



# MAPPING MIGRANT CHILDREN IN DETENTION

## Acknowledgments

In recent years, administrative policies seeking to roll back protections for immigrant and refugee children and families have had devastating impacts and only highlighted the unique needs and vulnerabilities of children in U.S. immigration custody. Efforts to restore, expand, and reimagine processes that prioritize children's rights and well-being have never been more critical. With the generous support of the Four Freedoms Fund, Kids in Need of Defense (KIND) undertook a project to map the different types of facilities in which children are detained in the U.S. immigration system to inform efforts to create a system centered in children's best interests, rights, and unique needs. This brief is excerpted from that project.

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# Chapter 1: Mapping Migrant Kids: Detention of Children in the U.S. Immigration System

## Introduction

Children who come to the U.S. without legal immigration status encounter a complex web of bureaucracy. Whether alone or with their families, they are shuttled from agency to agency, between detention centers and shelters, sometimes over vast distances. Where a child is in the immigration system, and in which agency's custody, has a significant impact on the child's well-being.

This issue brief charts children's path through the immigration system. It outlines the agencies involved, relevant procedures, standards of care, and oversight mechanisms, and the types of facilities in which children are detained. Two appendices provide charts, maps, and a consolidated overview of the agencies' roles. Finally, the brief provides a list of resources and articles that offer a deeper background on issues affecting children in immigration detention and advocacy efforts to ensure children's safety and well-being.

## Children's Path through the Immigration System

### A. Encountering the Department of Homeland Security (DHS)

#### 1. Processing at the border

Children, whether unaccompanied or with their families, often present themselves at a port of entry along the U.S.-Mexico border, where Customs and Border Protection's (CBP's) Office of Field Operations (OFO) may take them into custody for processing. Children may also attempt to cross the border between ports of entry and be detained by Border Patrol officers. CBP maintains short-term detention facilities along the U.S.-Mexico border that are used during initial processing of both unaccompanied children and families arriving at the border.

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) sets forth specific procedures for processing unaccompanied children arriving to the U.S. Pursuant to these procedures, CBP must first determine whether a child meets the legal definition of an "unaccompanied alien child," as defined by the Homeland Security Act of 2002. For a child to be unaccompanied, they must lack legal immigration status, be under age 18, and not have an immediately-available parent or legal guardian.<sup>1</sup> Under the TVPRA, this determination is to be made within 48 hours, and unaccompanied children must be transferred to the care and custody of the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) within 72 hours.

The TVPRA provides distinct procedures for children from contiguous countries, that is, Mexico or Canada. CBP must screen unaccompanied children from these countries to determine their age; if they have a fear of persecution or trafficking, or are at risk of trafficking if returned home; and if they are able to make an independent decision to return home voluntarily. If the child can make an independent decision to withdraw their application for admission, and if the child does not fear trafficking or persecution, CBP will typically turn the child back to Mexico or Canada within hours. If the child cannot make such a decision or in cases in which the child fears persecution or there is a risk or history of trafficking, the child must be transferred to ORR custody and will enter the same path as all other unaccompanied children. Prior to transfer, CBP will initiate removal proceedings against the unaccompanied child.

CBP will also initiate removal proceedings against families in immigration court. CBP typically sends families from Mexico or Canada immediately back to their country of origin unless they express fear of

persecution or an intent to apply for asylum, in which case they will be given a credible fear interview and will typically be detained in the U.S. during that process. CBP will generally send these families to one of ICE's three family detention centers (discussed in greater detail in the next section) while their cases continue. During the Trump Administration, however, numerous policies forced families to wait in makeshift camps in Mexico either to be processed into the U.S. ("metering") or for the duration of their U.S. asylum proceedings ("Remain in Mexico" policy). The Administration also implemented policies during the COVID-19 pandemic that denied unaccompanied children and families access to the U.S. to request protection, and that resulted in thousands of children being turned back to Mexico, or held in hotels or elsewhere until being expelled to their countries of origin—and the dangers they fled--without legally required protection screening and due process.<sup>ii</sup>

## 2. CBP facilities

During initial processing at the border, children are typically held in CBP's short-term detention facilities. These facilities, like all facilities housing minors in federal immigration custody, must comply with safety, hygiene, and other standards provided for by the *Flores* Settlement Agreement, which was signed in 1997 by the federal government and attorneys for immigrant and refugee children following a lawsuit challenging poor conditions and treatment of children in federal immigration custody. Among other provisions, *Flores* requires that children be held in "safe and sanitary" conditions in the "least restrictive setting" possible, and that they be released from government custody without "unnecessary delay."

