

Report to Congress on Separated Children

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GLOSSARY

American Civil Liberties Union (ACLU)
Area of Responsibility (AOR)
Country of Origin (COO)
Customs and Border Patrol (CBP)
Unaccompanied Alien Child (UAC)
Department of Health and Human Services (HHS)
Department of Homeland Security (DHS)
Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR)
Immigration and Customs Enforcement (ICE)
Incident Management Team (IMT)
National Crime Information Center (NCIC)
Liaison Officer (LNO)
Non-Governmental Organization (NGO)
Notice to Appear (NTA)
Office of Refugee Resettlement (ORR)
Point of Contact (POC)
U.S. Department of State (DOS)
William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)
Zero Tolerance Policy (ZTP)

INTRODUCTION

On March 1, 2003, the Homeland Security Act of 2002 transferred responsibilities for the care and placement of unaccompanied alien children (UAC) from the Commissioner of the Immigration and Naturalization Service within the Department of Justice (DOJ) to the Director of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS). Since then, ORR has cared for hundreds of thousands of children, incorporating child welfare practices as well as the principles and provisions established by the *Flores* Settlement Agreement in 1997, the Homeland Security Act of 2002, and the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.

Department of Homeland Security (DHS) officials transfer UAC they apprehend to the care and custody of ORR. An unaccompanied alien child is a person who has no lawful immigration status in the United States and has not attained 18 years of age, and with respect to whom: (1) there is no parent or legal guardian in the United States; or (2) no parent or legal guardian in the United States is available to provide care and physical custody.¹ ORR promptly places an unaccompanied alien child in the least restrictive setting that is in the best interest of the child, taking into consideration danger to self, danger to the community, and risk of flight.² ORR takes into consideration the unique nature of each child's situation and incorporates child welfare principles when making placement, clinical, case management, and release decisions.³ DHS must refer UAC to HHS within 72 hours of making the UAC determination, except in the case of exceptional circumstances.⁴

On April 6, 2018, DOJ announced a zero-tolerance policy for criminal illegal entry, which affected parents crossing the border illegally with their children.⁵ Attorney General Sessions notified all U.S. Attorney's Offices along the southwest border of the "zero-tolerance policy" (ZTP) for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States by an alien.⁶ Persons who applied to enter the United States through a Port of Entry were not charged with offenses under 8 U.S.C. § 1325(a).

Pursuant to the ZTP, DHS officers referred the parent(s) of purported family units to the Department of Justice for prosecution for unauthorized entry into the United States. DHS then transferred the children as "unaccompanied alien children" to HHS because their parents were not available to provide them care and physical custody.

On June 20, 2018, President Trump issued an Executive Order directing the Secretary of Homeland Security to maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings involving their members unless there was a concern

¹ 6 U.S.C. § 279 (g)(2).

² 8 U.S.C. § 1232(c)(2).

³ ORR Guide: Children Entering the United States Unaccompanied (UAC Policy Guide) Section 1.2.1 (2018).

⁴ 8 U.S.C. § 1232(b)(3). A UAC determination may be made at or after the time of apprehension by DHS, depending on the facts and circumstances.

⁵ Department of Justice, Office of Public Affairs, April 6, 2018.

⁶ *Id.*

that detention of the alien child with the child's alien parent would pose a risk to the child's welfare.⁷ The order indicated that the parent(s) and children would no longer be separated.

In *Ms. L. v U.S. Immigration and Customs Enforcement*⁸, Judge Dana Sabraw of the United States District Court for the Southern District of California ordered the federal government to safely reunify class members (certain separated parents) with their children. HHS had custody of the separated children, thus the agency took a leading role in creating an interagency plan for reunification of the separated children with their parents.

Congress included the language below in the Department of Health and Human Services Appropriations Act, 2019 (the "Appropriations Act"):

"SEC. 233. The Secretary shall submit to the Congress by November 15, 2018, a plan to promptly facilitate the reunification of children separated from their parents and placed in the custody of the Office of Refugee Resettlement ("ORR"), including the reunification of children with parents who are no longer in the United States:

Provided, That such plan shall include possible children of potential class members in the class-action lawsuit *Ms. L v. ICE*, as identified in the Joint Status Report filed on September 6, 2018:

Provided further, That such plan shall describe the activities the Administration has undertaken to locate parents who are no longer in the United States and to reunify those parents with their children, including (1) the process for tracking children and parents, (2) the process for coordinating interagency responsibilities for communication, location, and reunification of such parents, and (3) the number of parents that the Administration has been unable to contact:

