

**FEDERAL CARE OF UNACCOMPANIED  
CHILDREN: MINORS REMAIN  
VULNERABLE TO TRAFFICKING AND  
ABUSE**

**MINORITY STAFF REPORT**

**COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS**

**UNITED STATES SENATE**



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**FEDERAL CARE OF UNACCOMPANIED CHILDREN:  
MINORS REMAIN VULNERABLE TO TRAFFICKING AND ABUSE**

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## EXECUTIVE SUMMARY

Under the Chairmanship of Senator Portman, the Permanent Subcommittee on Investigations (“the Subcommittee”) conducted oversight investigations of Federal Government programs designed to protect and care for children who enter the United States without a parent or legal guardian during the Obama and Trump administrations. The Subcommittee documented its findings in three reports, released on January 28, 2016, August 15, 2018, and December 8, 2020. The Subcommittee’s 2016 and 2018 reports identified deficiencies in the processes at the Department of Health and Human Services (HHS) for ensuring the safety of unaccompanied alien children. The 2018 report also addressed concerns about the treatment of unaccompanied alien children in HHS custody at shelter facilities. The Subcommittee’s 2020 report examined the processes HHS uses to fund and open shelter facilities for unaccompanied alien children.

This investigation focuses on the Biden administration’s policies regarding the treatment of unaccompanied children and the insufficient safeguards to ensure they are not trafficked or abused. This includes programs under HHS, including the Office of Refugee Resettlement (ORR) and the Department of Homeland Security (“DHS”).

Under the Biden administration, the number of unaccompanied alien children entering the United States reached what was then an all-time high in 2021. As the number of unaccompanied children dramatically increased, the Biden administration weakened the background check standards for sponsors. In March 2021, when the unaccompanied alien children crossing the southwest border reached over 18,800 in a single month, the ORR Director issued two directives easing background check requirements for potential sponsors and related individuals: Field Guidance #10 and Field Guidance #11.

Waiving background check requirements on household members—even when ORR is releasing a child to a parent—exposes the child to potential risk and abuse. The background check waivers for adult household members and alternate adult caregivers under the Biden administration’s guidance include waiving public records and sex offender registry checks. Without complete background checks, ORR cannot be sure that the sponsors and household members it is placing these children with do not have a disqualifying criminal history, such as a history of child abuse. For its part, HHS is also unable to get critical information it needs from DHS to vet sponsors and safely place these children.

In total, more than 292,000 unaccompanied alien children entered the United States in 2021 and 2022, of whom HHS released 227,340 to sponsors. However, as a result of changes to ORR’s background check policies in March 2021, HHS’s completion of background checks decreased significantly. In FY 2021, HHS conducted 55 percent fewer digital fingerprint checks and almost 20 percent fewer child abuse and neglect registries than in FY 2019.

As part of this investigation, the Committee requested the number of background checks completed by HHS, broken down by type of background check and sponsor category. HHS informed Committee staff that it does not track data in the format requested—namely background check type by sponsor category—and it was unable to provide the information. As a result, Committee staff could not determine the number of cases in which HHS released an unaccompanied alien child to a household without fingerprint checks performed on all adult

household members and alternate caregivers, where public records checks revealed possible disqualifying factors.

Until recently, only limited information could be pulled in the aggregate from HHS's online database and information system for tracking unaccompanied alien children in its custody, the "UC Portal", and that information relates to the children not the sponsors. These limitations rendered ORR unable to perform essential reviews of its sponsor vetting or child placement processes. However ORR indicates it improved the ability to retrieve data from its system following this investigation.

This report is based on a review of more than 4,000 pages of documents from HHS and briefings from HHS, DHS, the HHS Office of Inspector General, and the Government Accountability Office (GAO). The briefings addressed the agencies' processes for apprehending unaccompanied alien children, transporting them to HHS, placing them with sponsors, ensuring their safety and appearance at immigration court proceedings, and adjudicating immigration cases. All entities cooperated with the Committee's requests for information, briefings, and interviews on a voluntary basis.

## FINDINGS AND RECOMMENDATIONS

### Findings of Fact

- (1) **In 2021, HHS weakened its requirements for background checks on potential sponsors and related adults.** In March 2021, ORR issued two directives—Field Guidance #10 and Field Guidance #11—easing background check requirements for potential sponsors and household members.
- (2) **HHS policy does not explicitly prohibit the placement of an unaccompanied alien child with a sponsor or other related adult who *refuses* to submit to a background check.** Under ORR policy, if a potential sponsor, adult household member, or other related adult refuses to complete a background check, the case is elevated to a Field Specialist who *may* deny release of the child. After considering the totality of circumstances, however, the Field Specialist may still release the child to that sponsor.
- (3) **HHS places many unaccompanied alien children with sponsors without seeing the living conditions.** Between Fiscal Years 2018 and 2022, ORR released 363,124 children to sponsors. Yet, ORR conducted only 24,693 home studies—or 6.8 percent of cases.
- (4) **DHS refuses to provide HHS some information necessary for ORR to vet sponsors and safely place children.** HHS regularly requests information on potential sponsors from DHS, including the people who arrive with a child, yet DHS in some cases refuses to provide the information, leading HHS to warn of “information sharing gaps” between the agencies in the safe placement of these children.
- (5) **HHS cannot track children following placement.** ORR has failed to implement a mechanism for tracking children post placement with a sponsor. ORR’s current mechanism for tracking children post placement is making a minimum of three safety and well-being phone calls to the child 30 days after placement and does not require a home visit.
- (6) **HHS denies legal responsibility for protecting unaccompanied alien children from abuse and trafficking after placement with a sponsor.** In a written response provided to the Committee, ORR claims its legal responsibility ends once a child is released to the care and custody of a sponsor. HHS’s denial of responsibility directly contradicts the plain language of its statutory obligations.

## Recommendations

- (1) Congress should pass the *Responsibility for Unaccompanied Minors Act*. This bipartisan legislation would resolve several shortcomings identified in the Subcommittee's two reports on unaccompanied alien children. The bill requires HHS to better track and care for unaccompanied alien children. Key provisions of this bill include:
  - Clarifies that HHS has legal responsibility for the care of unaccompanied alien children under current law until the child's immigration court proceedings conclude or until the child turns 18, whichever occurs first;
  - Instructs HHS to complete background checks on all potential sponsors and other adults living in a sponsor's household;
  - Requires a potential sponsor to execute a sponsor care agreement prior to assuming custody of a child. The agreement stipulates that the sponsor will ensure the child is present at all future immigration proceedings, notify HHS of any change in address, and notify local law enforcement if a child is at risk of abuse or harm, etc.;
  - Mandates that HHS must terminate sponsorship and reclaim custody of a child if a sponsor does not comply with the sponsorship agreement;
  - Directs HHS to provide notification to state welfare agencies prior to discharging an unaccompanied alien child to a sponsor residing in the state; and
  - Provides 225 additional immigration judge teams.
- (2) HHS should revise the corroboration policies described in ORR's Policy Guide and Category 3 sponsors—such as distant relatives and unrelated adult individuals—who fail to prove a pre-existing relationship with a child, should be explicitly prohibited from assuming custody.
- (3) HHS should improve its procedures for verifying pre-existing relationships and develop formal guidance for case managers during the verification process.
- (4) HHS should amend its directives easing background check requirements—Field Guidance #10 and Field Guidance #11—and ensure potential sponsors and household members are sufficiently vetted prior to releasing a child into sponsor custody.
- (5) If a potential sponsor or member of the household refuses to comply with required background checks, HHS should prohibit additional consideration of the release of a child into the sponsor's custody. This policy should be reflected in HHS's Policy Guide.

- (6) DHS and HHS should update their memoranda of agreement to ensure DHS provides ORR with the information necessary to vet sponsors and safely place unaccompanied alien children.
- (7) HHS should ensure UC Path—the UC Portal’s successor—is equipped with an easily navigable interface and user-friendly search function.
- (8) HHS should ensure the UC Path system stores data at both the child and sponsor level, allowing case managers and other HHS personnel to review data in the aggregate and perform essential analysis of its sponsor vetting and child placement processes.

## I. BACKGROUND

Numerous presidential administrations have confronted the problem of adults, accompanied alien children, and unaccompanied alien children attempting to enter the United States illegally. The Homeland Security Act of 2002 defines “unaccompanied alien children” as children under the age of 18 who have “no lawful immigration status in the United States” and who do not have a parent or legal guardian in the United States or whose parent or legal guardian in the United States cannot care for them.<sup>1</sup> U.S. authorities apprehend most of these children between U.S. ports of entry along the southwest border. Because of their age, lack of adult supervision, legal status, and language barriers, unaccompanied alien children are among the most vulnerable migrants.

No single reason drives these children’s entry into the United States. Regardless of the underlying motivations, smugglers and human traffickers transport many of the children who in turn face a high risk of exploitation and abuse.<sup>2</sup> In 2014, then-Vice President Biden warned that between 75 and 80 percent of unaccompanied alien children are brought into the United States by smugglers, many of whom “routinely engage in physical and sexual abuse, and extortion . . . .”<sup>3</sup> The Congressional Research Service has also warned that smugglers sell migrant children into forced labor and prostitution to recoup their costs.<sup>4</sup>

### A. The Continued Influx of Unaccompanied Alien Children

Although the United States has always experienced unaccompanied alien children entering the country illegally, the volume has increased substantially over the past decade.<sup>5</sup> During the 2000s, the United States apprehended an average of 6,700 unaccompanied alien children annually.<sup>6</sup> Apprehensions first increased substantially in 2011, reaching a then record high in 2014.<sup>7</sup> That year, United States authorities apprehended over 68,000 unaccompanied alien

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<sup>1</sup> See Homeland Security Act of 2002, Pub. L. No. 107-296 § 462, 116 Stat. 2135, 2205 (2002) (6 U.S.C. § 279(g)(2)).

<sup>2</sup> See *Foreign National Minors*, OFFICE FOR VICTIMS OF CRIME TRAINING & TECHNICAL ASSISTANCE CTR., OFFICE OF JUSTICE PROGRAMS, U.S. DEP’T OF JUSTICE, <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/45-victim-populations/minors-adolescents/foreign-national-minors/>.

<sup>3</sup> Vice President Joseph Biden, Remarks to the Press with Q&A in Guatemala (June 20, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/06/20/remarks-press-qa-vice-president-joe-biden-guatemala>.

<sup>4</sup> WILLIAM KANDEL ET AL., CONG. RESEARCH SERV., R43628, UNACCOMPANIED ALIEN CHILDREN: POTENTIAL FACTORS CONTRIBUTING TO RECENT IMMIGRATION 10 (2014).

<sup>5</sup> WILLIAM A. KANDEL, CONG. RESEARCH SERV., R43599, UNACCOMPANIED ALIEN CHILDREN: AN OVERVIEW 1 (2021).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; see also STAFF OF PERMANENT SUBCOMM. ON INVESTIGATIONS, S. COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFAIRS, 114TH CONG., REP. ON PROTECTING UNACCOMPANIED ALIEN CHILDREN FROM TRAFFICKING AND OTHER ABUSES: THE ROLE OF THE OFFICE OF REFUGEE RESETTLEMENT 5 (2016) [hereinafter PSI 2016 REPORT].

children—nearly double the apprehensions in 2013.<sup>8</sup> The increase was so concerning that then-Vice President Biden stated:

The United States, to state the obvious, is greatly concerned by the startling number of unaccompanied minors that—children and teenagers who are making a very perilous journey through Central America to reach the United States. . . . [T]he numbers are growing at an alarming [rate] . . . . [T]he current situation is untenable and unsustainable. . . .<sup>9</sup>

Despite annual fluctuations, the number of unaccompanied alien children apprehended by U.S. authorities has remained high since 2014.<sup>10</sup> Between 2015 and 2018, U.S. authorities apprehended an average of 47,783 unaccompanied alien children at the southwest border.<sup>11</sup> In 2019, the U.S. set a new record high, exceeding 80,000.<sup>12</sup> Instances of unaccompanied alien children attempting to enter the United States at the southern border in 2020 saw a 60 percent reduction due to COVID-related public health emergency measures instituted by the Centers for Disease Control.<sup>13</sup> That year, authorities encountered 33,557 unaccompanied alien children at the southern border.<sup>14</sup>

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<sup>8</sup> U.S. BORDER PATROL, CUSTOMS & BORDER PROTECTION, U.S. DEP’T OF HOMELAND SEC., TOTAL UNACCOMPANIED ALIEN CHILDREN APPREHENSIONS FY 2010–FY 2018, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-total-monthly-uacs-sector-fy2010-fy2018.pdf>.

<sup>9</sup> Vice President Joseph Biden, Remarks to the Press with Q&A in Guatemala (June 20, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/06/20/remarks-press-qa-vice-president-joe-biden-guatemala>.

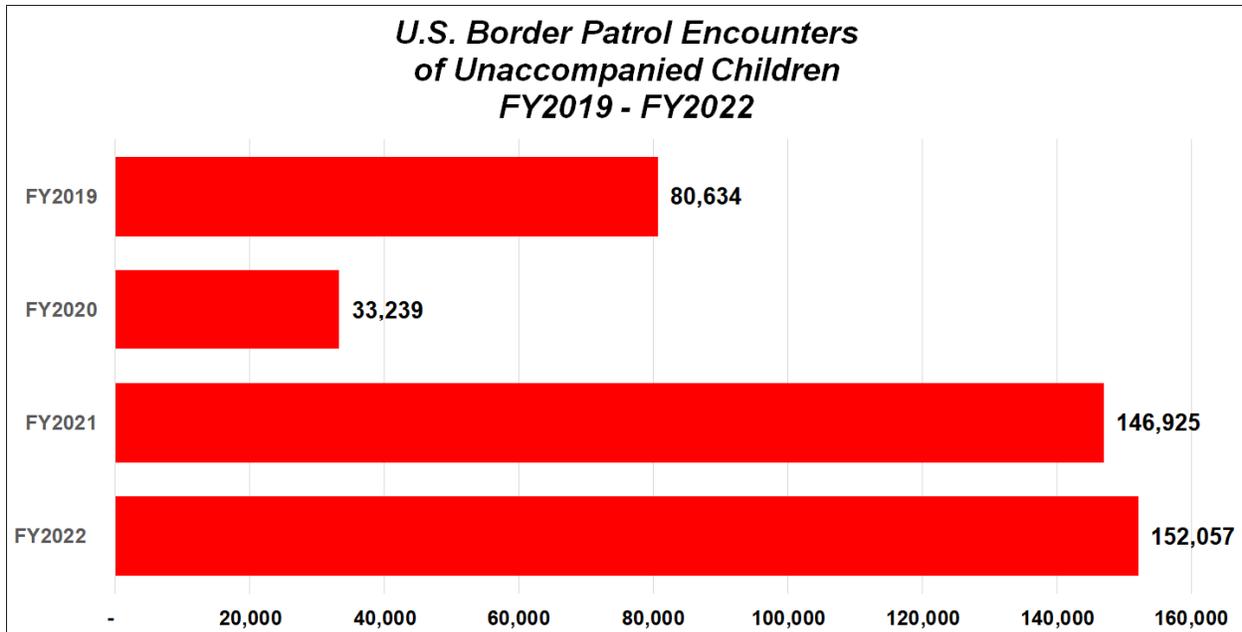
<sup>10</sup> KANDEL, *supra* note 5, at 1.

<sup>11</sup> U.S. CUSTOMS & BORDER PROTECTION, U.S. DEP’T OF HOMELAND SEC., TOTAL UNACCOMPANIED ALIEN CHILDREN (0–17 YEARS OLD) APPREHENSIONS BY MONTH - FY 2015–2018, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-total-monthly-uacs-sector-fy2010-fy2018.pdf>.

<sup>12</sup> U.S. CUSTOMS & BORDER PROTECTION, U.S. DEP’T OF HOMELAND SEC., SOUTHWEST LAND BORDER ENCOUNTERS, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>13</sup> *Id.*; KANDEL, *supra* note 5, at 28 (noting, “in March 2020 the CDC declared a public health emergency under Title 42 of the U.S. Code that allowed CBP to promptly expel unaccompanied children at the border without considering their asylum claims”).

<sup>14</sup> U.S. CUSTOMS & BORDER PROTECTION, *supra* note 12.