CBP is also governed by its Transport, Escort, Detention, and Search (TEDS) standards, a policy document that provides guidance related to all detainees in transport and detention, with specific additional guidance pertaining to children—including a general policy of family unity. However, these standards are not enforceable. The TVPRA's specific legal protections for unaccompanied children bind all federal agencies, including CBP, and limit the time in which unaccompanied children may be held in CBP's custody. CBP holding facilities must also adhere to DHS standards implementing the federal Prison Rape Elimination Act (PREA), which was enacted to prevent, detect, and respond to sexual abuse and assault in detention facilities.

DHS' Office of Inspector General (OIG), an independent agency within DHS, conducts oversight of DHS operations and facilities through audits, inspections, and investigations, including related to CBP's facilities. DHS' Office of Civil Rights and Civil Liberties (CRCL) receives and responds to complaints from the public and affected individuals about potential rights violations by DHS personnel or programs, conducts investigations, and oversees training and technical assistance on civil rights and civil liberties compliance within the Department. Importantly, access to CBP facilities by nonprofit organizations, the public, and attorneys is generally limited. Federal agency oversight, congressional investigations and visits, and facility monitoring by *Flores* counsel, including interviews with children in detention, have proven critical in gaining access to these facilities and highlighting the conditions facing children in CBP custody.

Children currently and previously in CBP custody commonly describe CBP detention facilities as either "iceboxes" (*hieleras*) or the "dog kennel" (*la perrera*).<sup>iii</sup> The former are cement cells kept at notoriously low temperatures that typically lack beds and in which only mylar blankets are provided for warmth. The latter are large empty rooms split up into pens with chain-link fencing, with bright overhead lights that are on continuously. Children lie on mats with disposable mylar blankets on a concrete floor. CBP has also used tents in the parking lots of CBP facilities and erected open-air "tent cities" to detain large groups of unaccompanied children and families.

Reports by federal oversight agencies and Congress as well as children and families, attorneys, journalists, doctors, and the federal court overseeing *Flores* have long documented violations of the minimum standards set forth in *Flores*, TEDS, the TVPRA, and other violations. For decades, advocates have challenged poor and inhumane conditions in CBP facilities, such as inadequate food and water,

failure to provide basic hygiene necessities, inadequate medical care, overcrowding, and prolonged detention of days, weeks, or longer. Between 2018 and 2019, six children died in CBP custody. Advocates continue to press for greater oversight and accountability, and immediate changes to protect the safety and well-being of children. Such recommendations include co-locating staff from HHS at the border to immediately identify appropriate placements for unaccompanied children, and hiring professionals with expertise in child development and protection, rather than law enforcement, at the border to oversee the care and screening and best interests of all children. Advocates are also urging broader systemic reforms that provide for initial reception of children and families at the border by humanitarian, rather than law enforcement, agencies.

## **B. Transfer to ORR or ICE**

### **1. ORR Care and Custody for Unaccompanied Children**

Pursuant to the TVPRA, ORR assumes custody and placement duties for unaccompanied children while it works to identify a sponsor, most often a parent or other family member, to whom the child can be promptly released and who can care for the child throughout their immigration proceedings. Unlike CBP and ICE, ORR is part of the Department of Health and Human Services (HHS), not DHS. Most children stay in dormitory-like shelters operated by organizations around the country that contract with ORR.

The *Flores* settlement mandates that ORR-contracted facilities be state-licensed for the care of dependent children. ORR maintains nearly 180 contract facilities and programs in 21 states, including different placement types depending on children's needs. For example, some children—especially those who are under 13, pregnant or parenting, or who have special needs—may be placed in short-term federal foster care placements in ORR-contracted programs. Some children stay in more restrictive staff-secure or secure shelters if they are deemed an escape risk or a danger to themselves or others. Children who are placed in secure or staff-secure facilities have their placement reassessed within 30 days to ensure they are in the least restrictive setting in their best interest. Children without an identified sponsor or who remain in ORR custody for longer periods, including those who may be eligible for or who have obtained relief from removal, may go to a long-term foster home or group home in ORR's network.

Regardless of where ORR shelters children, *Flores* and TVPRA protections always apply. ORR programs are subject to state licensing standards, and also must comply with PREA requirements for preventing and responding to sexual assault and abuse. Like DHS, HHS maintains an Office of Inspector General (OIG) and an Office for Civil Rights that conduct oversight and oversee compliance with standards and laws.

