" SIJS cases, and step-by-step guidance for representing SIJS-eligible youth in both affirmative and defensive applications.



Updated 5<sup>th</sup> Edition  
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### Agenda

11:05-11:10am	Who is an unaccompanied child (UC)?
11:10-11:20am	What are the pros & cons of being designated a UC?
11:20-11:30am	Which federal agencies interact with UCs?
11:30-11:45am	What types of immigration detention facilities exist for UCs?
11:45am-12:00pm	What is the process for UCs to be released from detention?
12:00-12:10pm	What happens once a UC is released from detention?
12:10-12:20pm	What legal options are available for UCs to fight deportation?
12:20-12:30pm	Q & A

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## Who is an unaccompanied child (UC)?

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### 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)

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### 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

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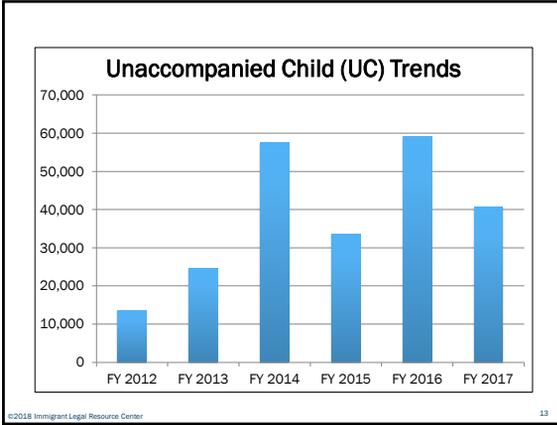
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**What are the pros & cons of being designated a UC?**

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- 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

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**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?**

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**Key Players: ORR**

- 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)

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### 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

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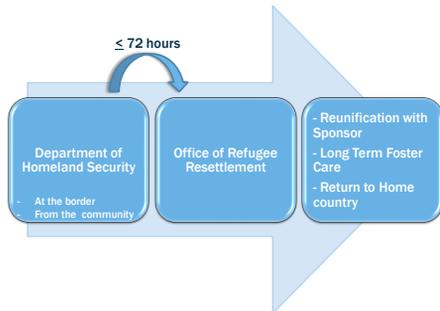
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### Apprehension & Custody



\*All kids are placed in removal proceedings.

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### 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 co-mingled 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

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### ORR Detention

- There are four levels of immigration detention that ORR operates for children:
  1. Shelter
  2. Staff Secure
  3. Secure
  4. Federal Foster Care
  - There are also limited “therapeutic” placements
  - Children can be “stepped up” for behavioral and other reasons.
- These facilities are located all over the U.S.
  - Children are placed where there is availability, not necessarily where they are close to family

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### 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.

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### Services Available at ORR Facilities

- Room and board
- Case Management
- Individual Counseling
- Group Counseling
- Medical Services
- Educational Services
- Recreation
- Acculturation
- Access to religious services
- Legal Services Orientation

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### 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.

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

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### Release from ORR Detention

- *Flores* Settlement established a **general policy favoring release** of minors from immigration custody while their removal proceedings are pending
  - Gov't has tried to limit the application of *Flores* through litigation
  - Gov't will soon publish regulations that may replace *Flores*
- ORR's Stated Objectives for Release:
  - Care and safety of the UC
  - Safety of others
  - Assurance that the UC will appear at their hearing in immigration court

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### 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.

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### 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
  - <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services#Family Reunification Packet for Sponsors>

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### 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

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### Prolonged Detention: ORR & ICE Collaboration

- Jan. 2017 Executive Order directed DHS to target parents and other family members who have helped children travel to the United States by arguing they have engaged in human trafficking/alien smuggling

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### Prolonged Detention: ORR & ICE Collaboration

- 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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### **Prolonged Detention: ORR Director Approval**

- Around June 2017, then-newly appointed ORR Director Scott Lloyd added a director review step to the UC release process
  - His personal approval was required to release any UC housed or previously housed in secure or staff secure facilities.
  - The TVPRA mandates that ORR “promptly” place UC in “least restrictive setting that is in the best interest of the child.” 8 U.S.C. Sec. 1232 (c)(2)(A).
  - The personal approval requirement delayed the release and reunification of UCs.