Source: U.S. Customs and Border Protection<sup>15</sup>

Since 2021, U.S. Customs and Border Protection (“CBP”) has reported a substantial increase in migrant encounters—across all demographics, including unaccompanied alien children.<sup>16</sup> In January alone, CBP encountered nearly 6,000 unaccompanied alien children.<sup>17</sup> The influx of unaccompanied alien children, however, exploded over the next two months: CBP encountered 9,402 children in February, a 61 percent increase over January, and encountered nearly 18,900 children in March, more than double the number in February.<sup>18</sup> Although the number of migrant children decreased slightly during the spring months, it reached a new peak in July 2021. That month, CBP apprehended approximately 19,000 unaccompanied alien children—the highest number in two decades.<sup>19</sup> Although the number of children encountered decreased following the summer of 2021, it continued to set records.<sup>20</sup> In total, more than 292,000 unaccompanied alien children entered the United States in 2021 and 2022—a record high.<sup>21</sup>

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

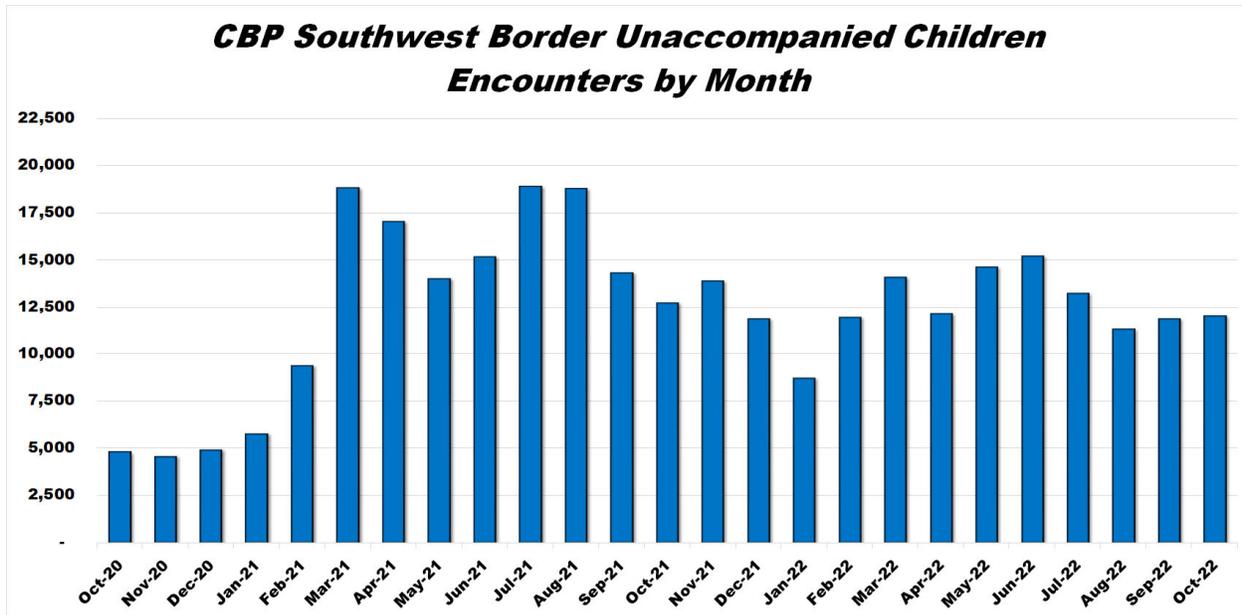
<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> U.S. BORDER PATROL, CUSTOMERS & BORDER PROTECTION, U.S. DEP’T OF HOMELAND SEC., TOTAL ILLEGAL ALIEN APPREHENSIONS BY MONTH: FY 2000–FY 2019, *available at* [https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Monthly%20Apprehensions%20%28FY%202000%20-%20FY%202019%29\\_1.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Monthly%20Apprehensions%20%28FY%202000%20-%20FY%202019%29_1.pdf)

<sup>20</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., LATEST UC DATA – FY 2021, <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2021/index.html>.

<sup>21</sup> U.S. CUSTOMS & BORDER PROTECTION, *supra* note 12.



Source: U.S. Border Patrol<sup>22</sup>

The dramatic rise in encounters at the southwest border has simultaneously increased the number of unaccompanied alien children referred to HHS. In fiscal year 2021, ORR received nearly 123,000 referrals from DHS—almost double the previous record set in 2019.<sup>23</sup> ORR noted that the number of unaccompanied alien child referred to HHS continue to increase in fiscal year 2022, telling the Committee it “continues to track record referrals in fiscal year 2022 and expects an increase in the wake of the termination of title 42.”<sup>24</sup>

<sup>22</sup> U.S. BORDER PATROL, *supra* note 8; U.S. CUSTOMS & BORDER PROTECTION, *supra* note 12.

<sup>23</sup> *Facts and Data*, OFFICE OF REFUGEE RESETTLEMENT, OFFICE OF THE ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>24</sup> Office of Refugee Resettlement, Office of the Admin. for Children & Families, U.S. Dep’t of Health & Human Servs, Draft Report Review 21 (Dec. 7, 2022) (on file with the Committee).

Referrals from DHS to ORR	
Fiscal Year	Referrals
2012	13,625
2013	24,668
2014	57,496
2015	33,726
2016	59,170
2017	40,810
2018	49,100
2019	69,488
2020	15,381
2021	122,731
2022*	128,904*

\*As of Dec. 7, 2022<sup>25</sup>

The massive increase in referrals from DHS that began in 2021 left more children in ORR’s care. ORR had approximately 3,700 children in its care at the end of calendar year 2020.<sup>26</sup> By the end of March 31, 2021, the children in ORR’s care had tripled to approximately 10,500.<sup>27</sup> By April and May 2021, the children in ORR’s care had nearly doubled to over 20,000 children.<sup>28</sup> ORR noted that “this was due to COVID-19-related staffing shortages and a decrease in bed capacity in response to physical distancing protocols and other public health mitigation strategies.”<sup>29</sup> Since March 2021, HHS has consistently had, on average, 11,000 children in its care each month.<sup>30</sup>

The vast majority of unaccompanied alien children entering the United States are age 13 or older.<sup>31</sup> Most unaccompanied alien children in its care are also males. For

example, in fiscal years 2020 and fiscal year 2021, only 16 percent of unaccompanied alien children were under the age of 13.<sup>32</sup> Since at least fiscal year 2012, more than 66 percent of all children apprehended have been male.<sup>33</sup>

## B. Legal Framework for the Care of Unaccompanied Alien Children

Congress recognized the need to care for unaccompanied alien children in Federal custody, and designated multiple Federal agencies to provide this care. Three legal regimes are integral to the apprehension, processing, and care of unaccompanied alien children: the 1997 *Flores* Settlement Agreement, the Homeland Security Act of 2002, and the 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”). Together, these authorities enable Federal

<sup>25</sup> Office of Refugee Resettlement, *supra* note 24, at 2.

<sup>26</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 20.

<sup>27</sup> *Id.*; Office of Refugee Resettlement, *supra* note 24.

<sup>28</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 20; Office of Refugee Resettlement, *supra* note 24.

<sup>29</sup> Office of Refugee Resettlement, *supra* note 24.

<sup>30</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 20; Office of Refugee Resettlement, *supra* note 24.

<sup>31</sup> OFFICE OF REFUGEE RESETTLEMENT, *supra* note 23.

<sup>32</sup> *See id.*; PetUC-0000936.

<sup>33</sup> *See* OFFICE OF REFUGEE RESETTLEMENT, *supra* note 23; PetUC-0000936.

agencies like HHS to care for unaccompanied children once DHS apprehends and refers them to ORR and establish requirements for the treatment of these children.<sup>34</sup>

*Flores Settlement Agreement.* In 1985, a group of plaintiffs brought a class action lawsuit against the former Immigration and Naturalization Service (“INS”)<sup>35</sup> challenging INS’s procedures for the treatment and placement of minors in INS custody.<sup>36</sup> In 1997 the U.S. Government and *Flores* plaintiffs signed the *Flores* Settlement Agreement (“*Flores* Agreement”), which prescribed national minimum standards for the care, treatment, and placement of minors apprehended by the INS.<sup>37</sup> The Agreement mandated that following arrest, INS needed to hold minors in safe and sanitary facilities that were “consistent with the INS’s concern for the particular vulnerability of minors.”<sup>38</sup>

The *Flores* Agreement established a general policy favoring the release of unaccompanied alien children.<sup>39</sup> In accordance with the *Flores* Agreement, the INS was required to:

[P]lace each detained minor in the least restrictive setting appropriate to the minor’s age and special needs, provided that such setting is consistent with its interests to ensure the minor’s timely appearance before the INS and the immigration courts and to protect the minor’s well-being and that of others.<sup>40</sup>

Consistent with that policy, the *Flores* Agreement expanded the individuals to whom INS could release children beyond parents, guardians, and close adult relatives, to include “an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor’s well-being” and “an adult individual or entity seeking custody . . . when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.”<sup>41</sup> The Agreement also envisioned placement with government-contracted facilities in the event INS could not place a minor with one of the above individuals, requiring that any such facilities:

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<sup>34</sup> Office of Refugee Resettlement, *supra* note 24.

<sup>35</sup> See Homeland Security Act of 2002, Pub. L. No. 107-296 § 462, 116 Stat. 2135, 2202 (2002) (6 U.S.C. § 279(a)) (“There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization”).

<sup>36</sup> The consent decree entered into as part of the litigation defined the term “minor” as “any person under the age of eighteen (18) years who is detained in the legal custody of the INS.” Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-cv-4544 (C.D. Cal. 1997), [hereinafter “*Flores* Agreement”]. See 8 U.S.C. § 1232.

<sup>37</sup> *Flores* Agreement.

<sup>38</sup> *Id.* at 7.

<sup>39</sup> *Id.* at 9.

<sup>40</sup> *Id.* at 7.

<sup>41</sup> *Id.* at 10.

provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others . . . .<sup>42</sup>

The *Flores* Agreement also requires potential sponsors to execute an Affidavit of Support (Form I-134) and adhere to an agreement to, among other things:

- “[P]rovide for the minor’s physical, mental, and financial well-being”;
- “[E]nsure the minor’s presence at all future proceedings before the INS and the immigration court”;
- “[N]otify the INS of any change of address within five (5) days following a move”;
- “[I]n the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director.”<sup>43</sup>

Finally, the *Flores* Agreement provided that “[t]he INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement.”<sup>44</sup>

*The Homeland Security Act of 2002.* In 2002, Congress passed the Homeland Security Act, outlining the Federal Government’s supervisory responsibilities for unaccompanied alien children. The Homeland Security Act of 2002 assigned ORR the “functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization.”<sup>45</sup> This included the responsibility for coordinating and implementing the care and placement of unaccompanied alien children, including placing the children in appropriate custody.<sup>46</sup> As the House Report to the Homeland Security Act of 2002 described, ORR is responsible for, among other items:

coordinating and implementing the law and policy for unaccompanied alien children who come into Federal custody; making placement determinations for all unaccompanied alien children in Federal custody; identifying and overseeing the infrastructure and personnel of facilities that house unaccompanied alien children; annually publishing a State-by-State list of professionals or other entities qualified to provide guardian and attorney services; maintaining statistics on unaccompanied alien children; and reuniting unaccompanied alien children with a parent abroad, where appropriate.<sup>47</sup>

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<sup>42</sup> *Id.* at 7–8.

<sup>43</sup> *Id.* at 10.

<sup>44</sup> *Id.* at 11.

<sup>45</sup> Homeland Security Act of 2002, Pub. L. No. 107-296 § 462, 116 Stat. 2135, 2202 (2002) (6 U.S.C. § 279(a)).

<sup>46</sup> *Id.*

<sup>47</sup> H. REP. NO. 107-609, at 106 (2002).

The Homeland Security Act of 2002 requires ORR to coordinate the care and placement of unaccompanied alien children; ensure that the interests of unaccompanied alien children are considered in decisions; develop policies pertaining to the placement of unaccompanied alien children; identify qualified sponsors; oversee the infrastructure and personnel of facilities where unaccompanied alien children may be held; and maintain biographical information for unaccompanied alien children.<sup>48</sup>

*The 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”).*

In December 2008, Congress passed the TVPRA, which recognized the vulnerability of unaccompanied alien children to human trafficking and other forms of exploitation and reiterated the responsibility of the Federal Government to care for and protect these children.<sup>49</sup> The TVPRA gave the Secretary of HHS responsibility for “the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate.”<sup>50</sup>

The bill was prompted, in part, by concerns that CBP was not adequately screening apprehended unaccompanied alien children for indicators of human trafficking or persecution.<sup>51</sup> Thus, the TVPRA prescribes processes to combat child trafficking in the United States and requires the Secretary of DHS—in conjunction with the Secretaries of State, HHS, as well as the Attorney General—to “develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.”<sup>52</sup>

The TVPRA delineates certain requirements for screening and safely repatriating children apprehended at the border or a port of entry.<sup>53</sup> For example, DHS or the apprehending agency must screen a child within 48 hours of apprehension, assessing whether the child meets the criteria of an unaccompanied alien child.<sup>54</sup> Upon determination that the apprehended child is an unaccompanied alien child, DHS must notify HHS of the apprehension within 48 hours and transfer custody of the child to HHS within 72 hours.<sup>55</sup> The TVPRA also requires the HHS

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<sup>48</sup> Homeland Security Act of 2002 § 462.

<sup>49</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 112 Stat. 5044 (2008).

<sup>50</sup> § 235, 112 Stat. 5044, 5077 (8 U.S.C. § 1232(b)(1)).

<sup>51</sup> KANDEL, *supra* note 5.

<sup>52</sup> § 235 (8 U.S.C. § 1232(a)(1)).

<sup>53</sup> *Id.* (8 U.S.C. § 1232(a)). Some ports of entry, such as international airports or major seaports, are not located at a land border port of entry.

<sup>54</sup> *Id.* (8 U.S.C. § 1232(a)(4)).

<sup>55</sup> *Id.* (8 U.S.C. § 1232(b)). While DHS may hold an unaccompanied alien child for more than 72 hours due to “exceptional circumstances,” the statute does not articulate the boundaries of the circumstances.

Secretary to “promptly” place an unaccompanied alien child “in the least restrictive setting that is in the best interest of the child.”<sup>56</sup>

### C. The Department of Health and Human Services Office of Refugee Resettlement

Three Federal agencies interact with unaccompanied alien children during their time in the United States. Two components within the Department of Homeland Security—Customs and Border Protection (“CBP”) and Immigration and Customs Enforcement (“ICE”)—encounter and apprehend unaccompanied alien children.<sup>57</sup> An immigration court in the Department of Justice Executive Office for Immigration Review adjudicates each child’s case.<sup>58</sup> Between apprehension and final immigration court proceedings, the Department of Health and Human Services is responsible for caring for the child.<sup>59</sup> Pursuant to the TVPRA, the HHS Secretary has custodial oversight responsibilities for an unaccompanied alien child until resolution of the child’s immigration court proceedings or until the child turns 18.<sup>60</sup>

The Homeland Security Act of 2002 delegated care and custody responsibilities to ORR, a component of HHS’s Administration for Children and Family (“ACF”).<sup>61</sup> ORR is led by a director who reports to the Assistant Secretary for ACF. ORR has four major subdivisions: Office of the Director, Office of the Principal Deputy Director (which includes Data, Division of Planning and Logistics, and Operations), Refugee Program, and the Unaccompanied Children Program.<sup>62</sup> The UC Program Director oversees ORR’s Unaccompanied Children Program.<sup>63</sup>

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<sup>56</sup> *Id.* (8 U.S.C. § 1232(c)(2)).

<sup>57</sup> CBP officers typically encounter children at or between U.S. ports of entry, particularly along the southwest border, where many children intentionally present themselves to U.S. authorities. By contrast, ICE officials typically encounter unaccompanied alien children when conducting immigration enforcement actions domestically. *See* KANDEL, *supra* note 5, at 7, 9.

<sup>58</sup> *See Organization, Mission And Functions Manual: Executive Office For Immigration Review*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/jmd/organization-mission-and-functions-manual-executive-office-immigration-review> (noting, “[the Executive Office for Immigration Review’s] mission is to interpret and administer federal immigration laws by conducting immigration court proceedings, appellate reviews and administrative hearings”).

<sup>59</sup> In a comment to this and the following statement, HHS informed the Committee that “unification with a vetted sponsor” should be added to the list of circumstances under which HHS’s custodial responsibilities end, referring to HHS’s view that its legal custody over children ends after placement. However, this investigation concluded that view is unsupported by the law and discusses this further at nn. 188–190 and accompany text. *See* Office of Refugee Resettlement, *supra* note 24.

<sup>60</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, § 235 (8 U.S.C. § 1232(b)(1)). If an unaccompanied alien child turns 18 years of age while in ORR’s care, ORR transfers custody of the unaccompanied alien child to the Department of Homeland Security; *see also supra* note 59.

<sup>61</sup> Homeland Security Act of 2002, Pub. L. No. 107-296 § 462, 116 Stat. 2135 (2002) (6 U.S.C. § 279(a)); Office of Refugee Resettlement, *supra* note 24.

<sup>62</sup> Office of Refugee Resettlement, *supra* note 24.

<sup>63</sup> *Id.*



Source: PetUC-0004078

To fulfill its statutory responsibilities, ORR uses a network of care provider facilities and programs across the country. ORR divides the country into three regions, each managed by a Federal Field Specialist Manager.<sup>64</sup> The managers each monitor a team of Federal Field Specialists.<sup>65</sup> Federal Field Specialists oversee and manage the care providers facilities and programs within their jurisdiction.<sup>66</sup> They are also responsible for approving all transfers of children between provider facilities and programs, as well as releases of children to sponsors.<sup>67</sup>

ORR issues grants or contracts with a variety of care provider facilities including shelters, foster-care or group homes, secure care facilities, residential treatment facilities, or special needs care facilities, to provide care and treatment for children prior to placement with a sponsor.<sup>68</sup> Intake

<sup>64</sup> *Id.*

<sup>65</sup> PSI 2016 REPORT, *supra* note 7, at 10.

<sup>66</sup> *Id.* at 10.

<sup>67</sup> See PetUC-0001003; see also OFFICE OF REFUGEE RESETTLEMENT, ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., ORR UNACCOMPANIED CHILDREN PROGRAM POLICY GUIDE at § 2.3.1 [hereinafter UC POLICY GUIDE].

<sup>68</sup> UC POLICY GUIDE, *supra* note 67, at §1; Office of Refugee Resettlement, *supra* note 24. Because of the large influx of children, ORR has also established temporary shelter facilities, emergency intake sites, and influx care facilities. ORR told the Committee,

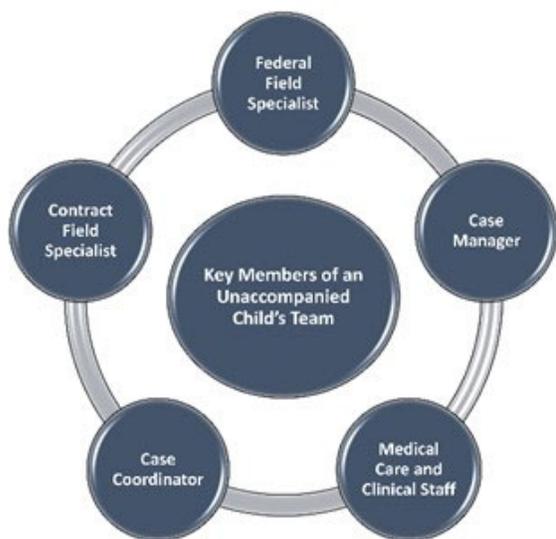
ORR brought Emergency Intake Services (EIS) online in 2021 to meet COVID-19 mitigation measures and ensure that children were not held in border patrol stations longer than 72 hours. These EIS were only used on a temporary basis in an emergency response setting. In January 2022, ORR demobilized 12 of the 14 EIS sites. In June 2022, ORR transitioned the remaining two sites into Influx Care Facilities (ICF). No EIS remain active. Unlike EIS sites, ICFs are required to provide certain standards of care as described in Exhibit 1 of the Flores Settlement Agreement, which are consistent with ORR UC Program Policy Guide Section 7.5.1 Influx Care Facility Minimum Services.