Upon turning 18, children “age out” of ORR custody and may be transferred to DHS custody. Under the TVPRA, DHS is required to consider alternatives to detention for these children before placing them in adult detention. ORR, for its part, creates “post-18” plans for children who are at risk of aging out of ORR custody prior to release to help identify the least restrictive settings for the child and any support services that may be needed. In some cases, however, these plans are either not prepared or are not in place before the child's 18<sup>th</sup> birthday. Additionally, DHS has often failed to consider less restrictive alternatives and placed children in ICE detention, including on their 18<sup>th</sup> birthdays—a practice that violates the TVPRA and that has been successfully challenged in court.

Unlike CBP, ORR does not run its own shelters. ORR contracts with non-profit and for-profit entities to run the ORR program. While ORR must work promptly and continuously to place children with their family or a sponsor, children can stay for as long as is necessary to complete that process.<sup>iv</sup> ORR shelters must provide medical care, food, clothing, hygiene items, recreation, education, and access to legal services. ORR maintains several types of facilities, including shelters, foster care, staff-secure, and secure facilities.

Nevertheless, it is generally in children's best interests to be housed in family- or home-based care, rather than in an institutional setting, and safe and prompt release from ORR custody (as provided for by the TVPRA and *Flores*) is critical. Within 24 hours of a child's admission, ORR begins the placement process by having a social worker perform an admissions assessment of the child's family, history, and other information. ORR provides potential sponsors with a "family reunification packet," which requires documentation showing a relationship with the child or consent from the child's parent or guardian for them to care for the child, in addition to contact information, immigration status, employment status, fingerprints, and more. ORR also checks other adults in the household. Before ORR places an unaccompanied child, a case manager interviews the sponsor, the facility where the child is sheltered makes a recommendation, and ORR approves or denies. ORR must also perform a home study when the child is a victim of trafficking, has a disability, has been a victim of physical or sexual abuse and their health or welfare has been significantly harmed or threatened, and when the sponsor presents a clear risk of abuse, maltreatment, exploitation, or trafficking based on all objective evidence.

Once a child is placed, the family or sponsor is responsible for the child's care and court appearances throughout the child's removal proceedings. A small number of children also receive post-release services pursuant to the TVPRA upon leaving ORR custody.

In recent years, DHS and HHS entered into an information-sharing agreement through which potential sponsors' personal information could be given to ICE, including for use in immigration enforcement. This policy deterred sponsors from coming forward to care for children in ORR custody, leading to prolonged time in custody for children. While congressional directives have placed limits on these policies, advocacy in this area remains important and ongoing.

As ORR shelters and attempts to reunify children with family members, children begin the arduous process of preparing their immigration cases. Due to recent policies accelerating dockets and removal proceedings, children are increasingly required to do so while in detention and without family support. All children in custody receive Know Your Rights presentations, and either an attorney or a "friend of the court" will appear on their behalf if they are required to attend proceedings while in detention. About half of unaccompanied children in removal proceedings acquire legal counsel through public-private partnerships or pro bono volunteers.

## Influx Facilities

When ORR's capacity in licensed facilities is full, ORR may use "influx" or "emergency" shelters. Influx shelters are distinct from ORR's other placements and are designed to hold as many children as possible during periods when the number of unaccompanied children arriving in the U.S. unexpectedly exceeds capacity in ORR's permanent shelters. Instead of a more dormitory-like experience, children may sleep in large rooms with military-style, tightly-packed bunk beds, with more limited access to services than is available in standard ORR shelters. Influx shelters must comply with *Flores* and TVPRA protections, but historically have been placed on federal land and have not been licensed by the states in which they are located. In 2014, in response to an historic and unexpected increase in unaccompanied children arriving at the border, ORR made use of three Department of Defense sites, in Oklahoma, Texas, and California, as temporary influx facilities. In 2018, ORR operated three influx facilities, including a tent city in Tornillo, Texas, and facilities in Carrizo Springs, Texas, and Homestead, Florida.

