



**WOMEN'S
REFUGEE
COMMISSION**



HALFWAY HOME: Unaccompanied Children in Immigration Custody

EXECUTIVE SUMMARY

Women's Refugee Commission

Orrick Herrington & Sutcliffe LLP

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"I didn't think I would ever find a place like this. But I did. They are taking care of me and I have the things I need."

"I am frustrated from being locked up for almost a year. I really can't stand being locked up anymore. I don't need therapy. I need to go home. I haven't spoken to my mother in months. Her phone is cut off."

Thousands of children migrate to the United States each year. Many of these children come fleeing war, violence, abuse or natural disaster; others come to reunite with family members already here, or to seek better lives for themselves. They undertake difficult journeys, often across numerous international borders, and often alone. Unaccompanied children are some of the most vulnerable migrants who cross our borders, and are in need of special protections appropriate for their situation. Yet they face additional hurdles upon arrival. They are placed in custody while their immigration cases proceed through the courts, and they must undergo adversarial immigration proceedings, often without the help of a lawyer or guardian.

In March 2003, the Homeland Security Act (HSA) transferred custody of unaccompanied alien children from the former Immigration and Naturalization Service (INS) to the Office of Refugee Resettlement (ORR). ORR, a division of the Department of Health and Human Services (HHS), created the Division of Unaccompanied Children's Services (DUCS) to provide care and services to this population.

In an effort to assess the effectiveness of the transfer, the Women's Refugee Commission* and the law firm of Orrick, Herrington & Sutcliffe LLP (Orrick) embarked on a landmark study of the conditions of care and confinement for children in immigration proceedings without a parent or guardian. We visited 30 DUCS programs, three facilities where Immigration and Customs Enforcement (ICE) detains children and three Border Patrol stations. In addition, we interviewed staff, attorneys, advocates,

social workers and more than 200 children. In this report, we provide an overview of what life is like for children in DUCS, Border Patrol and ICE custody.

In general, we found that the treatment of most unaccompanied children has greatly improved with the transfer of custody to DUCS. The majority of children are eventually released to parents, relatives or sponsors and a good number of those not eligible for release are held in child-friendly shelter facilities or foster home placements. DUCS has made significant improvements in the quality of medical care, has identified children in need of protection and has created a mechanism to better ensure that children are released to safe environments. In addition, DUCS has created pilot programs to provide legal assistance and guardians *ad litem* to some children. The recent passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) should further enhance protections for children. We conclude that HHS is the most appropriate entity to provide care and custody for unaccompanied children.

However, while important improvements have been made and children are better cared for, the Women's Refugee Commission found that significant child protection challenges remain under the current system. Border Patrol and ICE, which are agencies within the Department of Homeland Security (DHS), continue to detain children in inappropriate facilities. In addition, the DUCS program was based in large part on the old INS model of care and has suffered from growing pains and significant challenges as a result. The transfer of custody to DUCS has shifted service provision away from a criminal justice culture and injected social services into the system; however, the intent of the transfer, which was to decouple prosecution from care, has not been fully realized. The roles of prosecutor and caretaker continue to be interwoven in a manner that interferes with the best interest of children. As a result, today's system of care is in many ways a friendlier face superimposed on the old INS model. In essence, we found that the transfer of custody was incomplete because:

* Formerly the Women's Commission for Refugee Women and Children



Boys held in a cell at the Border Patrol's Fort Brown station in Texas.

- The Department of Homeland Security still serves as the gatekeeper in deciding which children will be transferred to DUCS, and when.
- DHS inappropriately retains custody of some children whom we consider to be unaccompanied.
- DUCS continues in some cases to rely on an institutional model of care that lacks appropriate monitoring and oversight and that fails to protect confidentiality or provide adequate services to all children consistent with child welfare principles.

