

Kids who cross the border meet with therapists and social workers. What they say can be used against them.

How the Trump administration is using undocumented kids' confidential health information to lock them up.

By Ella Nilsen | ella.nilsen@vox.com | Updated Jun 19, 2018, 8:51am EDT



US Border Patrol agents take a father and son from Honduras into custody near the US-Mexico border on June 12, 2018, close to Mission, Texas. The asylum seekers were then sent to a US Customs and Border Protection processing center for possible separation. | John Moore/Getty Images

Undocumented kids in custody at the border think they're getting help when they talk with a social worker or clinical psychologist, but what they say is often used to keep them in detention longer or even deport them, lawyers who work with these children say.

"They'll encourage the kids to open up and disclose, but those notes are not protected by HIPAA or privacy law," said Nithya Nathan, an attorney and senior program director for the

Detained Children’s Program. “It’s our experience [kids] have a really limited understanding of where that information goes and how it can be used.”

Doctors and social workers have long provided care to undocumented kids held by the Office of Refugee Resettlement (ORR), the agency responsible for resettling minors who cross the border, including those seeking asylum. The appointments appear to be just like any other between a medical provider and a patient, but under the Trump administration, the US Department of Homeland Security is increasingly relying on medical and psychological records from these meetings to make decisions about the fate of these kids, numerous immigration lawyers who represent undocumented children told Vox.

Immigration lawyers said files containing confidential medical and psychological records and social work case files from ORR (an office overseen by the US Department of Health and Human Services) are increasingly showing up in immigration court as evidence.

Often, these files are used by the Trump administration as an argument to push undocumented kids, especially teens with psychiatric conditions, into higher levels of detention in what lawyers described as “jail-like” settings.



Central American asylum seekers wait as US Border Patrol agents take them into custody on June 12, 2018 near McAllen, Texas. US border authorities are executing the Trump administration’s “zero-tolerance” policy toward undocumented immigrants. | Getty Images

Immigration lawyers also told Vox that children are sometimes deported back to their home countries on the basis of this information.

Lawyers say kids' confidential information was also shared between agencies under the Obama administration. But under Trump, the policy is increasingly used to detain or deport undocumented minors.

The function of ORR is to temporarily house undocumented children before they are reunited with a parent, family member, or other appropriate sponsor. But that's becoming more difficult after an **April memorandum of understanding** between ORR and the Department of Homeland Security [DHS], which allows for more information sharing about adult sponsors.

Parents and relatives are increasingly afraid to come forward to claim the kids, because **they could risk deportation** if they are undocumented. Those two things working together keep detained kids separated from parents and family members for weeks, months, or even years longer than they might have otherwise.

"They are being held in what is effectively indefinite detention," said Lewis Cohen, the senior director of communications for the National Center for Youth Law. "They're basically trying to make it impossible for sponsors to come forward, which is why I say this is becoming indefinite detention."

An HHS spokesperson did not respond to a request for comment.

Medical confidentiality laws for undocumented people are complicated — but experts say this practice is unethical

Multiple immigration lawyers Vox interviewed say the Trump administration's use of confidential records to detain kids longer violates medical ethics and the kids' basic rights to have their medical and psychological records kept confidential and out of the hands of law enforcement.

But the exact law on this issue is murky. Lawyers say the kids should have a right to privacy under the medical privacy law, HIPAA, but that is still an unsettled legal question for undocumented minors. HIPAA is a broad federal law, but it can be superseded by different state laws. Also, minors cannot legally exercise their HIPAA rights without the signature of a parent or guardian, which makes it difficult if a child's parent or guardian is also detained or can't claim sponsorship for fear of deportation.

HIPAA protections also depend on the individual circumstances of each child; for instance, medical providers, social workers, or psychologists are required to disclose information if a minor reveals they're being sexually abused or having suicidal thoughts.

However, multiple medical and legal experts who spoke to Vox said there are serious ethical concerns with confidential medical information being used by the government to prejudice the case of an undocumented minor in court.

"There are some concerns about HIPAA and whether it protects people who have status," said attorney Holly Cooper, the co-director of the Immigration Law Clinic at the University of California Davis School of Law who represents detained minors in California.



Central American asylum seekers wait as US Border Patrol agents take groups of them into custody on June 12, 2018, near McAllen, Texas. | John Moore/Getty Images

When kids arrive at ORR processing facilities, they are interviewed by a series of people, including social workers and clinical psychologists. Children are asked about the circumstances around why they're fleeing their home countries, whether they are experiencing psychosis or are depressed, or have ever had suicidal ideations or used drugs.