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### **ACLU Lawsuit: ORR Director Approval**

- On June 27, 2018, federal court in SDNY issued a preliminary injunction on this practice, finding:
  - ORR’s discretion is not absolute
  - Neither party questioned that prolonged detention was harmful to children
  - The new policy was adopted without any reasoned analysis

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**What happens once a UC is released from detention?**

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### Release from ORR Detention

- Upon release, children will receive a packet of information. Typically includes:
  - A copy of the NTA
  - 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




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### 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

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### 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

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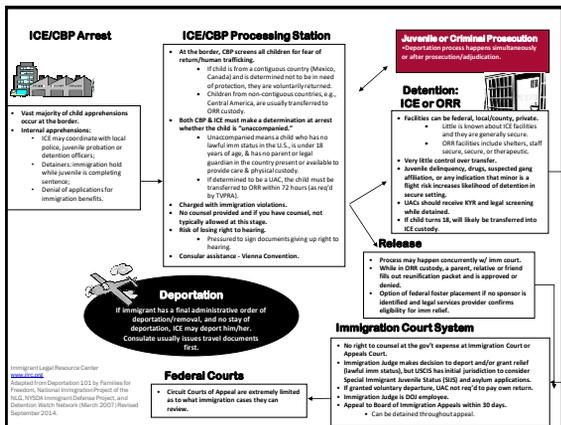
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## What legal options are available for UCs to fight deportation and gain lawful status in the U.S.?

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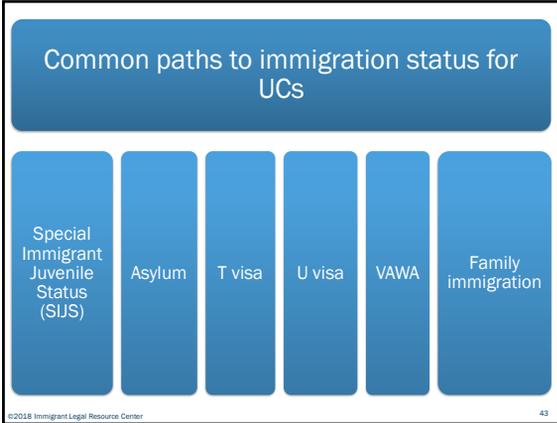
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### Current Challenges to Obtaining SIJS

- SIJS is a form of humanitarian protection for children who have been abandoned, abused, or neglected by a parent, and for whom it is not in their best interest to return to their country of origin
- SIJS is becoming more difficult to obtain, with changes in policy and practice at USCIS, e.g.:
  - Government is questioning the validity of orders made by state juvenile courts as a predicate to seeking SIJS
  - Long delays in adjudications at USCIS
  - Visa backlog creating multi-year waits for youth from El Salvador, Guatemala, Honduras, and Mexico to get a green card

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### Current Challenges to Obtaining Asylum

- *Matter of A-B-* decision issued by AG Sessions, making domestic violence and gang-based claims more challenging
- Increased questioning and scrutiny of any prior interaction with gangs, whether forced or not
- Delays in adjudications at the Asylum Office
- Threat of changing policy on treatment of UCs by Asylum Office (changing “once a UC, always a UC”)

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### Current Challenges to Obtaining U & T visas

- Years-long backlog for U visas (visas for victims of serious crimes)
- Increased difficulty in obtaining T visas (visas for survivors of human trafficking)

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### Resources

- ILRC, Immigrant Youth
  - <https://www.ilrc.org/immigrant-youth>
- Women's Refugee Commission, Unaccompanied Children
  - <https://www.womensrefugeecommission.org/rights/uac>
- KIND
  - <https://supportkind.org/resources/>

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

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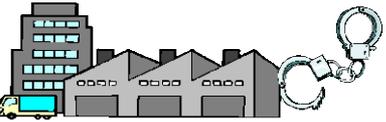
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# DEPORTATION SYSTEM FOR MINORS

## 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.

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[www.ilrc.org](http://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.



