



# Unaccompanied Minors at the Border

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## Key Points

- Unaccompanied minors are not being kept in “concentration camps” at the U.S. border. They are being processed and released to sponsors as fast as overwhelmed federal agencies can manage.
- The Trump administration policies represent continuity with previous administrations. The basic statutory framework for processing unaccompanied minors has been in place for 16 years.
- Federal facilities are at capacity and the agencies responsible for processing and releasing minors are overwhelmed, with the result that some minors have been in federal custody longer than allowed by law.
- Many of the minors are being released to parents already living in the United States, many of them here illegally.
- Because of the perception among many migrants that arriving at the U.S. border with a child will guarantee entry into the country, minors are at risk of being exploited for this purpose.

## Introduction

The treatment of minors apprehended at the U.S.-Mexico border without a parent or legal guardian has become a hot-button issue in the debate over the migrant crisis. Critics decry what they call “concentration camps” and the practice of putting “kids in cages.” However, federal policy on the treatment of unaccompanied alien children (UACs) has remained unchanged from the Obama administration, as has federal statute. U.S. authorities are currently caring for record numbers of minors coming into their custody, often by crossing the border with a group of families and other minors who turn themselves in to the U.S. Border Patrol.

How these minors are treated, and why they are processed the way they are, is not well understood by the American public, in part because of sensationalized media coverage of the crisis, and in part because the policies in question are complex, as is the entire American immigration system. This policy perspective will give an overview of the policies that govern the treatment of UACs in an attempt to clarify what is really happening to minors at the border, and why.

## Background

Within 72 hours of being apprehended by Border Patrol, UACs are supposed to be transferred from the custody of U.S. Customs and Border Protection (CBP) to the U.S. Department of Health and Human Services’ (HHS) Office of Refugee Resettlement (ORR). This agency has had jurisdiction over UACs since the passage of the Homeland Security Act of 2002 ([6 U.S.C. § 279](#)).

Once in ORR care, UACs are either housed in a shelter, transferred to foster care, or released to a parent, legal guardian, or relative. In addition, they are placed in removal proceedings. Shelters are state-licensed residential care centers funded by ORR and distinct from secure facilities, which may only be used under certain circumstances. It is the responsibility of the residential care provider to assess the suitability of potential sponsors, conduct an intake assessment within 24 hours of the minor’s arrival, and provide education and health care. Secure facilities are reserved for minors who are charged with a crime, commit or threaten to commit violence, or display unacceptably disruptive behavior in a shelter. Secure facilities may also be used in cases where, because of a sudden influx of minors, there is not enough bed space at nonsecure facilities. According to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), UACs are to be “promptly placed in the least restrictive setting that is in the best interest of the child” ([8 U.S.C. § 1232\(c\)\(2\)](#)).

However, CBP and ORR have been dealing with an influx of children for much of the last fiscal year. In June 2019, the average number of children in U.S. custody was 13,027, up from 8,647 during the same period in 2018. The vast majority of these are males between the ages of 15 and 17, and the average time in custody before being discharged is 45 days. Of the more than 8,700 minors discharged in June, about half were transferred to the care of a parent or legal guardian and half to that of an immediate relative. Nearly 700 were released to another sponsor,

either a distant relative or an unrelated adult ([U.S. Department of Health and Human Services](#)).

## The Current Crisis

The Trump administration's zero-tolerance policy, adopted in April 2018, meant that any adult attempting to cross the border illegally would be criminally prosecuted. In practice, this meant parents with children—"family units" in CBP parlance—were separated. The parents were transferred to Immigration and Customs Enforcement (ICE) for prosecution and removal, and the children were reclassified as UACs and transferred to the custody of ORR.

Such family separations had happened prior to April 2018 and in fact had been increasing since the end of 2016. ORR officials have said they were aware of increased family separations prior to April 2018, and that the percentage of children known to have been separated from their parents increased by more than tenfold between November 2016 and August 2017 ([Government Accountability Office, 7](#)). Still, the zero-tolerance policy caused a sharp increase in the number of separations. Between April 2018 and June 2018, when family separations were ended as a matter of policy, some 2,737 children were separated from their parents. On June 26, 2018, a federal judge ordered the administration to cease family separation and reunite all separated families. By September 10, 2018, most of the children who had been separated were reunited, the vast majority with their parents ([Government Accountability Office, 14](#)).

According to Trump administration officials, the family separation policy was designed as a deterrent to families seeking asylum by crossing the border illegally and turning themselves in to Border Patrol ([Burnett](#)). It resulted in more minors being classified as UACs and therefore coming into ORR custody at a time when UACs were already on the rise. Indeed, in the first nine months of the current fiscal year, more than 63,600 UACs were apprehended at the southwest border, a sharp increase over recent years—less than 42,000 were apprehended in all of 2017—and nearly as many minors as were apprehended at the beginning of the migrant crisis in 2014 ([U.S. Customs and Border Protection](#)). These minors, like the record numbers of families apprehended at the border this year, mostly hail from the Northern Triangle countries of Guatemala, Honduras, and El Salvador.

