

# The U.S. Government's Response to the Current Influx of Unaccompanied Children at the Border and Its Obligations Under Existing Court Orders

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## The current influx of unaccompanied children into the United States

Each of the last several years has seen a dramatic increase in the number of unaccompanied children apprehended by the U.S. Department of Homeland Security (DHS), and the number this year is far exceeding recent years' numbers. According to DHS, it has apprehended over 45,000 unaccompanied children so far in 2014, and by the end of the year the number may exceed 90,000.

While established procedures require that children who cannot be placed immediately with adult relatives be held in facilities that are licensed for the care of minors, for weeks DHS has responded to the influx by holding large numbers of children at military bases and other locations unequipped to meet their needs. There are also indications that DHS is contemplating returning large numbers of these children to their home countries.

The conditions in which these children are now detained, and the possibility that many will be summarily removed to their home countries, raise the prospect of possible violations of court orders issued in two nationwide class action cases in which the National Immigration Law Center (NILC) is lead counsel: the *Perez-Fuñez* permanent injunction and the *Orantes* permanent injunction. This issue brief provides a brief description of the requirements under each injunction and their relevance to the current treatment of unaccompanied children, as well as contact information for NILC attorneys who are monitoring DHS's compliance with the court orders.

### *Perez-Fuñez*: Covers unaccompanied children

The *Perez-Fuñez* injunction covers all unaccompanied children who are or will be detained by DHS for possible removal. It sets out specific procedures that DHS must follow before seeking a minor's agreement to depart or be removed from the U.S.

For all such children, DHS must first provide them with

- a *written explanation of their rights*, and, if they are unable to read the information, DHS must read them the information;
- a *list of free legal services* available in the area, and the minor must be permitted to retain a copy of this information; and
- *access to telephones*, and they must be advised that they may call a parent, close relative or friend, or an attorney or legal assistance organization.

For all children except those who are Mexicans or Canadians who were apprehended in the immediate vicinity of the border, DHS also must *ensure that the child actually communicates*, by telephone or otherwise, with a parent, close adult relative or friend, or an attorney or legal services organization. Communication with a consular official of the child's home country can meet this requirement only if the child chooses this alternative. *DHS must document that this required communication occurred.*<sup>1</sup>

<sup>1</sup> More information about the *Perez-Fuñez* injunction is available at [www.nilc.org/document.html?id=1109](http://www.nilc.org/document.html?id=1109).

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### ***Orantes*: Covers Salvadorans specifically, and protections benefit all detainees**

The *Orantes* nationwide injunction covers all Salvadorans eligible to apply for asylum who are or will be detained by DHS for possible removal, whether they are adults or children. Because *many thousands of the children who are currently being detained are Salvadoran*, the injunction's protections are particularly important during the current influx of unaccompanied children. Also, because many of the injunction's provisions concern the conditions in which Salvadorans are detained, and because Salvadorans generally are detained together with children from other nations, *the injunction's protections in effect benefit all detainees*.

The *Orantes* injunction requires that DHS:<sup>2</sup>

- Advise detainees, both in writing and orally, of their rights to apply for asylum, to be represented by attorneys, and to request a hearing.
- Ensure that detainees can communicate in private with attorneys and legal representatives.
- Permit both attorneys and paralegals to visit detainees throughout the day, between the hours of 9 a.m. and 9:30 p.m., and allow detainees the option to continue legal visitation during meals.
- Permit detainees to retain copies of the written advisal of rights, a list of available legal services, and legal materials and other written materials.
- Make legal materials regarding immigration law available to detainees in English and Spanish.
- Ensure that detention center libraries are sufficiently accessible to detainees.
- Provide Salvadoran detainees with updated and accurate legal services lists and writing materials, including papers, pencils, pens, and typewriters or computers.
- Provide adequate telephone access to detainees, with at least one working telephone available for every 25 detainees, and ensure some privacy for phone calls.
- Not coerce or in any other way attempt to persuade Salvadoran detainees to accept voluntary return to their home country or dissuade them from accepting voluntary return.
- Not transfer unrepresented Salvadoran detainees out of the district where they were first apprehended until they have been there at least seven days, so that they may more easily obtain legal help. The injunction also protects detainees who obtain counsel and are later transferred elsewhere by requiring that DHS return them to the location where their hearing is to take place in order to allow them to consult with their attorney.

Children may be transferred outside of the district during this seven-day period only if DHS first considers release as a preferable alternative, there is no space available in the district in any facility appropriate for the custody of children, and the transfer is to the nearest facility with available space that is licensed for the custody of children.

### **How to report violations of these requirements**

If you become aware of any violation of these requirements, we would appreciate your help documenting and correcting the violation. If you know of or suspect that there have been any violations, please contact:

- Karen Tumlin, NILC Managing Attorney, 213-674-2850 or [tumlin@nilc.org](mailto:tumlin@nilc.org), or
- Linton Joaquin, NILC General Counsel, 213-674-2909 or [joaquin@nilc.org](mailto:joaquin@nilc.org).

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<sup>2</sup> More information about the *Orantes* injunction is available at [www.nilc.org/document.html?id=97](http://www.nilc.org/document.html?id=97).