Office of Refugee Resettlement, *supra* note 24.

Specialists identify initial placement for unaccompanied alien children at facilities with available bed space and the level of care required for the child’s needs.<sup>69</sup>

A team of HHS staff and contractors manages the care of an unaccompanied alien child. Beyond the Field Specialists described above, case managers and case coordinators play a key role in the sponsor placement process.<sup>70</sup> Case managers perform a variety of the child’s services.<sup>71</sup> This includes completing a care plan for the child, reviewing the child’s documentation, and identifying and assessing potential sponsors.<sup>72</sup> The case manager interviews the child and potential sponsors, and may interview family members in the child’s home country if necessary.<sup>73</sup> After evaluating a potential sponsor, the case manager makes an initial recommendation for placement and coordinates the release of the child to the sponsor.<sup>74</sup> Case

coordinators are third party, HHS-contracted child welfare experts who review the child’s and potential sponsor’s files and make independent recommendations “based on child-welfare best practices.”<sup>75</sup>



Source: PetUC-0000994

#### D. HHS’s Child Placement Processes<sup>76</sup>

Multiple Federal agencies are involved in the custodial care of unaccompanied alien children. The unaccompanied alien children spend a majority of that time in the custody of HHS. Pursuant to statute and regulation, ORR—through its care provider network—is charged with evaluating the child and, where possible, placing that child with a sponsor in the

United States who can provide care for the child during the child’s removal proceedings. The following provides a high-level overview of ORR’s child placement processes, starting with

<sup>69</sup> Office of Refugee Resettlement, *supra* note 24.

<sup>70</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.3.

<sup>71</sup> *Id.* at § 2.3.2.

<sup>72</sup> PetUC-0000995; UC POLICY GUIDE, *supra* note 67, at § 2.3.2.

<sup>73</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>74</sup> PetUC-0000995.

<sup>75</sup> See PetUC-0001001; UC POLICY GUIDE, *supra* note 67, at § 2.3.3.

<sup>76</sup> This report uses the term “placement” to refer to the discharge of a child to a vetted sponsor. ORR noted to the Committee that this terminology is inconsistent with its terminology, telling the Committee that “ORR policy uses the term ‘reunification’ to refer to the discharge of a child to a vetted sponsor.” Office of Refugee Resettlement, *supra* note 24. However, the term reunification implies unaccompanied alien children are always placed with acquaintances from whom they were previously separated. This investigation found that is not always the case and therefore does not use the term reunification.

ORR taking custody through evaluation and placement with a sponsor, and the provision of post-placement services.

## 1. Take Custody of the Child following DHS Apprehension



ORR’s child placement process begins when DHS refers an unaccompanied alien child to HHS. ORR’s Policy Guide notes “the majority of unaccompanied alien children come into ORR custody because they were apprehended by border patrol officers within the Department of Homeland Security (DHS) while trying to enter the United States without legal authorization.”<sup>77</sup> As noted above, DHS must notify HHS of a child’s apprehension within 48 hours and transfer the child to HHS within 72 hours.<sup>78</sup>

Upon apprehension, DHS interviews the unaccompanied alien child and collects available biographical information, including name, birth date, and country of origin.<sup>79</sup> DHS also screens the child for certain risk factors, including human trafficking.<sup>80</sup> However, DHS does not cross reference the UC portal—HHS’s case management system and official system of record for unaccompanied alien children.<sup>81</sup> Under a March 11, 2021 Memorandum of Agreement, DHS electronically transfers information collected about the child to HHS through the UC Portal.<sup>82</sup> DHS includes available information on the potential sponsor; situational factors, such as the child’s health and travel companions; human trafficking indicators; criminal records; and behavioral issues.<sup>83</sup> The Memorandum of Agreement further states that DHS “will normally” transfer the child with a packet of relevant documents, including: identity documents; immigration records; the record of the person and property transferred; the child’s notice to appear in immigration court; copies of any criminal records; and CBP form 93, Unaccompanied

<sup>77</sup> See UC POLICY GUIDE, *supra* note 67, at § 1.1. Office of Refugee Resettlement, *supra* note 24.

<sup>78</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5077 (2008) (codified at 8 U.S.C. § 1232(b)).

<sup>79</sup> UC POLICY GUIDE, *supra* note 67, at § 1.3.1; Committee Briefing with UC care provider (July 16, 2021) (notes on file with the Committee) (The UC care provider explained that following apprehension and arrival at a CBP facility, CBP agents interview the unaccompanied child and collect available biographical information. This information is uploaded to HHS’ UC Portal System.); *see also id.* at § 5.6.2.

<sup>80</sup> Memorandum of Agreement Among the Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters (Mar. 11, 2021) [hereinafter 2021 MOA].

<sup>81</sup> Office of Refugee Resettlement, *supra* note 24.

<sup>82</sup> 2021 MOA, *supra* note 80. DHS, or another referring Federal agency, may also email ORR’s Intakes Team. *See* PetUC-0001227.

<sup>83</sup> *Id.*

Alien Child Screening Addendum.<sup>84</sup> As discussed later in this report, however, DHS’s information sharing with HHS remains inadequate.<sup>85</sup>

Once received through the UC Portal, ORR’s Intakes Team reviews the information for completeness and to determine if additional details are necessary to make an appropriate placement determination, pursuing the least restrictive setting possible.<sup>86</sup> The Intakes Team is comprised of specialists at ORR headquarters “who receive and process all referral requests, locate and designate appropriate placement” and document the designations.<sup>87</sup> The Intakes Team reviews available bed space at ORR care providers or temporary facilities through the UC Portal.<sup>88</sup> According to an employee of one care provider, the Intakes Team provides “very minimal demographic information” when attempting to identify initial placement.<sup>89</sup> In one instance, according to the care provider employee, the Intakes Team only asked whether the care provider if it had “space for a 12 year old boy from Guatemala.”<sup>90</sup> ORR expects care providers to respond to the request within one hour.<sup>91</sup> Notably, care providers must accept a request for placement under ORR policy, unless (1) the provider lacks available bed space; (2) placement would conflict with state or local licensing rules; or (3) the child has a significant physical or mental illness and the referring agency does not provide medical clearance or medications in conflict with state or local licensing requirements.<sup>92</sup> According to ORR policy, an Intakes Team member provides a recommendation for child placement to a Federal Field Specialist supervisor, and the supervisor makes the final placement decision.<sup>93</sup>

Once a care provider facility accepts a referral, ORR informs DHS.<sup>94</sup> ORR notifies DHS via email of the assigned care provider and placement location within 24 hours of learning that an

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<sup>84</sup> STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 115TH CONG., REP. ON OVERSIGHT OF THE CARE OF UNACCOMPANIED ALIEN CHILDREN 11 (2018) (citing Memorandum of Agreement among the Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters 2–3 (Apr. 13, 2018)) [hereinafter PSI 2018 REPORT]. *See also* On August 13, 2018, DHS officials told Permanent Subcommittee on Investigations staff that DHS always conducts trafficking screenings. *Id.* Thus, DHS should provide HHS a Form 93 for every child transferred.

<sup>85</sup> *See* Part II. 1. B., *infra*.

<sup>86</sup> Office of Refugee Resettlement, *supra* note 24; *see also* UC POLICY GUIDE, *supra* note 67, at §§ 1.1, 1.3.2.

<sup>87</sup> PetUC-0001227.

<sup>88</sup> *See* UC POLICY GUIDE, *supra* note 67, at §§ 1.2, 1.3.2; PetUC-0001230. The UC Portal automatically updates to reflect available beds by state and facility. Pursuant to policy, each care provider must verify available bed space every morning so that the system’s updates are accurate. PetUC-0001230.

<sup>89</sup> *See* Committee Briefing with UC care provider (July 16, 2021).

<sup>90</sup> *See id.*

<sup>91</sup> *See* PetUC-0001227 (“Care provider programs must have a primary and secondary contact available 24 hours a day, 7 days a week who will respond to ORR Intakes team within one hour of ORR Intakes’ request for UAC initial placement.”); Committee Briefing with UC care provider (July 16, 2021).

<sup>92</sup> *See* UC POLICY GUIDE, *supra* note 67, at § 1.3.3.

<sup>93</sup> *See id.* at § 1.3.2.

<sup>94</sup> *See* Committee Briefing with UC care provider (July 16, 2021).

unaccompanied alien child needs placement.<sup>95</sup> This email includes the contact information for the assigned care provider.<sup>96</sup> The referring agency coordinates the child’s transportation from DHS custody to the care provider.<sup>97</sup> The care facility receives the child’s flight information so that an employee of the facility can meet the child upon arrival.<sup>98</sup> According to one current care provider, the employee must sign a placement authorization form stating that the child is now in ORR custody.<sup>99</sup>

## 2. Evaluate the Child



Within 24 hours of assuming custody for an unaccompanied alien child, staff from the designated care provider completes an initial intake assessment, including an interview of the child to identify any immediate needs or issues.<sup>100</sup> The assessment also includes a screening for indicators of human trafficking.<sup>101</sup> The designated care provider must also give the child a standard orientation with 48 hours of assuming custody.<sup>102</sup> The orientation explains why the child is in ORR custody; emphasizes that the child must attend an immigration court hearing; explains care provider rules and internal policies; explains the child’s rights and responsibilities; and covers the expected daily schedule, among other topics.<sup>103</sup> The care provider must also review any documents provided by DHS during transfer, requesting any missing documentation as needed.<sup>104</sup>

Following the orientation, the case manager completes a detailed interview with the child, called the “UAC Assessment.”<sup>105</sup> In accordance with ORR policy, a case manager or clinician must complete the UAC Assessment within five days of the child’s admission into the care provider’s custody.<sup>106</sup> The UAC Assessment is extensive, covering a child’s basic demographic

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<sup>95</sup> See UC POLICY GUIDE, *supra* note 67, at § 1.3.2 (noting that ORR attempts to identify and designate placement within 24 hours of the initial referral); *see also* PSI 2018 REPORT, *supra* note 84, at 11–12.

<sup>96</sup> See PetUC-0001233.

<sup>97</sup> See UC POLICY GUIDE, *supra* note 67, at §§ 1.1, 1.3.4; Committee Briefing with UC care provider (July 16, 2021); PSI 2018 REPORT, *supra* note 84, at 12 (citing a 2018 Unaccompanied Alien Children Joint Concept of Operations).

<sup>98</sup> See Committee Briefing with UC care provider (July 16, 2021).

<sup>99</sup> See *id.*

<sup>100</sup> See PetUC0000009–10.

<sup>101</sup> See PetUC0000010.

<sup>102</sup> See UC POLICY GUIDE, *supra* note 67, at § 3.2.2.

<sup>103</sup> See *id.*

<sup>104</sup> See PetUC-0001236.

<sup>105</sup> See UC POLICY GUIDE, *supra* note 67, at § 3.3.1.

<sup>106</sup> See *id.*

information, the child’s journey and apprehension by U.S. authorities, family and significant relationships, and a child’s medical, legal, and educational background.<sup>107</sup>

The care provider is also required to screen the child for signs of human trafficking or other abuse.<sup>108</sup> To this end, a case manager—an employee of the care provider assigned to manage the child’s case—along with a clinician, asks the child about who planned or organized the child’s journey; whether any debt was incurred by the child or the child’s family in connection with the journey; whether anyone threatened the child or the child’s family over payment for the journey; and whether any payment for the child’s journey was made in return for a promise to work in the United States.<sup>109</sup> If the case manager or clinician suspect a child may be a trafficking victim, the case manager must refer the case to the HHS Office of Trafficking in Persons within 24 hours.<sup>110</sup>

### 3. Identify a Potential Sponsor



After arrival at a care facility ORR aims to release each unaccompanied alien child to a “sponsor”—a parent, guardian, relative, or other individual who can provide for the physical and mental well-being of the child while in the United States.<sup>111</sup> As ORR does this, it must simultaneously “protect[] children from smugglers, traffickers, or others who might seek to victimize or otherwise engage the child[ren] in criminal, harmful or exploitative activity.”<sup>112</sup> ORR developed five categories of potential sponsors, prioritizing “the placement of unaccompanied alien children with parents and legal guardians.”<sup>113</sup> The categories are:

Case managers begin the sponsor identification process “as soon as the child enters ORR’s care.”<sup>114</sup> During the assessment of the unaccompanied alien child and subsequent interviews, case managers ask the child for any known contacts in the United States.<sup>115</sup> Case managers may

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<sup>107</sup> See *id.*; Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>108</sup> See UC POLICY GUIDE, *supra* note 67, at § 3.3.3.

<sup>109</sup> See PetUC-0000019; see also PetUC-0000083 (A qualified case manager or clinician conducts a UAC Assessment covering a child’s demographic information, the child’s apprehension by U.S. authorities, family and significant relationships, and a child’s medical, legal, and educational background. In addition, the UAC Assessment consist of questions relating to the child’s journey into the United States including questions on the organization, planning, and circumstances surrounding the child’s journey.)

<sup>110</sup> See UC POLICY GUIDE, *supra* note 67, at § 3.2.1.

<sup>111</sup> See *id.* at § 2.1.

<sup>112</sup> See *id.*

<sup>113</sup> OFF. OF REFUGEE RESETTLEMENT, ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., ORR FIELD GUIDANCE #10: EXPEDITED RELEASE FOR ELIGIBLE CATEGORY 1 CASES (Mar. 22, 2021) [hereinafter ORR FIELD GUIDANCE #10].

<sup>114</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.2.

<sup>115</sup> Committee Briefing with HHS ORR (Oct. 14, 2021); see also UC POLICY GUIDE, *supra* note 67, at § 2.2.1.

also speak with the child’s family in the home country about potential sponsors in the United States.<sup>116</sup>

ORR prioritizes the release of unaccompanied alien children to a parent or legal guardian.<sup>117</sup> Nevertheless, ORR places some 50 percent of unaccompanied alien children with other relatives—extended family and brothers and sisters,<sup>118</sup> some of whom have never met the child before placement. According to HHS, ORR placed 262,159 unaccompanied alien children with sponsors from January 1, 2020 to December 7, 2022.<sup>119</sup> Of these, ORR placed approximately 50 percent with Category 2 sponsors, while another 12 percent went to Category 3 sponsors.<sup>120</sup>

#### 4. Vet a Potential Sponsor



ORR’s policies require that each potential sponsor be vetted to ensure the sponsor can “provide for the physical and mental well-being of the unaccompanied alien child” and does “not pose a risk to the unaccompanied alien child, to other children in the care provider facility or to care provider staff.”<sup>121</sup> Case managers must make “an independent finding that the [potential sponsor] has not engaged in any activity that would indicate a potential risk to the child.”<sup>122</sup> One ORR official described the vetting process as “layered,” and involves obtaining the sponsor’s identification and application, interviewing the sponsor, conducting a suitability assessment, and completing a variety of background checks.<sup>123</sup> Throughout this process, case managers look for “red flags”—any indicators of risk or information that may lead the manager to question the

<sup>116</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>117</sup> ORR FIELD GUIDANCE #10, *supra* note 113.

<sup>118</sup> According to ORR, it “places a majority of UCs with a parent, legal guardian or immediate relatives. Of these, approximately 36% are placed with Category 1 and 50 % are placed with Category 2 sponsors.” Office of Refugee Resettlement, *supra* note 24. However, ORR appears to use the term “immediate relative” inaccurately in its policy to include extended family members outside of the nuclear family. The exact language for categories 2A and 2B in ORR policy begins “A brother; sister; grandparent or other immediate relatives (*e.g.*, aunt, uncle, first cousin) . . .” UC Policy Guide, *supra* note 67, at § 2.2.1. The common understanding of “immediate relatives” is the nuclear family and would not include aunts, uncles, first cousins, or grandparents, who are members of the extended family. *See, e.g.*, Merriam Webster, Definition of “Immediate Family” (defining “immediate family” as “a person’s parents, brothers and sisters, husband or wife, and children”). *The Immigration and Nationality Act* itself defines “immediate relative” of a U.S. citizen as “the children, spouses, and parents of a citizen of the United States.” Sec. 201(b), 8 U.S.C. § 1151(b)(2)(A)(i).

<sup>119</sup> Office of Refugee Resettlement, *supra* note 24.

<sup>120</sup> *See* Letter from Jennifer M. Cannistra, Acting Asst. Sec’y, Admin. Of Children & Families, U.S. Dep’t of Health & Human Servs., to Hon. Andy Biggs, U.S. House of Reps., (Feb. 24, 2022) (on file with Committee).

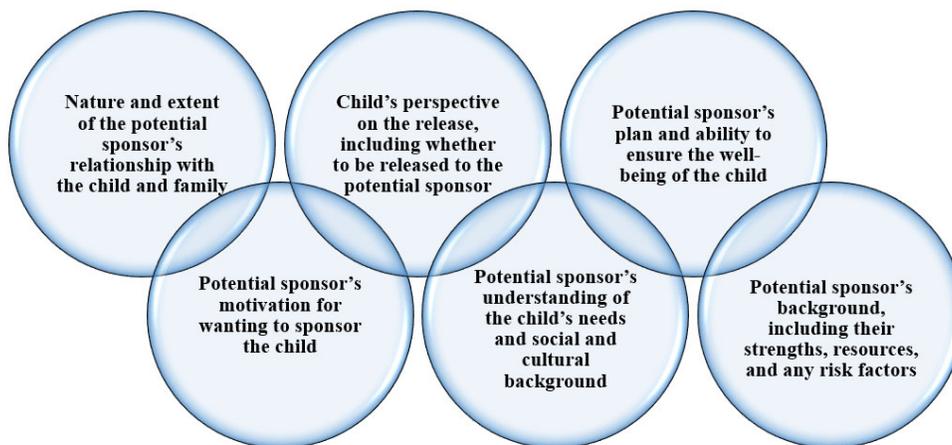
<sup>121</sup> *See* UC POLICY GUIDE, *supra* note 67, at §§ 2.2.2, 2.4.