Provided further, That such plan shall provide detailed information on how many parents have been determined to be ineligible for reunification and the reasons for those determinations:

Provided further, That such plan shall identify the number of children in ORR custody whose parents were deported that (1) have been reunified with their parents, (2) have been released into the custody of a family member other than a parent, (3) have been released into the custody of a sponsor who is not a family member, and (4) are still in ORR custody:

Provided further, That such plan shall provide detailed information regarding the procedures the Administration follows when child sexual abuse is alleged at facilities operated by ORR contractors:

Provided further, That such plan shall include an estimate of expenditures in fiscal year

⁷ Exec. Order No. 13841, "Affording Congress an Opportunity to Address Family Separation", 83 Fed. Reg. 29435-29436 (June 20, 2018).

⁸ *Ms. L. v U.S. Immigration and Customs Enforcement*, Case 3:18-cv-00428 (S.D. Cal. 2018).

2018 and an estimate of anticipated expenditures in fiscal year 2019 related to housing children who were separated from their parents at the border as well as activities to reunify such children with their parents:

Provided further, That if such plan is not submitted by the deadline identified above, the Department of Health and Human Services may not, until such a plan has been submitted to the Congress, obligate funds from the Fund established by section 223 of title II of division G of Public Law 110–161, except to obligate H. R. 6157—117 funds for projects identified in the joint explanatory statement accompanying this Act.”⁹

ORR’S ORDINARY UAC PROCESS

To provide appropriate context for the information presented in this report, it is necessary to explain ORR’s ordinary process for tracking UAC from intake through discharge—that is, how ORR brings UAC into its care, creates and maintains records on UAC in an electronic tracking and case management system known as the UAC Portal, and discharges UAC to sponsors.

The U.S. Border Patrol (USBP) and U.S. Immigration Customs Enforcement (ICE) are responsible for the majority of UAC referrals to ORR. USBP’s E3 system of record database is able to push UAC biographic, apprehension, and, other referral information into ORR’s UAC Portal’s referral page. ICE has access to ORR’s UAC Portal referral page and directly enters UAC information into the system. In the summer of 2018, a checkbox was added to the UAC Portal’s referral page to indicate whether a child has been separated from family. The referral page also has a notes section where USBP and ICE can type in the name and other information of the separated family member, including their alien number. Additionally USBP and ICE can enter this information into the parent/relative information section of the referral.

When ORR receives a child that another federal agency has referred to its care, ORR performs several different assessments. These include:

- The UAC Assessment, which covers biographic, family, legal/migration, medical, substance abuse, and mental health history
- A trafficking assessment, which is part of the UAC Assessment and identifies whether a child has been trafficked
- An educational assessment, which determines academic level
- A medical assessment, which occurs within 48 hours of arrival in the ORR care provider facility
- The Assessment for Risk, which occurs within 72 hours of admission and every 30 days thereafter to reduce the risk that a child is sexually abused or abuses someone else in ORR care
- The UAC Case Review, which updates the child’s file initially on the child’s 30th day in care and subsequently every 30 days (or 90 days for children in long-term foster care)

⁹ “Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019,” Pub. L. No. 115-245, div. B, title II, sec. 233.

Intakes policies are located at section 1 and 3 of the ORR policy guide, located at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>.

As ORR completes these assessments, grantee staff enter the alien registration number, name, biographical information and several assessments of the UAC into the UAC Portal. Case managers throughout the UAC grantee network use this system to create a complete case file for each child.¹⁰ Case managers enter case reviews into the UAC Portal every 30 days.¹¹ The Sponsor Information section is updated when new information becomes available.¹² When ORR releases a child to a sponsor, the sponsor must give ORR documentation of the address where the child will be living.¹³ At the time of physical release to a sponsor, ORR's legal obligations toward the child end.

Although ORR is not legally obligated to do so, thirty days after release to a sponsor, the ORR Call Center contacts the sponsor to ask questions as to the safety and well-being of the discharged child.¹⁴ The ORR Call Center is a contracted provider. After the 30-day well-being and safety call, ORR retains the record of the child but adds no additional information unless the child returns to ORR custody via a new referral from a Federal agency, which is rare.¹⁵

ORR policies on tracking children as they progress towards discharge appear in sections 2 and 3 of the UAC Policy Guide: <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>.