Many of these children come from Central American countries wracked by gang violence and are dealing with post-traumatic stress disorder and other mental issues. Attorneys say

the stress is worsened when they are removed from their families and placed in ORR custody.

“The more traumatized you are, the more emotional outbursts, the longer you’re going to be detained,” Cooper said. “We’re seeing more and more kids detained longer. The level of desperation is something you can’t even imagine.”

The practice of sharing information with other agencies isn’t new — it also happened under the Obama administration. The difference, legal experts say, is that the Trump administration is being far more aggressive, effectively using kids’ own medical records against them.

“It’s pretty clear to me that ICE [Immigration and Customs Enforcement] and USCIS [United States Citizenship and Immigration Services] can access ORR files,” Cooper said, adding that it’s “anything you can say to a doctor you don’t want brought up in a court of law, which is a lot.”

The law may not be clear on whether ORR is allowed to share confidential social worker or psychologist records with DHS, but one medical expert Vox spoke to said the medical ethics surrounding the practice are certainly questionable.

“There is privileged communication between a health care provider and a client,” said Erica Monasterio, a clinical professor of nursing at the University of California San Francisco. “When you breach confidentiality outside of those situations, you’ve clearly communicated to the patient, you’ve really breached trust. And health care relationships are really based on trust.”

Monasterio says that in her job as a medical professional, she has never seen any law that says an immigrant’s legal status has any impact on their right to medical confidentiality.

“Sometimes [providers] don’t well understand their responsibilities,” she said. “That doesn’t make it right, and it doesn’t make it ethical, and it seems to me to be a flagrant breach of confidentiality.”

ORR is supposed to release kids to sponsors, but that’s getting harder

ORR is the government agency that’s responsible for caring for undocumented children who cross the border, but it’s only supposed to keep children in its custody for a short period of time — until they are released into the care of a sponsor.

Usually, sponsors are either a parent or a family member already in the United States. A recent **report from the US Government Accountability Office** estimated that from January 2014 to April 2015, 60 percent of sponsors were parents, 32 percent were other family members, and another 8 percent were family friends.

It is perfectly legal for an undocumented sponsor to come forward and claim responsibility for a child. But the Trump administration is trying to make that much harder, by arguing that ICE should conduct background checks of sponsors to make sure they have enough money to care for the children and are not violent or gang members.

The April memorandum of understanding between HHS and DHS raised alarms from the **American Civil Liberties Union**, immigration attorneys, and immigrant rights groups, who argued it would make it much more difficult for sponsors to come forward.



US Border Patrol agents take Central American asylum seekers into custody on June 12, 2018, near McAllen, Texas. The family could face separation after being processed by the US Customs and Border Protection (CBP). | John Moore/Getty Images

This point was also raised during an **April hearing of the Senate Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Governmental Affairs**, during which numerous witnesses said that ICE conducting background checks could lead to children being held a lot longer in detention.

“I believe this memorandum of understanding, or at least this piece of it, would lead to a prolonged separation of children and their parents and sponsors, and a prolonged detention of UAC’s [unaccompanied alien children] in government custody,” **testified Allison Herre, immigration legal services director for Catholic Charities Southwestern Ohio.**

The law also says undocumented children are not supposed to languish in government detention facilities for months or years on end, but lawyers say the Trump administration’s use of confidential records to keep children detained, combined with fewer sponsors coming forward, is having that effect.

Undocumented children have legal protection from a 1997 agreement called the **Flores settlement**, which says the government must release kids from detention as quickly as possible, whether that is to parents, adult relatives, or licensed programs. If they can’t, the government is still obligated to keep kids in the “least restrictive,” age-appropriate setting possible.

“Every child who is in immigration custody is covered by this settlement,” Cohen said.

Most of the places where children are kept are shelters or federally run foster homes with low levels of security. These include **Casa Padre, the former Walmart Super Center in Brownsville, Texas**, that has been in the news a lot in the past few weeks. McClatchy also reported that HHS is looking to construct **“tent cities”** in Texas to house the influx of children in detention.

