



# Where We Stand:

A 20-Year Retrospective  
of the Unaccompanied  
Children's Program in  
the United States





# WHERE WE STAND: A 20-YEAR RETROSPECTIVE OF THE UNACCOMPANIED CHILDREN'S PROGRAM IN THE UNITED STATES

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## EXECUTIVE SUMMARY

*Where We Stand: A 20-Year Retrospective of the Unaccompanied Children's Program in the United States* reviews the Unaccompanied Children's Program from the passage of the Homeland Security Act (HSA) of 2002 until today. It assesses 20 years of legislation, policies, litigation, and, most importantly, the U.S. federal government's care of unaccompanied migrating children, with a view toward the next steps and improvements for the years ahead.

As described in Chapter One, the HSA transferred responsibility for the care and placement of unaccompanied children from the Commissioner of the Immigration and Naturalization Service to the Director of the Office of Refugee Resettlement (ORR). It was a significant step toward providing appropriate care for unaccompanied children. But the statutory direction was weak, and the transfer left gaps, interagency disagreements, and other challenges that plagued the program for years.

One of those challenges was the ongoing *Flores* litigation, which is introduced in Chapter Two. Another challenge was the lack of clear statutory guidance in major programmatic and operational areas. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) addressed many of those areas and is discussed in Chapter Three. The TVPRA included provisions on the “best interest” standard, transfers of children to ORR, home study and post-release service requirements, access to counsel, and Special Immigrant Juvenile (SIJ) status. Chapter Four highlights two of these areas: home studies/post-release services and SIJ status.

Chapter Five looks at the events that followed the 7.0 magnitude earthquake that devastated Haiti in 2010 and brought many Haitian children to the United States as unaccompanied children. Chapter Six follows with information about the first significant surge, or influx, of unaccompanied children into the United States. Chapter Seven discusses ORR’s publication of the interim rule on the prevention of sexual abuse. Finally, Chapter Eight, noting the lessons learned from the past, offers recommendations for the future of the care of unaccompanied children.

Over the years, the involved federal agencies, Congress, and nonprofit and advocacy organizations have worked to make changes as the program continued to have tremendous growth. Although the implementation of the changes was often slow, it was made, and many of those changes have resulted in a better system of care for unaccompanied children. The U.S. Committee for Refugees and Immigrants and The Children’s Village will continue to highlight the experiences of the past, using them to inform our current work with unaccompanied children and building on them to make recommendations for program improvements so that all children can move through their journeys in safety, with their rights protected, and with hope for their futures.



## RECOMMENDATIONS

### Recommendation 1:

Make post-release services for all unaccompanied children a legal requirement.

Congress has only specified that certain children receive home studies and post-release services. To ensure the safety of all unaccompanied children after release, we recommend that Congress clarify in law and provide appropriations for ORR's responsibility for the children's ongoing safety after release and require post-release services for all unaccompanied children.

### Recommendation 2:

Require ORR to appoint child advocates for the most vulnerable children.

Child advocates are underutilized and not clearly provided for under current law. We recommend that ORR be required to appoint child advocates for the most vulnerable children, specifically those expected to be in custody longer than 90 days and children who meet the current requirements for a home study.

### Recommendation 3:

Allocate funding so all unaccompanied children released from ORR custody have attorneys.

Lack of access to proper representation heightens the risk that children will not receive protections they are afforded under the law. The expansion of legal services is needed to successfully prevent and end the labor exploitation of unaccompanied children.

### Recommendation 4:

Expand the Unaccompanied Refugee Minors program.

For children without family or appropriate sponsors in the United States, we recommend an expansion of the Unaccompanied Refugee Minors program to create additional placements and more appropriate services for unaccompanied children.

### Recommendation 5:

Develop new and creative support programs for unaccompanied children after release.

Create a mentoring program, pairing unaccompanied children post-release with former unaccompanied children who can provide guidance and connection in their new communities.

### Recommendation 6:

Ratify the United Nations Convention on the Rights of the Child (UNCRC).

The treaty was the first to establish international standards on the rights of children. If the United States wants to continue to promote child rights internationally, and affirm the rights of children domestically, we must ratify the UNCRC.



# CHAPTER ONE: THE TRANSFER<sup>1</sup>

## THE BASICS

As used in this retrospective, unaccompanied children are children who have fled their home countries and entered the United States without their parents and with no legal immigration status. They flee their home countries for many reasons. In some cases, they are fleeing poverty, violence, or abuse or neglect by a parent. Others are trying to reunite with their parents or other family members living in the United States, leaving behind situations that put them in danger or offer no future. Regardless of the reasons, which are not a subject of this retrospective, these children travel thousands of miles encountering dangers and the risks of smuggling and trafficking that no child should ever have to face. They are among the world's most vulnerable groups, and for the past 20 years the United States has been attempting to improve their care once they arrive and are in the U.S. federal government's custody. One of the first steps in improving their care came from the passage of the Homeland Security Act (HSA) of 2002, which transferred the care of unaccompanied children from the Immigration and Naturalization Service (INS) to the Office of Refugee Resettlement (ORR).

### The Numbers

Over the past 20 years the make-up of this group and the structures in place to protect them have changed, in some ways slightly but in others considerably. We note first the dramatic increase in the number of unaccompanied children over the years and the consequential need to have robust systems in place to care for them. In fiscal year (FY) 2021, 122,731 unaccompanied children were referred to ORR.<sup>2</sup> In comparison, in FY 2000, before the passage of the HSA, the INS detained 4,136 unaccompanied children.<sup>3</sup> The INS typically had between 400 and 500 children in custody at any time.<sup>4</sup> In FY 2003, after the HSA passage, 4,792 unaccompanied children were referred to ORR.<sup>5</sup> Today, the entry of unaccompanied children into the United States is higher than ever before, more than 20 times the number of children that ORR was responsible for during the inception of the Unaccompanied Children's Program at ORR.

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<sup>1</sup> These chapters were previously published by USCRI and The Children's Village on the following dates: Chapter One, Dec. 2021; Chapter Two, Feb. 2022; Chapter Three, Sept. 2022; Chapter Four Part One, Jan. 2022; Chapter Four Part Two, March. 2023; Chapter Five, March. 2023; Chapter Six, April. 2023; Chapter Seven, April. 2023; Chapter Eight, April. 2023.

<sup>2</sup> Administration for Children and Families, Fiscal Year Congressional Justification 2022,

[https://www.acf.hhs.gov/sites/default/files/documents/olab/fy\\_2022\\_congressional\\_justification.pdf](https://www.acf.hhs.gov/sites/default/files/documents/olab/fy_2022_congressional_justification.pdf).