<sup>122</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5078 (2008) (codified at 8 U.S.C. § 1232(c)(3)(A)).

<sup>123</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

suitability of placement.<sup>124</sup> There is no single determinative factor case managers must consider when evaluating a sponsor's fitness; ORR's Policy Guide outlines multiple factors that care providers must consider in their evaluation.<sup>125</sup>

#### Select ORR Assessment Criteria for Evaluating Potential Sponsors



Source: UC Policy Guide at § 2.4.1<sup>126</sup>

**Submitting Required Documents & Application Forms.** A potential sponsor must complete a formal family reunification application and document the identity, address, and relationship to the child they seek to sponsor.<sup>127</sup> Case managers must then verify these materials.<sup>128</sup>

Other required documents include:

**Proof of Potential Sponsor's Identity.** To verify identity, ORR requires government-issued identification, such as a U.S. or foreign passport, certificate of naturalization, driver's license, or other identification card with a photograph.<sup>129</sup> If necessary, ORR will authenticate these documents with foreign embassies and consulates.<sup>130</sup>

### Category 2A Sponsors

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<sup>124</sup> *Id.*

<sup>125</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.4.1; Office of Refugee Resettlement, *supra* note 24.

<sup>126</sup> For brevity, this figure depicts only a selection of the eleven criteria. The complete list of criteria is available at sec. 2.4.1 of the UC Policy Guide, available at <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2>.

<sup>127</sup> Committee Briefing with HHS ORR (Oct. 14, 2021); see also UC POLICY GUIDE, *supra* note 67, at §§ 2.2.3, 2.2.4.

<sup>128</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>129</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.2.4.

<sup>130</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

(e.g., sister, brother, grandparent or other immediate relatives) If a potential sponsor has a criminal history that suggests a potential risk to the child, ORR asks for court records or police records.<sup>131</sup> If a potential sponsor has a history of drug or alcohol abuse, ORR asks for certification of the completion of recovery courses.<sup>132</sup>

**Proof of Address.** ORR also asks for proof of address to ensure there is an actual physical location where the child is going to be living.<sup>133</sup> Sponsors can use documents such as mortgage papers, utility bills, or a lease to validate an address.<sup>134</sup> According to ORR, Case managers will check SmartyStreets.com and Google Earth to verify that the address is classified as residential and that the address identified on GoogleMaps.<sup>135</sup> The case manager is responsible for appropriate follow up if there are questions regarding the authenticity of documents submitted.<sup>136</sup>

**Proof of Related Adults' Identity.** ORR policy also requires documentation to verify the identity of all adults residing with the potential sponsor and all adult caregivers identified in a sponsor care plan.<sup>137</sup> The UC Policy Guide requires that for all such adults, “potential sponsors must submit at least one identification document that contains a photograph.”<sup>138</sup>

**Proof of Relationship between Sponsor and Child.** A potential sponsor must provide evidence verifying their claimed relationship with the child.<sup>139</sup> Although ORR’s Policy Guide lists certain records, such as hospital or school records,<sup>140</sup> as acceptable evidence, it allows

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.* The UC Policy Guide also provides that,

In cases where ORR has released a child and later obtains derogatory information on a sponsor or sponsor household member, ORR determines whether the information if known prior to release would have led to a denial of sponsorship or presents some other high risk child welfare concern. In these instances ORR contacts state CPS and/or local law enforcement (as necessary) with jurisdiction over the sponsor’s home and provides them with ORR’s findings. ORR may contact the sponsor in certain situations to inform them of child welfare concerns post release in these instances, especially where it concerns an individual in the sponsor’s home.

UC POLICY GUIDE, *supra* note 67, at § 2.5.2; *see also* Office of Refugee Resettlement, *supra* note 24.

<sup>133</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>134</sup> *Id.* Other documents that can be used include a bank statement, a payroll check stub, a State ID, a piece of mail, a notarized letter from a landlord, or “other similar documents reliably indicating that the sponsor resides at the claimed address, dated within the last two months before submission of the FRA.” Office of Refugee Resettlement, *supra* note 24. Additional information can be found in UC MAP Section 2.2.4 Quick Glance.

<sup>135</sup> Office of Refugee Resettlement, *supra* note 24; *see also* Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>136</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>137</sup> *Id.*; *see also* UC POLICY GUIDE, *supra* note 67, at § 2.2.4. The sponsor care plan identifies an adult who will assume care of the child if the sponsor is no longer able to care for the child. *Id.* at § 2.7.6.

<sup>138</sup> *See* UC POLICY GUIDE, *supra* note 67, at § 2.2.4.

<sup>139</sup> *See id.*

<sup>140</sup> Other acceptable records include “birth certificates, marriage certificates, death certificates, court records, guardianship records, written affirmation of relationship from consulate and similar documents.” Office of Refugee Resettlement, *supra* note 24.

potential sponsors to determine what information to provide.<sup>141</sup> ORR requires that a case manager “attain sufficient corroboration to be confident that they have received needed verification of the relationship . . . .”<sup>142</sup> Failure to submit proof of relationship is not a disqualifying factor; rather, it is taken into account along with the totality of the evidence.<sup>143</sup> According to ORR, “each category of sponsor has a different list of acceptable documentation which can be found in the UC Policy Guide.” Additionally, “the FFS [Federal Field Specialist] may approve a voluntary DNA test for a close family member when there is no objective proof of establishing relationship through documentation.”<sup>144</sup>

**Interviewing.** The case manager or clinician interviews the potential sponsor using the Sponsor Assessment Interviewing Guidance, which ORR describes as “designed to gather necessary information for the required assessment criteria.”<sup>145</sup> In particular, the case manager asks questions related to child welfare concerns—criminal history, drug and alcohol use, and trafficking issues.<sup>146</sup> According to ORR, the Sponsor Assessment Interviewing Guidance “includes a set of required questions and instructions for asking any follow-up questions as needed. Case managers and clinicians are encouraged to make the interview conversational and if the sponsor answers more than one question in a single response, they should not ask a pre-answered question again.”<sup>147</sup> Case managers must also ensure the potential sponsor’s interview responses are consistent with the information submitted in the sponsor application and supporting documentation.<sup>148</sup> Case managers also use the interviews to educate the potential sponsor on “do’s and don’ts.”<sup>149</sup> However, ORR told the Committee that “There is nothing in ORR policy or procedures about discussing physical discipline [of the children] or work [authorization in the United States]” with the sponsors..<sup>150</sup>

**Completing Background Checks.** Potential sponsors must complete background checks as part of the assessment process—although the type of background check differs by sponsor category.<sup>151</sup> Generally, ORR conducts sex offender registry and public records checks on all potential sponsors, adult household members, and caregivers identified in the sponsor care plan.<sup>152</sup> More comprehensive checks—such as FBI fingerprinting—are reserved for non-parents or non-legal guardian relatives who have not previously been the primary caregiver (Category 2B) and sponsors unrelated to the child (Category 3).<sup>153</sup>

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<sup>141</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.2.4.

<sup>142</sup> See *id.*

<sup>143</sup> See *id.*

<sup>144</sup> Office of Refugee Resettlement, *supra* note 24

<sup>145</sup> *Id.*; see also Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>146</sup> *Id.*

<sup>147</sup> Office of Refugee Resettlement, *supra* note 24; see also Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>148</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>149</sup> *Id.*

<sup>150</sup> Office of Refugee Resettlement, *supra* note 24.

<sup>151</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>152</sup> See generally UC POLICY GUIDE, *supra* note 67, at § 2.5; Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>153</sup> See generally UC POLICY GUIDE, *supra* note 67, at § 2.5; Committee Briefing with HHS ORR (Oct. 14, 2021).

<b>REQUIRED BACKGROUND CHECKS</b>		
<b>TYPE OF CHECK</b>	<b>SCOPE</b>	<b>INDIVIDUALS SUBJECT TO CHECK</b>
<b>Public Records Check</b>	<b>Identifies arrests or convictions</b>	<b><u>In All Cases</u></b> All potential sponsors Adult household members Alternate adult caregivers
<b>Sex Offender Registry Check</b>	<b>Identifies adjudication as a sex offender</b>	<b><u>In All Cases</u></b> All potential sponsors Adult household members Alternate adult caregivers
<b>Fingerprint Check</b>	<b>Identifies criminal history, sex crimes conviction, or other convictions that compromise the sponsor’s ability to care for a child.</b>	<b><u>All Circumstances</u></b> All Category 2B and 3 sponsors <b><u>Select Circumstances</u></b> <sup>154</sup> Category 1 and 2A sponsors Adult household members Alternate adult caregivers
<b>Child Abuse and Neglect (CA/N) Check</b>	<b>Identifies all localities in which the sponsor or household member has resided in the past 5 years.</b>	<b><u>Select Circumstances</u></b> <b>In cases that require a home study and cases where a special concern is identified.</b>

Source: UC Policy Guide at § 2.5.1

ORR evaluates the results of a potential sponsor’s background check to determine whether releasing the child into their custody is safe.<sup>155</sup> If the background check uncovers risk factors, ORR may deny a potential sponsor.<sup>156</sup> Adverse information on a potential sponsor may also prolong ORR’s release decision,<sup>157</sup> as ORR may “request the potential sponsor to provide any additional information that may demonstrate the potential sponsor’s ability to provide for the

<sup>154</sup> Fingerprint checks are only required for Category 2A sponsors where the public records check reveals possible disqualifying factors. ORR may also run additional checks—including child abuse and neglect checks and state criminal history checks—on a case-by-case basis. See UC POLICY GUIDE, *supra* note 67, at § 2.5.1.

<sup>155</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.5.2.

<sup>156</sup> See *id.*

<sup>157</sup> See *id.*

child’s physical and mental well-being.”<sup>158</sup> Pursuant to policy, ORR must consider all criminal records and other relevant available information when making a final release decision.<sup>159</sup>

## 5. Consider Examining the Potential Sponsor’s Home



As part of the sponsor assessment process, the care provider facility must determine whether a home study is necessary.<sup>160</sup> ORR home studies fall into three categories: (1) those required by TVPRA, (2) those required by ORR policy, or (3) those at ORR’s discretion.<sup>161</sup> Under the TVPRA, ORR must conduct home studies when: (1) the unaccompanied alien child is identified as a victim of a form of trafficking; (2) the child is a special-needs child; (3) the child has been a victim of physical or sexual abuse; or (4) the child’s potential sponsor presents a risk of abuse, maltreatment, exploitation, or trafficking.<sup>162</sup> ORR policy requires home studies for all unaccompanied alien children 12 years or younger who are placed with a Category 3 sponsor, as well as when a proposed sponsor is seeking to sponsor multiple, non-related children or has previously sponsored a child and is seeking to sponsor another child unrelated to the previously sponsored child.<sup>163</sup> ORR retains the right to order home studies at its discretion for other situations where, according to ORR, “the home study is likely to provide additional information required to determine that the sponsor is able to care for the health, safety and well-being of the child.”<sup>164</sup>

Specialized providers, under strict timelines, typically perform home studies. The home study provider must contact the potential sponsor to schedule the home visit within 48 hours of referral acceptance.<sup>165</sup> Thus, there are no surprise home study visits. Care providers are required to inform the potential sponsors of the “scope and purpose” of the visit.<sup>166</sup> The “home study consists of interviews, a home visit, and a written report . . . [to] assess[] the potential sponsor’s ability to meet the child’s needs . . . .”<sup>167</sup> The provider assesses the potential sponsor’s neighborhood and home, including where the child will sleep, “whether there is running water,

<sup>158</sup> *See id.*

<sup>159</sup> *See id.* See generally UC POLICY GUIDE § 2.7.4 (providing the considerations and next steps when risks arise in a background check); Office of Refugee Resettlement, *supra* note 24.

<sup>160</sup> *See* UC POLICY GUIDE, *supra* note 67, at § 2.4.2.

<sup>161</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>162</sup> *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5078 (2008) (8 U.S.C. § 1232(c)(3)(B)).

<sup>163</sup> *See* UC POLICY GUIDE, *supra* note 67, at § 2.4.2; Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>164</sup> Office of Refugee Resettlement, *supra* note 24; *see also* UC POLICY GUIDE, *supra* note 67, at § 2.4.2; Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>165</sup> *See* UC POLICY GUIDE, *supra* note 67, at § 2.4.2.

<sup>166</sup> *See id.*

<sup>167</sup> *See id.*

electricity, food readily available, and any visible weapon or illegal substances in the home.”<sup>168</sup> The provider must submit a written recommendation to the ORR Federal Field Specialist within ten business days of receiving the referral.<sup>169</sup> “The final recommendation must present a comprehensive and detailed assessment of the sponsor’s ability to care for the needs of the child and address any additional information that emerges during the course of the home study regarding the sponsor, the sponsor’s household or the child.”<sup>170</sup> Thus, “a provider has ten business days from accepting a referral for a home study to complete the study and submit a written recommendation.”<sup>171</sup>

## 6. Release the Child to the Sponsor



Within the ORR network, ORR care providers “make a recommendation to release a child to a potential sponsor after the care provider has evaluated the sponsor, completed the background checks, and collected necessary documentation to prove the sponsor’s identity and relationship to the child or youth.”<sup>172</sup> Care provider case managers provide release recommendations to case coordinators—ORR-contracted field staff.<sup>173</sup> The case coordinator concurrently reviews the case file to make a recommendation regarding release.<sup>174</sup> Once the case manager and case coordinator agree on a particular recommendation for release, they submit the recommendation to an ORR Federal Field Specialist, who makes the final decision on release.<sup>175</sup> If the case manager and case coordinator cannot agree on the recommendation, they can refer the matter directly to the Federal Field Specialist.<sup>176</sup> The Field Specialist may, approve the release, approve the release with post-release services, require a home study before making a final release decision, deny the release, or send the case back to the care provider with a request for additional information.<sup>177</sup> ORR’s Policy Guide outlines particular circumstances where placement must be denied.<sup>178</sup> For example, ORR policies require denying release to a non-parent or legal guardian

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<sup>168</sup> See 2016 PSI Report at 19.

<sup>169</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.4.2.

<sup>170</sup> See *id.*

<sup>171</sup> Office of Refugee Resettlement, *supra* note 24.

<sup>172</sup> UC POLICY GUIDE, *supra* note 67, at § 2.7.

<sup>173</sup> *Id.* at § 2.3.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at § 2.7. If the case manager and case coordinator do not agree on the release recommendation, they can refer the case directly to the ORR field specialist for guidance. *Id.*

<sup>176</sup> UC POLICY GUIDE, *supra* note 67, at §§ 2.3, 2.7.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at § 2.7.4.

who has been convicted of a felony involving child abuse or neglect, a misdemeanor for a sex crime, an offense involving a child victim, or certain drug-related offenses.<sup>179</sup>

Once a child's release is approved, the case manager informs the sponsor of the decision.<sup>180</sup> ORR's policy provides that the sponsor must sign a document agreeing to thirteen terms. Those include notifying the immigration court of any changes to the unaccompanied alien child's address within five days; providing for the physical and mental well-being of the child; ensuring that the child reports for removal proceedings; and notifying the National Center for Missing and Exploited Children if the child disappears, is kidnapped, or runs away.<sup>181</sup> The care provider also provides the sponsor a copy of the Sponsor Handbook, which describes the sponsor's responsibilities.<sup>182</sup> Sponsors must also agree to attend legal orientation programs emphasizing the importance of ensuring the child's appearance at all immigration hearings and court proceedings.<sup>183</sup>

Once the sponsor signs the agreement, the care provider makes arrangements for transferring physical custody of the child to the sponsor.<sup>184</sup> Transfer should occur as quickly as possible, ideally within three calendar days of ORR's release approval.<sup>185</sup> ORR policy also requires that the care provider "notify DHS prior to the child's release to allow DHS an opportunity to comment on the imminent release as well as time to prepare any DHS paperwork for the ICE Chief Counsel's office."<sup>186</sup> ORR policy explicitly states, "[o]nce a child is released to a sponsor, ORR's custodial relationship with the child terminates."<sup>187</sup> However, the transfer is of physical custody only. Unless the sponsor is a parent or legal guardian (Category 1), sponsors do not have legal custody of an unaccompanied alien child without taking further legal steps.<sup>188</sup> HHS's interpretation of its legal responsibility for unaccompanied alien children, as defined by the Homeland Security Act of 2002, directly contradicts the plain language of the statute.<sup>189</sup> The

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<sup>179</sup> *See id.*

<sup>180</sup> *See* PetUC-0001556.

<sup>181</sup> OFF. OF REFUGEE RESETTLEMENT, ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., SPONSOR CARE AGREEMENT (Aug. 9, 2022), *available at* <https://www.acf.hhs.gov/sites/default/files/documents/orr/FRP-4-Sponsor-Care-Agreement.pdf>; *see also* UC POLICY GUIDE, *supra* note 67, at § 2.8.1. *See* link above for the complete list of terms in the Sponsor Care Agreement.

<sup>182</sup> UC POLICY GUIDE, *supra* note 67, at § 2.8.1.

<sup>183</sup> *See id.* at § 2.8.1.

<sup>184</sup> *See id.* at § 2.8.2. ORR engaged a third-party transportation company to transport the child from the care provider to the sponsor. *See, e.g.,* PetUC0000555; PetUC0001556.

<sup>185</sup> UC POLICY GUIDE, *supra* note 67, at § 2.8.2.

<sup>186</sup> *Id.*

<sup>187</sup> *See* UC POLICY GUIDE, *supra* note 67, at § 2.8.3. Although HHS considers the custodial relationship to have ended at this point, ORR policy requires that "the care provider keeps the case file open for 30 days after the release date in order to conduct the Safety and Well Being Follow Up Call, *id.* at § 2.8.4, and document the results of the call in the case file. The care provider closes the case file record after completing the Safety and Well Being Follow Up Call." UC POLICY GUIDE, *supra* note 67, at § 2.8.3; *see also* Office of Refugee Resettlement, *supra* note 24.

