

Who Has Custody? Aug. 2019

An overview of the detention systems migrants face upon arrival at the U.S.-Mexico border.

Children (unaccompanied)

Custody: CBP

CBP (within DHS) custody is supposed to be for the purpose of short term processing. The TVPRA requires that unaccompanied children be transferred to HHS within 72 hours.

Custody: ORR

The Homeland Security Act gave ORR (within HHS) responsibility for care and custody of unaccompanied children.

Those HHS facilities referred to as “influx facilities” may be run without state licensing and are often barracks-like.

HHS maintains a sub-contracted network of facilities designated as shelter, staff secure, or secure.

Reunification

Federal law requires ORR to release children to the least restrictive setting as expeditiously as possible. Under the Trump administration, the reunification process has been slowed because of policies that involve ICE in reunification. Children reunified with sponsors in the community remain in immigration court proceedings.

Families

Custody: CBP

CBP custody should be limited to 72 hours. CBP agents and officers—without the assistance of child welfare experts—exercise massive amounts of discretion to determine the fate of arriving families.

Release

Families may be released on recognizance or alternative-to-detention programs

Child

When CBP separates a family, the child is considered to be unaccompanied and goes to HHS custody

Separation

Parent

When CBP separates a family, the parent is transferred to ICE custody or U.S. Marshal’s custody in the case of a referral for prosecution

Custody: ICE Family Detention
ICE manages three family detention centers.

Adults

Custody: CBP

CBP custody is supposed to be for the purpose of short term processing. CBP’s own standards governing detention require that all people should be transferred out of CBP custody within 72 hours.

Custody: ICE

The Immigration and Nationality Act gives ICE (within DHS) the authority to detain people during their removal proceedings or while pending removal. Detention is considered “mandatory” for people facing removal with certain criminal histories and asylum seekers prior to establishing a “credible fear.” ICE has discretion to release in all other cases. ICE contracts with county jails and private prison companies to detain people.

Deportation

Release

Mechanisms include: release on recognizance, bond, alternatives to detention, and/or parole (for asylum seekers who have established credible fear).

Custody: U.S. Marshals

Some cases are referred to the U.S. Attorney’s office for prosecution for illegal entry or reentry. Through the course of this prosecution, individuals may be transferred to Marshal’s custody.

Read More:

- “A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration.” *National Immigrant Justice Center*. April 2019. immigrantjustice.org/BetterWay.
- “Family Separation Policy Continues, New Documents Show.” *National Immigrant Justice Center*. 22 June 2019. bit.ly/NIJCFamilySeparation.
- “Mapping U.S. Immigration Detention.” *Freedom for Immigrants*. bit.ly/DetentionMap.
- “The ORR and DHS Information-Sharing Agreement and its Consequences.” *National Immigrant Justice Center, et al.* bit.ly/ORRandDHS.
- “Toolkit: Immigration Detention Oversight and Accountability.” *National Immigrant Justice Center*. 22 May 2019. bit.ly/DetentionToolkit.

Glossary:

- CBP:** Customs and Border Protection
- DHS:** Department of Homeland Security
- HHS:** Department of Health and Human Services
- ICE:** Immigration and Customs Enforcement
- ORR:** The Office of Refugee Resettlement
- TVPRA:** Trafficking Victims Protection Reauthorization Act

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