Influx facilities are ill-suited for the long-term care of children, given their large size, lack of licensing, and placement in often remote areas at a distance from critical services. Some advocates have urged that influx facilities be only used as a last resort for true and unexpected emergencies, and for as short a period as possible, to prevent children being forced to remain for extended periods in CBP custody (as occurred in 2014 when the government was unprepared for the dramatic increase of unaccompanied children seeking protection in the U.S.)—in holding facilities that are inappropriate for even short-term custody of children. They have urged ORR to expand its capacity of small-scale and home- and community-based placements to prepare for emergency circumstances, and pressed for standards and oversight to limit the use of influx facilities. Some of these provisions have been included as part of federal appropriations laws funding ORR. Advocates have also opposed the use of influx facilities when used not to respond to emergency circumstances but to respond to circumstances created by the government's own policies and have expressed concern about the use of for-profit contractors lacking experience with unaccompanied children in the operation of some influx facilities.<sup>1</sup>

## 2. Families with Children

Children with their families are sent to Dilley, TX; Karnes, TX; or Berks County, PA, where ICE maintains its family detention centers. While there, families are placed in expedited removal proceedings unless they express fear of return to their countries of origin and pass a credible fear interview. In that case, the family is entitled to a full asylum hearing before an immigration judge but may still be held in detention while their case is ongoing. While DHS has previously asserted that such detention is mandatory as part of the expedited removal process and to help ensure families attend court appearances, DHS has discretion to release families while their cases are pending, including through case management programs and alternatives to detention. Federal courts have underscored that the government must individually assess the release of accompanied children in expedited removal to comply with the *Flores* Settlement Agreement.

Berks is run by Berks County and is the smallest facility with 96 beds. Karnes is a much larger complex of buildings, with 830 beds, run by private prison operator Geo Group. Dilley is larger still, a huge complex with 2,400 beds, run by private prison operator CoreCivic. Karnes and Dilley are fenced in, and all three are guarded. While these family detention centers are more accommodating than CBP short-term detention and offer more freedom, they nonetheless operate as prisons. Family detention can cause significant psychological damage to children, and many show signs of trauma. Recognizing this, advocates have called for an end to family detention entirely, urging that families not be detained, but immediately released with case management services.

Pursuant to court rulings in *Flores*, the government cannot generally keep children in unlicensed family detention facilities for more than 20 days. All three family detention facilities are unlicensed. Importantly, nothing requires ICE to detain families at all. Although ICE could release parents and children together through alternatives to detention to comply with *Flores*, it instead often forces parents into a false and

impossible choice: separate from their children by staying in detention while their child is transferred to ORR, or waive their child's right to prompt release and be held together in family detention.

In addition to *Flores*, ICE is bound by its Family Residential Standards (FRS). The FRS outline safety, care, and other standards for families in ICE detention. As with CBP and TEDS, however, advocates frequently report ICE violations of FRS.

### **C. Legal Case Resolution: Removal or Relief**

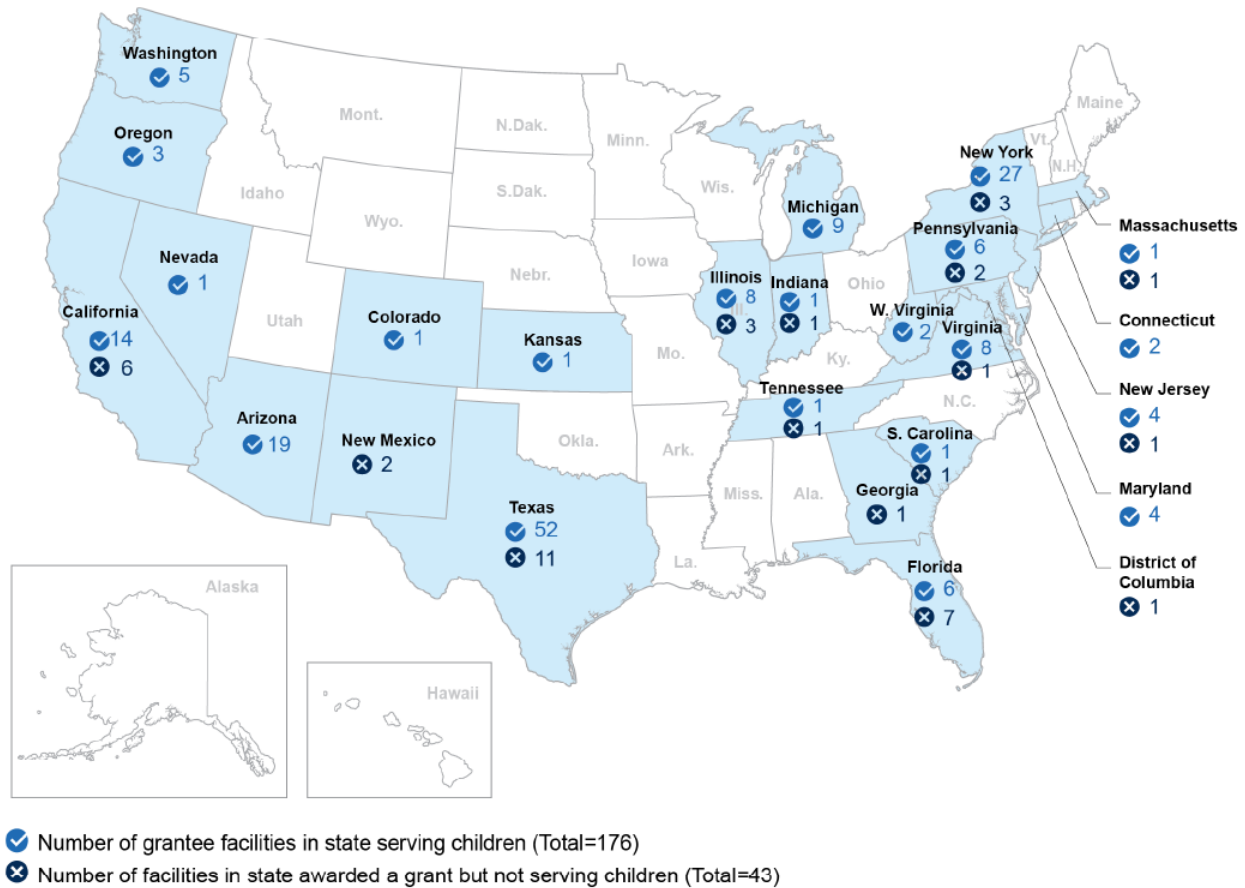
Removal proceedings may commence while a child is in CBP custody and continue for months or years after a child's release from ORR. If all of an unaccompanied child's claims are denied, then an immigration judge in the Department of Justice's Executive Office for Immigration Review (EOIR) may issue a removal order and inform DHS that the child should be removed. DHS will contact the consulate of the child's country and their ORR facility to inform them of the removal. DHS arranges for transportation, and the child is removed to their country of origin. ICE also arranges for removal of families who have been ordered removed. A very small number of children also receive return and reintegration services through programs and organizations such as KIND.