REUNIFICATION PLANS FOR SEPARATED CHILDREN

The language in the Appropriations Act on the reunification plans for separated children is as follows:

The Secretary shall submit to the Congress by November 15, 2018, a plan to promptly facilitate the reunification of children separated from their parents and placed in the custody of the Office of Refugee Resettlement (“ORR”), including the reunification of children with parents who are no longer in the United States:

Provided, that such plan shall include possible children of potential class members in the class-action lawsuit *Ms. L v. ICE*, as identified in the Joint Status Report filed on September 6, 2018:

Provided further, that such plan shall describe the activities the Administration has undertaken to locate parents who are no longer in the United States and to reunify those parents with their children, including (1) the process for tracking children and parents, (2) the process for coordinating interagency responsibilities for communication, location, and

¹⁰ UAC Manual of Procedures (2017), Section 1.3, Referrals to ORR and Initial Placements.

¹¹ UAC Policy Guide (2018), Section 3.3.1, UAC Assessments and Case Review.

¹² UAC Policy Guide (2018), Section 2.2.2, Contacting Potential Sponsors.

¹³ UAC Policy Guide (2018), Section 2.2.4, Required Documents for Submission with the Application for Release.

¹⁴ UAC Policy Guide (2018), Section 2.8.4, Safety and Wellbeing Follow Up Call.

¹⁵ UAC Policy Guide (2018), Section 2.8.3, Closing the Case File.

reunification of such parents, and (3) the number of parents that the Administration has been unable to contact.

HHS and its interagency partners are executing plans, approved by Judge Dana Sabraw in *Ms. L*, for reunification of separated minors with their parents, which provide the information requested by Congress. These plans filed in *Ms. L* are identified below and attached hereto:

- HHS/DHS Unified Plan of Operations For Reunification of 5-17 Year Old Population To Include Flow Chart and Summary of Required Steps, 14 July 2018.¹⁶
- Interagency Plan for Reunification of Separated Minors with Removed Parents, August 16, 2018.¹⁷

As of November 6, 2018, there were zero departed *Ms. L* class members who the Administration had been unable to contact.¹⁸

STATISTICS

The Appropriations Act requests statistics related to separated parents and children in *Ms. L*. Specifically, it states:

Provided further, that such plan shall provide detailed information on how many parents have been determined to be ineligible for reunification and the reasons for those determinations:

Provided further, that such plan shall identify the number of children in ORR custody whose parents were deported that

- (1) have been reunified with their parents,
- (2) have been released into the custody of a family member other than a parent,
- (3) have been released into the custody of a sponsor who is not a family member, and
- (4) are still in ORR custody.

As of November 6, 2018, there were 30 children in *Ms. L* whose parents are ineligible for reunification because the parent was determined to be unfit or present a danger to the child, based on the parent's criminal history or other individualized factual considerations bearing on fitness or dangerousness. As of November 6, 2018, 23 of these children remained in ORR custody.¹⁹

¹⁶ July 15, 2018 Notice, *Ms. L v U.S. Immigration and Customs Enforcement*, No. 3:18-cv-00428 (S.D. Cal. 2018), ECF No. 109, 109-1.

¹⁷ August 16, 2018 Notice Regarding Implementation of Plan for Reunifications Abroad, *Ms. L v U.S. Immigration and Customs Enforcement*, Case No. 3:18-cv-00428 (S.D. Cal. 2018), ECF No. 189.

¹⁸ See November 8, 2018 Joint Status Report, *Ms. L v U.S. Immigration and Customs Enforcement*, Case No. 3:18-cv-00428 (S.D. Cal. 2018) (attached).

¹⁹ *Id.*

As of November 6, 2018, there were 117 children in ORR care with parents who were Ms. L. class members presently departed from the United States. The parents of 99 of the 117 children waived reunification through the ACLU. In contrast, the parents of only 7 of the 117 children chose reunification in their country of origin through the ACLU. ORR was still waiting for the ACLU to communicate parental intent for 11 of the 117 children. Because the 117 children were “in ORR custody” as of November 6, 2018, none of them were reunified with a parent, released to a family member other than a parent, or released to a sponsor who is not a family member.²⁰

The data reporting to the *Ms. L.* court has not included cumulative reporting of discharges of possible children of potential class members who are presently departed from the United States, separate from other data points. Nevertheless, as of November 6, 2018, ORR had discharged 411 possible children of potential *Ms. L.* class members who were presently departed from the United States. One hundred and sixty of the 411 children were reunified with a parent. Eighty-seven of the 411 children were discharged to a Category 2 sponsor, meaning an immediate relative, such as a brother, sister, aunt, uncle, grandparent, or first cousin. Thirty-four of the 411 children were discharged to a Category 3 sponsor, meaning a distant relative or an unrelated adult individual.

ORR POLICY FOR SEXUAL ABUSE ALLEGATIONS

The language in the Appropriations Act on sexual abuse is as follows:

Provided further, that such plan shall provide detailed information regarding the procedures the Administration follows when child sexual abuse is alleged at facilities operated by ORR contractors.

