



Recommendations to Congress to Enhance Protections for Unaccompanied Noncitizen Children Released from Federal Care

The Homeland Security Act of 2002 made the U.S. Department of Health and Human Services’ (HHS) Office of Refugee Resettlement (ORR) responsible for the care and placement of unaccompanied migrant children (UC) in the United States. Under federal law, this includes any child who (1) lacks lawful immigration status in the United States, (2) is under 18-years-old, and (3) is either without a parent or legal guardian in the country or without a parent or legal guardian in the country who is available to provide care and physical custody.¹ Requirements and services pertaining to the care of these children have been established and augmented over time by the Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent reauthorizations, including the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, among other measures, as well as the *Flores* Settlement Agreement. The number of these vulnerable children referred to ORR’s care annually has increased significantly in recent years, and the TVPRA requires each child to be “placed in the least restrictive setting that is in the best interest of the child,”² which can include release to family or another sponsor in the United States.

For decades, the U.S. Conference of Catholic Bishops’ Department of Migration and Refugee Services (MRS) has been a leader in the protection of migrant and refugee children through its programmatic, advocacy, and educational efforts. Consistent with Catholic social teaching, MRS believes these children, like all children, are best served in the care of a loving family, and timely reunification of a child with his or her family, to the extent possible, should be a guiding principle of the UC Program. However, the safety and well-being of children are of paramount concern, and the speed of their release from ORR care should never take precedence over these goals.

Exploitation in its various forms is most likely to occur (or continue) when an individual is isolated from support or confronted by systemic barriers in accessing assistance. This is especially true for unaccompanied children as an inherently vulnerable population. The following recommendations are intended to enhance the protection of these children, with a particular emphasis on preventing human trafficking and other exploitative situations following their release from ORR care, as well as improving detection and alleviation of such situations when they occur.

1. Fully fund post-release services and grant ORR authority to provide post-release services whenever it is determined to be in a child’s best interests.

In line with HHS’s stated goal of providing 100% of discharged children with access to post-release services by Fiscal Year 2024, Congress should prioritize and appropriate the necessary funding to achieve this target and ensure that ORR is clearly authorized to assist children with

¹ 6 U.S.C. 279(g)(2).

² 8 U.S.C. 1232(c)(2)(A).

post-release services whenever doing so would be in a child's best interest. Besides supporting each child's integration into society and strengthening families, making post-release services available from the moment children are placed with a sponsor helps maintain continuous contact with them, thereby limiting opportunities for children to become isolated and more vulnerable to exploitation. In this way, trusted, community-based care providers partnering with ORR to provide these services also exist as a bridge between released children/their sponsors and the agency.

The authority to provide post-release services should also allow ORR to clearly reopen or initiate post-release services upon the prior conclusion, where necessary. This authority should be utilized with discretion, but special consideration should be given when a child requests the initiation or continuation of post-release services, even if the child's sponsor declines, and:

- a. The child expresses/exhibits fear for his or her personal safety in the sponsor's home;
- b. The child has unresolved or chronic medical or mental health challenges;
- c. ORR receives a notice of concern from post-release care provider staff conveying that a child's safety is at risk; or
- d. The child's circumstances display signs of potential human trafficking, exploitation, neglect, abuse, and/or other forms of maltreatment.

2. Clarify ORR's authority to intervene in cases where a child has already been released to a sponsor and the child's safety or well-being is at risk.

Children should be released by ORR with every expectation that their placement will provide a safe and nurturing environment, following thorough and consistent vetting procedures, including home studies when warranted. Unfortunately, there are instances where a sponsor placement "breaks down" or unforeseen circumstances arise, and the state or local domestic child welfare agency is unwilling or unable to intervene. In such cases, because placement has already occurred, ORR may also decline to intervene and resume care of the child, citing statutory limitations. Variations in the responses of state and local child welfare agencies and the lack of clear authority for ORR to extend or resume care of these children leave this vulnerable population without recourse available to other children in similar situations.