As a result:

- DHS exerts significant influence over care and custody of unaccompanied children despite the fact that DUCS is the legal custodian for this population.
- Not all unaccompanied children are transferred to DUCS custody, and many who are transferred are not transferred within 72 hours, as mandated by the *Flores* Settlement (see Appendix I).
- Conditions at Border Patrol and ICE facilities remain inappropriate for children.

- Services are compromised by the concentration of DUCS programs in rural areas.
- DUCS inappropriately shares children's information with DHS, undermining children's access to reunification and relief.
- Children's ability to access protection is limited by a lack of legal representation and lack of access to guardians *ad litem*.
- Despite clear procedures, DUCS does not have effective or adequate monitoring practices.
- DUCS does not place all children in the least restrictive setting appropriate for their needs. It has recently been increasing the number of children placed in staff-secure and secure facilities and has few therapeutic programs.

Recommendations

Complete the Transfer of Custody

The Department of Homeland Security (DHS) exerts significant influence over care and custody of unaccompanied children despite the fact that DUCS is the legal custodian for this population and that custody was clearly transferred to DUCS in the Homeland Security Act. DHS is the gatekeeper in determining which children go to DUCS custody. Some children not in the company of a parent remain in DHS custody. DHS' concerns influence DUCS placement decisions and DHS has inappropriate access to information regarding children transferred to DUCS. DHS must relinquish control over matters involving children to the Department of Health and Human Services (HHS). In turn, HHS and the Administration for Children and Families (ACF), as the parent agencies of ORR/DUCS, must assert authority over decisions that impact the health and well-being of the children in its custody, as befits their role as the children's legal custodian, and not allow DHS to encroach upon DUCS' decision-making authority. ACF management/ORR management must continue to work with DHS to solve procedural and policy issues in a way that puts the health and well-being of the child first.

- DHS, HHS, the Department of Justice and the Department of State must implement all provisions of the William Wilberforce Trafficking



Children held at the Fort Brown Border Patrol facility sleep on cold floors, with minimal bedding.

Victims Protection Reauthorization Act of 2008 (TVPRA). Congress must provide adequate resources to enable this implementation.

- ORR, ICE and Customs and Border Patrol (CBP) must finalize the Joint Operations Manual to clarify the division of roles and responsibilities and to increase the transparency of their procedures.
- ICE, Border Patrol and ORR must clarify the definition of unaccompanied alien child and age determination techniques so that no children remain in ICE or Border Patrol custody for more than 72 hours unless in the physical company of their parents. Children who are detained or apprehended with their parents should be released or placed into alternatives as a family unit.
- DHS, in partnership with HHS, should utilize age determination techniques that encompass multiple forms of evidence, including behavioral evaluations, and that are developed by child welfare experts. *This is mandated by the TVPRA, which must be implemented expeditiously.*

- Congress must authorize an appeals process through which adverse findings regarding age determination can be appealed to HHS.
- Border Patrol must screen all children who are nationals of Mexico or Canada to determine whether they are a potential victim of trafficking or have a fear of persecution before they are repatriated. *This is mandated by the TVPRA, which must be implemented expeditiously.*
- Any federal agency that apprehends an unaccompanied alien child must transfer that child to DUCS custody as soon as possible and in less than 72 hours, regardless of criminal history. *This is mandated by the TVPRA, which must be implemented expeditiously.*
- ICE and Border Patrol must provide all information collected about an unaccompanied alien child to DUCS in a standardized, complete and consistent manner.
- DUCS should maintain a database of all alien children in federal custody, including those never transferred to DUCS by other federal agencies and all children in federal custody deemed accompanied.
- DUCS must stop sharing information from children's files with DHS.
- DHS should not use reunified children as bait for re-detaining them with their parents or guardians.

Reform DHS Policies with Respect to Children

DHS is a law enforcement agency that does not have policies, practices or the expertise to facilitate the appropriate treatment of children. The agency uses correctional-type facilities to detain children at the border and in the interior. Procedures to ensure the safety of children released directly from DHS custody are not applied. Training on recognizing trafficking victims and children with fear of return is inadequate.