<sup>3</sup> U.S. Department of Justice, Office of Inspector General, Unaccompanied Juveniles in INS Custody (2001),

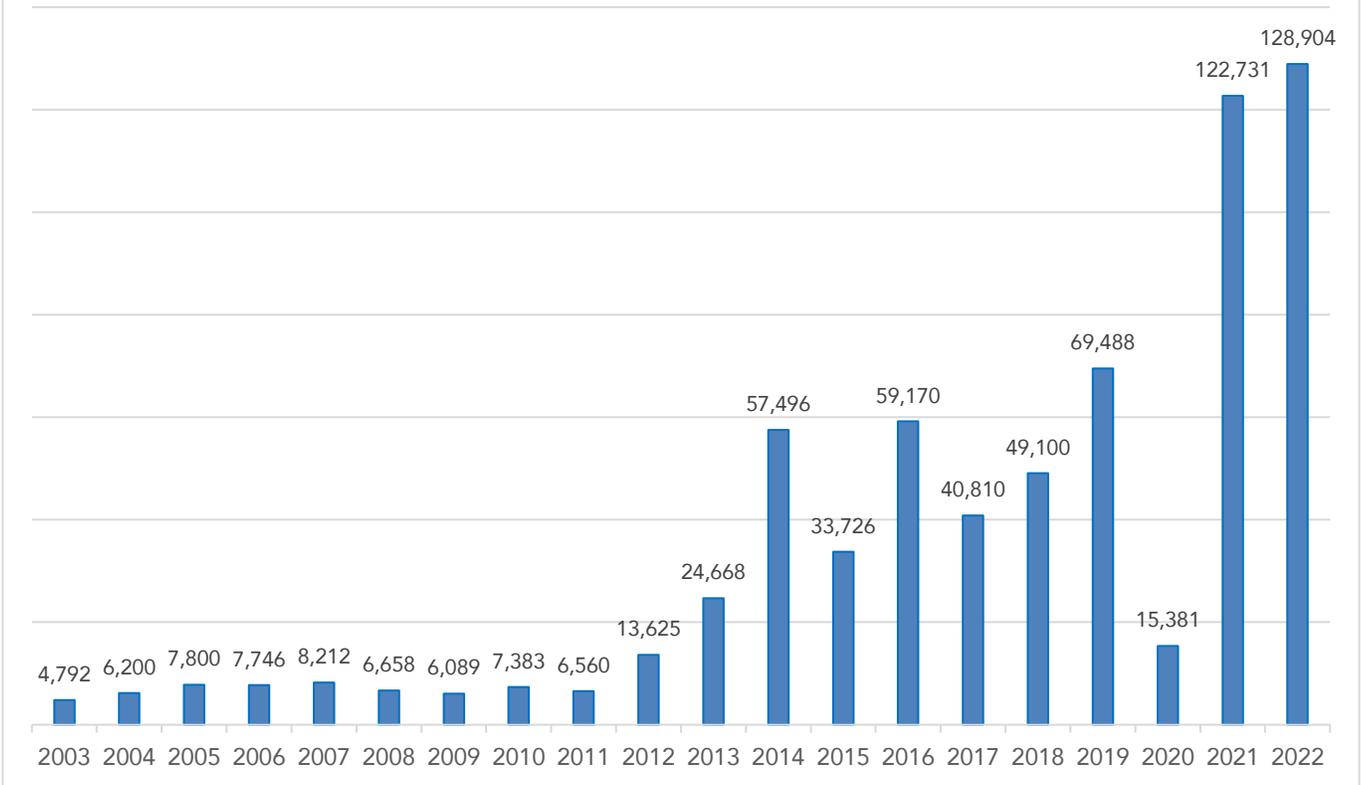
<https://oig.justice.gov/reports/INS/e0109/index.htm>.

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

<sup>5</sup> *Id.*



## UC REFERRALS TO ORR BY FISCAL YEAR



6

Data on unaccompanied children is not robust and has been flawed for several decades. In 2001, the U.S. Department of Justice, Office of Inspector General (USDOJ/OIG), noted that "data entry errors were not always corrected and reconciled."<sup>7</sup> The statistical database maintained by ORR is the most cited source about unaccompanied children. But in a discussion with a federal employee at ORR with detailed knowledge of the system, the employee explained the difficulties in obtaining and maintaining the database and the staff to handle it. ORR had one data employee from 2003 until 2012, the year when the number of children doubled, and the need for a dependable database system became increasingly obvious. Right before the first major influx of unaccompanied children into the United States, ORR formed a data team to keep reliable records.

<sup>6</sup> Office of Refugee Resettlement, Facts and Data. The Administration for Children and Families, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

This data comes from ORR's publicly available data published online. Data from the earlier days of the program comes from an internal memo provided by an ORR employee. It's important to note that both data sets did not have the same referral number per fiscal year but were still in the same range.

<sup>7</sup> U.S. Department of Justice, Office of Inspector General, Unaccompanied Juveniles in INS Custody (2001), <https://oig.justice.gov/reports/INS/e0109/index.htm>.



The Unaccompanied Children’s Program housed fewer than 8,000 children per year from 2003 through 2011.<sup>8</sup> Not until 2012 did the trajectory for the number of children entering the United States unaccompanied change. Although not discussed as a year for one of the major influxes, 2012 had a significant increase in unaccompanied children. To manage the first major increase in children, ORR coordinated with the Department of Defense (DOD) to temporarily house children on military bases. Lackland Air Force Base in San Antonio, Texas, was the first military base to house unaccompanied children.

