



A child stands with her family during a protest outside of the Homestead Temporary Shelter for Unaccompanied Children on Sunday, June 16, 2019, in Homestead, Florida.

Compassion, Not Confinement

How States and Localities Can Help Ensure Humane Housing for Unaccompanied Immigrant Children Awaiting Family Reunification

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The need

In the first five months of 2021, about 65,000 children were apprehended by U.S. Customs and Border Protection (CBP) after arriving in the United States unaccompanied by a parent or legal guardian.¹ These children come to the United States seeking protection, stability, and a chance to reunite with their families, but instead of receiving a humane reception, they are processed at federally run stations and incarcerated in jail-like conditions with often freezing temperatures, inadequate food and water, limited access to showers and hygiene products, and no access to private toilets, sinks, or beds.²

Rather than incarcerating unaccompanied children in such awful conditions, there is another way: to urge the federal government to respond to their arrival with compassion, not confinement, and to work as quickly as possible to reunify them with family and kin in the United States. This brief provides concrete recommendations to states and localities to intervene and use their authority toward this goal.

Ninety percent of children who arrive unaccompanied are eventually reunited with family members in this country.³ With limited exceptions, federal law gives the U.S. Department of Homeland Security (DHS) 72 hours to transfer unaccompanied children from CBP holding areas to the custody of the Office of Refugee Resettlement (ORR), which normally takes the form of state-licensed residential or foster care placements while children await reunification.⁴ Because of this state licensing requirement, states and localities also play a critical role in safeguarding the rights of children in federal immigration custody. Through licensing enforcement, states and localities can set standards for how such housing operates, monitor whether these standards are being met, and help to address and resolve compliance issues. Additionally, states and localities can urge the federal government to adopt an evidence-based child welfare approach and support the quick release and reunification of children with kinship caregivers and provide services to them post-release.

However, when there is an increase in the number of unaccompanied children arriving in the United States and ORR needs more time to locate licensed state facilities for their care, ORR can temporarily place children in emergency sites—known as Emergency Intake Sites (EISs) or emergency reception centers (ERCs), which are unlicensed facilities anywhere ORR can find space, including using U.S. Department of Defense bases or U.S. Department of Labor camps or leasing space from state agencies or private entities. Although ORR is directed to move children into licensed care “as expeditiously as possible,” no set time frame dictates this process, and children languish in horrific conditions.⁵

States and localities can take steps to protect unaccompanied children

As the number of children arriving unaccompanied to the United States has increased in recent months, the use of EISs and ERCs has swelled. At the moment, thousands of children are housed in these untenable conditions. So, what can states and localities do—both immediately and long-term—to protect unaccompanied children?

1 Call on the federal government to accelerate the reunification process for unaccompanied children and provide expertise from their own child welfare systems.

→ States and localities that have pioneered quick reunification in their own state child welfare systems can share those best practices with ORR so that children are placed in less than a week, as opposed to the federal government’s current 30-day average.⁶

→ States and localities can also temporarily assign local child welfare experts to assist with reunification processing until the federal government is fully staffed to perform this function at scale.

2 Proactively identify and offer to ORR available spaces in state- and local-licensed group housing facilities.

States and localities should continuously scour their inventory of licensed congregate and foster care placements in their state child welfare systems to identify available spots and notify ORR of that availability. States and localities should actively discourage ORR from placing children in EISs and ERCs if there are available licensed slots within local settings.

3 If no licensed local slots are available, use oversight and authority to require that ORR’s emergency sites comply with state health and welfare codes and best practices for child welfare.

States and localities should require any emergency facilities operating within their jurisdiction to comply with state standards and codes for basic water, sanitation, air quality, and living conditions, including sufficient bathrooms, showers, and medical care (particularly in light of COVID-19).