<sup>188</sup> *See* OFF. OF REFUGEE RESETTLEMENT, *supra* note 181, at 1 ("you agree to comply with the following provisions while the minor is in your care . . . If you are not the minor's parent or legal guardian, make best efforts to establish legal guardianship with your local court within a reasonable time").

<sup>189</sup> *See* Part IV. A., *infra*.

Homeland Security Act of 2002 defines an “unaccompanied alien child” as one for whom “. . . (i) there is **no parent or legal guardian** in the United States; or (ii) **no parent or legal guardian** in the United States is available to provide care and physical custody.”<sup>190</sup> In accordance with this definition, a non-parental sponsor or non-legal guardian (Category 2 and 3) are not legal guardians unless they obtain an order from a state court.<sup>191</sup> As discussed in more detail below and contrary to HHS’s interpretation of the law, this investigation finds that Federal law invests HHS with legal custody and responsibility for every unaccompanied alien child placed with a non-parental or non-legal guardian sponsor, unless and until a competent court appoints the sponsor as the child’s legal guardian or the child attains majority age.

## 7. Conduct Post-Placement Follow-Up



After placement, ORR keeps each child’s file open for 30 days.<sup>192</sup> During this period, the care provider must complete a Safety and Well Being Follow Up Call.<sup>193</sup> These calls “determine whether the child is still residing with the sponsor, is enrolled in or attending school, is aware of upcoming court dates, and is safe.”<sup>194</sup> ORR documents results of the call in the case file.<sup>195</sup> ORR Policy contains no requirement for an in person visit, scheduled or unscheduled, as part of the post-placement follow-up.<sup>196</sup> Instead, ORR policy provides for a follow-up phone call to the sponsor.<sup>197</sup>

ORR may also arrange post-release services for the child, including mental health care and social services.<sup>198</sup> HHS offers those services through its network of service providers.<sup>199</sup> HHS must provide these services for any child that received a home study.<sup>200</sup> Post-release service providers are permitted to establish caseloads of one case manager to twenty-five unaccompanied alien children, but may go up to a ratio of one case manager to forty children if deemed necessary by the provider. Although HHS is required to provide post-release services in some cases, sponsors

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<sup>190</sup> Homeland Security Act of 2002, Pub. L. No. 107-296 § 462, 116 Stat. 2135, 2205 (2002) (6 U.S.C. § 279(g)(2)) (emphasis added).

<sup>191</sup> See PSI 2018 REPORT, *supra* note 84, at 28.

<sup>192</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.8.3.

<sup>193</sup> See *id.* at § 2.8.4.

<sup>194</sup> See *id.*

<sup>195</sup> See *id.*

<sup>196</sup> See *id.* at § 2.8.3, *et seq* (showing ORR requirements following placement of a child, including a safety and well-being follow up phone call, *id.* at § 2.8.4, but no requirement for an in person visit of any kind).

<sup>197</sup> See *id.* at § 2.8.4.

<sup>198</sup> See *id.* at § 2.7.2.

<sup>199</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5077 (2008) (codified at 8 U.S.C. § 1232(i)); see UC POLICY GUIDE, *supra* note 67, at § 6.2.

<sup>200</sup> See UC POLICY GUIDE, *supra* note 67, at § 6.2.

are not required to accept those services.<sup>201</sup> In Fiscal Year 2021, HHS provided post-release services to approximately 22,000 children, despite placing nearly 108,000 children with sponsors.<sup>202</sup> HHS responded to this noting that the unprecedented influx of unaccompanied alien children, which this report notes is as a result of the crisis at the southern border, has become unmanageable with current resources:

At the height of increased referrals in 2021, provider capacity and resources to accept PRS [Post-Release Service] referrals and serve them was limited. ACF is currently exploring options to expand post-release services to all children discharged from ORR care but will rely on Congress to appropriate funds to make this expansion possible.<sup>203</sup>

### E. Reports Have Identified Historical Deficiencies in HHS’s Child Placement Processes



HHS’s ability to care for unaccompanied alien children is an issue of longstanding concern. A 2001 report by the Department of Justice Office of Inspector General found a number of problems, including issues with transporting children, oversight of child shelters, the length of time children spent in custody before release, and kidnapping of children post-release.<sup>204</sup> Since the TVPRA transferred responsibility for unaccompanied alien children to the HHS Secretary, the HHS Office of Inspector General has conducted numerous audits and evaluations identifying systemic failures in the Department’s care for unaccompanied alien children.<sup>205</sup>

The Senate Permanent Subcommittee on Investigations, under then-Chairman Portman, also conducted extensive oversight of HHS’s care of unaccompanied alien children. The Subcommittee documented its findings in three reports, released on January 28, 2016, August 15, 2018, and December 8, 2020. The

<sup>201</sup> PSI 2018 REPORT, *supra* note 84, at 14.

<sup>202</sup> OFFICE OF REFUGEE RESETTLEMENT, *supra* note 23; *Unaccompanied Children Released to Sponsors by State*, OFFICE OF REFUGEE RESETTLEMENT, ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>.

<sup>203</sup> Office of Refugee Resettlement, *supra* note 24.

<sup>204</sup> *See generally* OFFICE OF THE INSPECTOR GEN., U.S. DEP’T OF JUSTICE, REP. NO. I-2001-009, UNACCOMPANIED JUVENILES IN INS CUSTODY (Sept. 28, 2001), <https://oig.justice.gov/reports/INS/e0109/index.htm>.

<sup>205</sup> *See generally* OFFICE OF INSPECTOR GEN., U.S. DEP’T OF HEALTH & HUMAN SERVS., *Unaccompanied Children*, <https://oig.hhs.gov/reports-and-publications/featured-topics/uac/>.

Subcommittee’s 2016 and 2018 reports identified deficiencies in HHS’s processes for ensuring the safety of unaccompanied alien children. The 2018 report also addressed concerns about the treatment of unaccompanied alien children in HHS custody at shelter facilities. The Subcommittee’s 2020 report examined the processes HHS uses to fund and open shelter facilities for unaccompanied alien children.

The Subcommittee launched its initial investigation in 2015 following reports that ORR placed eight children with members of a human trafficking ring.<sup>206</sup> The traffickers enticed the children to come into the United States, promising they could attend school.<sup>207</sup> When CBP apprehended the children at the border and placed them in custody, the traffickers applied as sponsors, pretending to be family friends.<sup>208</sup> Once HHS released the children to the traffickers, the traffickers forced them to work on an egg farm in Marion, Ohio for 12 hours a day, six or seven days a week.<sup>209</sup> The children lived in poor conditions, and the traffickers threatened them and their families with physical harm and even death if they did not work and surrender their paychecks.<sup>210</sup> According to the indictment, the traffickers “used a combination of threats, humiliation, deprivation, financial coercion, debt manipulation, and monitoring . . . to create a climate of fear and helplessness that would compel [the victims’] compliance.”<sup>211</sup> Seven people pled guilty to Federal charges for their roles.<sup>212</sup> By June 2020, Pablo Duran Ramirez and three other defendants—each charged with encouraging illegal entry for financial gain—have been convicted and sentenced to imprisonment for their roles in the human trafficking scheme.<sup>213</sup>

In January 2016, the Subcommittee released a report entitled “Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: the Role of the Office of Refugee Resettlement.”<sup>214</sup> That report found that HHS placed several children with sponsors without taking sufficient steps to ensure that the placements would be safe.<sup>215</sup> The report also highlighted instances where HHS failed to: investigate the relationship between the sponsor and child; run background checks on the adults in the sponsors’ households and secondary caregivers; visit sponsors’ homes prior to

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<sup>206</sup> PSI 2016 REPORT, *supra* note 7, at 1; PSI 2018 REPORT, *supra* note 84, at 2.

<sup>207</sup> PSI 2016 REPORT, *supra* note 7, at 24.

<sup>208</sup> *Id.* at 24.

<sup>209</sup> *Id.* at 24.

<sup>210</sup> *Id.* at 24–25.

<sup>211</sup> Indictment at 8, *United States v. Castillo-Serrano et. al.*, No. 3:15CR0024 (N.D. Ohio July 1, 2015); *see also* PSI 2016 REPORT, *supra* note 7, at 4.

<sup>212</sup> Press Release, Northern District of Ohio, U.S. Attorney’s Office, U.S. Dep’t of Justice, Another Defendant Pleads Guilty in Connection with Labor Trafficking of Minors at Ohio Egg Farm (Sept. 18, 2018), <https://www.justice.gov/usao-ndoh/pr/another-defendant-pleads-guilty-connection-labor-trafficking-minors-ohio-egg-farm>.

<sup>213</sup> Press Release, Northern District of Ohio, U.S. Attorney’s Office, U.S. Dep’t of Justice, Labor Trafficker Sentenced for Encouraging the Illegal Entry of Guatemalan Nationals, Including Unaccompanied Minors, into the United States (June 19, 2020), <https://www.justice.gov/usao-ndoh/pr/labor-trafficker-sentenced-encouraging-illegal-entry-guatemalan-nationals-including>.

<sup>214</sup> *See generally* PSI 2016 REPORT, *supra* note 7.

<sup>215</sup> *See generally id.* at 2.

placement; determine whether sponsors were accumulating multiple unrelated children; and conduct post-placement follow-up to ensure the child was safe.<sup>216</sup>

After its 2016 report, the Subcommittee continued its oversight of HHS and other relevant Federal agencies to track HHS’s progress in resolving the deficiencies identified in the report and its implementation of best practices, culminating with a second report in 2018. The Subcommittee’s second report found that, although HHS took incremental steps to improving its care of unaccompanied alien children, the Department still did not take sufficient responsibility for guarding the children’s safety.<sup>217</sup> The Subcommittee found many issues documented in its 2016 report remain unaddressed, but also additional problems including that HHS “could not ascertain with certainty” the location of nearly 1,500 children placed with sponsors.<sup>218</sup> HHS argued it had no legal responsibility to track children after placement with a sponsor.<sup>219</sup>

The Subcommittee also examined HHS’s processes for funding and opening children shelter facilities.<sup>220</sup> In October 2019, the Subcommittee initiated an investigation of how HHS gave two companies—VisionQuest and New Horizon—\$32 million in grants to operate shelter facilities that never opened.<sup>221</sup> In its report, released in 2020, the Subcommittee found that (1) HHS failed to identify that both companies had historically questionable childcare practices, and (2) both companies were unable to obtain licenses to open the facilities for which HHS gave them taxpayer-funded grants.<sup>222</sup> As a result, the Subcommittee concluded that HHS failed to exercise proper oversight when awarding grants for shelter facilities.<sup>223</sup>

## **II. HHS’S SPONSOR VETTING PROCESSES CONTINUE TO LEAVE CHILDREN VULNERABLE TO TRAFFICKING AND ABUSE**

Since the end of 2020, the United States has seen a drastic rise in the number of unaccompanied alien children entering the country.<sup>224</sup> Part of ORR’s charge under Federal law is to ensure the safe release of unaccompanied alien children to a sponsor that the Secretary of Health and Human Services has determined “is capable of providing for the child’s physical and mental well-being” and “has not engaged in any activity that would indicate a potential risk to the child.”<sup>225</sup> The Biden administration reiterated the importance of this responsibility, vowing to safeguard children “to make sure their treatment is consistent with their best interest . . . mov[ing

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<sup>216</sup> *Id.* at 2–3.

<sup>217</sup> PSI 2018 REPORT, *supra* note 84, at 4.

<sup>218</sup> *Id.* at 37.

<sup>219</sup> *Id.* at 6.

<sup>220</sup> STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 116TH CONG., REP. ON OVERSIGHT OF HHS SHELTER GRANTS FOR UNACCOMPANIED ALIEN CHILDREN 2 (2020).

<sup>221</sup> *Id.* at 1–4.

<sup>222</sup> *Id.* at 2–3.

<sup>223</sup> *Id.* at 4.

<sup>224</sup> U.S. CUSTOMS & BORDER PROTECTION, *supra* note 12; Part I.A., *supra*.

<sup>225</sup> 8 U.S.C. § 1232(c)(3)(A); *see also* UC POLICY GUIDE, *supra* note 67, at § 2.5.

them] into safe environments as quickly as possible.”<sup>226</sup> Despite numerous investigative reports since 2016 identifying lapses in HHS’s sponsor vetting, the Department has yet to address or implement basic recommendations to ensure children are not subject to trafficking and abuse. In some cases, HHS weakened its vetting procedures to expedite release of children.

#### **A. HHS Still Does Not Adequately Verify a Sponsor’s Identity and Relationship with a Child**

One of ORR’s stated priorities is “ensuring the safe release of unaccompanied children to an appropriate sponsor.”<sup>227</sup> To promote child safety, the TVPRA requires HHS, prior to placing a child with a sponsor, to “verif[y] . . . the custodian’s identity and relationship to the child, if any.”<sup>228</sup> The Subcommittee’s 2016 and 2018 reports, however, revealed inadequacies in HHS’s verification procedures, leaving children vulnerable to trafficking, abuse, and other harms. For example, in 2016 the Subcommittee found HHS did not require sponsors to submit documentation of the sponsor’s relationship to the child.<sup>229</sup> The Subcommittee cited several examples where HHS insufficiently verified pre-existing relationships with children were, including instances where children were trafficked by their sponsors.<sup>230</sup> Although the Subcommittee first identified these weaknesses in 2016, HHS has made minimal progress in strengthening its vetting and verification policies and procedures.

For example, following the Subcommittee’s 2016 report identifying weaknesses that led to HHS placing children with labor traffickers,<sup>231</sup> ORR has made minimal changes to its corroboration requirements and guidance. According to ORR officials, ORR revised the questions asked during the child and sponsor interview process, expanded its home studies categories, and reintroduced discretionary home studies.<sup>232</sup> Prior to 2016, ORR had paused discretionary home studies. According to ORR officials, after the Subcommittee’s 2016 report, they revised the questions asked during the child and sponsor interview process to be more comprehensive and better determine how to evaluate human trafficking indicators.<sup>233</sup> While ORR now requires sponsors to submit evidence of a pre-existing relationship, ORR does not expressly prohibit placement with a sponsor who fails to prove a pre-existing relationship.<sup>234</sup> Instead, ORR “*may*

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<sup>226</sup> *The Biden Plan for Securing Our Values as a Nation of Immigrants*, BIDEN HARRIS, <https://joebiden.com/immigration/>; see also UC Policy Guide, *supra* note 67, at § 1.2.3 (“The safety and well-being of a child or youth is a primary consideration in placement decisions.”).

<sup>227</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.5.

<sup>228</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5078 (2008) (codified at 8 U.S.C. § 1232(c)(3)(A)).

<sup>229</sup> PSI 2016 REPORT, *supra* note 7, at 27.

<sup>230</sup> *Id.* at 27–30.

<sup>231</sup> *Id.* at 1; PSI 2018 REPORT, *supra* note 84, at 2.

<sup>232</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>233</sup> *Id.*; PetUC-0000160.

<sup>234</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.2.4.

take [the lack of evidence] into account” when assessing whether to release the child to the sponsor.<sup>235</sup>

Further, ORR has not provided any guidance to case managers for how they should perform the verification of a potential sponsor’s pre-existing relationship with a child. When the Committee asked for vetting process guidance or training policy materials provided to care providers, ORR referenced a list of questions within ORR’s *Sponsor Assessment Interviewing Guidance* that case managers must ask when interviewing a potential sponsor. Within five days of identifying a potential sponsor, ORR’s Policy Guide instructs case managers to “ask all questions” as written in the *Sponsor Assessment Interviewing Guidance*.<sup>236</sup> If a potential sponsor answers multiple questions in a single response, ORR policy instructs case managers not to clarify or re-ask a question.<sup>237</sup> ORR officials told Committee staff that the questions asked during an interview are left to the discretion of case managers.<sup>238</sup> When asked to explain how case managers validate pre-existing relationships, ORR officials responded that case managers should look for inconsistencies across the “totality of the evidence” obtained, including documentation and statements from the proposed sponsor, child, and family.<sup>239</sup>

## **B. HHS Weakened Its Requirements for Background Checks on Potential Sponsors and Related Adults**

To ensure ORR releases unaccompanied alien children into a safe environment ORR requires potential sponsors and certain related individuals to undergo background checks.<sup>240</sup> These checks confirm that no one responsible for or living with the unaccompanied alien child presents a risk to that child. Prior to 2016, HHS did not require other individuals living in sponsors’ homes or individuals listed as backup sponsors to undergo background checks, meaning HHS had inadequate information about many of these individuals.<sup>241</sup> In its 2016 investigation, the Subcommittee found HHS’s failure to conduct background checks on all adults living in the sponsor’s home interfered with its statutory responsibilities to ensure a sponsor “is capable of providing for the child’s physical and mental well-being” and to determine whether a sponsor “presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.”<sup>242</sup> Following the Subcommittee’s investigation, however, HHS has made only modest improvements and changes.<sup>243</sup> As a result, HHS continues to place

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<sup>235</sup> *See id.* (emphasis added).

<sup>236</sup> PetUC-0000160.

<sup>237</sup> *Id.*

<sup>238</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>239</sup> *Id.*

<sup>240</sup> *See* UC POLICY GUIDE, *supra* note 67, at § 2.5.

<sup>241</sup> *See* PSI 2016 REPORT, *supra* note 7, at 31–32.

<sup>242</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5078 (2008) (codified at 8 U.S.C. § 1232(c)(3)(A)–(B)); PSI 2016 REPORT, *supra* note 7, at 31–32.

<sup>243</sup> *See, e.g.*, ORR FIELD GUIDANCE #10, *supra* note 113. In response, ORR contended it made “a number of improvements and changes,” citing Field Guidance 10 and 11 as examples. Office of Refugee Resettlement, *supra* note 24. While this investigation found those Guidance documents were indeed departures from past practices, it did not find them to be improvements for the reasons discussed in Part II. B. 3, *infra*.

children with sponsors without fully assessing whether the placement exposes the child to harm or abuse.

