



OBTAINING OFFICE OF REFUGEE RESETTLEMENT RECORDS FOR UNACCOMPANIED MINORS

By Andrew Craycroft & Rachel Prandini

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I. Introduction

Advocates should obtain as much information as possible about their clients' cases. Freedom of Information Act (FOIA) and other records requests are an important tool for obtaining a client's important documents and records. For young people who are or have been detained in an Office of Refugee Resettlement (ORR) facility, their ORR file also contains valuable information and records for their cases. This practice advisory discusses the importance of requesting ORR records, which documents can be obtained through an ORR records request, and the process for obtaining them.

II. What is ORR?

ORR is an office in the U.S. Department of Health and Human Services' Administration for Children and Families division.¹ Under the 2002 Homeland Security Act, ORR is charged with the care and custody of unaccompanied children (UCs), referred to in federal immigration law as "unaccompanied alien children"² or "UACs."³ A UC is defined as a child who:

- has no lawful immigration status in the United States;
- has not attained eighteen years of age; and
- with respect to whom there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody.⁴

ORR operates several different types of detention settings including shelter, staff secure, and secure facilities. Additionally, ORR has limited "therapeutic" facilities for children with more significant mental health needs. It also administers a network of federal foster homes for youth who may be eligible for or have been granted some type of immigration relief but do not have an adult in the United States into whose custody they can be released. ORR has opened large "influx" facilities during certain periods when bed space in existing facilities was limited. ORR contracts the operation of facilities to different care providers that it oversees.⁵ Consequently, a child's experience in ORR detention may vary depending on the type and size of facility they were placed in, the level of security, and the contractor who administered it.

Most children in the immigration system are apprehended by U.S. Customs and Border Protection (CBP) at the U.S. border; children may also be apprehended by Immigration and Customs Enforcement (ICE) in the interior, sometimes by referral of local law enforcement working within the juvenile justice system when the child is charged with a violation of the law and suspected of being undocumented. If the child is determined to be a UC, they are then sent to ORR custody. Many minors who are designated as "unaccompanied" do have parents

¹ U.S. Department of Health and Human Services, ORR, About, *available at* <https://www.acf.hhs.gov/orr/about>.

² Due to the offensive and derogatory nature of the term "alien," the ILRC as well as many immigration advocates prefer the term "UC."

³ 6 U.S.C. § 279(b).

⁴ *Id.* at § 279(g)(2) (defining when a minor is considered "unaccompanied").

⁵ U.S. Department of Health and Human Services, ORR Guide: Children Entering the United States Unaccompanied, § 1.1, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied> (hereinafter "ORR Guide").

or legal guardians in the United States. However, for various reasons, usually out of fear, they do not come forward initially to pick up their children, although they may later “sponsor” them out of ORR custody.⁶ Moreover, many minors who were with one or both of their parents at the time of apprehension have been separated from them. Minors who have been separated from a parent or guardian are placed in ORR custody even though they were not unaccompanied at the time of apprehension.⁷ Such separations were widespread during the Trump Administration, but are now less common.⁸ The settlement agreement in *Ms. L v. ICE*, a case challenging the family separation policy, limits the circumstances under which the government can separate a child from their parent or legal guardian.⁹ Such separations may only occur where there are national security concerns, concerns about safety of the child, a medical emergency, or certain criminal warrants for the child’s parent or guardian.

III. How do I know that my client has an ORR file?

In general, anyone who was in immigration custody while they were under the age of eighteen and was not detained with a parent or legal guardian has an ORR file.¹⁰ Additionally, some young people who were initially believed to be unaccompanied minors but later found to be over eighteen through age redetermination and transferred back to Department of Homeland Security (DHS) custody, may still have ORR records.¹¹ When ORR takes a child into custody, it is required to create a file that contains the records of the child’s detention as well as other records related to their removal proceedings.¹²

Not all people who were detained in immigration custody as children have an ORR file. For example, family detention centers where children are detained together with a parent are administered by ICE, not ORR. Young people who were held with a parent or guardian in a family detention center or were otherwise not designated as unaccompanied minors will generally not have an ORR file. Those minors should follow other agencies’ records request processes, such as a FOIA request, to obtain their A-file and detention records.

IV. What is in the ORR file?

An ORR file includes shelter records, resource materials for UCs and sponsors, medical records, educational records, reports, and legal documents. Depending on the nature and length of custody, an ORR file may include hundreds of pages of records. A complete list of

⁶ “Sponsor” is the term used to describe the adult to whom ORR releases a UC from custody. It is important to note that sponsoring a child does not make the sponsor the child’s legal guardian, which requires a court order.

⁷ U.S. Department of Health and Human Services, Office of Inspector General, HHS OIG: Many Children Separated from Parents, Guardians Before *Ms. L. v. Ice [sic]* Court Order and Some Separations Continue, (Jan. 17, 2019), <https://www.oig.hhs.gov/newsroom/news-releases/2019/uac.asp>.