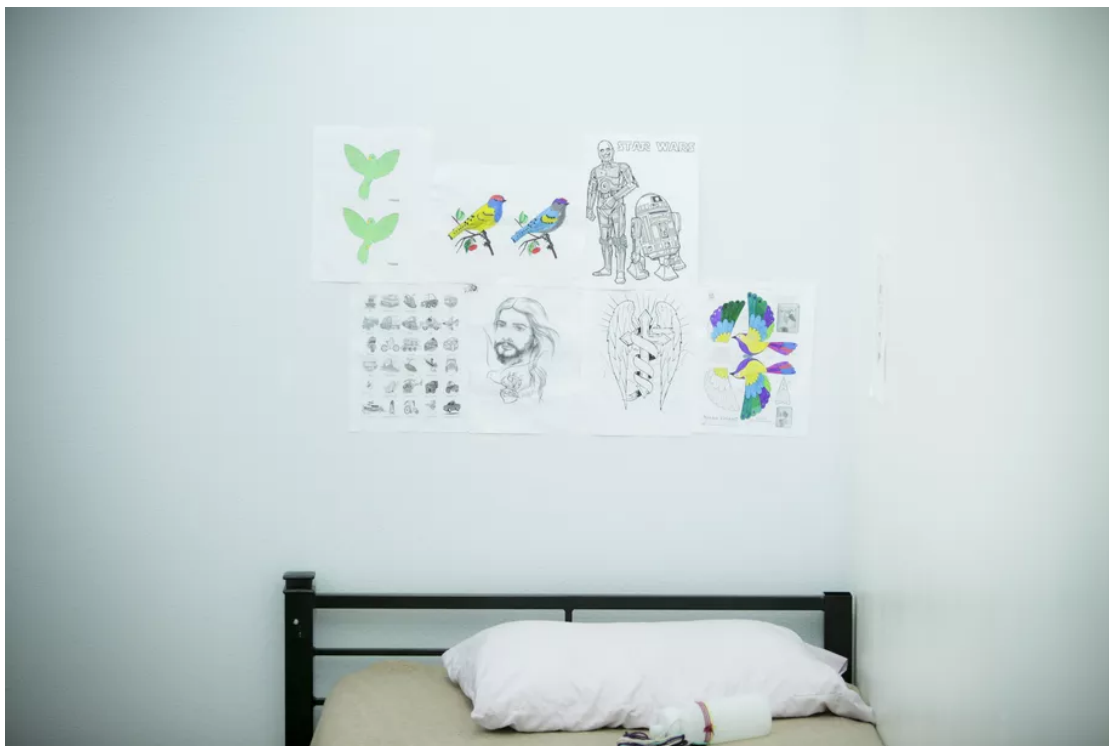


A Department of Health and Human Services handout image inside Casa Padre, the largest government-contracted migrant youth shelter, located in Brownsville, Texas. | Administration for Children and Families at the US Department of Health and Human Services

There are about 11,000 minors in US government custody, but more are being added every day. **Nearly 2,000 children were separated from their families** at the southern border from April 19 through May 31 alone — just a six-week period — according to the Trump administration.

In addition to the shelters, there are three secure facilities around the country where ORR places minors it deems to need a higher level of supervision. Two of these, Shenandoah Valley Juvenile Center and Northern Virginia Juvenile Detention Center, are located in Virginia. The third is the Yolo County Juvenile Detention Facility in California.

“It is a jail-like setting,” said Nathan, who represents clients housed in the two Virginia facilities. “ORR might call them shelters, but secure detention within ORR is a domestic juvenile detention center. There are cinderblocks, the cells have a stainless steel toilet, there’s no privacy. The setting is very, very child-unfriendly.”



A Department of Health and Human Services handout image inside Casa Padre, the largest government-contracted migrant youth shelter, located in Brownsville, Texas. | Administration for Children and Families at the U.S. Department of Health and Human Services

The average length of stay in ORR shelter and transitional foster care facilities was 41 days, but that figure doesn't include those kids held in secure facilities like Shenandoah and Yolo. Attorneys say it's further evidence that ORR — which is supposed to provide humanitarian assistance to undocumented kids — is becoming an arm of law enforcement under the Trump administration.

“The kids we work with are really smart and perceptive,” Nathan said. “They understand the whole system that’s designed to provide humanitarian assistance is under attack.”



A Department of Health and Human Services handout image inside Casa Padre, the largest government-contracted migrant youth shelter, located in Brownsville, Texas. | Administration for Children and Families at the US Department of Health and Human Services

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