- Border Patrol must improve conditions for children at all stations and holding facilities, including increasing temperature; providing clean clothing and blankets; providing adequate food and water; ensuring access to medication, showers and recreation; and permitting children to make phone calls to relatives and consulates.

- Border Patrol and ICE should under no circumstances hold a child in immigration custody in a cell with an unrelated adult or in a criminal or juvenile offender facility. Unaccompanied minor males and females should not be commingled.
- Border Patrol should create a new juvenile officer position at all Border Patrol stations to supervise children in their custody and monitor care provided to them. This individual should be specifically trained in child welfare principles.
- DHS should ensure that Border Patrol agents, Border Patrol juvenile officers and ICE officers are trained to interview children and to recognize potential victims of trafficking and children with a fear of return. *This is partially mandated by the TVPRA, which must be implemented expeditiously.*
- DHS should institute policies to ensure that children they release are released into safe and appropriate settings.
- ICE should utilize child-friendly, shelter-type facilities for holding children pending transfer to DUCS or who have been transferred from DUCS to ICE pending removal. Under no circumstances should these children be held in facilities intended for juvenile offenders or commingled with adults or youth offenders.
- ICE Juvenile and Family Residential Management Unit (JFRMU) personnel should not be selected from DOJ or DHS' enforcement personnel and the unit should not be housed in the Division of Detention and Removal Operations (DRO).
- ICE should work with child welfare agencies to develop plans for children who "age out" of DUCS custody instead of placing them in adult detention facilities. For cases where these young adults cannot remain in the community, ICE should develop a dedicated shelter care or group home setting in which youth between the ages of 18 and 21 can be housed. These young adults should not be housed with youth offenders or criminal adults unless there has been an individualized determination that they are a danger to the community.
- ICE should not commingle any individual suspected of being an unaccompanied child with adults. ICE should make every effort to transfer such an individual out of an adult housing unit within 12 hours. ICE must complete an age determination and effect transfer to DUCS (if the individual is found to be a child) as soon as possible and within 72 hours.
- DHS must create a database that includes all facilities where children and young adults between the ages of 18 and 21 may be held; who is held there; for how long they are held; and why they are held.



A bedroom at the Baptist Child and Family Services (BCFS) shelter, an ORR facility, in San Antonio, Texas, has a more dorm-like feel.

Reform DUCS

HHS is the federal entity best suited to maintain custody of children in immigration proceedings. Unaccompanied children have greatly benefited from the transfer of custody from the former INS to ORR. DUCS reunifies more children with their families or sponsors, takes steps to ensure that the most vulnerable unaccompanied children are safely reunified, has expanded the use of foster care and utilizes social workers in the field. However, the current structure is based upon the old INS model and does not allow for full and effective implementation of established child welfare principles. The system is institutional in nature and does not always fulfill the Flores Settlement mandate that children be housed in the least restrictive setting possible. DUCS

shares confidential information from children's files with DHS, thus compromising their safety, access to services, relief and reunification. Ineffective grievance and monitoring procedures have led to inconsistency in the delivery of services and the failure to prevent and respond to abuse. Many of these shortcomings may be attributable to the newness of the DUCS program and its rapid expansion. A reassessment of the program structure and service model would be beneficial at this juncture.

- An independent agency or organization with expertise in child welfare service delivery should conduct an analysis of the DUCS program and structure, and issue recommendations for a service delivery model that brings the program into line with recognized child welfare practices.

In the meantime:

DUCS should standardize the provision of services to comply with the best interest principle and general child welfare practices.

- HHS should codify the *Flores* Settlement standards into regulations.
- DUCS should not be subject to hiring freezes. ORR should provide the program with the authority to hire appropriate federal and contracted staff and to allocate additional resources for training and monitoring facilities.



The quality—and quantity—of education varies between DUCS program sites. Here, children study at the Abraxas Hector Garza Center in San Antonio, Texas.