ORR has a zero-tolerance policy for all forms of sexual abuse and sexual harassment in all of its care provider facilities.²¹ Care providers must report sexual abuse, sexual harassment, or inappropriate sexual behavior that occur in ORR-funded programs caring for children immediately but no later than four hours after learning of the allegation.²² Care providers report this information via a sexual abuse significant incident report (SIR). For purposes of a SIR, sexual abuse can include a wide range of allegations, and care providers are trained to over-report out of an abundance of caution.

Care providers report to the U.S. Department of Justice’s Federal Bureau of Investigation and the HHS’ Office of the Inspector General any allegations of sexual abuse that are subject to federal reporting laws or could constitute violations of federal law. Sexual abuse is defined at 34 U.S.C. § 20341 and in ORR regulations at 45 C.F.R. § 411.6.

Care providers also must follow state licensing requirements to report allegations of sexual harassment and inappropriate sexual behavior. Care providers report allegations of sexual abuse to ORR, child protective services (CPS), and the state licensing agency. In the case of a sexual

²⁰ *Id.*

²¹ UAC Policy Guide (2018), Section 4.1.1, Sexual Abuse.

²² UAC Policy Guide (2018), Section 4.10.2, Care Provider Reporting Requirements.

abuse allegation involving minors, CPS or state licensing may cross-report to local law enforcement. If an allegation involves an adult, the care provider must independently notify local law enforcement.

If a sexual abuse allegation involves a staff member, the care provider is required by regulation to suspend the staff member from all duties that would provide the staff member with access to UAC pending investigation.

ORR policies on sexual abuse and harassment appear on-line in the ORR Policy Guide at section 4: <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>.

ORR also published an interim final rule on the “Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children.”²³

ESTIMATE OF EXPENDITURES IN FY 2018 AND FY 2019

The language in the Appropriations Act for financial information is as follows:

Provided further, that such plan shall include an estimate of expenditures in fiscal year 2018 and an estimate of anticipated expenditures in fiscal year 2019 related to housing children who were separated from their parents at the border as well as activities to reunify such children with their parents.

The estimates of expenditures in FY 2018 and FY 2019 related to the care and reunification (or other appropriate discharge) of possible children of potential *Ms. L.* class members is below. The estimates are based on 2,667 minors identified as possible children of potential *Ms. L.* class members. ORR estimates the shelter costs, including clothing, education, recreation, and food at \$58,800,000. The estimated DNA screening costs are \$1,400,000.²⁴ The estimated medical services are \$2,670,000. The estimated legal services are \$4,010,000. The estimated case management and program support costs are \$13,470,000.²⁵ As of November 1, 2018, the total estimated cost is \$80,350,000, or four percent of the total amount of funds obligated for the UAC program in FY 2018. This cost is only a small part of total UAC costs in FY 2018. The costs incurred are ongoing as separated children remain in ORR custody.

Number of Children	Average Days in ORR Care - per child	Estimated Shelter Costs - including Education and Food	Estimated DNA Screening	Estimated Medical Services	Estimated Legal Services	Case Management and Program Support	Total Estimated Cost
2,667	83	\$58,800,000	\$1,400,000	\$2,670,000	\$4,010,000	\$13,470,000	\$80,350,000

²³ 45 CFR Part 411.

²⁴ DNA testing is utilized to verify parentage for children and parents where authenticated documents (such as birth certificates) are unavailable.

²⁵ This includes funding ORR reimbursed HHS/ASPR: \$3,500,000 for assistance in reunification costs; transportation costs to reunification sites; and costs incurred by grantees and contractors.

CONCLUSION

HHS and its interagency partners created reunification plans to meet the orders issued by the court in *Ms. L*. The plans continue to be executed to finish any remaining reunifications of *Ms. L* class members. As of November 6, 2018, there were only 25 possible children of potential class members in ORR care who had not been reunified with their parents. Those 25 children do not overlap with any of the 99 children in ORR care with a parent presently departed from the United States whose intent not to reunify was confirmed by the ACLU. Nor do they overlap with any of the 17 children in ORR care with a parent in the United States who has indicated an intent not to reunify. When a parent indicates an intent not to reunify, ORR discharges the child to a sponsor pursuant to its ordinary TVPRA processes (which generally involve further vetting and may take longer to complete than a reunification under the *Ms. L* court's orders).

As of November 6, 2018, more than 92 percent of the possible children of potential class members in *Ms. L* have been reunified or otherwise appropriately discharged.