## UNACCOMPANIED MINORS (UACs) & NEW EXECUTIVE ORDERS<sup>1</sup>

March 2017

The Republican Administration has already issued multiple immigration-related Executive Orders and implementing memoranda. These orders and memoranda touch on nearly all areas of immigration enforcement, including the treatment of immigrant children. In this resource, we address possible ways that UACs may be affected by these sweeping changes. *We do not know how these policies will play out in practice, and there will likely be legal and advocacy challenges to their implementation.*

### Limiting Who Can Be Considered a UAC

A UAC is defined as 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.<sup>2</sup> When children from non-contiguous countries are apprehended by Customs & Border Protection (CBP) or Immigration & Customs Enforcement (ICE), those agencies must notify the Department of Health & Human Services (HHS) within 48 hours, and transfer the child to HHS within 72 hours of determining them to be a UAC.<sup>3</sup> Such notice and transfer are also required for UACs from contiguous countries, provided that they trigger trafficking or asylum concerns or are unable to make an independent decision to withdraw their application for admission. Many UACs are apprehended by CBP at the border, such that even those who do have parent(s) in the U.S. typically do not have parents that are “available to provide care and physical custody” in the short time in which CBP must determine if the child meets the UAC definition. Because of this, some children are classified as UACs even though they have a parent in the U.S., consistent with the definition’s disjunctive third prong. Under USCIS guidance<sup>4</sup> and practice, once a child is classified as a UAC, the child continues to be treated as a UAC, regardless of whether they continue to meet the definition. The UAC designation is generally beneficial because the law provides for more child-friendly standards for UACs.

In an apparent effort to limit the number of youth who are classified as UACs, the Dept. of Homeland Security (DHS) Memorandum implementing the recent Executive Order on border enforcement (“Border Enforcement Memo”) directs U.S. Citizenship & Immigration Services (USCIS), CBP, and ICE to develop “uniform written guidance and training” on who should be classified as a UAC, and when and how that classification should be reassessed.<sup>5</sup> **This guidance has not yet been developed.** But we anticipate that we may see any or all of the following changes:

- Fewer children being classified as UACs upon apprehension. This could result in these children being subject to expedited removal (fast-track deportation without seeing an Immigration Judge)<sup>6</sup>, rather than being placed in removal proceedings under INA § 240, as the law requires for all UACs from

<sup>1</sup> The Immigrant Legal Resource Center is a national, nonprofit resource center that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The mission of the ILRC is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. For the latest version of this advisory, please visit [www.ilrc.org](http://www.ilrc.org). For questions regarding the content of this advisory, please contact Rachel Prandini at [rprandini@ilrc.org](mailto:rprandini@ilrc.org). Many thanks to Kristen Jackson, Senior Staff Attorney at Public Counsel, for her contributions to this advisory.

<sup>2</sup> 6 U.S.C. § 279(g)(2).

<sup>3</sup> 8 U.S.C. § 1232(b)(2)-(3).

<sup>4</sup> See e.g., Ted Kim, “Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children” (May 28, 2013).

<sup>5</sup> Sec. John Kelly, “Implementing the President’s Border Security and Immigration Enforcement Improvements Policies” (Feb. 20, 2017), Sec. L; see also Donald J. Trump, “Executive Order on Border Security and Immigration Enforcement Improvements” (Jan. 25, 2017), Sec. 11(e).

<sup>6</sup> For more information on expedited removal, see American Immigration Council, National Immigration Project of the National Lawyers Guild, ACLU, “Expedited Removal: What Has Changed Since the Executive Order No. 13767, Border Security and Immigration Enforcement Improvements” (Feb. 20, 2017), available at [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/final\\_expedited\\_removal\\_advisory\\_updated\\_2-21-17.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/final_expedited_removal_advisory_updated_2-21-17.pdf).

non-contiguous countries and those who pass the screening from contiguous countries.<sup>7</sup> This could also result in more children being detained by DHS in detention centers rather than by HHS in less restrictive settings.

- Children who are initially classified as UACs being stripped of that designation—formally or informally—once they turn 18 and/or reunify with a parent and/or obtain a legal guardian. Federal law offers certain benefits to UACs. Losing that designation may deprive the affected children of those protections, meaning that they may: 1) no longer be able to avail themselves of the provision of law that allows UACs to file their asylum applications with USCIS in a non-adversarial setting despite being in removal proceedings;<sup>8</sup> 2) be subject to expedited removal after being released from HHS custody rather than being placed in removal proceedings under INA § 240; 3) not receive post-release services from HHS; 4) no longer be eligible for certain government-funded legal representation programs for UACs; and 5) no longer be eligible for voluntary departure at no cost.