⁸ *Id.*

⁹ *Ms. L. v. ICE*, No. 18-428 (S.D. Cal. Dec. 11, 2023), ECF No. 721-1 (Settlement Agreement), 727 (Order Granting Final Approval of Settlement Agreement and Certifying the Settlement Classes).

¹⁰ See ORR Guide at § 5.6.2.

¹¹ See *id.* at 1.6.

¹² *Id.* at § 5.6.2.

ORR file documents can be found on ORR's website.¹³ Key documents that advocates should look for in the file include:

- A copy of the UC's birth certificate or other identity documents;
- The Notice to Appear;
- The Form I-770 Notice of Rights and Disposition;
- Documents from immigration court hearings that occurred while the UC was in custody;
- Medical records and progress notes, including for mental health services and counseling;
- Significant Incident Reports (SIRs) documenting any incident that occurred or was disclosed while the UC was in custody that they were involved in or witnessed;¹⁴
- ORR Verification of Release, which can serve as a photographic identity document in some circumstances if the UC does not have any other forms of identification.¹⁵

Keep in mind that not all of the important documents for a UC's case are included in their ORR file. For example, the Form I-213 Record of Deportable/Inadmissible Alien is generally not included in the ORR file and must be separately obtained from DHS. In most cases, a FOIA request or other records request will be necessary in addition to the ORR records request.

V. Why should I make an ORR file request

Any time a young person has been in ORR custody, it is advisable to request a copy of their ORR file. This is true even if they are now an adult and their detention in ORR custody was a long time ago. Advocates should request the ORR file when they first begin representing a UC or former UC, as the request may take some time to process.

Even though there are many protections for UCs under federal law, there is no law or policy preventing ORR from sharing certain records with DHS. This means that ICE or U.S. Citizenship and Immigration Services (USCIS) may have access to these records. ORR records include sensitive documents, such as progress notes from therapy and other mental health services that the child has received while in ORR custody. Additionally, ORR states that it is obligated to disclose some significant incidents to DHS.¹⁶ Incidents that must be reported include unauthorized absences, arrests, evaluations that result in relocation to another facilities, abuse and neglect that occurred in DHS custody, allegations of smuggling or trafficking, and death of a UC.¹⁷ If a UC's records contain negative information or information that may conflict with their claim for legal relief, it is important to be aware of and review such information.

There are also documents in the ORR file that may be helpful to a UC's case. Therapy records or progress notes may help to corroborate facts that are central to the UC's claim for relief. If a UC no longer has their identity document, such as a birth certificate or their ORR Verification of

¹³ *Id.* at § 5.6.2.

¹⁴ SIRs can also include incidents that occurred outside of ORR custody that the UC disclosed to shelter staff. *See id.* at §§ 5.8.4, 5.8.6, 5.8.7.

¹⁵ *Id.* at § 5.6.2.

¹⁶ *Id.* at § 5.8.8.

¹⁷ *Id.*

Release, it may be in the ORR file. Finally, the ORR file includes important documents from DHS related to removal proceedings, such as the Notice to Appear, Form I-770, and documents from immigration court proceedings that took place while the young person was held by ORR.

Finally, some ORR file documents may help advocates work with their client in a way that avoids retraumatization. Significant Incident Reports and other records may describe traumatic events that the young person experienced or witnessed. Knowing about such events before the first meeting with a client can help advocates approach the subject matter in a trauma-informed way.

VI. How do I request an ORR file?

The process for requesting and obtaining ORR records is distinct from the FOIA process, which federal immigration agencies use. Records requests must be made directly to ORR by e-mailing UCRecords@acf.hhs.gov.¹⁸ Records requests are made on the Authorization for Release of Records (ARR) form.¹⁹ The ARR, as well as other forms required for the request, can be downloaded from the ORR website at <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program>. The requirements for completing the ARR depend on the custody status of the subject of the request, the documents sought, and the identity of the requesting party.

A. Requirements for a Complete Records Request

An e-mail request for an ORR file must include:

- subject line that reads: “ORR Records Request for UC [initials of First/Middle/Last Name], XXX-XXX-[last three digits of A-number];”
- if requesting expedited processing the subject line should also contain the word “URGENT;”
- a completed and signed ARR form;
- if the request is being submitted by a young person’s legal representative, it must include a completed Form L-3, Notice of Attorney Representation;²⁰
- additional documentation if required.²¹

B. Custodial Status, Age, and Capacity of the Subject UC

If the UC is fourteen years of age or older, they must sign the ARR. If they are currently in ORR custody and have not reached the age of fourteen or have a diagnosed developmental disability and do not have the capacity to consent to the release of records, ORR has

¹⁸ ORR Guide § 5.10.1.

¹⁹ Form A-5, Authorization for Release of Records,

<https://www.acf.hhs.gov/sites/default/files/documents/orr/A5-Authorization-for-Release-of-Records.pdf>.