### 1. DHS Does Not Share All Necessary Information with HHS

As discussed above, HHS and DHS have entered into memoranda of agreement (MOA) relating to information sharing on unaccompanied alien children, the most recent of which was signed in 2021 and replaced a 2018 MOA. Key differences between the two MOA are shown in the following table:

Analysis of Differences between 2018 and 2021 DHS-HHS Memoranda of Agreement	
2018 Memorandum	2021 Memorandum
<ul style="list-style-type: none"> <li>• ORR will notify ICE-ERO if the UAC commits physical violence or assault.</li> </ul>	<ul style="list-style-type: none"> <li>• Children perpetrating physical assaults on another person at the care provider if such information is used in a determination that the UAC is dangerous. <b>Will only share information to DHS if required by law.</b></li> </ul>
<ul style="list-style-type: none"> <li>• <b>This section is not included in the 2018 Memorandum of Agreement.</b></li> </ul>	<ul style="list-style-type: none"> <li>• ORR must notify DHS of allegations that a child is a perpetrator of a crime that ORR determines would make the child a danger to the community where required by Federal or state law, and where disclosure of the information does not waive any applicable privilege or confidentiality requirement under Federal or state law.</li> </ul>
<ul style="list-style-type: none"> <li>• HHS must determine if a sponsor is capable to support a child and has not engaged in activity to put a child at risk.</li> <li>• ORR will request from ICE information about all potential sponsors and adult members of the household including citizenship, immigration status, and criminal/immigration history.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>This section is not included in the 2021 Memorandum of Agreement.</b></li> </ul>
<ul style="list-style-type: none"> <li>• ORR will provide ICE with name, date of birth, address, fingerprints of all adult members of the household.</li> <li>• ORR will search Sex Offender Registry, National (FBI) Criminal History database, Child abuse and neglect, State Criminal History Repository and local police records.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>This section is not included in the 2021 Memorandum of Agreement.</b></li> </ul>

<ul style="list-style-type: none"> <li>• ICE will conduct screening of potential sponsors and adult household members within 72 hours including: <ul style="list-style-type: none"> <li>- Criminal check of the national databases</li> <li>- Check for warrants</li> <li>- Immigration status check of the immigration databases</li> <li>- Fingerprint check</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>This section is not included in the 2021 Memorandum of Agreement.</b></li> </ul>
<p><b>Source:</b> Office of Refugee Resettlement, Office of the Admin. for Children &amp; Families, U.S. Dep’t of Health &amp; Human Servs, Draft Report Review 21 (Dec. 7, 2022) (on file with the Committee).</p>	

Although the 2021 MOA superseded and replaced the 2018 MOA, HHS noted to the Committee that it did not supersede or replace a 2016 MOA between the agencies, which currently remains in effect.<sup>244</sup> The 2016 MOA goes into greater detail about roles and responsibilities, established a joint concept of operations that covered interagency coordination and an interagency working group for coordination and information sharing, and included a requirement for joint data sharing and reporting capabilities for operations related to unaccompanied alien children.<sup>245</sup>

According to HHS, a mere comparison of the differences between the 2018 and 2021 memoranda of agreement is inadequate to capture fully the information sharing efforts between HHS and DHS.<sup>246</sup> Specifically HHS informed the Committee that it often makes information requests on potential sponsors from DHS, including the person or people who arrive with a child, yet DHS has refused to provide HHS all of the requested information, telling HHS “that they are not required to do so.”<sup>247</sup> HHS warned the Committee that this lack of information sharing from DHS “creat[es] further information sharing gaps” between the agencies in the safe placement of unaccompanied alien children.<sup>248</sup> ORR also noted that the 2021 MOA includes a number of qualifiers on the types of information and amount of information DHS shares with HHS, such as such as “to the extent such information is known” and “to the extent such information is available and practicable to provide.”<sup>249</sup> Consequently, the information HHS receives from DHS also varies in type, level, and breadth, requiring ORR to conduct its own assessments and screenings for risk factors, including trafficking indicators.<sup>250</sup> In short, DHS is not providing the

<sup>244</sup> See Office of Refugee Resettlement, *supra* note 24, at 21.

<sup>245</sup> See *id.*

<sup>246</sup> See *id.*

<sup>247</sup> See *id.*

<sup>248</sup> *Id.* at 21–22.

<sup>249</sup> *Id.* at 6.

<sup>250</sup> See *id.*

information to ORR that the agency needs to vet sponsors adequately and safely place unaccompanied alien children with vetted sponsors.

HHS for its part maintains that it is legally limited in the information it can share with other agencies on unaccompanied alien children, noting that “ORR is not an immigration enforcement agency and does not share information with the U.S. Department of Homeland Security, U.S. Department of Justice, or similar governmental entity to facilitate immigration enforcement actions.”<sup>251</sup> HHS cites to directions from Congress tied to the Consolidated Appropriations Act, 2021, which directs ORR,

to issue guidance to its employees and care providers within 30 days of enactment of this Act prohibiting them from sharing non-essential information concerning a child’s prospects for family reunification with a court (including, but not limited to personal records pertaining to the child’s stay in ORR custody, including medical or mental health records and behavioral reports; assessments of a child’s eligibility for immigration relief; or information concerning a potential sponsor’s immigration status of viability) unless ORR or that care provider is appearing as a party or counsel in a proceeding of record.<sup>252</sup>

Consequently, “ORR does not transmit non-essential case file information to EOIR or DHS when it is understood that the information is to be used in immigration proceedings or for immigration enforcement.”<sup>253</sup>

**2. ORR’s Policies Do Not Require Fingerprint Checks for All Household Members and Alternate Caregivers**

Fingerprint Checks for Sponsors, Household Members, and Adult Caregivers	
Always Required	Not Always Required
Category 2B Sponsors (e.g., an immediate relative, and relatives through legal marriage)	Category 1 Sponsors (e.g., parent or legal guardian)
Category 3 Sponsors (e.g., distant relatives and unrelated adult individuals)	Category 2A Sponsors (e.g., sister, brother, grandparent or other immediate relatives)
	Adult Household Members & Alternative Adult Caregiver

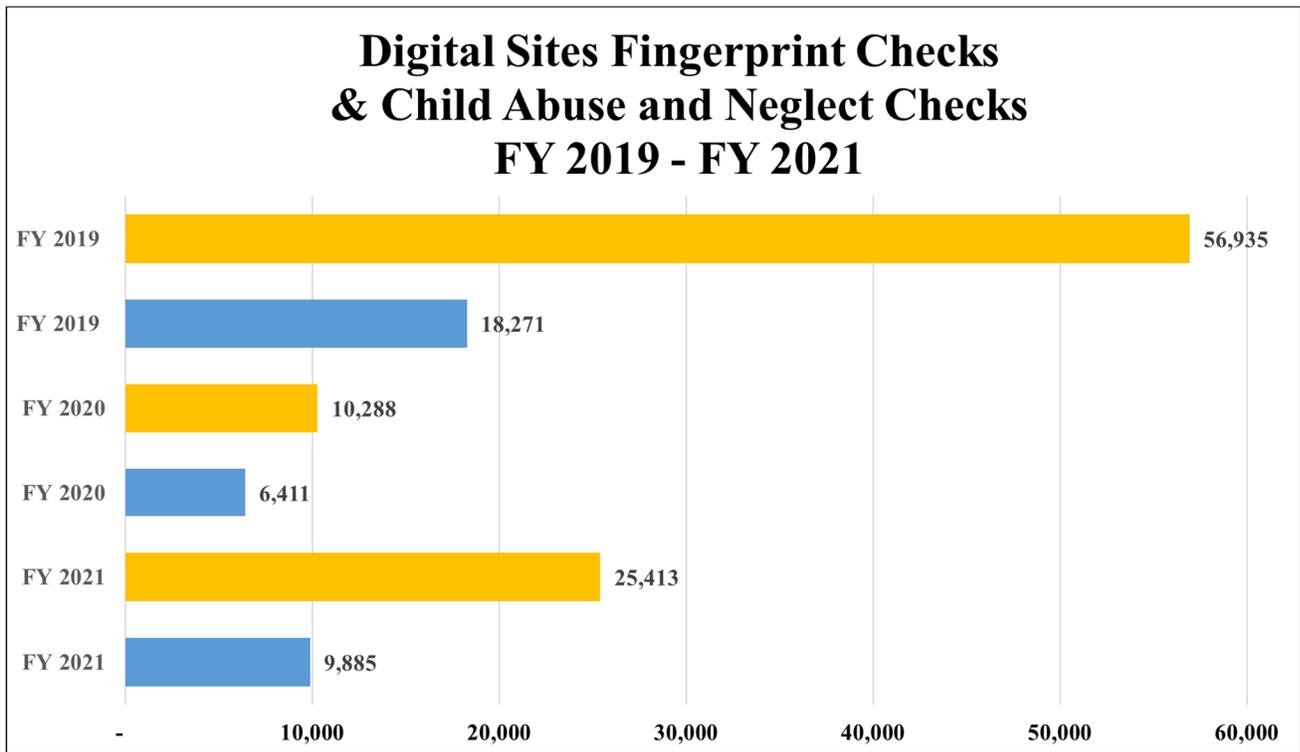
Source: UC Policy Guide at § 2.5.1.

<sup>251</sup> *Id.* at 21–22.

<sup>252</sup> H.R. REP. NO. 116-450, at 188 (2020) (Report of the Committee on Appropriations of the House of Representatives on H.R. 7614, Departments of Labor, Health and Human Services, and Related Agencies Appropriations Bill, 2021); *see also* Office of Refugee Resettlement, *supra* note 24, at 21–23.

<sup>253</sup> Office of Refugee Resettlement, *supra* note 24, at 22; UC POLICY GUIDE, *supra* note 67, at § 5.10.2.

ORR’s Policy Guide requires that “all potential sponsors and adult household members undergo a public records background check of criminal history and sex offender registry databases.”<sup>254</sup> As detailed above, more substantive background checks, including FBI fingerprint background checks and checks of state child abuse and neglect registries, are only required for certain categories of sponsors, adult household members, and alternative caregivers.<sup>255</sup>



■ Digital Sites Fingerprints Checks

■ Child Abuse and Neglect Checks

**Source:** Statement from HHS to Committee staff (Apr. 5, 2022) (documenting the number of background checks completed by ORR).

Per ORR policy, fingerprint checks are only required from adult household members and alternate caregivers if “a public records check reveals possible disqualifying factors . . . or where there is a documented risk to the safety of the unaccompanied alien child, the child is especially vulnerable, and/or the case is being referred for a home study.”<sup>256</sup>

<sup>254</sup> UC POLICY GUIDE, *supra* note 67, at § 2.5.

<sup>255</sup> PSI 2016 REPORT, *supra* note 7, at 18.

<sup>256</sup> UC POLICY GUIDE, *supra* note 67, at § 2.5.1.

As illustrated in the chart above, for FY 2019 through FY 2021, HHS released 72,851 unaccompanied alien children to sponsors,<sup>257</sup> while completing 56,935 digital sites fingerprint checks (78 percent of cases) and 18,271 checks with state child abuse and neglect registries (25 percent of cases).<sup>258</sup> In FY 2020, amid the onset of the COVID-19 pandemic and CDC's implementation of COVID-related public health emergency measures, the number of unaccompanied alien children in HHS custody significantly decreased.<sup>259</sup> During this time, HHS released 16,839 unaccompanied alien children to sponsors<sup>260</sup>, and completed 10,288 digital sites fingerprint checks (61 percent of cases) and 6,411 checks with state child abuse and neglect registries (38 percent of cases).<sup>261</sup> In FY 2021, more than 146,000 unaccompanied alien children entered the United States,<sup>262</sup> of whom HHS released 108,246 to sponsors.<sup>263</sup> However, following changes to ORR's background check policies in March 2021, HHS's completion of background checks decreased significantly. In FY 2021, HHS completed 25,413 digital sites fingerprint checks (23 percent of cases) and 9,885 child abuse and neglect registries (9 percent of cases).<sup>264</sup> In other words, following what HHS considered improvements to its policies, in FY 2021, HHS conducted 55 percent fewer digital fingerprint checks and almost 20 percent fewer child abuse and neglect registries than in FY 2019.

In its response, ORR disputed these statements generally, referring to steps the agency had taken to increase its network of fingerprint sites and its transition to a new digital system that interfaces directly with the Federal Bureau of Investigation, arguing those changes have decreased the time for sponsor assessment and release.<sup>265</sup> However ORR did not dispute the premise of this paragraph—that the number of digital fingerprint checks and child abuse and neglect registry checks of prospective sponsors has markedly decreased.

As part of this investigation, the Committee requested the number of background checks completed by HHS, broken down by type of background check and sponsor category.<sup>266</sup> HHS

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<sup>257</sup> Statement from HHS to Committee staff (May 6, 2022) (documenting the number of unaccompanied alien children released to sponsors by ORR).

<sup>258</sup> Statement from HHS to Committee staff (Apr. 5, 2022) (documenting the number of background checks completed by ORR).

<sup>259</sup> U.S. CUSTOMS & BORDER PROTECTION, *supra* note 12; KANDEL, *supra* note 5 (noting, “in March 2020 the CDC declared a public health emergency under Title 42 of the U.S. Code that allowed CBP to promptly expel unaccompanied children at the border without considering their asylum claims”).

<sup>260</sup> Statement from HHS to Committee staff (May 6, 2022) (documenting the number of unaccompanied alien children released to sponsors by ORR).

<sup>261</sup> Statement from HHS to Committee staff (Apr. 5, 2022) (documenting the number of background checks completed by ORR).

<sup>262</sup> U.S. CUSTOMS & BORDER PROTECTION, *supra* note 12.

<sup>263</sup> Statement from HHS to Committee staff (May 6, 2022) (documenting the number of unaccompanied alien children released to sponsors by ORR).

<sup>264</sup> <sup>264</sup> Statement from HHS to Committee staff (Apr. 5, 2022) (documenting the number of background checks completed by ORR); U.S. CUSTOMS & BORDER PROTECTION, *supra* note 12.

<sup>265</sup> Office of Refugee Resettlement, *supra* note 24, at 24–27.

<sup>266</sup> Statement from HHS to Committee staff (Apr. 5, 2022) (documenting the number of background checks completed by ORR).

informed Committee staff that it does not track data in the format requested—namely background check type by sponsor category—and it was unable to provide the information.<sup>267</sup> As a result, the Committee was unable to evaluate the level at which HHS is conducting substantive background checks on certain sponsor categories otherwise not required to complete these checks without adverse information present. This includes Category 1 sponsors, Category 2A sponsors, and adult household members.<sup>268</sup> Specifically, Committee staff could not determine the number of cases in which HHS released an unaccompanied alien child to a household without fingerprint checks performed on all adult household members and alternate caregivers, where public records checks revealed possible disqualifying factors.

### **3. ORR Reduced the Requirements for Background Checks to Expedite Placement during the 2021 Surge of Migrant Unaccompanied alien children**

In March 2021, when the unaccompanied alien children crossing the southwest border reached over 18,800,<sup>269</sup> the ORR Director issued two directives easing background check requirements for potential sponsors and related individuals.<sup>270</sup>

#### ***Field Guidance # 10***

First, on March 22, 2021, ORR issued “Field Guidance #10, Expedited Release for Eligible Category 1 Cases.”<sup>271</sup> Under Field Guidance #10, ORR may release certain children to their Category 1 sponsor—a parent or legal guardian—using modified procedures that ease standard release requirements under ORR’s Policy Guide.<sup>272</sup> The guidance provided that a child’s release could be expedited if: (1) the sponsor is a parent or legal guardian, (2) the child is not deemed to be especially vulnerable, (3) the child is not otherwise subject to a mandatory TVPRA home study, and (4) there are no other red flags, including indicators of abuse or neglect.<sup>273</sup> In these cases, sponsors complete a shortened application to establish proof of relationship and identity.<sup>274</sup> ORR also eliminated the proof of address requirement for the potential sponsors.<sup>275</sup> ORR instructed care providers to continue conducting searches on Google; Smarty Streets, an address verification system; and sex offender databases for the address the sponsor provided.<sup>276</sup>

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<sup>267</sup> Statement from HHS to Committee staff (Apr. 5, 2022) (documenting the number of background checks completed by ORR).

<sup>268</sup> UC POLICY GUIDE, *supra* note 67, at § 2.5.1.

<sup>269</sup> See U.S. CUSTOMS & BORDER PROTECTION, *supra* note 12.

<sup>270</sup> See ORR FIELD GUIDANCE #10, *supra* note 113; OFF. OF REFUGEE RESETTLEMENT, ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., ORR FIELD GUIDANCE #11, TEMPORARY WAIVERS OF BACKGROUND CHECK REQUIREMENTS FOR CATEGORY 2 ADULT HOUSEHOLD MEMBERS AND ADULT CAREGIVERS (Mar. 31, 2021) [hereinafter ORR FIELD GUIDANCE #11].

<sup>271</sup> See ORR FIELD GUIDANCE #10, *supra* note 113.

<sup>272</sup> See *id.*

<sup>273</sup> See *id.*

<sup>274</sup> See *id.*

<sup>275</sup> See PetUC-0000546.

