



FROM THE OFFICES OF
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Office for Refugees and Immigrants and Office of the Attorney General

**Guidance Regarding DHS's Recent Policy on
Unaccompanied Children Aging Out of ORR Custody**

This guidance is intended primarily for organizations that provide services to unaccompanied children. The information contained in this document is provided for informational purposes only and should not be construed as legal advice. For legal advice, unaccompanied children, and youth including those reaching the age of 18, should contact a lawyer.

Immigration and Customs Enforcement (ICE) has reportedly issued new interim field guidance subjecting unaccompanied children to detention on their 18th birthday when they age out of the federal Office of Refugee Resettlement (ORR) custody. It also has been reported that ICE may be issuing letters to unaccompanied children who are under 18, describing the agency's intention to detain children in accordance with this policy change, and offering the children funds to self-deport. As noted below, a federal court has temporarily stopped ICE from implementing this policy change; however, the need for guidance remains.

Under the William Wilberforce Trafficking Victims Protection Reauthorization Act, as amended, unaccompanied children have significant legal protections.¹ As a result of this law, many unaccompanied children have a pathway to legal permanent residence through Special Immigrant Juvenile Visas (SIJ) and protections against restrictive placements.² The following summary highlights protections that may apply to unaccompanied children. As mentioned above, please consult with an attorney if you believe you may be affected by this guidance.

- **Youth under 18, who entered the United States as an unaccompanied child without having been admitted:** The federal agency, ORR, is generally responsible for the care and placement of unaccompanied children before they turn 18.³ Under federal law, unaccompanied children under age 18 are to be placed in the “least restrictive setting”

¹ An unaccompanied child, or an “unaccompanied alien child” as defined in statute, is a child who: (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. *See* 6 USC § 279(g)(2).

² *See generally* 8 USC § 1232.

³ *See* 6 USC § 279. Note, children who are in the unaccompanied refugee minor (URM) program, with related immigration status, are not in ORR custody and instead are in the custody of the state in which they are placed under the URM program.



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which generally means with their parents or sponsors, not in ORR or other restrictive custody.⁴

- **Youth over 18, who entered the United States as an unaccompanied child and who do not yet have legal permanent residence status:** Youth who are over 18 and not yet legal permanent residents (i.e. green card holders) “age out” of ORR custody, into DHS oversight and custody.⁵ There have been recent instances of SIJ applicants, who are over 18, being detained and transferred outside of Massachusetts, and having a difficult time gaining release from immigration custody on bond. However, there are legal protections and defenses for youth over age 18 in this area. Under federal law, DHS must “consider placement in the least restrictive setting available,” for unaccompanied children who turn 18 taking into account certain statutory factors.⁶ On October 4, 2025, a federal court in D.C. temporarily stopped ICE transferring unaccompanied children who turn 18 from ORR custody to ICE detention and required compliance with the court’s prior order to follow specific processes for placement in the “least restrictive setting.” *See Garcia Ramirez et al. v. U.S. Immigration and Customs Enforcement et al*, Case No: 1:18-cv-00508-RC (Dist. D.C.). Additionally, a federal court in California has ruled that it was illegal for DHS to randomly re-detain children unless DHS can show a change in circumstances of the original release. *Saravia v. Barr*, Case No. 3:17-cv-03615 (N.D. Cal.). For example, if an 18–21-year-old were arrested on a criminal charge, that would likely constitute a change in circumstances. Overall, the courts have been reluctant to accept random detention and re-detention of people who entered the United States as unaccompanied children. Please be aware that these protections will likely be argued extensively in upcoming litigation, including in Habeas Corpus petitions in Federal Court.
- **Important considerations for youth who entered the United States as an unaccompanied child and who are on a path toward legal permanent residency:** For those who came to the United States as an unaccompanied child, who are now over 18, and who are on a path towards obtaining legal permanent residency (i.e. a green card), it is important to know that - absent any criminal charges - ICE cannot detain individuals once they have obtained legal permanent resident status. We encourage individuals to be aware of their priority date in the SIJ process – which can be checked by the date on which petition for a green card was filed. Special Immigrant Juvenile Priority Processing dates are listed under “Final Action Dates For employment-based preference Cases” in

⁴ See 8 USC § 1232(c)(2)(A); 45 CFR Part 410.

⁵ See 8 USC § 1232(c)(2)(B).

⁶ *Id.*



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The Visa Bulletin (Please note: Special Immigrant Juveniles are considered “Fourth” preference in the Employment based category.)

Resources

Many community organizations and resettlement agencies are available to support unaccompanied children in Massachusetts. For individuals who need additional information or resources to support unaccompanied children or youth turning 18, please contact the Massachusetts Office for Refugees and Immigrants, ORI.inbox@mass.gov, for referrals and additional resources.

Unaccompanied children, including those turning 18 or older, and SIJ visa applicants should consider consulting an attorney about their individual circumstances. For youth in need of legal counsel, please see resources below.

- Massachusetts Legal Resource Finder:
 - <https://masslrf.org/en/home>
- List of Immigration Groups:
 - <https://www.mass.gov/info-details/immigration-legal-support#free-immigration-legal-clinics>
- City of Boston free consultations:
 - <https://www.boston.gov/departments/immigrant-advancement/free-immigration-consultations>
- MIRA immigration helpline:
 - <https://miracoalition.org/news/immigration-helpline/>

In addition, individuals who are currently detained may reach out to the Legal Representation fund:

- **Detained Hotline: (617) 637-8195**
- **Family & Friends Hotline: (617) 396-7143**