



United States Department of State

*United States Permanent Mission to the
Organization of American States*

Washington, D.C. 20520

May 6, 2019

Dr. Paulo Abrão
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006

**Re: Complaints of Sexual Abuse by Detained Migrant Children
Request for Information (Article 18 – IACHR Statute)
United States
CIDH/SE/Art.18/4-2019/21**

Dear Dr. Abrão:

The U.S. Government has the honor of submitting to the Inter-American Commission on Human Rights this response to request for information your office transmitted to us on April 17, 2019. Please find enclosed the United States' response to the request. We trust this information is useful to the Commission and thank the Commission for its attention to this matter.

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Carlos Trujillo'.

Carlos Trujillo
Ambassador

**Complaints of Sexual Abuse by Detained Migrant Children
Request for Information (Article 18 – IACHR Statute)
Response of the United States**

The Office of Refugee Resettlement's (ORR) in the U.S. Department of Health and Human Services (HHS) top priority is the safety and well-being of children in our care. ORR care provider facilities diligently track all allegations of a wide range of sexually inappropriate conduct, ranging from name calling or use of vulgar language to more serious claims. The data given to Congress by our agency reflects allegations much broader than 'sexual abuse' (as defined in 34 U.S.C. § 20341 and in ORR regulations at 45 C.F.R. § 411.6), to also include 'sexual harassment' (as defined in ORR regulations at 45 C.F.R. § 411.6) and 'inappropriate sexual behavior' (a catch-all category for sexual behaviors that do not rise to the level of sexual abuse or sexual harassment).

The vast majority of the allegations reported to ORR are 'inappropriate sexual behaviors' involving solely Unaccompanied Alien Children (UACs), and not staff or any other adults. Facilities can often resolve these allegations by, for example, counseling the minors about more appropriate behaviors. The vast majority of allegations of 'sexual abuse' involve 'UAC-on-UAC' allegations; the distinct minority involve adults.

1. Detail the actions taken when there are allegations of abuse to protect the victim throughout the investigation process and their immigration proceedings, including providing legal representation and translators.

As requested by a victim, the presence of his or her victim advocate must be allowed to the extent possible for support during a forensic exam and investigatory interviews. Additionally, care provider facilities are required to utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention, counseling, investigation, and the prosecution of sexual abuse perpetrators to most appropriately address a sexual abuse victim's needs. Care providers must also maintain memoranda of understanding or other agreements with community service providers, or national organizations if local providers are not available, that provide legal advocacy and confidential emotional support services for immigrant victims of crime.

2. Detail the actions that are taken after the receipt of an allegation to protect others from the alleged perpetrator and to prevent further harm.

In all cases of an allegation of sexual abuse, care provider facilities must:

- *Report the allegation to ORR, state/local child protective services (CPS), state licensing, HHS' Office of the Inspector General, and the U.S. Department of Justice's FBI.*
- *Report allegations of sexual abuse that involve an adult to local law enforcement.*
- *Cooperate with any investigation of the allegation, including by CPS, licensing or law enforcement.*
- *Take immediate action to protect the victim and the safety of other children in the program (i.e., separating the victim from the perpetrator, increasing supervision, housing changes, transfers).*
- *Provide follow-up services, including medical or mental health services.*
- *Make appropriate notifications to parents, legal guardians and sponsors, attorneys, and child advocates, if applicable.*

If a sexual abuse allegation involves a staff member, the care provider facility is required by regulation to suspend the staff member from all duties that would provide the staff member with access to UAC pending investigation.

After investigation by an oversight entity substantiates the allegation, a care provider facility must take disciplinary action up to and including termination for violating ORR's or the care provider facility's sexual abuse-related policies and procedures. Termination is the presumptive disciplinary sanction for staff who engaged in sexual abuse or sexual harassment.

ORR reviews every report of sexual abuse submitted by care provider facilities. When appropriate, ORR issues corrective actions or stops further placement of unaccompanied alien children until the care provider facility addresses identified issues.

3. Detail measures taken to investigate abuse allegations and the outcomes of the investigations.

Care providers must report sexual abuse, sexual harassment, or inappropriate sexual behavior that occur in ORR care immediately but no later than four hours after learning of the allegation. Care provider facilities must follow state licensing requirements to report allegations of sexual harassment and inappropriate sexual behavior.

Care providers report allegations of sexual abuse to CPS, the state licensing agency, HHS/OIG and the FBI. In the case of a sexual abuse allegation involving minors, CPS or state licensing may cross-report to local law enforcement. If an allegation involves an adult, the care provider must notify local law enforcement.

ORR has no formal investigative authority. CPS and state licensing investigate allegations of sexual abuse according to state law, and the FBI and the HHS/OIG investigate allegations according to federal laws and procedures.

The Department of Justice takes the allegations referred to it by HHS seriously, fully investigates them, and, if the evidence warrants, pursues criminal prosecutions. For instance, the Department recently successfully prosecuted a youth care worker in Arizona for sexually abusing unaccompanied minors at a detention facility where he worked. In January 2019, a federal judge sentenced the former worker to 19 years' imprisonment, followed by lifetime supervised release. See <https://www.justice.gov/usao-az/pr/youth-care-worker-sentenced-19-years-prison-sexually-abusing-unaccompanied-minors>. Given the disparate local, state, and federal law enforcement authorities that may be involved in investigating such allegations, and limitations on the ability to disclose the existence and outcomes of law enforcement investigations, more particularized information is not available for disclosure.