4 Promote the following nine standards of care to help ORR meet children’s critical needs while in emergency placement.

- **Reunification services must be in place before children arrive.** States or localities should require ORR to set up on-site reunification case management services that trace and vet children’s family members *before* emergency sites open. If ORR does not have capacity to provide case management services, states and localities can bridge staffing gaps by providing those services through their child welfare departments as a reimbursable cost. Los Angeles County’s Department of Children and Families pioneered this approach and serves as a model for other EISs and ERCs.⁷
- **A full range of health services must be in place before children arrive.** States or localities should also ensure that health services that meet local and federal guidelines are in place prior to opening, including medical care overseen by a pediatrician, mental health care, and dental care, as well as reproductive rights education and services and special arrangements to curb the spread of COVID-19.
- **Programming, including educational and recreational services, must be in place before children arrive.** Educational and recreational services, including bilingual programming, should meet academic standards set by each state and/or school district, and children should receive educational services and recreational opportunities within 48 hours of their arrival at an emergency facility.
- **Children in custody must have access to video and/or telephone calls with family.** On at least a daily basis, facilities should provide access for children to make and receive live video or phone calls with family members in a private setting, regardless of whether the family member is in the United States or a home country.
- **States and localities should employ oversight and transparency mechanisms to ensure compliance with standards of care.** States and localities should set up formal oversight and transparency bodies to monitor emergency facilities and request that ORR shares information related to the well-being of children in custody, including average length of stay and access to and receipt of educational services, medical and mental health services, legal services, and recreation. This data should be made public to encourage transparency and ongoing oversight.
- **Experienced legal services providers should have access to the site and provide services to children.** As part of the intake and orientation process, legal services providers should meet with all children in custody to identify particularly vulnerable children who need immediate, direct legal representation or referrals to other services. Even for children who do not have the benefit of counsel, legal services providers should deliver daily interactive, age-appropriate, trauma-informed know your rights presentations (“KYR”) on site so that children are aware of their rights in the United States while they are detained and after their release.

- **Settings should prioritize freedom of movement, natural light, outdoor space, and private space where children can relax.** Local governments should offer settings that allow children to feel comfortable and decompress, and they should prioritize designating sites such as college dormitories, summer camps, and fairgrounds as EISs or ERCs instead of more institutional settings. Multiple smaller-scale settings should be considered rather than large congregate settings, especially due to COVID-19.
- **Sites should prioritize language access needs of children.** At a minimum, all staff in emergency settings should be fluent in English and Spanish. Given the additional challenge of providing reunification services in a language other than English or Spanish, Indigenous children and non-English and non-Spanish speakers should not be housed at emergency facilities.
- **States and localities should plan from the outset to only allow temporary operation of emergency sites.** Emergency facilities should be closed at most three months from the date of opening. During this time, the U.S. Department of Health and Human Services and ORR can build transitional foster care bed capacity and develop more robust, expedited reunification procedures.

Endnotes

- 1 U.S. Customs and Border Protection, Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last accessed June 10, 2021).
- 2 Americans for Immigrant Justice, *Do My Rights Matter? The Mistreatment of Unaccompanied Children in CBP Custody* (Miami: Americans for Immigrant Justice, 2020), <https://perma.cc/G9UP-8VGX>.
- 3 Nick Miroff, Andrew Ba Tran, and Leslie Shapiro, “Hundreds of Minors are Crossing the Border Each Day Without Their Parents. Who are They?,” *Washington Post*, March 11, 2021, <https://www.washingtonpost.com/nation/2021/03/11/unaccompanied-minors-immigrants-border/>.
- 4 The Flores Settlement Agreement, signed in 1997, establishes the basic standards governing the detention and release of all children in federal immigration custody. In general, the Flores Settlement Agreement requires the government to place all children in state-licensed facilities within three days of their entry into federal immigration custody. See *Flores v. Reno*, Case No. CV85-4544-RJK (C.D. Cal. 1997) Stipulated Settlement Agreement, ¶¶ 12.A, 19.
- 5 In cases of “an emergency or influx of minors into the United States,” the Flores Settlement Agreement provides a limited exception to the requirement that children go to state-licensed care within 72 hours, instructing the government to place children in state-licensed facilities “as expeditiously as possible.” *Ibid.*, ¶ 12.A. In these cases, ORR may use “influx care facilities,” which “may not be licensed or may be exempted from licensing requirements by State and/or local licensing agencies” due to their emergency nature. See ORR, “Children Entering the United States Unaccompanied,” Section 7.1, September 2019, <https://perma.cc/4QS7-DE79>.
- 6 See U.S. Department of Health and Human Services, “Latest UC Data – FY 2021,” <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2021/index.html> (last updated May 7, 2021) (reporting that the average length of care for unaccompanied children discharged from ORR custody, as of March 31, 2021, was 35 days).
- 7 Los Angeles County Supervisor Hilda L. Solis, “Frequently Asked Questions – Pomona Fairplex Serving as Emergency Intake Site,” April 30, 2021, <https://perma.cc/VT2U-27VM>.

For more information

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