²⁰ Form L-3, Notice of Attorney Representation, <https://www.acf.hhs.gov/sites/default/files/documents/orr/L3-Notice-of-Attorney-Representation.pdf>.

²¹ ORR Guide § 5.10.1.

discretion as to whether to release their information if they consider it to be in the best interests of the child.²²

If the UC is under fourteen years of age or does not have capacity to consent to the release of records and they are no longer in ORR custody, the ARR must be signed by the UC's caregiver. Additionally, ORR has special signature requirements for the release of sensitive information, including medical records, clinical and mental health records, and home study reports or records of post-release services.²³

Regardless of whether the UC is still in custody or has been released from custody, all ARRs must be signed by a witness, and the witness' name and relationship, if any, to the UC must be included in the signature section.²⁴

C. Additional Requirements Based on Identity of Requesting Party

Depending on what type of individual or entity is making the request, the requester may be required to submit documentation, signatures, or information in addition to the signed ARR.

1. Requests from Attorneys or Legal Representatives on Behalf of a UC

If the requesting party is an attorney or BIA accredited representative representing the UC, or if they are an ORR-funded legal services provider, they must include a completed Notice of Attorney Representation form.²⁵

2. Requests from Government Agencies

If the requesting party is a federal or state government agency outside of the Department of Health and Human Services' Administration for Children and Families, or a representative from the National Center for Missing and Exploited Children, they must submit a statement on the agency's letterhead that verifies their affiliation, specifies the scope of their investigation, and includes a case reference number. Otherwise, the requester must submit a lawfully issued subpoena or court order for the records. ORR generally prefers that government requesters obtain the signature of the subject of the request. It has also indicated that it will not release records to government agencies that are outside the scope of their authority or if the purpose appears to be immigration enforcement.²⁶

3. Requests by Current or Former UC for their Records

If the requesting party is a current UC, they are not required to submit any additional supporting documentation to obtain their records.²⁷ If they are a former UC, they must submit

²² *Id.* at § 5.10.1.2.

²³ *Id.*

²⁴ *Id.*

²⁵ Form L-3, Notice of Attorney Representation, <https://www.acf.hhs.gov/sites/default/files/documents/orr/L3-Notice-of-Attorney-Representation.pdf>.

²⁶ ORR Guide § 5.10.1.2.; see also ORR Guide § 5.10.2.

²⁷ See *id.* at § 5.10.1.4.

their ORR Verification of Release document or another form of government-issued photo identification.²⁸ If the requesting party is a UC's parent, legal guardian, or ORR sponsor, they must submit a government-issued photo identification document.²⁹

4. Requests by Educational Institutions or Medical Providers

If the requesting party is an educational institution or medical provider, they must submit a statement on the organization's official letterhead verifying that they are providing educational or medical services to the subject of the request.³⁰

VII. Timeframe for Receiving ORR Records

ORR records are generally sent electronically via e-mail. Although ORR records request previously took several months to receive, processing times have improved since ORR switched to sending records electronically. Currently, ORR aims to process non-urgent requests for records within forty days and urgent requests within seven days.³¹

The criteria for expediting an ORR records request are distinct from those for expediting a FOIA request. It is possible to expedite the request for an ORR file if:

- the subject has a court date within thirty days of the request;
- the subject is turning eighteen years old in less than thirty days;
- the records are needed for a child protective services, law enforcement, or missing persons investigation related to the subject;
- the records are needed for the subject's enrollment in school; or
- the records are needed for the provision of medical care to the subject.³²

To request expedited processing, the word "URGENT" must be included in the subject line and the requestor must indicate the reason for the urgency in Section C of the ARR.

VIII. What can I do if ORR does not release the requested records?

ORR retains the right to reject requests for the ORR file if the request is incomplete, does not follow ORR policies and procedures, for safety reasons, or for other reasons, as it deems necessary.³³ Because the procedure to request the ORR file is outside of the scope of the FOIA process, ORR does not have to inform recipients if it withholds or redacts information or provide a reason. Furthermore, there is no right to appeal a denial of a request for an ORR file.

If a request is denied and/or an incomplete set of records is provided, advocates may wish to make a FOIA request to the Department of Health and Human Services for these records. For more information about submitting a FOIA request to the Department of Health and Human

²⁸ *Id.* at § 5.10.1.2.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at § 5.10.1.5.

³² *Id.*

³³ *See id.* at § 5.10.1.1.

Services' Administration for Children & Families (which can be submitted online), visit <https://www.acf.hhs.gov/freedom-of-information-act>.



San Francisco

1458 Howard Street
San Francisco, CA 94103
t: 415.255.9499
f: 415.255.9792

ilrc@ilrc.org
www.ilrc.org

Washington D.C.

1015 15th Street, NW
Suite 600
Washington, DC 20005
t: 202.777.8999
f: 202.293.2849

Houston

540 Heights Blvd.
Suite 205
Houston, TX 77007

San Antonio

10127 Morocco
Street
Suite 149
San Antonio, TX
78216

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