4. Provide information on whether any measures are being or will be set in place to guarantee a preventative approach to sexual abuse and the protection of human rights.

ORR has implemented a number of safeguards designed to prevent sexual abuse in care provider facilities. Care provider facilities must individually assess children and youth for risk of being a victim or a perpetrator of sexual abuse while in ORR custody and use the results of the assessment to inform the minor's housing, education, recreation, and other service assignments.

ORR requires all care provider facilities to complete pre-employment background checks on all potential staff, contractors and volunteers to ensure they are suitable to

work with minors in a residential setting. ORR recently revised Section 4.3 in the ORR Policy Guide (<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.3>) to provide additional guidance on applicant screening.

Care provider staff are required to complete a number of trainings pre-employment. These trainings ensure that staff understand their obligations under ORR regulations and policies. Trainings include communicating with UAC, avoiding inappropriate relationships, reporting procedures, and sensitivity regarding trauma. Care provider facilities must tailor trainings to the unique needs, attributes, and gender of the unaccompanied alien children in care at the individual care provider facility. Staff must complete refresher trainings every year or with any policy change. Additionally, ORR provides periodic trainings on topics related to preventing sexual abuse. ORR also conducts monthly calls to update care providers on sexual abuse prevention issues.

ORR monitoring is an ongoing, multi-layered process that provides consistent oversight of all components of a care provider facility's program, including program design, management, services, safety and security, child protection, case management, personnel management, stakeholder relations, and fiscal management. The monitoring policies create formal accountability standards and check points at regularly scheduled intervals.

ORR monitoring activities include the following:

- *Desk Monitoring: Ongoing oversight based on the HHS grants management model, which includes monthly check-ins with the care provider's Project Officer (PO), regular record and report reviews, financial/budget statements analysis, and communications review.*
- *Routine Site Visit Monitoring: Day-long visits to every facility on a once or twice monthly basis, both unannounced and announced, to review policies, procedures, and practices and guidelines compliance. Generally, these visits are limited to review of case management services.*
- *Site Visits in Response to PO or Other Requests: Visits for a specific purpose or investigation, for example, in response to a corrective action plan.*
- *Monitoring Visits: Week long monitoring to the site not less than every two years to conduct a comprehensive review of the program.*

- *Audits by an external contractor to determine a care provider facility's compliance with ORR regulations and policies related to sexual abuse prevention.*

5. Indicate the number of U Visas that have been issued to victims and whether reparations have been made to victims, and if so, what were the reparations and when were they implemented, including continuing access to healthcare, comprising of physical and mental care.

ORR provides routine and emergency medical and mental health care for all unaccompanied alien children in its care, including an initial medical examination, any appropriate follow-up care, and weekly individual and group counseling sessions with clinicians. If a child is sexually abused while in ORR care, the care provider must ensure that the child is offered and/or provided with specific medical and mental health care services. These services include crisis intervention services, lawful pregnancy-related medical services, emergency contraception, and sexually transmitted infections prophylaxis.

The disclosure of information related to the applicants for or beneficiaries of U nonimmigrant status is restricted by 8 U.S.C. 1367.

6. Provide information on the procedure individuals go through to file complaints.

ORR is committed to ensuring that children and youth in ORR care have multiple ways to report any sexual misconduct that may occur. UAC must receive an orientation regarding issues related to sexual misconduct within 48 hours of admission to a facility. Children and youth in ORR care must have access and instructions on how to report sexual abuse, sexual harassment, and inappropriate sexual behavior verbally and in writing to care provider staff, child protective services, the UAC Sexual Abuse Hotline, consular officials, and a local community service provider or national rape crisis hotline if a local provider is unavailable. ORR has a UAC Sexual Abuse Hotline that UAC and third parties (including sponsors, parents, and other stakeholders) can use to report any information about sexual misconduct in an ORR facility.

Care provider facilities must provide unaccompanied alien children access to telephones with preprogrammed numbers for the UAC Sexual Abuse Hotline, CPS, and the local community service provider or national rape crisis hotline. Care provider facilities include other preprogrammed telephone numbers, such as

telephone numbers for consulates or a legal service provider, in order to avoid any stigma in using the preprogrammed telephones. Preprogrammed telephones must be placed in areas of the facility where children may easily access them without assistance from staff but where they are also afforded some level of privacy so that other children and staff cannot easily listen to telephone conversations.

7. What mechanisms are being or have been implemented by the State to ensure that children are not detained, regardless of whether they are accompanied, unaccompanied or separated from their families. In this regard, what alternatives to detention have been established?

As mandated by law, ORR places an unaccompanied alien child in the least restrictive setting that is in the best interests of the child. ORR policies for placing children and youth in its custody into care provider facilities are based on child welfare best practices in order to provide a safe environment and place the child in the least restrictive setting appropriate for the child's needs. (See Section 1.2.1 of ORR's Policy Guide: <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>.)

8. Actions taken to guarantee that the conditions of detention are in accordance with relevant international standards.

ORR's Unaccompanied Alien Children Program operates in accordance with the applicable provisions of the Flores Settlement Agreement (FSA), the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008, the Interim Final Rule on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Alien Children, as well as ORR policy. Please see the link for the ORR Policy Guide above.

9. Provide any official reports or studies available to the government, or undertaken at its initiative, which may provide additional information regarding the prevalence of abuse at the US Southern Border and in detention centers.

10. Any additional information that you may deem pertinent.