The number of unaccompanied children apprehended by U.S. Customs and Border Protection (CBP) increased from 38,759 in FY 2013 to 68,542 in FY 2014, almost an 80% increase.<sup>9</sup> The U.S. system was overwhelmed; CBP kept children in temporary facilities, and ORR once again turned to military bases for support. Military emergency facilities expanded to Fort Sill in Oklahoma, Naval Base Ventura County in California, and continued at Lackland Air Force Base in Texas.<sup>10</sup> Over 7,700 children were housed on military bases, but the facilities were closed after four months.<sup>11</sup>

In response to the influx of unaccompanied children arriving at the border, President Obama declared "an urgent and humanitarian situation." The administration coordinated a federal response with representatives from key agencies, headed by the Administrator of the Federal Emergency Management Agency (FEMA). The Administrator's role was to "lead and coordinate the Federal response efforts to ensure that Federal agency authorities and the resources granted to the departments and agencies under Federal law ... are unified in providing humanitarian relief to the affected children, including housing, care, medical treatment, and transportation." <sup>12</sup>

In 2015, the Department of Health and Human Services (HHS) asked the DOD again to help find bed space due to the influx of children. As the relationship between both agencies continued, HHS Secretary Sylvia Burwell made a request for assistance to DOD Secretary Ash Carter to accommodate more children. In 2016, an upward trend of unaccompanied children

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<sup>8</sup> U.S. Department of Health and Human Services. Administration for Children and Families, Latest UC Data – FY2019 HHS.gov (2019), <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data->.  
<sup>9</sup> FY2008-FY2013: United States Border Patrol, "Juvenile and Adult Apprehensions—Fiscal Year 2013."  
FY2014-FY2018: Customs and Border Protection, "U.S. Border Patrol Southwest Border Apprehensions by Sector FY2018." FY2019-FY2021: U.S. Border Patrol, "Southwest Land Border Encounters."  
<sup>10</sup> Office of Refugee Resettlement Year in review - FY2014, The Administration for Children and Families, <https://www.acf.hhs.gov/orr/outreach-material/office-refugee-resettlement-year-review-fy2014>.  
<sup>11</sup> *Id.*  
<sup>12</sup> Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border and The White House, Office of the Press Secretary, Presidential Memorandum, The White House, Office of the Press Secretary, Presidential Memorandum—Response to the Influx of Unaccompanied Alien Children Across the Southwest Border (2014).



continued. In FY 2016, 59,170 children were referred to ORR. In January 2016, the Pentagon asked Holloman Air Force Base in New Mexico to accommodate unaccompanied children.<sup>13</sup>

In FY 2017, there was a downward trend in unaccompanied child arrivals, with ORR receiving 40,810 referrals. But on April 6, 2018, U.S. Attorney General Jeff Sessions announced a "zero tolerance" policy intended to ramp up criminal prosecution of people caught entering the United States illegally.<sup>14</sup> Nearly 3,000 children were separated from their parents as parents were detained and prosecuted or deported, and children were sent to ORR.

Also, in FY 2018, the Department of Homeland Security (DHS) issued a policy via memorandum, the Migrant Protection Protocol (MPP), or the "Remain in Mexico" policy.<sup>15</sup> Under MPP, individuals who arrived at the southern border and asked for asylum (either at a port of entry or after crossing the border between ports of entry) were given notices to appear in immigration court and sent back to Mexico. Unaccompanied children were not themselves subject to MPP, but children were sent back with their parents. Due precisely to this policy, MPP did force some children apart from their parents and family members. In some cases, children's parents who were returned to Mexico disappeared due to widespread kidnappings and harm by criminal groups, effectively leaving affected children alone. Despite this policy, another increase in unaccompanied children was seen in FY 2018.<sup>16</sup>

In 2020, at the beginning of the COVID-19 pandemic, the Trump Administration temporarily restricted the entry into the United States of certain foreign nationals to limit the spread of coronavirus. The Centers for Disease Control and Prevention (CDC) published a notice referencing Title 42 (from the section of the U.S. Code dealing with public health) on March 21, 2020, which suspended certain foreign nationals from Mexico and Canada from entering the United States.<sup>17</sup> Under Title 42, border patrol expelled most unaccompanied children to Mexico or their country of last transit instead of processing them under immigration law. The use of Title 42, combined with the pandemic's restrictive impact on migration, contributed to a drop in referrals of unaccompanied children that ORR received from 69,488 in FY 2019 to

<sup>13</sup> Personal correspondence with ORR employees.

<sup>14</sup> Attorney General announces zero-tolerance policy for illegal criminal entry, The United States Department of Justice (2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

<sup>15</sup> Secretary Kirstjen M. Nielsen announces historic action to confront illegal immigration, Secretary Nielsen Announces Historic Action to Confront Illegal Immigration | Homeland Security, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.

<sup>16</sup> Facts and Data, The Administration for Children and Families, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>17</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, "Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes," 85 Fed. Reg. 16559, March 24, 2020; and U.S. Department of Health and Human Services, Center for Disease Control and Prevention, "Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists," 85 Fed. Reg. 17,060, March 26, 2020.



15,381 in FY 2020.<sup>18</sup> In November 2020, a federal judge halted the application of the March CDC order to unaccompanied children, ruling that it violated the Trafficking Victims Protection Reauthorization Act (TVPRA).<sup>19</sup> In February 2021, the Biden Administration formally exempted unaccompanied children from Title 42 expulsions.<sup>20</sup>

### Afghan Unaccompanied Children

In 2021, the Taliban took over Afghanistan, leading to a major humanitarian and displacement crisis. As of January 27, 2022, more than 1,485 Afghan children had arrived in the United States without a parent.<sup>21</sup> Unaccompanied children from Afghanistan came into the United States under parole, a temporary tool that authorizes the entry of immigrants without visas on humanitarian grounds. Because humanitarian parole is not a lawful immigration status, Congress will need to create a long-term solution for Afghans. According to an internal memo, ORR issued field guidance instructing officials to expeditiously release Afghan children who arrived without a parent to non-parental caregivers who were evacuated from Afghanistan.<sup>22</sup> What the United States does next with Afghan unaccompanied children will determine the rest of their lives.

### Demographics and Countries of Origin

The countries the children come from have changed. In FY 2001, unaccompanied children represented 64 different nationalities, with the largest percentages coming from Central America, China, and Mexico.<sup>23</sup> In FY 2021, the largest percentages came from Guatemala, Honduras, and El Salvador.

