



FAQ: PROTECTING UNACCOMPANIED CHILDREN FROM TRAFFICKING OR OTHER HARM

Updated July 8, 2016

What happens to children when they cross the border into the United States? Are they always taken into custody by U.S. authorities?

If children are encountered crossing into the United States without permission by Custom and Border Protection (CBP) within the Department of Homeland Security (DHS), they are always taken into custody. The overwhelming majority, 93% in Fiscal Year 2014, are apprehended directly by U.S. Border Patrol (USBP) between official Ports of Entry. Other children are encountered at the Ports of Entry, which are monitored by CBP's Office of Field Operations (OFO) officers. Once children are apprehended, they are taken to short-term holding cells at either USBP stations or OFO stations where they are processed. This includes obtaining their demographic information and interviewing them about how and why they came to the United States. If they are unaccompanied and from non-contiguous countries, children are then transferred to the Office of Refugee Resettlement (ORR) for temporary placement pending family reunification.

According to the *Flores* Settlement agreement and the Trafficking Victims Protection Reauthorization Act (TVPRA), unaccompanied children must be moved out of CBP short-term holding locations and transferred to ORR custody within 72 hours of their apprehension.¹ During the summer of 2014, when an unprecedented number of children were fleeing from Central America and being apprehended at the U.S. border, CBP was unable to comply with this timeframe. Today, as the numbers of children being apprehended at the U.S. border are much lower, CBP is generally complying with this timeframe. Likewise, ORR now has the bed space to accept children more quickly from CBP custody.

For a detailed overview of the treatment of unaccompanied children, please read the LIRS report [At the Crossroads for Unaccompanied Migrant Children](#).

How is this process different for children from contiguous countries (Mexico and Canada)?

Pursuant to the terms of the TVPRA, children from contiguous countries are treated differently than those from non-contiguous countries. Thus, the most important differentiation that CBP agents have to make is the nationality of an apprehended child. Children from Mexico and Canada, unlike other children, are offered fewer due process protections. While the screening in the TVPRA was intended to be protective, DHS delegated this responsibility to CBP agents instead of immigration and child welfare professionals. The TVPRA only permits the repatriation of Mexican and Canadian children if a child:

1. Is NOT a trafficking victim;
2. Is NOT at risk of trafficking if returned to their home country;
3. Has NO credible fear of return to their home country; AND

¹ *Flores* Settlement Agreement is a binding, consent agreement that establishes minimum standards for all children in federal immigration custody. The TVPRA, however, only applies to unaccompanied children.

4. CAN make an independent decision to withdraw their application of admission.

Unfortunately, the failure by CBP to adequately screen Mexican children for potential trafficking risks and credible fear of return has been documented by both the [United Nations High Commissioner for Human Rights](#) (UNHCR) and the U.S. [Government Accountability Office](#) . It is the position of LIRS and other human rights and child welfare organizations that all children should be adequately screened and interviewed by qualified professionals with child welfare and immigration law expertise before removal. Without thorough, child-appropriate screening, children may be returned to traffickers and other dangerous situations in their home country. See [this](#) sign-on letter for more information.

For a chart of this screening process, please see LIRS' [Apprehension Diagram for Unaccompanied Children in At the Crossroads](#).

What happens after a child is transferred to ORR custody? What screening is done for trafficking or other harm?

Once a child is transferred to ORR custody, a licensed, bi-lingual clinician conducts a detailed screening and full psychosocial evaluation. This includes an assessment for a variety of problems, any potential asylum claim and trafficking indicators. Trafficking screening can be incredibly challenging as many children do not realize that they were with traffickers during their journey. For instance, it is not uncommon for a girl to believe that she was brought to the United States by her adult boyfriend to get married, when in fact he is trafficking her into prostitution. The vulnerability of children and their often incomplete understanding of the situation requires ORR staff, legal representatives and social service providers to develop highly advanced skills for interviewing children and asking appropriate and detailed questions to uncover trafficking situations.

Regardless of whether trafficking indicators are uncovered while the child is in ORR custody, there may be no guarantee that trafficking will not occur once they are released. This is one reason why LIRS and other service providers have long advocated that full background checks (including Federal Bureau of Investigation (FBI) and Children Abuse/Neglect (CA/N) checks) are performed for *all* sponsors and that post-release case management services be provided to all children upon release. Currently, only a minority of children receive post-release services.

Also upon placement in ORR custody, children receive full medical check-ups, vaccinations, and counseling; as well, ORR begins the process of family reunification or placement with a suitable sponsor or foster care environment. To remain in compliance with the Prison Rape Elimination Act (PREA), children are given an orientation on how to prevent, detect and respond to sexual abuse or harassment. Children must also receive information on how to report potential abuse to ORR by using the ORR hotline.

For a chart of this process, please see: [UC Release Decision Tree](#) in *At the Crossroads*.

How does ORR verify that sponsors are truly a child's family?