If an unaccompanied child is granted relief, removal proceedings are terminated and the child may remain where they are.<sup>v</sup> If a family's claims succeed, their proceedings are terminated and they are released from detention, if not yet released.



## Appendix A: Flowchart and Maps

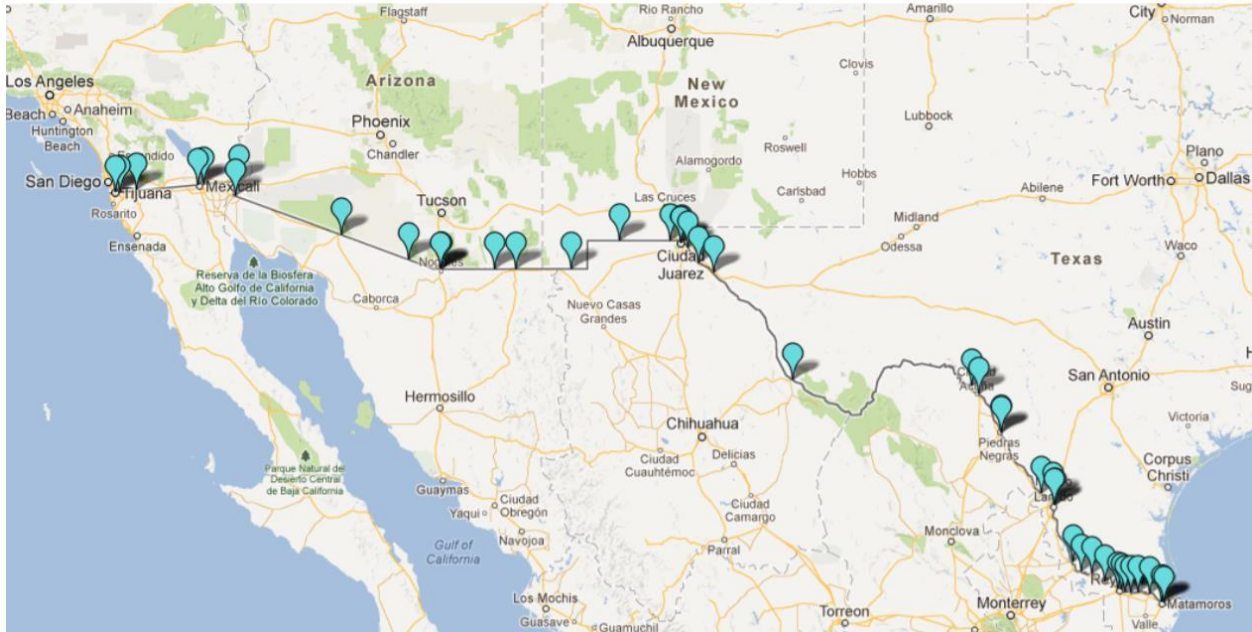
**Figure 1: Number of Grantee Facilities Funded by the Office of Refugee Resettlement With and Without Unaccompanied Children in Residence, July 2020**