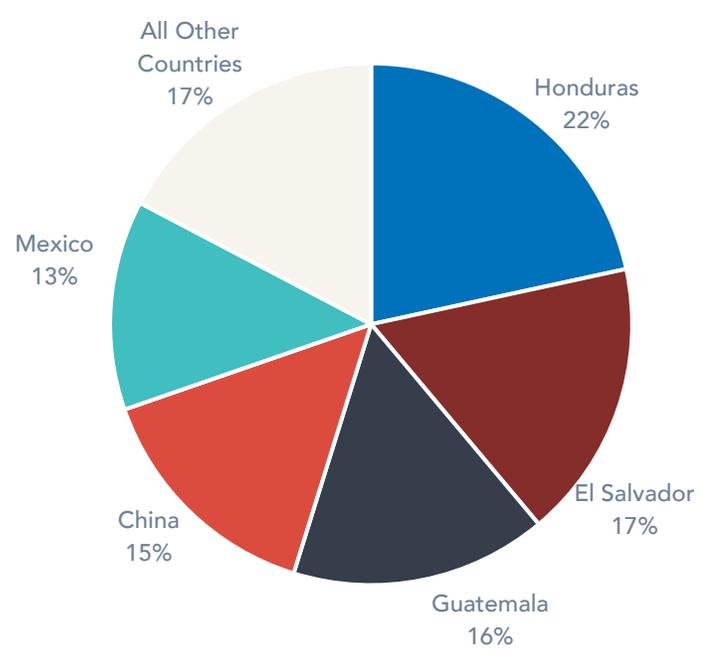
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<sup>18</sup> Facts and Data, The Administration for Children and Families, <https://www.acf.hhs.gov/orr/about/ucs/facts->  
<sup>19</sup> P.J.E.S v. Wolf 1:20-cv-02245 (D.D.C.)  
<sup>20</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, "Notice of Temporary Exception from Expulsion of Unaccompanied Non-citizen Children Pending Forthcoming Public Health Determination," 86 Fed. Reg. 9942, February 17, 2021. CDC reaffirmed that exemption in July. See U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, "Title 42 Order Reassessment and Exception for Unaccompanied Noncitizen Children," media statement, July 16, 2021.  
<sup>21</sup> Personal correspondence with ORR officials.  
<sup>22</sup> *Id.*  
<sup>23</sup> *Id.*

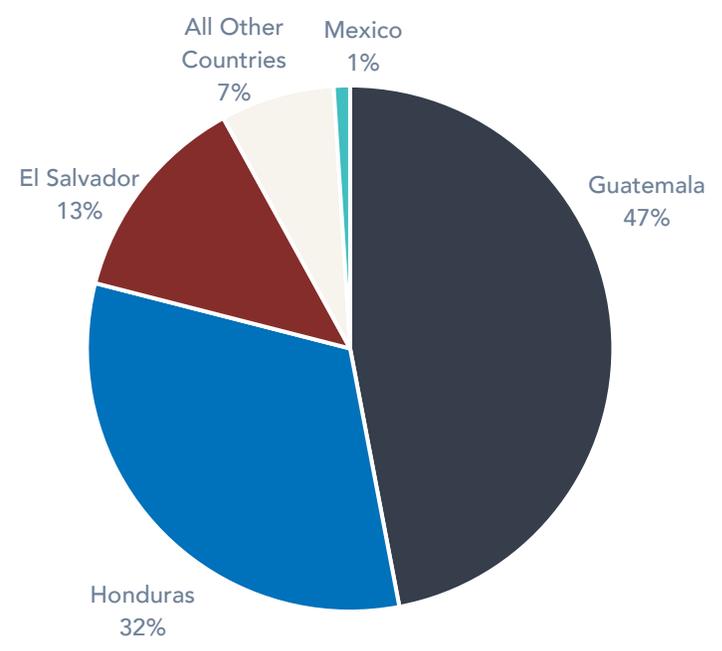


## NATIONALITY OF UNACCOMPANIED CHILDREN <sup>24</sup>

FY 2000



FY 2021

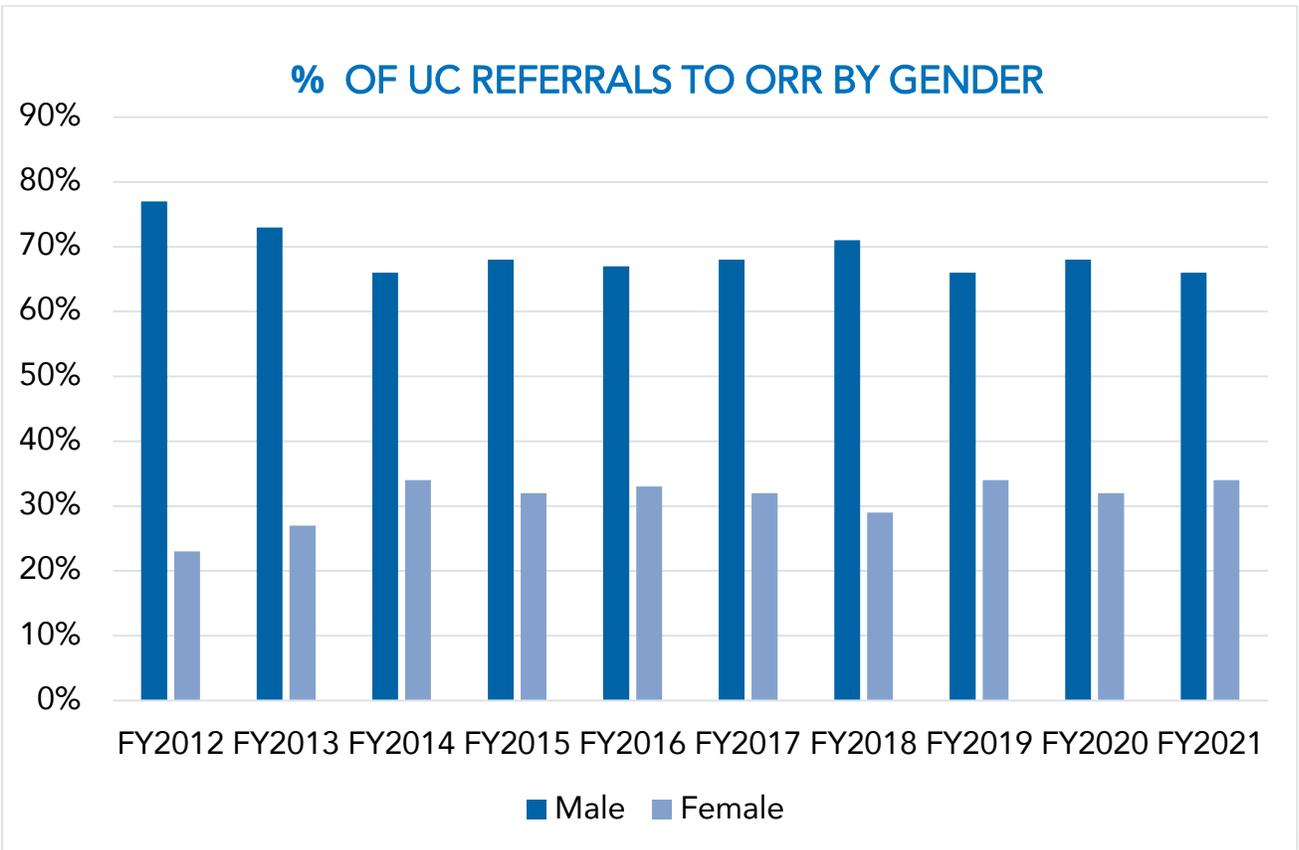


### Gender

The gender of unaccompanied children (UC) arrivals is largely unchanged. In FY 2000, 75% were male, and 25% were female. In FY 2021, 66% were male, and 34% were female.<sup>25</sup> Since 2014, the proportion of arriving male and female unaccompanied children has been remarkably stable, with more girls beginning to arrive. FY 2022 continued this trend.