Congress should clarify ORR's authority to resume care of unaccompanied children, particularly when local welfare agencies are unable or unwilling to intervene and a child's safety is at risk. Congress should fund post-release federal field specialists (PRFFS) to serve as a liaison between community-based care providers and ORR. These staff would review cases potentially requiring the resumption of care and decide whether or not to exercise this authority in a particular case. The authority to resume ORR care should be incorporated into and exercised within the post-release services model. The child should continue to receive the necessary post-release services while a determination regarding the resumption of care is being made. The exceptional authority to resume care should be utilized with discretion and with due regard for the rights of parents and legal guardians. The use of this authority should be given special consideration when:

- a. The child expresses/exhibits fear for his or her personal safety in the sponsor's home;
- b. ORR receives a notice of concern from post-release care provider staff conveying that a child's safety is at risk; or
- c. The child's circumstances display signs of potential human trafficking, exploitation, neglect, abuse, and/or other forms of maltreatment.

3. Provide robust funding for legal services and establish a trauma-informed and child-centric process for immigration proceedings.

Many unaccompanied children present in the United States have fled violence and insecurity in their home countries. Additionally, these children are exposed to harrowing and traumatic experiences on their journey to the United States. Upon arriving in the country, children are then placed in immigration proceedings that inherently require recalling and describing the details of their trauma, often without the assistance of legal counsel or mental health resources. In addition to funding legal services for these children, Congress should create a child-friendly and trauma-informed process for their immigration proceedings, such as through the bipartisan, bicameral Immigration Court Efficiency and Children's Court Act of 2023 (S. 3178/H.R. 6145). Not only would this enhance fairness and due process for these children, it would also improve the timeliness of adjudications and reduce the immense backlog facing the immigration courts.

4. Establish an Officer for Child Trafficking Prevention within ORR.

As a senior member of the ORR leadership team, the Officer for Child Trafficking Prevention (OCTP) would directly advise the ORR Director and the Assistant Secretary for the Administration for Children and Families (ACF) in matters relating to the trafficking of children. This individual would support ORR's efforts to prevent and address trafficking of discharged children by coordinating with both HHS and interagency stakeholders, including those from the U.S. Departments of Homeland Security, Labor, and Justice. The OCTP would work in tandem with ACF's Office on Trafficking in Persons to evaluate, improve, and supplement ORR's internal procedures for assessing whether a child's previous history of trafficking in his or her country of origin or in transit to the United States presents a current danger while in ORR care or a potential danger after release and promote access to services, as needed. This individual would also provide continuing education to ORR staff and publish reports on ORR's anti-trafficking efforts.

5. Mandate training for ORR staff to identify the signs of child maltreatment and human trafficking.

All ORR Division of Unaccompanied Children Operations (DUCO) staff should be required to complete regular child welfare training that includes modules on child trafficking. Federal staff who participate in this training should include project officers, federal field support specialists, supervisors, advisors, and case coordinators. This division-wide training should assist staff with understanding how the principles of best interest determinations relate to possible indicators of child abuse, neglect, and exploitation. Training should also provide an understanding of best practices used to ensure the safety of children in domestic child welfare systems, especially where removal from a home is required, to inform the internal development and execution of policies/procedures for the potential resumption of care by ORR.

6. Conduct oversight of the ORR National Call Center.

The ORR National Call Center is intended to serve as an additional support for unaccompanied children and others to report concerns or express a need for assistance while children are in ORR care and after their release. Oversight should focus on the nature of calls received, when and how

steps were taken to follow up on reports, and the outcomes of those interventions, to the extent possible, with an emphasis on overall effectiveness of the call center. Further action should be taken as needed to address deficiencies, streamline processes, and ensure that adequate follow-up measures are taken when warranted.