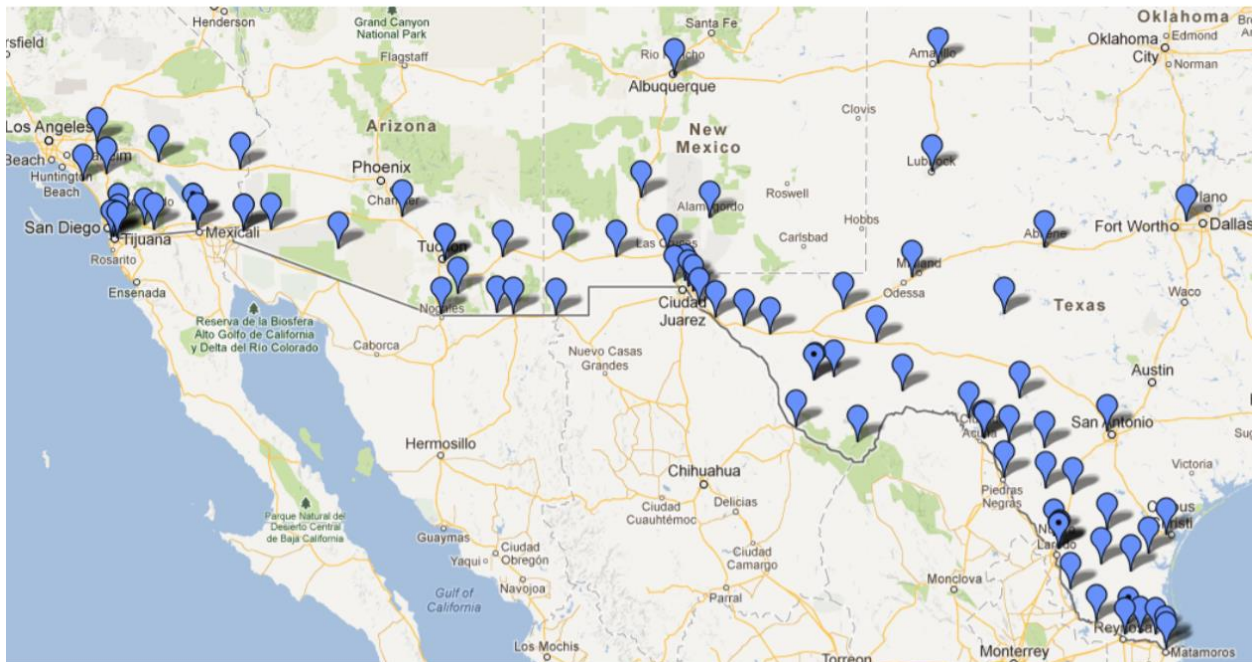
Source: Government Accountability Office, “Unaccompanied Children: Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities,” Sept. 2020



## At 45 land ports of entry: CBP Field Operations



## Between ports of entry: Border Patrol



Source: Washington Office on Latin America, “Beyond the Border Buildup: Security and Migration at the U.S.-Mexico Border,” Feb. 2013 (showing CBP facilities at and between ports of entry)