- DUCS should use recognized and proven tools to develop a transparent, fair and effective policy for making individualized placement determinations that ensure that children are placed in the least restrictive setting possible. DUCS should review placements for appropriateness individually and on a regular basis. *This is partially mandated by the TVPRA, which must be implemented expeditiously.*
- DUCS should expand the use of foster care and small, group-home settings.
- DUCS should establish additional therapeutic residential facilities for children who cannot be safely placed in shelter or foster care programs and who do not require secure or staff-secure placement.
- Secure facilities should only be used to house children who are a threat to themselves or others. *This is partially mandated by the TVPRA, which must be implemented expeditiously.*
- DUCS should allocate the necessary funds and training to ensure that facilities are providing adequate mental health services.
- DUCS should expand the provision of suitability assessments, home studies and follow-up services for children who are reunified or released. *This is partially mandated by the TVPRA, which must be implemented expeditiously.*
- DUCS should implement requirements to ensure that sponsors fully understand the importance of court appearances by requiring sponsors to attend a legal orientation presentation (LOP) or view an LOP video. *This is mandated by the TVPRA, which must be implemented expeditiously.*
- DUCS should protect the confidentiality of information in children's files and should not share case file information with ICE, other than providing the name and address of the parent, guardian or sponsor to whom a child is reunified or released.
- DUCS programs should be located in urban areas where there is greater access to pro bono services, law school clinical programs, and medical and mental health care.

- Congress should enact legislation that provides government-funded counsel to children in immigration proceedings in cases in which the child lacks paid or pro bono legal representation. DUCS should make every effort to facilitate the identification of pro bono counsel. The Executive Office for Immigration Review (EOIR) should accommodate requests for continuances if necessary to secure legal representation.
- DUCS should ensure that advocates or guardians *ad litem* are available to all children to protect their best interest and to help them navigate the system. Congress should consider funding EOIR or ACF to implement this program to avoid the conflict of interest that may arise when DUCS funds guardian programs.

DUCS should improve oversight

- DUCS should ensure that all facility management and staff are fully trained to understand and implement DUCS' policies and procedures.
- DUCS facility program staff should provide children with a verbal orientation and a child-friendly written orientation packet in their native language upon their arrival that includes the name, job responsibilities and obligations of each staff position. DUCS facility staff should also explain the confidentiality rules verbally and in writing in the child's native language to each child upon arrival.
- DUCS should institute a more effective and comprehensive grievance system that includes a process for bringing grievances and concerns against DUCS facilities, facility staff, DUCS management and the DUCS program and policies. The system must include the ability for third parties (e.g., family members, attorneys,

social workers) to file complaints and must clearly prohibit and protect children and advocates from retaliation.

- HHS should create an Office of the DUCS Ombudsperson within ORR or ACF to address grievances brought by children or third parties. ORR or ACF must create a mechanism by which grievances may be brought directly to the attention of the Ombudsperson or may be elevated to the Ombudsperson through an appeals process.
- The Ombudsperson and DUCS must ensure that all grievances are investigated and addressed in a timely manner. The Ombudsperson must provide complainants with written notice of how the situation was resolved.
- DUCS should contract with independent nongovernmental or professional organizations that have expertise in monitoring and evaluating residential youth programs to monitor facilities for compliance with DUCS policies and procedures and with the *Flores* Settlement. DUCS must ensure that such monitoring includes conversations with field coordinators, staff, advocates, attorneys and children in custody and does not rely solely on facility self-evaluation.
- ACF should ensure that at a minimum DUCS is held to the same standards as state child welfare programs.
- DUCS should establish a consistent crisis response policy to enable quick and effective resolution of adverse findings resulting from grievances, monitoring and oversight activities.

For a copy of the full report, go to womenscommission.org/pdf/halfway_home.pdf



Michelle Brané (left), director of the Women's Refugee Commission's detention and asylum program, interviews a girl held at the Fort Brown Border Patrol station.



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