## Punishing Sponsors & Family Members of UACs

The Border Enforcement Memo also seeks to penalize parents, family members, and any other individual who “directly or indirectly . . . facilitates the smuggling or trafficking of an alien child into the U.S.”<sup>9</sup> This could include persons who help to arrange the child’s travel to the U.S., help pay for a guide for the child from their home country to the U.S., or otherwise encourage the child to enter the U.S.<sup>10</sup> Pursuant to the Border Enforcement Memo, enforcement against parents, family members or other individuals involved in the child’s unlawful entry into the U.S. could include (but is not limited to) placing such person in removal proceedings if they are removable, or referring them for criminal prosecution. **We do not know how this provision will play out in practice.** But even the inclusion of this language in the memo may cause panic and dissuade parents, family members or other adults from 1) sending children to the U.S. (typically done when children face imminent harm in their home country); 2) sponsoring children out of HHS custody once they are in the U.S.; 3) assisting in children’s applications for immigration relief, including asylum; 4) otherwise assisting children in fighting against deportation.

## Criminalizing Young People

Under the DHS memo implementing the Executive Order on interior enforcement, DHS’s enforcement priorities have been vastly expanded.<sup>11</sup> While DHS previously focused its resources on removing people with serious criminal convictions, now DHS will take action to deport anyone it considers a “criminal alien.” The Republican Administration’s definition of a criminal alien is incredibly broad, including people with criminal convictions, but also those charged with criminal offenses, or who have committed acts that could constitute a criminal offense.<sup>12</sup> Immigration law has long treated juvenile delinquency differently than criminal convictions, and that law is unchanged.<sup>13</sup> However, it is unclear given the broad scope of the new enforcement plan whether delinquency will be considered a “criminal offense” and thus a priority for purposes of enforcement (even though it may not make a person inadmissible or deportable under the immigration laws). It remains to be seen how these expanded enforcement priorities will play out.

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<sup>7</sup> 8 U.S.C. § 1232(a)(5)(D)(i). For more information about the use of expedited removal with children, see U.S. Congressional Research Service, “Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief” (R43664; July 30, 2014), by Ruth Ellen Wasem.

<sup>8</sup> INA § 208(b)(3)(C).

<sup>9</sup> See note 5, *supra*, at section M.

<sup>10</sup> The grounds of inadmissibility and deportability for “alien smuggling” are at INA § 212(a)(6)(E) and INA § 237(a)(1)(E).

<sup>11</sup> Sec. John Kelly, “Enforcement of the Immigration Laws to Serve the National Interest” (Feb. 20, 2017), Sec. A.

<sup>12</sup> Note that it also includes anyone who is in the country unlawfully, not just those who have had contact, or could have contact with law enforcement.

<sup>13</sup> It is well established that a juvenile delinquency adjudication does not constitute a conviction for immigration purposes, regardless of the nature of the offense. In *Matter of Devison*, the Board of Immigration Appeals found that it had consistently held “that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes.” *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000), citing *Matter of C. M.*, 5 I&N Dec. 27 (BIA 1953), *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). It relied on Congress’ recognition that adjudications for juvenile delinquency are separate from criminal convictions. Most, but not all, criminal related provisions of immigration law are triggered by a conviction.

## THE HARM OF FAMILY DETENTION

### Why Modifying *Flores* and Detaining Families Together Cannot Be the Answer to Family Separation

On June 20, 2018, the Trump Administration issued an [Executive Order](#) (EO) purporting to end the separation of families at the U.S.-Mexico border. The EO does not explicitly end family separation, and it clearly leaves in place the “zero-tolerance” policy that resulted in over [2,300 children](#) separated from their families since early May 2018.

The EO also instructed the Justice Department to seek a modification of the 1997 *Flores* Settlement Agreement (*Flores*). The administration, as well as numerous Congressional Republicans, seek to modify *Flores* either through the court, or through the passage of legislation, for two main reasons:

- In order to be allowed to detain children in inappropriate conditions, such as secure, non-licensed facilities.
- In order to be allowed to detain children in inappropriate conditions for prolonged periods of time.

Immigration and Customs Enforcement (ICE) already operates three family detention centers — none of which comply with *Flores* requirements for long term custody of children — with capacity for more than 3,000 parents and children. **ICE is now exploring expanding family detention by up to 15,000 beds, including potentially on military bases.** As Congress weighs bills and the Administration considers policies that would result in the long-term detention of families, here is why modifying *Flores* and expanding family detention cannot be the answer to the Trump administration’s self-created family separation policies.