<sup>24</sup> U.S. Department of Justice, Office of Inspector General, Unaccompanied Juveniles in INS Custody (2001), <https://oig.justice.gov/reports/INS/e0109/index.htm>.

<sup>25</sup> Facts and Data, The Administration for Children and Families, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.



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## Age

The ages of arriving children have been relatively stable in the last couple of years. All age groups are arriving in the same proportions as in other years. In FY 2000, their average age was 15 years, and the median age was 16 years.<sup>27</sup> In FY 2021, the age breakdown of the children was 16% tender-age children (ages 0-12), 13% were 13 and 14 years old, 39% were 15 and 16 years old, and 33% were 17 years old.<sup>28</sup> Most children were nationals of Honduras (32%), Guatemala (47%), and El Salvador (13%).<sup>29</sup> FY 2022 continued this trend.

<sup>26</sup> *Id.*

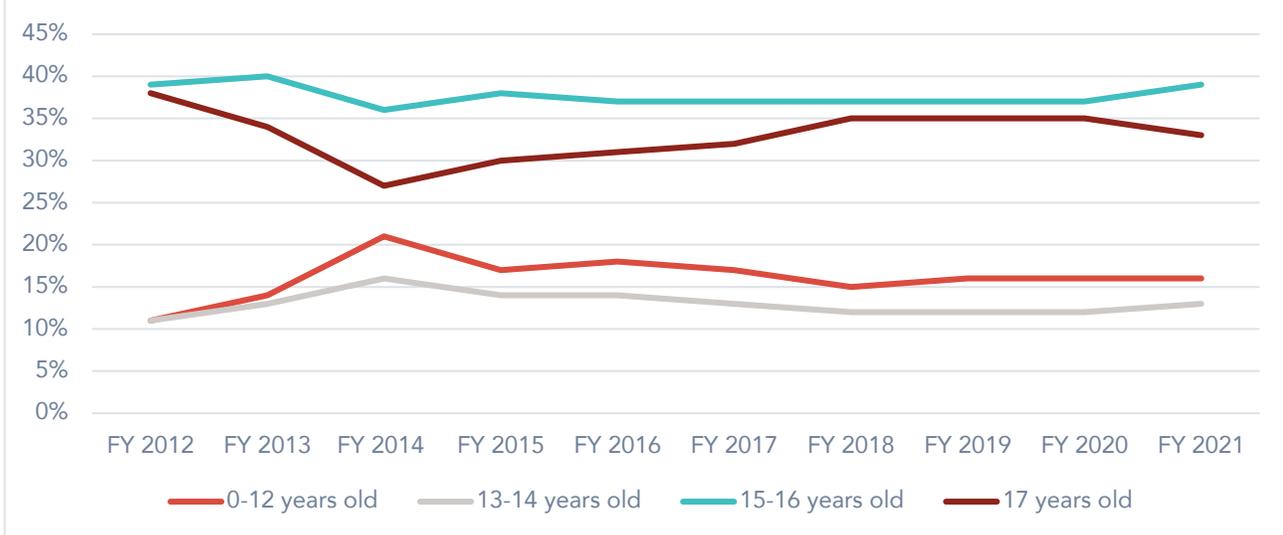
<sup>27</sup> U.S. Department of Justice, Office of Inspector General, Unaccompanied Juveniles in INS Custody (2001), <https://oig.justice.gov/reports/INS/e0109/index.htm>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*



## % ARRIVING UNACCOMPANIED CHILDREN BY AGE COHORT



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### Budget Make-Up

Unlike the age and gender of the children, the budget for the Unaccompanied Children’s Program has increased dramatically, certainly a reflection of the increased number of children. In early 2003, when the Unaccompanied Children’s Program was housed at INS, the program was funded at \$32.2 million, and \$21 million was transferred to ORR in March 2003.<sup>31</sup> In 2003, the budget request for the program was \$33 million, with the final enacted budget of \$37 million. After the passage of the HSA, eight full-time INS employees transferred to ORR.<sup>32</sup> In strong contrast, for FY 2021, the Unaccompanied Children’s Program was funded at \$1.3 billion with roughly 500 employees.<sup>33</sup> For FY 2022, the Administration for Children and Families requested an increase of \$1.98 billion from the FY 2021 appropriation of \$1.3 billion to care for children referred by DHS.<sup>34</sup> The increase request included \$30 million set aside for no-year funding to establish a Separated Families Services Fund to provide mental health and

<sup>30</sup> *Id.*  
<sup>31</sup> U.S. Department of Health and Human Services, Administration for Children and Families, FY 2004 ACF Congressional Justification (2004), [https://www.acf.hhs.gov/sites/default/files/documents/olab/2004cj\\_refugee\\_and\\_entrant\\_assistance.pdf](https://www.acf.hhs.gov/sites/default/files/documents/olab/2004cj_refugee_and_entrant_assistance.pdf). U.S. Department of Health and Human Services, Administration for Children and Families, FY 2006 ACF Congressional Justification (2004), [https://www.acf.hhs.gov/sites/default/files/documents/olab/sec2e\\_refugees\\_2006cj.pdf](https://www.acf.hhs.gov/sites/default/files/documents/olab/sec2e_refugees_2006cj.pdf). This number was confirmed with personal correspondence with ORR officials.  
<sup>32</sup> This number comes from personal correspondence with former ORR officials.  
<sup>33</sup> *Id.*  
<sup>34</sup> U.S. Department of Health and Human Services. Administration for Children and Families, FY 2022 Justification of Estimates for Appropriations Committees Administration for Children and Families (2022), [https://www.acf.hhs.gov/sites/default/files/documents/olab/fy\\_2022\\_congressional\\_justification.pdf](https://www.acf.hhs.gov/sites/default/files/documents/olab/fy_2022_congressional_justification.pdf).



other supportive services for children, parents, and legal guardians separated at the United States-Mexico border under the previous administration.<sup>35</sup> In 2022, President Biden signed off on the federal spending for FY 2022, which included \$8 billion for the Unaccompanied Children’s Program.<sup>36</sup> This helps provide more certainty for the program to allow ORR to improve and expand services for children referred to their care, including mental healthcare, legal assistance, and child welfare services.