First Step: Family Reunification Packet

As part of the family reunification process, ORR requires the completion of a family reunification packet. Sponsors are required to provide photo identification, a copy of their own birth certificate, a copy of the child's birth certificate and documents to prove the child's relationship to the sponsor. If the sponsor is not a child's parent or legal guardian, then they must submit a proof of address. These documents are detailed

on the ORR [website](#). Unfortunately, in the past, traffickers have provided fraudulent documents to sponsor children despite the efforts ORR has made to verify the identity of anyone claiming a familial relationship. This is why LIRS and other organizations believe that CA/N checks and FBI crime history checks (digital fingerprinting) should be performed for every sponsor, whenever feasible.

In 2014, ORR helped expedite the reunification process by allowing parents to complete the family reunification packet over the phone, so long as they provided copies of the other supporting documents.

Second Step: Sponsor Background Checks

ORR uses a range of [background checks](#) to determine if a child would be at risk under the care of a sponsor. In some cases ORR may conduct screening of other adult household members. Among these checks are:

- A **public records check** to determine if the individual has a criminal history;
- A **sex offender registry check** to determine if the individual is a documented sex offender;
- An **immigration status check through the Central Index System (CIS)** to determine if an individual has immigration proceedings that could lead to their removal from the U.S.;
- A **national FBI criminal history (digital fingerprint)** check to determine if the individual has a criminal history; *or* an **FBI identification index** used in lieu of a FBI criminal history check when fingerprints cannot be obtained; and
- A **Child Abuse/Neglect check (CA/N check)** to determine if there is a history of child abuse or neglect, and a state criminal history repository check to determine if there are further criminal offenses. These checks are done in every state where the sponsor has reported that they have lived.

LIRS provides sponsors with a safe place for: fingerprinting services, informational packages, notary services and additional support through our [Safe Release Support](#) program.

Third Step: Child and Sponsor Interviews & Assessment of Risk

ORR requires case managers to verify a potential sponsor's identity and relationship to the child before determining whether the individual is an appropriate sponsor. This includes interviewing both the child and the potential sponsor to validate the relationship between the child and the sponsor. During this interview, ORR considers different risk factors to determine if the sponsor is suitable for the child. These risk factors include the sponsor's motivation for sponsoring the child, the wishes of the parent, the child's wishes, the sponsor's understanding of the child's needs, as well as any risk factors or special concerns the unaccompanied child might have. The screening is intended to ensure that children are placed in the safest environment possible and that they are not at risk of being abused or exploited under the sponsor's care.

Below is a chart of the categories of sponsors and the corresponding risks and/or TVPRA requirements that would trigger each type of background check. (Current policy as of April 2016).

SPONSOR TYPE	RISK FACTORS	BACKGROUND CHECK	LENGTH OF TIME FOR CHECK
Category 1 Parents and Legal Guardians & Category 2 Immediate adult relatives such as siblings, aunts, uncles, grandparents, or first cousins	Category 1 AND no risk factors with child or sponsor.	<ul style="list-style-type: none"> Public Records and Sex Offender Registry check on all sponsors and any adult household members 	Within 7-15 days depending on the circumstances.
	Category 2 AND no risk factors with child or sponsor.	<ul style="list-style-type: none"> Public Records and Sex Offender Registry check Immigration Status check FBI/fingerprints 	<ul style="list-style-type: none"> FBI checks can take anywhere from 4-5 days on average (longer in certain circumstances). CA/N checks* can take anywhere from 4 weeks to 8 weeks (depending on state backlog/priorities and sponsor's comprehension of the paperwork). Home studies w/ background checks may take longer depending on backlog with home studies and CA/N checks.
	Category 1 & 2 AND a documented risk factor/ TVPRA mandated home study.	<ul style="list-style-type: none"> Public Records and Sex Offender Registry check Immigration Status check FBI/fingerprints Child Abuse/Neglect check (CA/N)—home study cases 	
Category 3 Distant relatives and unrelated adults	ALL Category 3	<ul style="list-style-type: none"> Public Records and Sex Offender Registry check Immigration Status check Child Abuse/Neglect check (CA/N) FBI/fingerprints 	

**May be waived in certain circumstances, except in the states of NM or LA.*

Has ORR's policy towards sponsors changed in recent years?

During 2014, because of the significant numbers of arriving unaccompanied children and no commensurate increase in funding, ORR developed alternative safe release procedures to stretch post-release follow-up services. This included releasing a child with a safety plan or release with a follow-up phone call, to ascertain if post-release services were needed. While this permitted some type of follow-up there was no way for a child to have a private conversation with a social worker and ensure the child was in a safe place. This is one reason why LIRS has advocated that ORR have full funding including emergency funds so that when safe release concerns arise ORR can provide the necessary services upon release to ensure safety and community support, while also ensuring family unity.

In early 2014, ORR issued an **expedited release process** that treated category 2 and category 3 sponsors exactly like category 1 sponsors. This allowed ORR to forgo certain background checks, including

fingerprinting for criminal history and CA/N checks, if there were no risk factors or TVPRA requirements for home studies. These new policies continued to require that sponsors provide documented evidence of their relationship to the child, such as the child's birth certificate or a marriage license to prove a relationship. When the number of children arriving at the border declined at the end of Fiscal Year 2014 and beginning of Fiscal Year 2015, ORR reversed its [policy](#) on this requirement.