## Appendix B: Agency Overview

- Department of Homeland Security (**DHS**): contains Customs and Border Protection (**CBP**), Immigration and Customs Enforcement (**ICE**), and Citizenship and Immigration Services (**USCIS**)
  - **CBP**: Encounters children at the border; screens them within 48 hours; transfers to ORR within 72 hours; initiates removal proceedings; returns children from contiguous countries, if applicable. Includes the Office of Field Operations (OFO) and Border Patrol
    - **CBP** must hold children in “the least restrictive setting appropriate” that is “safe and sanitary,” with “concern for the particular vulnerability of minors,” and release children “without unnecessary delay” (within 72 hours)
    - **CBP** maintains 45 facilities used for short-term detention at land ports of entry along the southern border in CA, AZ, NM, and TX. **CBP** also maintains dozens of other short-term detention facilities between ports of entry in the same states
  - **ICE**: Encounters children in the interior; screens them within 48 hours; transfers to ORR within 72 hours; initiates removal proceedings; keeps accompanied children in family detention; effects removal orders
    - **ICE** must hold children in “the least restrictive setting appropriate” that is “safe and sanitary,” with “concern for the particular vulnerability of minors,” and release children “without unnecessary delay”
    - **ICE** maintains three family detention facilities in two states
      - Berks Family Residential Center, Leesport, PA (“Berks”)
      - South Texas Family Residential Center, Dilley, TX (“Dilley” or “STFRC”)
      - Karnes County Family Residential Center, Karnes City, TX (“Karnes”)
    - **ICE** employs trial attorneys who prosecute removal cases on behalf of the government before immigration judges
  - **USCIS**: Adjudicates applications for humanitarian and other protection, including asylum, trafficking, and SIJ applications
- Department of Health and Human Services (**HHS**): contains the Office of Refugee Resettlement (**ORR**)
  - **ORR**: Shelters unaccompanied children in state-licensed facilities or influx shelters when licensed shelters are full; contracts for legal services for children; perform background checks and assessments of potential sponsors
    - **ORR** must keep children in the “least restrictive setting in the best interest of the child,” and make “prompt and continuous efforts” towards release. **ORR** must provide education, healthcare, recreation, legal services, case management, meals, showers, clean clothing, clean bedding, and personal hygiene products. Legal services include Know Your Rights presentations, legal screenings, court preparation and assistance (not as counsel), and sometimes pro bono representation
    - **ORR** maintains approximately 180 facilities in 21 states. These numbers regularly change. **ORR** has a 13,500-bed capacity, with 5,000 more funded but not operational (as of July 2020).
- Department of Justice (**DOJ**): contains the Executive Office for Immigration Review (**EOIR**), which includes immigration judges (**IJs**) and the Board of Immigration Appeals (**BIA**)
  - **IJs**: Adjudicate removal proceedings and applications for relief; adjudicate appeals from asylum applications denied by USCIS
  - **BIA**: Adjudicates appeals from immigration court decisions

## Resources for Advocates

### Laws, Standards, and Government Reports

1. [The Flores Settlement Agreement](#), *Flores v. Reno* (C.D. Cal. 1997)
2. [William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008](#), P.L. 110-457 (*see* Sec. 235)
3. [CBP TEDS Standards](#), Oct. 2015
4. [ICE Family Residential Standards](#), 2020
5. Congressional Research Service, [“Unaccompanied Alien Children: An Overview,”](#) Oct. 2019
6. Government Accountability Office, [“Unaccompanied Children: Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities,”](#) September 2020
7. Congressional Research Service, [“Unaccompanied Alien Children: A Processing Flow Chart,”](#) July 2014
8. DHS Office of Inspector General, [“DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley,”](#) July 2019
9. DHS Office of Inspector General, [“Capping Report: CBP Struggled to Provide Adequate Detention Conditions During 2019 Migrant Surge,”](#) June 2020
10. ORR, [“Unaccompanied Alien Children: Facts and Data,”](#) Nov. 2020
11. ORR, [“Fact Sheet: Unaccompanied Alien Children Program,”](#) Dec. 2020
12. Congressional Research Service, [“The Department of Homeland Security’s Reported ‘Metering’ Policy: Legal Issues,”](#) Aug. 2019

### Organizational Letters and Reports

1. American Immigration Council, [“Immigration Detention in the United States by Agency,”](#) Jan. 2020
2. Vera Institute of Justice, [“The Flow of Unaccompanied Children Through the Immigration System,”](#) March 2012
3. Women’s Refugee Commission, [“Step-by-Step Guide on Apprehension and Detention of Juveniles in the United States,”](#) May 2016
4. WRC, KIND, & The Young Center, [“Protecting Unaccompanied Children,”](#) Dec. 2019
5. AILA, WRC, & AIC, [“The Psychological Impact of Family Detention on Mothers and Children Seeking Asylum,”](#) June 2015
6. USCCB MRS, WRC, NIJC, LIRS, & The Young Center, [“The ORR and DHS Information-Sharing Agreement and Its Consequences,”](#) Oct. 2019
7. Washington Office on Latin America, [“A National Shame: The Trump Administration’s Separation and Detention of Migrant Families,”](#) Aug. 2018
8. Washington Office on Latin America, [“Beyond the Border Buildup: Security and Migration at the U.S.-Mexico Border,”](#) Feb. 2013
9. Human Rights First, [“Humanitarian Disgrace: U.S. Continues to Illegally Block, Expel Refugees to Danger,”](#) Dec. 2020
10. Human Rights Watch, [“‘Like I’m Drowning’: Children and Families Sent to Harm by the US ‘Remain in Mexico’ Program,”](#) Jan. 2021
11. Detention Watch Network, [“Family Detention,”](#) Sept. 2020