**Facilities**

In 2000, the INS had contracts with more than 100 facilities for shelter care, group homes, foster homes, and detention centers.<sup>38</sup> The bed space included 400 non-secure beds comprised of shelter, group, and foster beds, as well as 100 secure beds. Notably, one-fifth of the beds were in secure detention. The bed space at the time generally was plentiful enough to manage the number of children being apprehended. But if a child entered INS custody and beds were unavailable, the child would be housed in hotel rooms secured by contract guards in a few instances.<sup>39</sup> The facilities were classified as secure, medium secure, and non-secure.<sup>40</sup> Secure facilities were state or county-licensed detention facilities or facilities with whom INS had contracts with.<sup>41</sup> Medium secure facilities were state-licensed facilities designed for children

“Secure [INS facility] is a terrible place. It’s a place for criminals. No immigrant should be in there. I wish nobody to go there. They humiliate you every minute, every day. You can’t do anything they didn’t tell you to do, and they restrain you. They throw you down on the floor and hold you there. I had to go to the dentist one time. They took me there in shackles with handcuffs that were connected to a chain around my waist.” This quote is from a letter from Ernst, a 17-year-old boy from Haiti who wrote to advocacy groups detailing his experiences under INS custody. Ernst arrived in the United States in December 2001, hoping to reunite with his mother, a lawful permanent resident who had filed a visa petition and was approved by the INS in 1995. Instead, Ernst was shackled, handcuffed, and sent to a facility in Pennsylvania. Ernst described the facility as “the valley of death.”<sup>37</sup>

<sup>35</sup> *Id.*  
<sup>36</sup> H.R.2471 - 117th Congress (2021-2022) (Enacted).  
<sup>37</sup> Charu Newhouse al-Sahil, Chris Kleiser & Cheryl Little, *I Running Out of Hopely: Profiles of Children in INS Detention Florida* (2002), <http://www.ajjustice.org/docs/reports/ChildrensReport.pdf>.  
<sup>38</sup> US Department of Justice, Office of Inspector General, *Unaccompanied Juveniles in INS Custody* (2001), <https://oig.justice.gov/reports/INS/e0109/index.htm>.  
<sup>39</sup> *Id.*  
<sup>40</sup> *Id.*  
<sup>41</sup> *Id.*



who required close supervision but not secure detention.<sup>42</sup> Non-secure facilities consisted of shelters, foster programs, or group homes.<sup>43</sup>

In 2003, when the program transferred to ORR, the program had approximately 550 beds, and grants for shelter care totaled \$30 million.<sup>44</sup> Inter-governmental service agreements with local county detention centers totaled \$5.7 million.<sup>45</sup> Detention facilities were used throughout the country; 30% were in southern border states, and 70% were located on the East or West coast.<sup>46</sup> The type of care provided included foster care, shelter care, and secure detention.<sup>47</sup> Annual placements were roughly around 4,800.<sup>48</sup> Soon after the transfer of the program and in the years after, ORR significantly reduced the number of unaccompanied children placed in secure detention. And although the transition was not immediate, ORR expanded the types of facilities to care for unaccompanied children, creating facilities to address the special circumstances of each child, such as long-term foster care for children who may remain in custody for an expanded period of time, mommy-and-me facilities for pregnant and parenting teens, and transitional foster care for children of tender age or with special needs.

## Federal Agencies

As noted above, the HSA transferred the care and custody of unaccompanied children from INS to ORR. The HSA delineated certain responsibilities for processing unaccompanied children to the newly created DHS. The law assigned responsibility for the apprehension, transfer, and repatriation of unaccompanied children to DHS. While dissolving the former INS, the HSA transferred the immigration and enforcement functions into three separate divisions of DHS: U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and CBP.<sup>49</sup>

To ORR, the law assigned responsibility for coordinating and implementing the care and placement of unaccompanied children. At the time the HSA was passed, ORR was a small office with approximately 40 staff and contractors working on refugee resettlement and the newly created trafficking in persons program.<sup>50</sup> It was part of HHS and was housed in the Administration for Children and Families (ACF), which included other social services support

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

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

<sup>44</sup> This number comes from personal correspondence with former ORR officials.

<sup>45</sup> *Id.*

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

<sup>47</sup> Department of Health and Human Services, Administration for Children and Families, FY 2004 ACF Congressional Justification (2004), [https://www.acf.hhs.gov/sites/default/files/documents/olab/2004cj\\_refugee\\_and\\_entrant\\_assistance.pdf](https://www.acf.hhs.gov/sites/default/files/documents/olab/2004cj_refugee_and_entrant_assistance.pdf).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386 [H.R. 3244], 28 October 2000.



offices, such as the Office of Head Start, the Children’s Bureau, and the Office of Family Assistance. ORR mainly issued grant awards to nonprofit organizations and states that resettled incoming refugees. In 2002, ORR staff were in Washington, DC, with no regional offices in other parts of the country. Staff in its three main divisions processed and monitored grant awards with little to no regular contact with the recipients of this federal aid and no direct service to children.

One of ORR's divisions operated the Unaccompanied Refugee Minors (URM) Program. The URM Program had close ties to the U.S. Department of State, which identified children overseas who were eligible for refugee resettlement but did not have a parent or close relative to provide care. These children received refugee foster care and benefits funded by ORR and implemented by states and nonprofit organizations. Again, ORR had no direct contact with the children and provided no direct care.

In 2003, with the transfer of the program for unaccompanied children, the ORR Director, Nguyen Van Hanh, senior HHS, and ACF leadership recognized the need to reorganize and create a division in ORR to implement the responsibilities transferred by the HSA specifically. As part of the reorganization, the ORR director created and designated the Division of Unaccompanied Children's Services (DUCS) to be responsible for the care and placement of unaccompanied children. The DUCS operational structure covered four areas of responsibility: case management, project management, intakes, and field operations. DUCS staff consulted with child welfare professionals and DHS and developed initial and rudimentary placement policy, decisions, and recommendations to ensure that children received the appropriate care. With the inclusion of DUCS, ORR consisted of four divisions:

- The Division of Community Resettlement
- The Division of Refugee Assistance
- The Division of Budget, Policy, and Data Analysis
- The Division of Unaccompanied Children’s Services (DUCS)<sup>51</sup>

## THE LAW AND POLICIES

### The Homeland Security Act

Section 462 of the HSA, the specific section that addressed unaccompanied children, was the product of years of advocacy by human rights organizations, the immigration legal community, refugee and religious groups, and political leaders. Section 462 transferred the care of

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<sup>51</sup> 68 Fed. Reg. 11566.