**1. *Flores* instituted basic child protection measures so that children experience less harm and trauma. Overturning or limiting those measures eliminates requirements on the government that ensure children are treated properly.**

*Flores* resulted from over a decade of litigation responding to the U.S. government’s detention policy in the 1980s towards migrant children Central America. At the time, **children were being detained with unrelated adults in prison-like conditions for long periods of time, without access to education, recreation, or family visitation. The children in the case were subject to regular strip searches, including vaginal strip searches.** The agreement sets national standards regarding the detention, release, and treatment of all — unaccompanied and accompanied — children in immigration detention and underscores the principle of family unity. It requires that children be released from custody without delay, preferably to a parent, and that if they cannot be released they must be held in non-secure settings licensed by child welfare entities.

If *Flores* is modified, overturned, or ignored so that the administration can expand family detention, then migrant and asylum-seeking children would be subject to inappropriate conditions that have already been well-documented. These include: 1) prolonged detention, including for years, 2) being held in unlicensed facilities and subject to abuse, 3) care and disciplinary decisions made by guards who are not child welfare experts, 4) an inability to access a lawyer, translators, and other due process violations, and 5) inadequate medical and mental health care. **These protections are not “loopholes,” as the administration likes to portray, but instead requirements for care and due process grounded in child protection principles.**

## THE HARM OF FAMILY DETENTION

### Why Modifying *Flores* and Detaining Families Together Cannot Be the Answer to Family Separation

#### 2. There is no humane way to lock up families.

We already know what it looks like when the government does not comply with *Flores* in cases of family detention. Women's Refugee Commission and numerous others have long documented the harm of family detention, even for short periods of time. Our reports [Locking Up Family Values](#) and [Locking Up Family Values, Again](#) documented the trauma and harm of family detention. Since family detention was widely expanded in 2014, numerous [Members of Congress](#) and [Senators](#) have opposed the practice, as has the [American Academy of Pediatrics](#) and [Immigration and Customs Enforcement's \(ICE\) own Advisory Committee on Family Residential Centers](#); these groups have similarly found that family separation cannot be the alternative. Administrative complaints documented [sexual assault](#) in family detention centers, as well as the [traumatic impact](#) of family detention and the absence of meaningful mental health and [medical care](#). Family detention also does not deter those fleeing harm from seeking protection in the United States, as former DHS Secretary Jeh Johnson – who oversaw the resurrection of family detention in an effort to deter migration – recently [wrote](#).

For a comprehensive set of dozens of articles, reports, Congressional statements, litigation materials, and more on family detention, see the links at this [timeline](#) documenting family detention through 2016.

#### 3. Family detention (and family separation) eviscerate access to asylum.

[Only 14 percent of those in immigration detention have a lawyer](#), even though their chances of success [increase ten-fold](#) with representation. As has been extensively documented, detention and separation are also traumatizing, making it more difficult to explain one's fear of return, especially without a lawyer, during a credible fear interview or before an immigration judge. Moreover, current policies and Republican proposals do not envision an end to the "zero-tolerance" policy, meaning that asylum-seeking families are first still criminally prosecuted despite exercising their legal right to seek asylum.

DHS's own [fact sheet](#) on family reunification implies that ICE is taking steps to reunite children and parents only for purposes of deportation. Parents are effectively being pressured to accept deportation and give up what could be credible asylum cases for the possibility of seeing their child(ren) again.

#### 4. Family detention – like family separation – costs taxpayers billions.

Government estimates place the [cost](#) of a single bed in ICE's current family detention facilities at nearly \$320 per person per day. A bed in ICE adult detention, where a separated parent is detained alone, is over \$130. Separated children transferred to the custody of the Office of Refugee Resettlement (ORR) stay in shelters or foster care programs that [cost](#) an average of \$256 per child per night, or, if sent to one of the agency's new "tent cities" to accommodate the large number of children, \$775 per child per night.

## THE HARM OF FAMILY DETENTION

### Why Modifying *Flores* and Detaining Families Together Cannot Be the Answer to Family Separation

#### 5. The government has better options, but it is ignoring proven alternatives.

This approach is not only inhumane, but ignores the fact that the government could safely release many families to sponsors in the community while the family pursues their immigration case in court. It could also turn to [alternatives to detention](#) that boast compliance rates of 99% with court appearances but cost as little as \$5 per day. And it could re-start the [Family Case Management Program](#) (FCMP), a program specifically used for asylum-seeking families but discontinued in June 2017, that favored case management to ensure access to social and other services, including legal information, and had [100% compliance rates](#) with court proceedings for the cost of \$36 for an entire family each day.