As the total number of UACs has increased, locating and properly vetting parents and relatives, including conducting home studies and background checks, has consumed an increasing share of ORR resources. The result is that UACs have remained in custody for longer, with ORR facilities at or near capacity. This, in turn, has made it impossible for CBP to transfer minors to ORR within 72 hours as

mandated by federal law. Recent news reports have chronicled how some UACs have been held for a week or more in CBP facilities that are designed for short-term processing and lack basic provisions such as adequate bedding and toiletries. As one CBP official in the Rio Grande Valley told the *Washington Post* in May, "I don't have any beds, because we're meant to be short-term processing — not even holding. I have stools and benches, but I have no beds. . . . Our facilities are not built for long-term holding, and they're certainly not built to house children for very long at all" ([Hauslohner and Sacchetti](#)).

Before a UAC can be released to a parent, legal guardian, relative, or any other sponsor, ORR must conduct a background investigation to verify the identity of the adult assuming custody and ensure the person has no record of abusive behavior. Potential sponsors, often initially identified by the UACs themselves, must fill out a form detailing their relationship with the UAC, and ORR can consult with the UAC, the consulate of the UAC's home country, and request a home study, although these are relatively rare—for example, of the nearly 35,000 UACs released to sponsors in 2018, ORR conducted just 3,641 home studies ([Office of Refugee Resettlement 2019b; 2019a](#)). Beginning in June 2018, ORR implemented more rigorous background checks, which required the collection of fingerprints from all potential sponsors, including parents, as well as all adults in the household. The fingerprints were then transferred to ICE to conduct criminal and immigration status checks on ORR's behalf. But in December 2018, ORR decided to limit these criminal and immigration status checks to the potential sponsor unless there were specific concerns about adults in the household raised by a public records check or in cases where a home study was ordered ([Government Accountability Office, 6](#)).

However, background checks do not prevent UACs from being released to parents or adult sponsors who are present in the United States illegally. In fact, it is quite common for minors to be released to sponsors who have no legal status or are in removal proceedings. At a Senate Homeland Security and Governmental Affairs Committee (HSGAC) hearing in April 2019, Sen. Ron Johnson cited statistics showing that between July 2018 and January 2019, 23,445 UACs were released to the care of sponsors. Of those, 18,459 (78.7 percent) had no legal status and 638 (2.7 percent) were in removal proceedings. Only 1,008 were U.S. citizens ([Arthur](#)). This is not a new phenomenon. The Associated Press has reported that between February 2014 and September 2015, of the 71,000 UACs, most of them Central American, placed with sponsors, 80 percent were released to adults who were in the country illegally ([Taxin](#)).

Although the administration ended its family separation policy in June 2018, under certain circumstances, CBP still separates minors and adults traveling together. Since the administration ended family separation as a policy, more than 900 minors have been separated from parents or adults with whom they were traveling ([Jordan](#)). In July, acting Homeland Security Secretary Kevin McAleenan told the House Oversight and Reform Committee that minors are separated from adults when it is not clear that the adult is the parent, when there are concerns or questions about the minor's welfare, or when the parent has a criminal history.

Such concerns are not without merit. Because of the perception among many migrants—fueled by human smuggling networks and cartels that profit off illegal immigration—that arriving at the U.S. border with a child will guarantee entry into the country, minors are at risk of being exploited for this purpose. Indeed, CBP acting Commissioner Mark Morgan testified in July before the Senate Homeland Security and Governmental Affairs Committee that his agency has identified 5,800 “fake families,” in which the adult is not the parent of the minor ([Morgan](#)). This practice has also been reported by the news media. A report published in June by the *San Diego Union-Tribune* chronicled efforts by Tijuana law enforcement to investigate groups of migrant men offering to purchase children from single migrant mothers to cross into the United States ([Fry](#)). Immigration officials on the southwest border have also reported cases where a minor is “recycled” or passed across the border multiple times to adults posing as a parent. Officials blame transnational criminal organizations that orchestrate and profit off the practice ([Montes](#)).

## Conclusion

As noted above, many of the UACs now being released are being released to parents living in the United States. This fact exposes a strange irony in HHS policy. According to federal law, a UAC is someone who has no legal status in

the United States, is under the age of 18, and has no parent or legal guardian in the United States, or no parent or legal guardian in the United States who is able to care for them ([6 U.S.C. § 279\(g\)\(2\)](#)). According to this definition, none of the 3,760 UACs released to a parent or legal guardian in June should have been classified as a UAC, because they in fact had a parent or legal guardian in the United States who was able to care for them. Once it was determined that they had a parent in the United States, it would have been more accurate to classify them as a family unit. The practice of classifying them as UACs appears to arise not from federal statute but from ORR's internal UAC “policy guide” ([Government Accountability Office, 6](#)).

With the end of the Trump administration's family separation policy in June 2018, the treatment of UACs apprehended at the border has, as a matter of policy, been conducted in exactly the same manner as it was during the Obama administration. Where it has varied is largely in the length of time UACs are in CBP and ORR custody. However, this is not a function of policy but of capacity constraints and limited resources. The last statutory changes to how UACs are to be treated were passed in the Violence Against Women Reauthorization Act of 2013 and dealt with peripheral matters like the appointment of child advocates for UACs, a GAO study of the effectiveness of border screenings, and policies for UACs who turn 18 while in federal custody.

To be sure, conditions in CBP facilities, as well as the length of time some UACs are in CBP custody, represent ongoing challenges for the federal government. However, ORR faces a dilemma: carefully vet UAC sponsors, which extends the amount of time a UAC is in ORR care, or quickly release UACs to family members or relatives without adequate vetting, including the ability of the sponsor to ensure the UAC will appear at all removal proceedings. ★

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