“unaccompanied alien children” from the former INS to ORR. The term “unaccompanied alien child” or “UAC” appeared in the HSA in 2002 and was defined as: 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>52</sup>

UAC was a new term. When the children had been under the purview of the INS, the agency referred to "juveniles" and "minors." During the Obama Administration, ORR ceased using the terms "unaccompanied alien child" and "UAC" and began referring to children who met the definition in the HSA as "unaccompanied children" or "UC." However, some agency officials still use the term "minor" during regular business. This report uses the terms unaccompanied children, UC, child/children, or unaccompanied migrating children.

Along with the definition, the statute included the necessary language to transfer the program’s main elements. Section 462 of the HSA stated that the ORR Director’s responsibilities included:

- Coordinating and implementing the care and placement of unaccompanied children who are in Federal custody by reason of their immigration status, including developing a plan to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding the appointment of counsel;<sup>53</sup>
- Ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied child;
- Making placement determinations for all unaccompanied children who are in Federal custody by reason of their immigration status;
- Implementing the placement determinations;
- Implementing policies with respect to the care and placement of unaccompanied children; and
- Reuniting unaccompanied children with a parent abroad in appropriate cases.

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<sup>52</sup> 6 U.S.C. § 279(g)(2).

<sup>53</sup> The Homeland Security, 6 U.S.C. §279.



Section 462 also included a requirement that the ORR Director consult with DHS when deciding on the placement of a child. It stated:

In making determinations [for the placement of a child], the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Border Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

- (i) are likely to appear for all hearings or proceedings in which they are involved;<sup>54</sup>
- (ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and
- (iii) are placed in a setting in which they are not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

The HSA also stated, "[t]he Director of ORR is encouraged to use the refugee children foster care system established according to section 412 of the Immigration and Nationality Act (8 USC 1522 (d)) for the placement of unaccompanied alien children."<sup>55</sup> The Director was encouraged but not obligated to follow the URM program. Today, children eligible for the URM program are under 18 years of age, are unaccompanied, and are refugees, Cuban and Haitian entrants, asylees, victims of trafficking, U visa holders, and children with Special Immigrant Juvenile Status (SIJS). Most of these children are placed in licensed foster homes.

### Flores Settlement Agreement

Another significant section of the HSA was section 1512, which covered the savings provisions and transferred responsibilities under the Flores settlement agreement to ORR. The legal history of the Flores settlement agreement started in 1985 when immigrant children filed a class-action lawsuit against the former INS challenging their detention, treatment, and release from federal custody.<sup>56</sup> The case made its way through the courts over many years, including an appeal to the U.S. Supreme Court, until the parties reached a settlement in 1997.<sup>57</sup> The

<sup>54</sup> *Id.*

<sup>55</sup> The Homeland Security, 6 U.S.C. §279.

<sup>56</sup> Stipulated Settlement Agreement, *Flores v Reno*, No. CV 85-4544- RJK(Px) (CD Cal 1997).

<sup>57</sup> *Id.*



settlement agreement required the government to release children from immigration detention without unnecessary delay. It provided an order of preference of the individuals to whom children could be released, beginning with parents and including other caregivers such as aunts, grandparents, and adult siblings. The settlement also instructed that children must be placed in the least restrictive setting appropriate to their age and special needs. And it included detailed standards for children’s care and services.

In 2001, the parties agreed to a modification of the settlement agreement, providing that the settlement agreement would continue until the INS published implementing regulations. However, INS never published implementing regulations. Although it had a regulation governing the release of minors, it never fully incorporated the *Flores* settlement agreement requirements into its regulation.<sup>58</sup>

So, when the HSA was passed, the savings provisions in section 1512 transferred the settlement agreement requirements to ORR, right alongside the rest of the program. ORR found itself operating a new program for children under a court-ordered settlement agreement. This meant that plaintiffs could bring an enforcement action against ORR if they believed ORR was not meeting the required standards. The *Flores* settlement agreement and its repercussions on the program are discussed in future chapters of this retrospective.

The *Flores* settlement agreement required the federal government to place children in programs licensed by the states, except in exceptional circumstances. Along with following all applicable state child welfare laws and regulations and all state and local building, fire, health, and safety codes, those licensed shelters had to provide:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.
2. Appropriate routine medical and dental care, family planning services, and emergency health care services.
3. An individualized needs assessment, including various initial intake forms.
4. Educational services appropriate to the minors’ level of development and communication skills in a structured classroom setting.
5. Activities according to a recreation and leisure time plan, including daily outdoor activities.
6. At least one individual counseling session per week conducted by trained social work staff.
7. Group counseling sessions at least twice a week.

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<sup>58</sup> 8 C.F.R. Part 236 (1998).



8. Acculturation and adaptation services, including information regarding the development of social and interpersonal skills.
9. Upon admission, a comprehensive orientation regarding program intent, services, rules, expectations, and the availability of legal assistance.
10. Whenever possible, access to religious services of the minor's choice.
11. Visitation and contact with family members (regardless of immigration status).
12. A reasonable right to privacy, including the right to (a) wear his or her own clothes; (b) retain a private space in the residential facility; (c) talk privately on the phone; (d) visit privately with guests; (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.
13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.
14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense of the government, the right to a deportation or exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

The *Flores* settlement agreement imposed several obligations onto the federal government, including, among other things, that children:<sup>59</sup>

- are placed in the least restrictive setting appropriate to the child's age and special needs.
- are segregated from unrelated adults during transport and temporary detention.
- are transferred out of a temporary location to a permanent location within 72 hours.
- are treated with "dignity, respect, and with special concern" due to vulnerabilities.
- have free and ready access to drinking water, food, and snacks.
- are permitted attorney-client visits in facilities; and
- are placed in a licensed program within 3 to 5 days, and such facilities must be non-secure as required by state law, except that those children deemed to be delinquents, criminals, or meeting other specific factors under the *Flores* settlement agreement may be placed in secure facilities.

## AGENCY TRANSITION

On March 1, 2003, ORR, along with its counterparts at DHS, began officially implementing section 462 of the HSA, which required the transfer of the care and placement of

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<sup>59</sup> Stipulated Settlement Agreement, *Flores v Reno*, No. CV 85-4544- RJK(Px) (CD Cal 1997).



unaccompanied children from the former INS to the Director of ORR. This transfer was extraordinary for the legal issues it presented, the number of offices involved, the operational complexities to be sorted, and most importantly, the need to provide seamless care for some of the world's most vulnerable children. By all accounts, the transition was incremental and took over a year. The DHS OIG put the operational transfer of the program in August 2004.<sup>60</sup> The contrasting missions of DHS and HHS – one an enforcement agency, the other a health and social services agency – shadowed the interagency work and policy development throughout and after the transition, making the already-present challenges thornier to resolve.