### News Articles

1. Emily Kassie & Eli Hager, [“Inside Family Detention, Trump’s Big Solution,”](#) The Marshall Project (June 22, 2018)
2. Maria Sacchetti, [“ICE’s chief called family detention ‘summer camp.’ Here’s what it looks like inside,”](#) The Texas Tribune (Aug. 25, 2019)
3. Lisa Ryan, [“Inside 3 Detention Centers Where Immigrant Children Are Kept From Their Parents,”](#) The Cut (June 18, 2018)
4. Gretchen Frazee, [“A look inside the facilities where migrant families are detained,”](#) PBS (Aug. 26, 2019)
5. Serena Marshall, Lana Zak, & Jennifer Metz, [“Doctor compares conditions for unaccompanied children at immigrant holding centers to ‘torture facilities’,”](#) ABC News (June 23, 2019)
6. Nick Miroff, [“Amid migrants’ complaints of frigid holding cells, a battle for control of border thermostats,”](#) The Washington Post (Aug. 7, 2018)

7. John Burnett, ["Inside The Largest And Most Controversial Shelter For Migrant Children In The U.S."](#) NPR (Feb. 13, 2019)
8. Bonnie Silkman, ["A look inside a Portland facility for unaccompanied immigrant children."](#) FOX 12 Oregon (June 21, 2018)
9. Aura Bogado, Patrick Michels, Vanessa Swales, & Edgar Walters, ["Migrant children sent to shelters with histories of abuse allegations."](#) Reveal (June 20, 2018)
10. Michael Grabell & Topher Sanders, ["Immigrant Youth Shelters: 'If You're a Predator, It's a Gold Mine'."](#) ProPublica (July 27, 2018)

## Endnotes

<sup>i</sup> Under this legal definition, children arriving with older siblings, grandparents, and other relatives are considered “unaccompanied” absent proof of a family member’s legal guardianship of the child. In such cases, CBP typically transfers the child to ORR custody pursuant to the TVPRA, while the family member(s) are transferred to ICE custody. In order to prevent prolonged separations while preserving the critical due process protections for unaccompanied children provided for under federal law, advocates have recommended that ORR “co-locate” staff at the border to expedite its family reunification process and evaluate as potential sponsors family members with whom children have traveled to enable their release from custody together in coordination with DHS. CBP may also separate families if its agents believe that the parents or legal guardians have any criminal history or to refer individuals for prosecution for immigration-related offenses. CBP has interpreted its authority broadly and in many cases separated families without regard to whether a prior crime has any bearing on the safety or well-being of a child, is minor or nonviolent, or is an immigration-related offense. CBP may also refer parents or legal guardians to be prosecuted for unlawful entry or re-entry, as occurred under the Trump Administration’s Zero Tolerance Policy, which led to the separation of thousands of families.

<sup>ii</sup> These practices were challenged in litigation as applied to unaccompanied children on the grounds that they violated the TVPRA and the scope of the federal public health law cited by the government. *See P.J.E.S. v. Wolf*, Civ. Action No. 20-2245 (EGS) (D.D.C. 2020).

<sup>iii</sup> *See, e.g.* Americans for Immigrant Justice, *Do My Rights Matter? The Mistreatment of Unaccompanied Children in CBP Custody*, Oct. 2020, <https://aijustice.org/do-my-rights-matter-the-mistreatment-of-unaccompanied-children-in-cbp-custody/> ([aijustice.org](https://aijustice.org/)), at p. 27.

<sup>iv</sup> In recent years, average length of care in ORR custody has fluctuated over time. For example, in May 2020, the average length of care was 122 days. *See, e.g.*, ORR, Fact Sheet: Unaccompanied Alien Children (UAC) Program (July 10, 2020), [https://www.acf.hhs.gov/sites/default/files/documents/orr/unaccompanied\\_alien\\_children\\_program\\_fact\\_sheet\\_07\\_10\\_2020.pdf](https://www.acf.hhs.gov/sites/default/files/documents/orr/unaccompanied_alien_children_program_fact_sheet_07_10_2020.pdf). As of October 2020, the average length of care was 51 days. *See* ORR, Fact Sheet, Unaccompanied Alien Children (UAC) Program (Dec. 4, 2020), <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.

<sup>v</sup> Children who obtain lawful immigration status cannot stay in ORR custody, but may be released to an alternative placement or to the Unaccompanied Refugee Minors program if no sponsor is available.