



ICE Age-Outs

April 13, 2021

Fiscal Year 2021 Report to Congress



Homeland
Security

U.S. Immigration and Customs Enforcement

Message from the Acting Director

April 13, 2021

I am pleased to present the following report, "ICE Age-Outs," which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report has been compiled pursuant to direction in House Report 116-458, which accompanies the Fiscal Year 2021 Department of Homeland Security Appropriations Act (P.L. 116-260).

Pursuant to congressional guidelines, this report is being provided to the following Members of Congress:



The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Chris Murphy
Chair, Senate Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to me at (202) 732-3000.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tae D. Johnson", with a long, sweeping underline.

Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Executive Summary

The following report provides an overview of the ICE age-out process. When unaccompanied alien children reach their 18th birthday and are still in the care and custody of the U.S. Department of Health and Human Services Office of Refugee Resettlement (ORR), they are referred to as “age-outs.” The report states that the custody of those noncitizens considered age-outs then is transferred to ICE, which subsequently will make a custody determination. A provision of the Violence Against Women Act of 2013 governs how those custody determinations are made.

The report provides age-out data including the total number of age-outs by ICE area of responsibility, total number of age-outs by month, the number of age-out custody determinations and release type, the number of age-out custody determinations and detention reasons, and a total count of age-outs with ORR Post-18 plans and custody determination.



ICE Age-Outs

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I. Legislative Language

This report has been compiled pursuant to direction in House Report 116-458, which accompanies the Fiscal Year (FY) 2021 Department of Homeland Security Appropriations Act (P.L. 116-260).

House Report 116-458 states:

Age-Outs.—... Finally, ICE shall provide a monthly report to the Committee with the number of UAC who turned 18 in ORR custody and were then transferred to ICE detention, including a breakdown by ICE area of responsibility and the UAC's most recent type of ORR placement, the reason for detention, and whether ORR provided a post-18 plan.

II. Background

Unaccompanied alien children (UAC) are defined by statute as children who have no lawful immigration status in the United States; have not attained 18 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 available to provide care and physical custody (6 U.S.C. § 279(g)(2)). When UAC reach their 18th birthday and are still in the care and custody of the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services (HHS), they are referred to as “age-outs.”

Federal law provides that the custody of an age-out is transferred to U.S. Immigration and Customs Enforcement (ICE), which must make a custody determination as to where the age-out will be placed. A 2013 provision in the Violence Against Women Act, sometimes referred to as “VAWA 2013” or 8 U.S.C. § 1232(c)(2)(B), the section of the U.S. Code in which this statute is codified, governs how the custody determination must be made. VAWA 2013 imposes two requirements and obligations on ICE:

- ICE “shall consider placement in the least restrictive setting available after taking into account the alien’s danger to self, danger to the community, and risk of flight.”
- Such “aliens shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien’s need for supervision, which may include placement of the alien with an individual or organizational sponsor, or in a supervised group home.”

The continuum of alternatives available to age-outs includes an order of release on recognizance (OREC) or an order of release on supervision (OSUP); release to a family member, friend, or other individual sponsor; release to a shelter, group home, or other organizational sponsor; and/or release pursuant to ICE’s Alternative to Detention (ATD) program or on an ICE bond.

To demonstrate compliance with the statute, ICE created a worksheet called the Age-Out Review Worksheet (AORW). The AORW is a beneficial tool for officers to document ICE’s considerations when making an age-out custody determination. The AORW assists officers with an in-depth analysis of the statutory risk factors outlined in VAWA¹, which may be mitigated through some of the information gathered and documented on the worksheet.

¹ As mentioned earlier, the statutory factors that ICE shall consider are the alien’s danger to self, danger to the community, and risk of flight.

III. Data Report

Total Count of FY 2021² Age-Outs by Area of Responsibility (AOR)

AOR	Custody Determination		Total
	Detained	Not Detained	
El Paso	-	6	6
Houston	1	16	17
Los Angeles	-	3	3
Miami	-	1	1
New York City	-	4	4
Phoenix	-	8	8
Seattle	-	1	1
San Francisco	-	1	1
San Antonio	2	30	32
San Antonio – Harlingen	-	45	45
Washington	1	-	1
Total	4	115	119

Total Count of FY 2021³ Age-Outs by Month

Month	Custody Determination		Total
	Detained	Not Detained	
October	2	29	31
November	-	29	29
December	2	57	59
Total	4	115	119

FY 2021⁴ Age-Outs by Custody Determinations and Release Type

Release Type	Not Detained Total
OREC	113
OSUP	1
OSUP/ATD	1
Total	115

² Age-out data reflect the reporting period October 1, 2020, to December 31, 2020.

³ Age-out data reflect the reporting period October 1, 2020, to December 31, 2020.

⁴ Age-out data reflect the reporting period October 1, 2020, to December 31, 2020.

FY 2021⁵ Age-Outs by Custody Determination and Detention Reason

Detention Reason	Total Detained
Flight Risk	2
Danger to Community	2
Total	4

Total Count of FY 2021⁶ Age-Outs by ORR Post-18 Plan and Custody Determination

Post 18 Plan	Detained	Not Detained	Percent Detained*	Percent Not Detained	Total
Yes	2	90	2%	98%	92
No	2	25	7%	93%	27
Total	4	115	3%	97%	119

*Two percent of individuals with an ORR Post-18 Plan⁷ were detained compared to 7 percent of those without an ORR Post-18 Plan. Of all cases, 97 percent were not detained.

⁵ Age-out data reflect the reporting period October 1, 2020, to December 31, 2020.

⁶ Age-out data reflect the reporting period October 1, 2020, to December 31, 2020.

⁷ A “Post-18 Plan” is an HHS ORR-generated release plan for age-outs, which may outline post-release services and information regarding sponsors.

IV. Conclusion

VAWA 2013 or 8 U.S.C. § 1232(c)(2)(B) governs how custody determinations must be made and the ATDs available to age-outs, which include OREC or OSUP; release to a family member, friend, or other individual sponsor; release to a shelter, group home, or other organizational sponsor; or on ICE's ATD program or on bond.

Appendix: Abbreviations

Abbreviation	Definition
AOR	Area of Responsibility
AORW	Age-Out Review Worksheet
ATD	Alternative to Detention
FY	Fiscal Year
HHS	U.S. Department of Health and Human Services
ICE	U.S. Immigration and Customs Enforcement
OREC	Order of Release on Recognizance
ORR	Office of Refugee Resettlement
OSUP	Order of Release on Supervision
UAC	Unaccompanied Alien Children
VAWA	Violence Against Women Act