In 2015, ORR expanded **post-release services** (as needed/requested based on sponsor reports on ORR Sponsor Helpline) and required it for all category 3 sponsors, and expanded home studies for category 3 sponsors who sponsored more than 1 unaccompanied child.

In early 2015, ORR also revised their policy on **CA/N checks**. ORR reversed its policy that children could be released to sponsors with a CA/N check pending (because they take over 4 weeks); however, waits for CA/N checks increased the lengths of stay in ORR custody up to 4-8 weeks. By late 2015, ORR permitted a procedure for waiving CA/N checks when there was no indication of child abuse or neglect.

After the investigation into the release of 8 young boys into the hands of a labor trafficking ring in Ohio in early 2016,² ORR strengthened their policies for **screening of potential sponsors**, including steps to fix the data check process in the UC Portal for sponsor's address, enhancing background check requirements for category 2 and 3 sponsors, requests for additional information or action when the sponsor's criminal history is questioned, and conducting a safety and well-being follow-up call 30 days after the child has been released to the sponsor. LIRS welcomes these improvements as a commitment to increased protections for children, though unfortunately many of these improvements are contingent upon the provision of adequate resources and funding.

While LIRS welcomes these changes that improve child protection while safeguarding family unity, LIRS believes that all children should have access to post-release case management services and all sponsors should be thoroughly vetted through CA/N and FBI background checks.

Does ORR do a home study on every sponsor?

No. During the family reunification process, a small percentage of children are required under the TVPRA to have a home study. These children include those who are victims of severe trafficking, children with special needs or disabilities, children who have been victims of physical or sexual abuse and sponsors who present a risk of abuse, maltreatment, exploitation or trafficking. In 2015, ORR changed its policies to require home studies before releasing any children to a non-relative sponsor who is seeking to sponsor multiple children or who is looking to sponsor an additional child (following a previous child reunification).

Children who receive a home study are required to have post-release services for the duration of their immigration court proceeding.

Do all children get post-release services through ORR?

No. Only children who have a home study as well as children who are deemed vulnerable or in need of extra services receive post-release assistance. In Fiscal Year 2014, ORR reunified 60% of unaccompanied children with parents and 30% with other family members, with as many as 53,518 placed in homes while

² Abbie VanSickle "Overwhelmed federal officials released immigrant teens to traffickers in 2014" January 26, 2016. Available at: https://www.washingtonpost.com/national/failures-in-handling-unaccompanied-migrant-minors-have-led-to-trafficking/2016/01/26/c47de164-c138-11e5-9443-7074c3645405_story.html

children's removal cases proceeded. Yet ORR was only able to provide home studies for 1,434 children (or 2.5%), and post-release services to 3,989 children (or 7%). In Fiscal Year 2015, 1,895 children received home studies (or 5.6%) and 8,618 received post-release services (or 25.5%).³ As of September 2015 all children released to a sponsor are to receive a Safety and Well Being Follow Up Call 30 days after the release date to determine whether the child is still residing with the sponsor, is enrolled and attending school, is aware of upcoming court dates, and is safe.

The TVPRA only mandates post-release services for children who receive a home study. ORR partners with organizations, like LIRS, to provide these services. Not only do post-release services provide critical social services to children, these services also help link children to counsel, which increases their appearance rate in court. This is why LIRS believes that ORR should be fully funded to provide short-term, post-release services for all children released from ORR care.

Must a child's sponsor have legal immigration status in the United States?

No. Sponsors do not have to have legal immigration status for a child to be released to them. If sponsors were required to have legal immigration status, many families would be prevented from reunifying, circumventing parental rights and impacting a child's developmental needs and best interests by living with his or her family. Regardless, a child still has to appear for immigration court proceedings and the vast majority of children do show up for their hearings. If they have counsel or post-release case management services, children are even more likely to attend their immigration court hearings.

For more information on children's access to counsel and services upon release, look at this [backgrounder](#).

Other than providing care for the children, what else is a sponsor responsible for?

In addition to caring for the child, a sponsor is responsible for ensuring that the child attends his or her immigration court proceedings, is enrolled in school, and receives any additional care he or she might need. ORR's [website](#) clearly details the obligations of sponsors. All unaccompanied children apprehended and placed in ORR custody are put into removal proceedings. Upon release from ORR custody, ICE files a Notice to Appear in the immigration court that is in the same jurisdiction as the child's sponsor (i.e., the jurisdiction where the child now lives). Additionally, sponsors are informed of their obligations to enroll the child in school and bring the child to immigration court proceedings before a child can be released to them. Children released to sponsors have a high appearance rate in immigration court and that rate increases even more when the child has adequate legal representation and/or receives case management services (which help identify legal services).

For more information please contact:

Jessica Jones, Policy Counsel, LIRS, jjones@lirs.org or 202-626-3850

³ Facts and Data, Office of Refugee Resettlement, last reviewed February 10, 2016. Available at: <http://www.acf.hhs.gov/programs/orr/about/ucs/facts-and-data>