7. Adequately fund the Department of Labor’s Wage and Hour Division.

The U.S. Department of Labor’s Wage and Hour Division (WHD) plays an important role in enforcing child labor laws and protecting children from dangerous and exploitative labor situations, including noncitizen children. In March 2023, ACF and the WHD signed a Memorandum of Agreement to formalize the collaboration between the two agencies to prevent and address unlawful child labor. In addition to investigating possible violations of federal labor laws and civil enforcement generally, as well as referring cases to the Justice Department for prosecution, the WHD coordinates with ACF in the identification of suspected child labor exploitation situations, helps identify circumstances where children are unlawfully employed, and facilitates access to critical services for child labor trafficking victims or potential victims. Unfortunately, the WHD has been found to be severely underfunded and understaffed for many years,³ allowing for child labor exploitation to go unchecked. Congress should rectify this with increased support for the agency to ensure it is better able to carry out its statutory mandate and promote the protection of all children, noncitizens or otherwise.

8. Support state-level coordinators for unaccompanied children.

Unaccompanied children face unique challenges once released from ORR care, even when supported by loving families. Congress should support the establishment of state-level coordinators focused on unaccompanied migrant children and unaccompanied refugee minors (URM)—similar to existing coordinators for refugees generally—who would provide a vital resource for these populations and their caregivers, tailored to each state. The coordinators, with particular expertise in their needs, could assist these children with the services for which they are eligible, provide a vital point of contact between the states and federal grantees who provide post-release services, and foster community awareness to ease the transition of these children from ORR care. The coordinators could also provide support and act as a liaison in instances of sponsor breakdowns. Additionally, the coordinators could provide training and technical assistance to local child welfare and social services agencies to minimize barriers to accessing support.

9. Establish an independent national review board to evaluate and inform the federal government’s efforts relating to noncitizen children.

While government custody of children is typically reserved to the states, the federal government’s role in the care and placement of certain noncitizen children is a unique exception. Therefore, Congress should establish an independent national review board with rotating members representing nonprofit organizations engaged in direct-service provision, law enforcement, and

³ See, e.g., Economic Policy Institute, *Record-low Number of Federal Wage and Hour Investigations of Farms in 2022* (Aug. 22, 2023), <https://www.epi.org/publication/record-low-farm-investigations/> (finding that the WHD’s 2022 budget was roughly similar to its budget in 2006 (after adjusting for inflation), and the number of WHD investigators in 2022 was just 810, hovering near its record low.).

other areas relevant to the care and well-being of noncitizen children to advise Congress and the Administration on the federal government's efforts in this area. The board should include members who have frequent interactions with federal programs and noncitizen children themselves. The board would further the goals of increasing transparency and public engagement, undertake evaluations, and offer recommendations to both the legislative and executive branches on the care and protection of these children.

10. Pass the Protect Vulnerable Immigrant Youth Act.

Congress created the special immigrant juvenile (SIJ) classification to provide humanitarian protection to abused, neglected, or abandoned noncitizen youth in the United States. State courts are responsible for determining if reunification with one of such child's parents is not a viable option due to the abuse, neglect, or abandonment suffered or a similar basis under state law and that it is not in the best interest of a child to return to his or her country of origin. After receiving the necessary court order and applying for a visa within the employment-based, fourth preference (EB-4) category, SIJs can become lawful permanent residents, assuming there is an EB-4 visa available to them. However, there are only about 10,000 visas allocated to this category annually, and this same visa category is relied upon by several classes of employment-based immigrants. The current demand from all groups within the EB-4 visa category has resulted in a backlog exceeding five years.

It has never been a logical or just arrangement for SIJs to be included among other groups within the EB-4 visa category. SIJ status is decidedly a humanitarian benefit, and children deemed eligible for that status are not accurately described as employment-based immigrants. Many of these children are not even old enough to work lawfully in the United States, and delaying the resolution of their legal status exacerbates the vulnerabilities already faced by these youth. The Protect Vulnerable Immigrant Youth Act (S. 1885/H.R. 4285) is a simple and direct solution, which would take the reasonable step of exempting SIJ applicants from the EB-4 category. As a result, SIJ applicants would be treated more like other humanitarian populations within U.S. immigration law, such as those granted refugee status or asylum, neither of which are subject to annual visa caps, and would ensure more timely access to legal residency for those deemed eligible, thereby reducing the potential for exploitation.

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