<sup>276</sup> See *id.*

Nevertheless, sponsors are not required to submit supporting documentation as proof of address.<sup>277</sup>

Although Field Guidance #10 still requires sponsors to undergo a public records background check, it explicitly exempted other household members.<sup>278</sup> Field Guidance 10 also does not require that household members submit identification documents or undergo a background check.<sup>279</sup> Case managers need only ask the sponsor to identify these individuals in the Family Reunification Application, meaning the care providers may have less information about the other members of the household likely to be around the child if placed with a given sponsor.<sup>280</sup>

### ***Field Guidance # 11***

Ten days after reducing background check requirements for household members of parents or legal guardians, ORR eased background check requirements for household members and adult caregivers of Category 2 sponsors. On March 31, 2021, ORR issued “Field Guidance #11, Temporary Waivers of Background Check Requirements for Category 2 Adult Household Members and Adult Caregivers,” which provided:

Effective immediately, background check requirements (as well as requirements for obtaining identification) for adult household members and alternate adult caregivers identified in a sponsor care plan are not required as a condition of release for any Category 2 case unless the child is especially vulnerable; the child is subject to a mandatory TVPRA home study; or there are red flags present in the case, including red flags relating to abuse or neglect.<sup>281</sup>

Field Guidance #11’s own title envisioned that background check rollbacks would be temporary. ORR indicated it would reevaluate the background check waivers within 60 days—or by May 31, 2021.<sup>282</sup> ORR provided to the Committee a memo dated June 30, 2021, describing an evaluation of the waiver in Field Guidance 11 beginning on June 7, 2021.<sup>283</sup> The memo recommends the continuance of the guidance, stating, “[i]f any concerns or red flags are identified, background checks of all household members are conducted.”<sup>284</sup> However, waiving background check requirements on household members—even when ORR is releasing a child to a parent—exposes the child to potential risk and abuse.<sup>285</sup> Field Guidance 11’s background check waivers for adult household members and alternate adult caregivers include public records

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<sup>277</sup> See *id.*

<sup>278</sup> See ORR FIELD GUIDANCE #10, *supra* note 113; PetUC-0001163.

<sup>279</sup> See PetUC-0000546.

<sup>280</sup> See *id.*

<sup>281</sup> See ORR FIELD GUIDANCE #11, *supra* note 270.

<sup>282</sup> See *id.*

<sup>283</sup> See PetUC-0004069–0004074.

<sup>284</sup> See PetUC-0004073.

<sup>285</sup> See PSI 2016 REPORT, *supra* note 7, at 38.

and sex offender registry checks.<sup>286</sup> Without background checks, ORR has no means to assess whether a household member of a parent or legal guardian has a disqualifying criminal history, such as a history of child abuse.

#### **4. ORR’s Policy Does Not Prohibit Placement with Sponsors Refusing to Submit to a Background Check**

ORR policy requires that ORR deny placement to a non-parent or legal guardian with certain criminal histories or adverse child welfare findings.<sup>287</sup> This policy is applicable in cases where a sponsor or other related adult completes a background check. However, ORR’s policies do not explicitly prohibit the release of a child to a potential sponsor where an adult household member refuses to comply with the required background checks.<sup>288</sup> Because HHS does not keep statistics on a case-by-case basis, they were unable to tell the Committee whether this had ever occurred.<sup>289</sup> ORR’s Policy Guide instructs case managers to elevate a case to a Field Specialist when “a potential sponsor, adult household member, or adult caregiver refuses to complete a required background check.”<sup>290</sup> ORR’s Policy Guide states that it “*may* deny release,” but ORR will “consider[] the totality of the circumstances, including the adult household member’s refusal and all other relevant and available information to determine whether the release process may continue.”<sup>291</sup> There is no requirement to deny placement with a sponsor if a sponsor or household member refuses a background check.

#### **C. HHS Still Places Many Unaccompanied Alien Children without Seeing the Sponsor Living Conditions**

ORR conducts home studies prior to placement: when required by the TVPRA or ORR-policy, or at its discretion.<sup>292</sup> Currently, TVPRA requires home studies for certain vulnerable children, including victims of trafficking, special-needs children, victims of sexual or physical abuse, and cases where the sponsor presents a risk of abuse or maltreatment, trafficking, or exploitation.<sup>293</sup> ORR also requires home studies when (1) a non-relative sponsor seeks to sponsor multiple children, (2) a non-relative sponsor who previously sponsored or sought to sponsor a child is

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<sup>286</sup> See ORR FIELD GUIDANCE #11, *supra* note 270; PetUC-0001163.

<sup>287</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.7.4.

<sup>288</sup> See *id.* at § 2.5.3.

<sup>289</sup> See Committee Briefing with HHS ORR (March 2, 2022) (ORR officials told the Committee that its data team does not keep statistics on a case-by-case level and are unable to determine the number of cases where an adult refuses to comply with the background check requirement).

<sup>290</sup> PetUC-0000173.

<sup>291</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.5.3 (emphasis added).

<sup>292</sup> Committee Briefing with HHS ORR (Oct. 14, 2021); see also William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5078 (2008) (8 U.S.C. § 1232(c)(3)(B)).

<sup>293</sup> § 235; Committee Briefing with HHS ORR (Oct. 14, 2021).

seeking to sponsor an additional child, and (3) a non-relative sponsor seeks to sponsor a child 12 years old or younger.<sup>294</sup>

In its 2018 report, the Subcommittee found that HHS conducted home studies in fewer than 4.3 percent of cases between 2013 and 2015.<sup>295</sup> Although home studies are required in certain circumstances, the Subcommittee found several examples where HHS failed to conduct them.<sup>296</sup> For Fiscal Year 2021, which covers October 2020 through September 2021, ORR took custody of over 122,700 children.<sup>297</sup> Yet, ORR conducted only 5,468 home studies—or 4.5 percent of cases.<sup>298</sup> Between fiscal years 2017 and 2020, HHS completed a home study for an average of 8.7 percent of placements.<sup>299</sup>

### Pre-Placement Home Studies FY2015 - FY2021

Fiscal Year	Referrals	Home Studies	Percent of Cases
2021	122,731	5,468	4.5%
2020	15,381	1,913	12.4%
2019	69,488	4,875	7%
2018	49,100	3,641	7.4%
2017	40,810	3,173	7.8%
2016	59,170	3,540	6.0%
2015	33,726	1,895	5.6%

Source: Office of Refugee Resettlement, Facts and Data<sup>300</sup>

ORR does not universally require home studies for all children 12 or older, despite these children being at higher risk for labor trafficking.<sup>301</sup> When asked whether ORR has considered requiring home visits for Category 3 sponsors applying to sponsor children over the age of 12, an ORR official said they “had not considered it to that degree of specificity.”<sup>302</sup> The ORR official warned that requiring home studies for certain categories of children may have unintended consequences, like lengthening the time children remain in ORR’s care.<sup>303</sup>

<sup>294</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>295</sup> PSI 2018 REPORT, *supra* note 84, at 22.

<sup>296</sup> *Id.* at 38–39.

<sup>297</sup> See OFFICE OF REFUGEE RESETTLEMENT, *supra* note 23 (comparing number of home studies to number of referrals).

<sup>298</sup> *See id.*

<sup>299</sup> *See id.*

<sup>300</sup> *See id.*

<sup>301</sup> PSI 2016 REPORT, *supra* note 7, at 34–35.

<sup>302</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>303</sup> *Id.*

The same ORR official characterized ORR’s current home visit policies as “pretty good,” stressing that care providers can always request a discretionary home study if the child is not covered by other home study requirements but human trafficking indicators exist.<sup>304</sup> “For discretionary home studies, the case manager and case coordinator must agree that the home study is likely to provide additional information required to determine that the sponsor is able to care for the health, safety, and well-being of the child,” ORR told the Committee.<sup>305</sup> ORR’s Policy Guide states case managers may only request a home study if there is a “reasonable expectation that results of the home study process . . . will provide additional information, other than what has already been gathered via the sponsor assessment process, which will mitigate concerns.”<sup>306</sup> As a result, ORR recommends discretionary home studies on a very limited basis. The Policy Guide states that care providers should only request discretionary home studies “for potentially viable sponsors.”<sup>307</sup> For example, concerns involving motor vehicle moving violations, including offenses of driving while intoxicated (DWI) and driving under the influence (DUI), cannot be used as a basis for requesting a discretionary home study.<sup>308</sup> ORR’s Unaccompanied Children Manual of Procedures specifically states that DUI/DWI’s may not be used “unless there are multiple charges in a relatively short period”.<sup>309</sup> Of the 245,515 children placed with sponsors between August 2018 and January 2022,<sup>310</sup> only 1,835 received discretionary home studies—or less than one percent of cases<sup>311</sup> The total percentage of home studies conducted including non-discretionary home studies, that is home studies required by TVPRA or ORR policy, during a similar period was higher but still less than ten percent—between FY 2018 and FY 2022, ORR conducted 24,693 home studies with 363,124 unaccompanied alien children released to sponsors, meaning 6.8 percent of those children received a home study.<sup>312</sup>

### **III. HHS HAS NOT IMPLEMENTED A RELIABLE MECHANISM TO TRACK AND MONITOR CHILDREN IN ITS CARE**

ORR’s responsibility for safeguarding children from harm does not conclude after placement. Yet, ORR has provided limited post-placement follow-up and failed to adopt a system to track children following placement with a sponsor. Over the past 14 years, Federal investigative entities, including the Permanent Subcommittee on Investigations, the U.S. Government

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<sup>304</sup> *Id.*

<sup>305</sup> Office of Refugee Resettlement, *supra* note 24, at 24–27; *see also* Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>306</sup> PetUC-0000166.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> HHS Statistics on UAC Released to Sponsors (May 6, 2022) (on file with the Committee).

<sup>311</sup> Statement from HHS to Committee staff (Mar. 29, 2022) (detailing the number of home visits conducted by ORR).

<sup>312</sup> *See* Office of Refugee Resettlement, *supra* note 24, at 32–33.

Accountability Office and HHS Office of Inspector General have each issued reports finding that HHS has not implemented a reliable mechanism to track and monitor children in its care.

### A. The UC Portal Should Have a User-Friendly Search Function

ORR assigns every child in its custody a page in the UC Portal, including a section listing sponsor assessments, as seen below.<sup>313</sup> Information about the sponsor or potential sponsor—including name, date of birth, address, and notes regarding the child’s relationship to the sponsor—are then available to the case manager.<sup>314</sup> Information regarding household members is also included in the sponsor information section.<sup>315</sup> ORR takes much of this information from the sponsor’s family reunification application, which a case manager inputs into the portal.<sup>316</sup> Information from the application is cross-referenced with information provided during the UAC Assessment.<sup>317</sup>

#### UC Portal Case File Page



Source: Committee Briefing with HHS ORR (Nov. 8, 2021).<sup>318</sup>

<sup>313</sup> Committee Briefing with HHS ORR (Nov. 8, 2021).

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

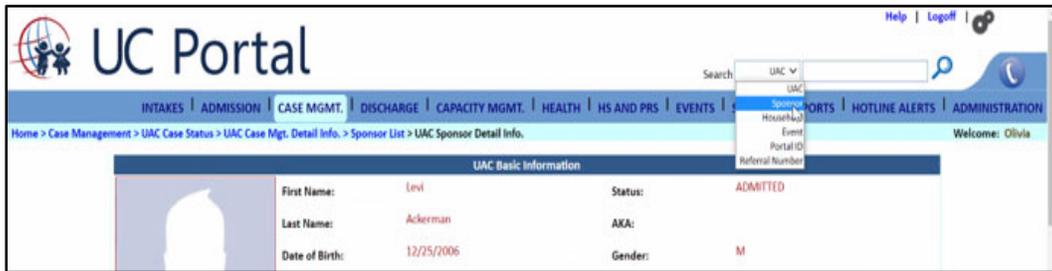
<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> The graphics are snapshots of a test portal site, which “directly mirrors” the UC Portal used by ORR but uses test data—not real data about unaccompanied alien children or sponsors. *Id.*

ORR expects case managers to search a potential sponsor’s name and address in the Portal as part of the sponsor assessment process.<sup>319</sup> According to an ORR official, this search will allow a case manager to identify any relationship between that sponsor and a current sponsor, prior sponsor, or prior applicant to be a sponsor.<sup>320</sup> However, the Portal’s search function is limited. A case manager cannot run a search term across the entire platform.<sup>321</sup> Instead, case managers must specify the type of information the specific search term is to be compared against.<sup>322</sup> The Portal has six categories for searching—two of which are relevant to sponsors: “sponsor” and “household.”<sup>323</sup>

### UC Portal Search Function



**Source:** Committee Briefing with HHS ORR (Nov. 8, 2021).<sup>324</sup>

<sup>319</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>320</sup> Committee Briefing with HHS ORR (Nov. 8, 2021).

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.* Nearly all of the other categories are specific to the child—the child’s name; portal id tracking number; and referral number or “A Number,” which DHS assigns upon apprehension. *Id.*

<sup>324</sup> The graphics are snapshots of a test portal site, which “directly mirrors” the UC Portal used by ORR but uses test data—not real data about unaccompanied alien children or sponsors. *Id.*

To search potential sponsors, a case manager must select “sponsor” and then type the first or last name in the search box.<sup>325</sup> The Portal will generate a list of whole and partial matches, from which the case manager can select the sponsor’s profile.<sup>326</sup>

### UC Portal Sponsor Search

First Name	Last Name	Address	City	State	P Counter	A Counter	Flag
Christina	Fake	14248 Bale Dr	El Paso	TX	12	10	1
Christina	Fake	14248 Bale Dr	El Paso	TX	12	10	1
Eleopardo	Bravo Fake	512 Gano St.	Houston	TX	1		1
Elizabeth	Lopez	123 Fake Street	Los Angeles	CA	1		0
Fake	Uncle	1601 Rolling Hills Dr	Richmond	VA	1		0
Fake	Fake	Fake	Fake	AK	1		0
Guillermo	Fake	1234 Lock Dr	Miami	FL	6	4	1
John	Fake	234 Sun Valley	Tucson	TX	1	1	0
Jose	Fake	3467 Camino Rd	Monterrey	CA	8	5	1
Jose	Fake	2023 House	brownsville	TX	4	2	0
Julio	Fake	123 Locust	Las Cruces	NM	7	4	1
Liz	Heimann	110 Fake St	New York	NY	1	1	0
Maria	Fake	913 Hanover st	Daly City	CA	1		0
Marla	Fake	1019 Union City RD	Union city	NJ	1		0
Michael	Fake	22 East 10 South Apt. 9	Atlanta	GA	2	1	0
My Fake	Fake	123 High Street	New York	NY	2		1
Pedro	Fake	5799 Southland Drive	Mobile	AL	2		0
Roberto	Fake	1222 Lake Ave	Albuquerque	NM	1		0
Romelio	Topaz Fake	15423 Lakenworth Dr	Lake Worth	FL	1		0
Rosario	Fake	173 fake dr	houston	TX	1		0

**Source:** Committee Briefing with HHS ORR (Nov. 8, 2021).<sup>327</sup>

The profile page lists other household members and alternate caregivers.<sup>328</sup> But, the profile page does not clearly indicate whether an identified household member or alternate caregiver is currently or has previously sponsored or attempted to sponsor a child.<sup>329</sup> A case manager would need to search separately each name of a related adult across the “sponsor” field.<sup>330</sup> To be comprehensive, the case manager would also need to run the potential sponsor’s name across the “household” field.<sup>331</sup>

Notably, “address” is not one of the six available search options in the UC Portal drop-down menu despite ORR policy requiring an address check during the sponsorship assessment process.<sup>332</sup> This information is important because it alerts the case manager if ORR has released

<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

<sup>327</sup> The graphics are snapshots of a test portal site, which “directly mirrors” the UC Portal used by ORR but uses test data—not real data about unaccompanied alien children or sponsors. *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*; Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>330</sup> Committee Briefing with HHS ORR (Nov. 8, 2021).

<sup>331</sup> *Id.*

<sup>332</sup> Committee Briefing with HHS ORR (Oct. 14, 2021); Committee Briefing with HHS ORR (Nov. 8, 2021).

another child to the same address.<sup>333</sup> ORR’s Policy Guide refers to a separate search function where a care provider inputs potential sponsor information.<sup>334</sup> The Policy Guide instructs care providers to search “the address provided.”<sup>335</sup>

Since its 2021 briefings with the Committee, ORR has made a number of improvements to the UC Portal’s functionality. For example, ORR now issues bi-weekly enhancements to the UC Portal “to ensure that children in ORR care are receiving case management services without unnecessary technological delays.”<sup>336</sup> ORR also improved the UC Portal’s search capability to account for minor variations in spelling, format, and capitalization.<sup>337</sup>

## **B. ORR Cannot Track Children after Placement**

In 2008, the HHS Office of Inspector General found that ORR’s precursor, the Division of Unaccompanied Alien Children’s Services:

[did] not have a method to track children after they [we]re released to sponsors and therefore [was] unable to determine whether the processes facilities use[d] to screen sponsors [we]re effective and whether sponsors continue[d] to provide for children’s physical, mental, and financial well-being.<sup>338</sup>

Eight years later in 2016, HHS still had not adopted a mechanism to track children following placement with a sponsor. In its 2016 report, the Subcommittee found post-release services were HHS’s best means of tracking children—but HHS only provided post-release services in about ten percent of cases.<sup>339</sup> Later in 2016, the U.S. Government Accountability Office similarly found HHS had very little information about children after releasing them to sponsors, and no means to collect such information comprehensively.<sup>340</sup> GAO observed that “[w]ithout processes to ensure that the data from its activities are reliable, systematically collected, and compiled in summary form, ORR may be missing an opportunity to provide useful information about [the unaccompanied alien children] population for the use of other government agencies.”<sup>341</sup> In the six years since GAO’s report, HHS has failed to make any significant improvement in

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<sup>333</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>334</sup> PetUC-0000140–41.

<sup>335</sup> *Id.*

<sup>336</sup> Office of Refugee Resettlement, *supra* note 24, at 38–39.

<sup>337</sup> *Id.* at 42.

<sup>338</sup> OFFICE OF THE INSPECTOR GEN., DEP’T OF HEALTH & HUMAN SERVS., OEI-07-06-00290, DIVISION OF UNACCOMPANIED CHILDREN’S SERVICES: EFFORTS TO SERVE CHILDREN ii (2008).

<sup>339</sup> PSI 2016 REPORT, *supra* note 7, at 40, 42.

<sup>340</sup> U.S. GOV’T ACCOUNTABILITY OFF., GAO-16-180, UNACCOMPANIED ALIEN CHILDREN: HHS CAN TAKE FURTHER ACTIONS TO MONITOR THEIR CARE 33 (2016).

