



# Existing Protections for Unaccompanied Children

Credit: CNS/Gregory Shemitz

## Who qualifies as a UAC?

“Unaccompanied alien children” (UAC) are defined by statute as children who cross our borders and (1) have no lawful immigration status in the United States, (2) have not attained 18 years of age, and (3) have no parent or legal guardian in the United States who is available to provide for their care and physical custody.<sup>1</sup>

## What protections are currently in place for UAC?

The custody, care, and release of UAC is governed under U.S. law by the Flores Settlement Agreement of 1997,<sup>2</sup> the Homeland Security Act (HSA) of 2002,<sup>3</sup> the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008<sup>4</sup>, and the Violence Against Women Act of 2013 (VAWA)<sup>5</sup>. In part, these laws require:

- Screening of UAC from Mexico and Canada (“contiguous countries”) for protection concerns within 48 hours to determine if they require transfer to HHS/ ORR;
- Transfer of apprehended UAC from non-contiguous countries (e.g., Honduras, Guatemala, El Salvador) to the Department of Health and Human Services’ Office of Refugee Resettlement (HHS/ORR) within 72 hours;
- Consideration of the best interest of the child in decisions relating to their care and custody;
- Placement (typically) of children in non-secure and licensed facilities;

- Compliance by facilities with standards for adequate care, medical assistance, supervision, and contact with family members;
- Placement of children in the least restrictive setting appropriate given their needs and age. This typically includes the right to reunify with family members and other caregivers in the United States (“sponsors”) while the children undergo immigration proceedings;
- Verification of the suitability of adults who apply to serve as sponsors of UAC;
- In-depth assessment of sponsor placements (“home studies”) for certain vulnerable children. For children who received a home study, HHS/ORR is also required to provide follow-up (post-release) services.
- Provision of legal orientation presentations to sponsors of UAC;
- Compliance with due process rights of UAC, including right to a hearing and judicial review;
- Appointment of child advocates, who advocate for the best interest of the child, for child trafficking victims and a select number of other particularly vulnerable UAC; and
- Negotiation of repatriation agreements that ensure the safety of returned children.

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## Endnotes

1. 6 U.S.C. § 279(g)(2).
2. Settlement Agreement, Flores, et al. v. Reno, Case No. CV 85-4544-RJK (C.D. CA, 1997), available at [https://cliniclegal.org/sites/default/files/attachments/flores\\_v.\\_reno\\_settlement\\_agreement\\_1.pdf](https://cliniclegal.org/sites/default/files/attachments/flores_v._reno_settlement_agreement_1.pdf).
3. 6 U.S.C. § 279.
4. 8 U.S.C. § 1232.
5. 42 U.S.C. §13925.

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