<sup>341</sup> *Id.* at 36.

tracking child post-placement. In fact, HHS regularly loses track of children for which it is legally responsible.<sup>342</sup>

ORR's primary mechanism for tracking children post placement is a minimum of three phone calls to the child 30 days after placement with the sponsor.<sup>343</sup> According to ORR's policy, "the purpose of the [call] is to determine whether the child is still residing with the sponsor, is enrolled in or attending school, is aware of upcoming court dates, and is safe."<sup>344</sup> Case managers are required to make a minimum of three attempts to speak with both the sponsor and child.<sup>345</sup> Forty-five days after placing a child with a sponsor, ORR closes the child's electronic record in the UC Portal.<sup>346</sup>

ORR policy only requires case managers to document the results of the call; it does not require the case manager to take any follow up action if the case manager cannot make contact with the sponsor or child.<sup>347</sup> The policy advises case managers to comply with state, local, and Federal laws and regulations for reporting to child protective agencies or law enforcement if the case manager believes the child is unsafe.<sup>348</sup> ORR's Policy Guide outlines additional steps for case managers if they believe a child is in immediate harm or otherwise unsafe.<sup>349</sup> These steps include calling 911 in the case of immediate danger, alerting the ORR National Call Center Help Line, and emailing the Field Specialist.<sup>350</sup>

Despite the follow-up call policy, the Subcommittee's 2018 report found ORR failed to take any action to address situations where it could not make contact with a child or sponsor.<sup>351</sup> This included 1,070 instances where ORR could not reach a sponsor or the sponsor refused to cooperate; 28 instances where the child had run away from the sponsor; 52 instances where the child no longer resided with the sponsor; and 1,475 instances where HHS "could not ascertain the whereabouts of" a child.<sup>352</sup> The Subcommittee recommended that "HHS should track [children] after it places them with sponsors to ensure that they are safe and appear at their immigration court proceedings," and "[i]f HHS cannot reach a [child] after the [child] is placed with a sponsor by telephone, HHS should make continued efforts to determine the location and living conditions of the [child]."<sup>353</sup> From August 2018 to December 2020, HHS completed

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<sup>342</sup> *Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse: Hearing before the S. Permanent Subcomm. on Investigations*, 115th Cong. (2018) (testimony of Steven Wagner, Acting Assistant Sec'y, Admin. for Children & Families, U.S. Dep't of Health and Hum. Servs.).

<sup>343</sup> See UC POLICY GUIDE, *supra* note 67, at § 2.8.4; PetUC-0000209-10.

<sup>344</sup> UC POLICY GUIDE, *supra* note 67, at § 2.8.4.

<sup>345</sup> PetUC-0000209-10.

<sup>346</sup> PetUC-0000209.

<sup>347</sup> UC POLICY GUIDE, *supra* note 67, at § 2.8.4.

<sup>348</sup> *Id.* at § 2.8.4.

<sup>349</sup> PetUC-0000210-0000211.

<sup>350</sup> See *id.*

<sup>351</sup> See PSI 2018 REPORT, *supra* note 84, at 35-37.

<sup>352</sup> See *id.* at 35-37.

<sup>353</sup> See *id.* at 9.

78,953 safety and well-being follow up calls.<sup>354</sup> During that time, HHS placed 9,176 calls that did not result in connection with the unaccompanied child or sponsor—or 11.6% of calls placed.<sup>355</sup> Since the Subcommittee’s 2018 report, the numbers have not improved and HHS continues to lose track of the children under its care as a result of existing guidance.

#### **IV. HHS CONTINUES TO REFUSE RESPONSIBILITY FOR UNACCOMPANIED ALIEN CHILDREN OR TO ENSURE THEIR SAFETY AFTER PLACEMENT WITH A SPONSOR OF AN UNACCOMPANIED ALIEN CHILD**

None of the issues above is new. Congress, inspectors general, and other private entities have documented them for years. They are, however, indicative of a larger issue—HHS’s refusal to implement systems designed to ensure the safe release of children and accept legal responsibility for unaccompanied alien children after they are paired with a sponsor, as required by law. ORR is statutorily obligated to provide for the safety of unaccompanied alien children throughout their time in the United States until placement with a parent or legal guardian.<sup>356</sup> HHS’s refusal to fulfill these responsibilities is illegal and leaves unaccompanied alien children—among the most vulnerable of populations—without the important care and safety they need.

##### **A. HHS Continues to Refuse to Accept Responsibility for Children Placed with Non-Parent Sponsors**

One of the most concerning findings in both the Subcommittee’s 2016 and 2018 reports was that no Federal agency claimed responsibility for unaccompanied alien children placed with non-parental sponsors (Categories 2 and 3).<sup>357</sup> In 2008, the HHS Inspector General first identified this issue, finding that after HHS placed children with sponsors, no agency acknowledged it had authority or responsibility for ensuring the children’s safety.<sup>358</sup> This was one reason why, in December 2008, Congress passed the TVPRA, which states “the care and custody of all unaccompanied alien children . . . shall be the responsibility of the Secretary of Health and Human Services.”<sup>359</sup>

Despite the change in law and the Subcommittee’s findings and those of the HHS Inspector General, HHS still maintains it has no legal responsibility for children placed with Category 2 and 3 sponsors. In February 2022, HHS stated “ORR’s custodial responsibilities end when a child is discharged from ORR care” and that “[o]nce a child is released to the care and custody of

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<sup>354</sup> Statement from HHS to Committee staff (Mar. 29, 2022) (detailing the number of safety and well-being follow up calls conducted by ORR).

<sup>355</sup> *Id.*

<sup>356</sup> Homeland Security Act of 2002, Pub. L. No. 107-296 § 462, 116 Stat. 2135, 2202–03 (2002) (6 U.S.C. § 279(b)(1)).

<sup>357</sup> PSI 2016 REPORT, *supra* note 7, at 49–50; PSI 2018 REPORT, *supra* note 84, at 25–28.

<sup>358</sup> OFFICE OF THE INSPECTOR GEN., DEP’T OF HEALTH & HUMAN SERVS., *supra* note 338.

<sup>359</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5077 (2008) (8 U.S.C. § 1232(b)(1)).

a vetted sponsor, ORR’s legal custody ends.”<sup>360</sup> As part of its investigation, the Committee requested that HHS provide an assessment of its legal responsibility to ensure children are not abused or trafficked when placed with a sponsor other than a parent or legal guardian.<sup>361</sup> In written response provided to the Committee, HHS stated, “ORR does not have authority over [unaccompanied alien children] after they are discharged to the care of a sponsor but does fund post-release services for children who had a home study . . . .”<sup>362</sup> HHS’s statements fail to distinguish between children placed with parents or legal guardians and those placed with other individuals. Rather, HHS disclaims any responsibility for the nearly 147,000 children placed with sponsors between January 2021 and February 2022.<sup>363</sup>

HHS’s denial directly contradicts the plain language of the law. The Homeland Security Act of 2002 explicitly states the “care and custody” of all unaccompanied alien children are the responsibility of HHS, without limitation.<sup>364</sup> Consistent with that mandate, Congress gave HHS the ongoing responsibility to “conduct[] investigations and inspections of . . . entities in which unaccompanied alien children reside, including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements.”<sup>365</sup> The definition of “unaccompanied alien child,” in the Homeland Security Act of 2002 is:

a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.<sup>366</sup>

Under this definition, children placed with Category 2 and 3 sponsors remain unaccompanied and under the HHS Secretary’s care. Category 2 and 3 non-parental sponsors are not legal guardians unless they obtain an order from a state court.<sup>367</sup> Thus, HHS reunites the children with their parents or legal guardians, or until their sponsors obtain such an order, they remain unaccompanied alien children by definition still under the care and protection of HHS. As noted above, this covers nearly 92,000 children placed between January 2021 and February 2022—more than 60 percent of children HHS placed during that time—as well as all other

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<sup>360</sup> See Letter from Jennifer M. Cannistra, Acting Asst. Sec’y, Admin. of Children & Families, U.S. Dep’t of Health & Human Servs., to Hon. Andy Biggs, U.S. House of Reps., (Feb. 24, 2022) (on file with the Committee).

<sup>361</sup> See Letter from Sen. Gary Peters and Sen. Rob Portman, Chairman and Ranking Member of the S. Comm. on Homeland Sec’y and Governmental Affairs, to Hon. Xavier Becerra, Sec’y, U.S. Dep’t of Health & Human Servs. (Jan. 26, 2022) (on file with the Committee).

<sup>362</sup> See Statement from HHS to Committee staff (Mar. 29, 2022) (discussing HHS’ legal responsibility to protect children from trafficking).

<sup>363</sup> See Letter from Jennifer M. Cannistra, Acting Asst. Sec’y, Admin. Of Children & Families, U.S. Dep’t of Health & Human Servs., to Hon. Andy Biggs, U.S. House of Reps., (Feb. 24, 2022) (on file with Committee).

<sup>364</sup> See Homeland Security Act of 2002, Pub. L. No. 107-296 § 462, 116 Stat. 2135, 2202–03 (2002) (6 U.S.C. § 279(b)(1)).

<sup>365</sup> See *id.* (6 U.S.C. § 279(b)(1)(L)) (as amended in 2008 by Pub. L. No. 110-457, Title II, § 235(f)).

<sup>366</sup> See *id.* (6 U.S.C. § 279(g)(2)).

<sup>367</sup> See PSI 2018 REPORT, *supra* note 84, at 28.

unaccompanied alien children who have not yet attained the age of 18 or who are not residing with a parent or legal guardian.<sup>368</sup>

***ORR's Response.***

As of December 2022, HHS continues to maintain that its custodial responsibilities for unaccompanied alien children end after placement of a child, telling the Committee that “While ORR’s custodial responsibilities end when a child is released from ORR care, ORR provides post-release services for children and sponsors who would benefit from ongoing connections to community services.”<sup>369</sup> HHS went on to say that, “Throughout the sponsor vetting process, ORR works to establish an after-care plan to ensure a sponsor can meet the child’s needs when they assume custody.”<sup>370</sup> The Department also noted that it conducts a follow-up call with “both the sponsor and child” after the release of the child and must make attempt to reach the sponsor and child by phone at least three times. No further follow-up is required.<sup>371</sup>

HHS provided the Committee with the following information regarding what ORR does to minimize trafficking of children, which this report is including in full:

If a care provider suspects that a child may have experienced trafficking, the care provider must refer the child’s case to the Office of Trafficking in Persons (OTIP) within 24 hours for further assessment and eligibility determination for additional benefits for trafficking victims. OTIP connects UC with potential trafficking concerns to its victim assistance grant recipients immediately, even if trafficking has not yet been substantiated. ACF’s OTIP also coordinates with ORR and the National Center for Missing and Exploited Children or NCMEC on cross-referral processes authorized by the Trafficking Victims Protection Act and the Preventing Sex Trafficking and Strengthening Families Act.

This referral is appropriate if the care provider suspects the child may have experienced forced labor or commercial sex at any point in the child’s life and in any country, including on the journey to the United States. This referral is also appropriate if the care provider has concerns that the child was brought to the United States for the purpose of engaging in forced labor or commercial sex, including concerns that may arise during the sponsor assessment process. In addition, ORR must refer any trafficking concerns to the Homeland Security Investigations division (HSI) and the Human Smuggling and Trafficking Center (HSTC), at the Department of Homeland Security. Referrals to OTIP, HSI, and HSTC may include supporting documents relevant to investigative purposes. ORR may also request assistance from other federal agencies in assessing a child’s case for potential trafficking concerns. Out of an abundance of caution, and in some

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<sup>368</sup> See Letter from Jennifer M. Cannistra, Acting Asst. Sec’y, Admin. Of Children & Families, U.S. Dep’t of Health & Human Servs., to Hon. Andy Biggs, U.S. House of Reps., (Feb. 24, 2022) (on file with Committee).

<sup>369</sup> Office of Refugee Resettlement, *supra* note 24, at 52.

<sup>370</sup> *Id.* at 52–53.

<sup>371</sup> See *id.* at 52–56.

cases, supervisory review and/or additional home studies have been utilized before releasing UC to certain addresses in areas flagged for concern.

Additionally, this administration is actively working to provide post-release services to more discharged children. In fiscal year (FY) 2021, services were provided to approximately 25% of children after they left ORR care. In FY22, more than 42% of UC were served. ORR plans to increase post release services to 100% of UC by the end of FY24 and legal representation to 100% of children by the end of FY27. When children have post-release services and legal representation, it is more likely that ORR will be able to contact them and facilitate a continuum of care for all who would benefit from ongoing support as they transition into their new communities.<sup>372</sup>

While providing this vulnerable population access to post-release services is commendable, doing so does not discharge HHS of its custodial responsibilities for the children unless and until the child is placed with a parent or legal guardian or attains majority age. HHS retains responsibility for those children under the law. HHS's refusal to take responsibility for these children after placement with a sponsor other than a parent or guardian undermines those children's safety, our immigration system, and the rule of law.

#### **B. ORR's Systems Were Designed Not to Provide Aggregate Data or Analyze Trends, Leaving ORR Unable to Identify Potential Red Flags in Children's Safety**

As part of this investigation, the Committee requested basic information on ORR's vetting of potential sponsors and supervision of unaccompanied alien children—both pre- and post-placement. Information requested included statistics on:

- The number of background checks completed by sponsor category;
- The number of potential sponsors approved for placement by sponsor category;
- The number of potential sponsors denied for placement, by sponsor category;
- The number of discretionary home visits completed, including the sponsor category at issue in the home visit; and
- Follow-on actions taken by HHS upon learning that a Safety and Well Being Follow Up call did not result in connection with the unaccompanied alien child or sponsor or otherwise indicated the child was no longer living with the sponsor.<sup>373</sup>

Nearly three months after receiving the data requests, HHS informed the Committee that it was unable to provide the requested data because ORR did not keep the data in the format sought—

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<sup>372</sup> Office of Refugee Resettlement, *supra* note 24, at 56–61.

<sup>373</sup> See Letter from Sen. Gary Peters and Sen. Rob Portman, Chairman and Ranking Member of the S. Comm. on Homeland Sec'y and Governmental Affairs, to Hon. Xavier Becerra, Sec'y, U.S. Dep't of Health & Human Servs. (Jan. 26, 2022) (on file with the Committee); see also Email from Committee Staff to Department of Health & Human Servs. Staff (Dec. 8, 2021) (on file with the Committee) (staff requests for information preceding letter from Chairman and Ranking Minority Member of the Committee).

namely it could not look at data at a sponsor-level.<sup>374</sup> ORR pulls data from the UC Portal.<sup>375</sup> As noted above, ORR uses this system to document and manage the records for individual children.<sup>376</sup> ORR officials informed Committee staff that the system is set up on an individual basis.<sup>377</sup> Only limited information can be pulled in the aggregate, but even that information relates to the children.<sup>378</sup> For example, although ORR could provide Committee staff with the number of home visits, it could not indicate how many of those home visits involved Category 3 sponsors.<sup>379</sup> ORR stated it had no means to pull aggregate data for the basic number of potential sponsors who denied placement.<sup>380</sup>

These limitations render ORR unable to perform essential reviews of its sponsor vetting or child placement processes. For example, despite Committee requests for information demonstrating what actions ORR took when it learned that a child was no longer residing with the child's assigned sponsor or where ORR was otherwise unable to reach the child or sponsor, ORR officials told the Committee that reviewing and providing this data would be resource intensive, requiring ORR to conduct a case-by-case review of every child's safety and well-being call record.<sup>381</sup>

Subsequently, in December 2022, ORR told the Committee that following this review, ORR enhanced the UC Portal to resolve some of these issues and allow ORR to "pull information for home studies by sponsor categories on an aggregate level . . . in a way it was previously unable to . . .".<sup>382</sup> This investigation was unable to verify that information prior to publication, however if true, ORR is to be applauded for its progress in addressing this issue. To execute its mission, ORR needs a comprehensive method for storing, accessing, and analyzing information relevant to its job functions. This includes information at both the child and sponsor level. Only through this approach can ORR perform essential analyses of its operations and fulfill its basic mission. Until ORR implements such systems, ORR's ability to ensure the health and safety of children in its care will remain severely limited.

## V. CONCLUSION

The care of vulnerable populations is among the most important responsibilities of any government and few populations are more vulnerable than children traveling alone across borders with no legal status. Caring for unaccompanied alien children, children at significant risk of labor and sex trafficking and abuse, should be one of the top priorities of the United

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<sup>374</sup> Committee Briefing with HHS ORR (Mar. 2, 2022).

<sup>375</sup> *Id.*

<sup>376</sup> Committee Briefing with HHS ORR (Oct. 14, 2021).

<sup>377</sup> Committee Briefing with HHS ORR (Mar. 2, 2022).

<sup>378</sup> *Id.*

<sup>379</sup> *Id.*

<sup>380</sup> *Id.*

<sup>381</sup> *Id.*

<sup>382</sup> Office of Refugee Resettlement, *supra* note 24, at 61.

States Government. Yet, this investigation reveals actions by the Biden administration that show the opposite—serious disregard for these children’s welfare.

Under the Biden administration, the number of UACs entering the United States reached a record high for the country. As that number has increased, the Biden administration reduced the protections for those children against abuse and trafficking. This included issuance of Field Guidance #10 and Field Guidance #11, which waived certain background check requirements for those to whom the Biden administration entrusts the care of UACs, requirements like public records and sex offender registry checks. This combined with a more than 50 percent reduction in digital fingerprinting of prospective sponsors for these children means the Biden administration is not ensuring caretakers for these vulnerable children have no criminal history or history of committing child abuse and neglect.

Under the Biden administration, HHS has also continued to fail to adopt the recommendations identified in the Subcommittee’s previous three reports to correct these issues to protect children. HHS’s current policies on unaccompanied alien children do not address trafficking and abuse vulnerabilities. HHS continues to deny its legal responsibility for unaccompanied alien children after discharging them to sponsors.

Without acknowledging its responsibility, correcting these issues, and better vetting potential sponsors, the Biden administration cannot ensure the safety of unaccompanied alien children.