## Culture

Staff who were there at the time of the transfer recall the differences in the agencies' missions, the operational complexities, the lack of sufficient statutory clarity, and the interagency issues. Ken Tota, who now serves as the Deputy Director of ORR, was, at the time of the transfer, a Senior Program Specialist at INS, where he provided oversight for the children's program (referred to as the juvenile program in INS).<sup>61</sup> Tota noted the differences in the agencies' cultures.

"Eight full-time employees from INS transferred to ORR. When we first arrived, it was interesting being the new guys in the office. How exactly were we to fit into this new culture? It took time to adjust to the new environment, but the staff was extremely supportive. Leadership reinforced moving the program forward by focusing on the child's best interest, which differed from the culture at INS that focused on detention and removal. In contrast, ORR had a more humanitarian approach."

While the transfer of custody of unaccompanied children from INS to ORR was a positive step toward a more humanitarian approach to the care of these children, ORR was not accustomed to implementing an operational program responsible for the actual care and custody of children, and that led to obstacles in effective implementation. In the HSA, the Director of ORR had custody of the children and was responsible for decisions about their placement in certain types of facilities and their release from federal custody. While children were presumably better off in the care of a social services agency like ORR, the incomplete remodeling of the program left gaps and challenges in implementing the program. Tota, as a programmatic staff person, recognized the operational complexities even prior to arriving at ORR.

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<sup>60</sup> Department of Homeland Security. Office of Inspector General, A Review of DHS' Responsibilities For Juvenile Aliens (2005), [https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG\\_05-45\\_Sep05.pdf](https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG_05-45_Sep05.pdf).

<sup>61</sup> Ken Tota gave this interview based on his personal experience and reflections on the earlier days of the program during the initial transfer. Ken did not speak on behalf of the Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.



"After the passage of The Homeland Security Act, there was a level of uncertainty. Which staff would transfer? What services would transfer? How would the program restart? A lot of time was spent trying to work through the mechanics of what the transition would look like.

At the INS, the structure of the juvenile program was a part of a much larger infrastructure that included the adult population. When the program got transferred, we had to figure out who would transition and how the program would function outside of this larger infrastructure. That was one of the biggest challenges at the time because you had to separate a tiny component out of this larger infrastructure and then place the program into an office that didn't have the infrastructure around it to support it. The program didn't benefit from a regional structure or have a database in place."

AnnaMarie Bena, who is now Senior Vice President of the U.S. Committee for Refugees and Immigrants, was, at the time of the transfer, an Immigration Specialist in ORR. She echoed Tota's remarks about the operational challenges that ORR faced.

"When the program first transferred, ORR had no staff with experience in these kinds of operations and no staff with hands-on experience running a national program to provide care for children. The INS staff that transferred were familiar with how the program had worked, but at ORR, we didn't have the infrastructure. We didn't even have a database to record information about the children. We had no procedures in place for many things that needed to be done for the children."

Former and current federal workers, who were involved in the program at the time and either asked not to be identified or needed to speak anonymously because of their current government roles, shared similar stories about the operational complexities. They noted: the day-to-day challenges of decision-making for this vulnerable population, including making major medical decisions for the children; communicating with border patrol agents who initially took custody of the children; conveying ORR's humanitarian mission to former INS detention centers still caring for the children; and making decisions about the safety of the release to certain sponsors, including what background checks to run and information to collect.

According to Ken Tota,

"There was no established infrastructure or procedures in place when the program was transferred. . . We tried to build up policies around initial referrals [from DHS] and trying to figure out how to execute reunification requests [from parents]. In the early days, we



were such a small program and lacked the infrastructure and database that we kept track of most of the unaccompanied children via spreadsheet.”

AnnaMarie Bena also noted the interplay of the law with the operational challenges.

“When the program transferred, we had the *Flores* settlement agreement, which we had to become familiar with quickly. But we had very little legislative direction from Congress. Everyday questions came up, and we looked at each other and asked, 'are we legally allowed to do that?' For example, the *Flores* settlement agreement and the HSA said nothing about releasing a child to a parent who had immigration issues. DHS told us we couldn't release those children, but ORR wanted children to be released to their parents. And there was no law, policy, or procedures to guide us.”

Because of the legal questions, ORR worked closely with the Office of the General Counsel (OGC) at HHS for legal advice. Bena, who was an Immigration Specialist in ORR, transferred to OGC as a Staff Attorney to work directly on the legal issues. Her boss was Robert "Bob" Keith, former Associate General Counsel at HHS. Bob Keith, like Bena, became familiar with the operational and the legal questions of transferring the Unaccompanied Children's Program from INS to ORR. On the operational factors, Keith noted:

"This transfer was something we had never done before. In the '80s, the Social Security Administration [(SSA)] was separated from the Department of HHS and became a stand-alone agency. Social welfare programs previously under SSA (e.g., welfare, child welfare, and child support enforcement) were transferred to a newly created Family Support Administration within HHS. But we [HHS] had never handled a new program transition of this magnitude. We had familiarity with funding and setting guidelines for foster care and other state programs for families, but we never had responsibility for the direct care of children.

"It was relatively easy for Congress to apportion and divide the money between both DHS and HHS, but we had an overwhelming number of practical questions. Interagency-wise, how long and where would DHS hold the children until transfer to ORR? How would children be transported to shelters? Who would cover the cost of transportation? What care and services would be provided for the children while in DHS custody? What would be ORR's responsibilities once they received the children? How would we handle the identification and vetting of potential sponsors and release of the children? What about follow-up services for children after their placement? These were just a few of a huge variety of complicated and complex issues the agency had to address despite never having had any significant experience providing physical care for children. The HSA opened up a whole new realm for ORR to navigate."



Bena offered another example of the interplay between law and policy, and the lack of legislative guidance:

“Congress noted in section 462 that ORR should use the Unaccompanied Refugee Minors Program (URM) for unaccompanied children. It was so unrealistic. The URM program didn't have the capacity and didn't care for children in the situations that many unaccompanied children were in. And ORR didn't have custody of kids in URM. Those children went into the state's custody or a nonprofit, not the federal government. Even though ORR was involved in the URM program's funding, they did not have the concept of operationalizing the care for unaccompanied children. ORR could oversee if the funding was being used properly for a program, but they didn't have the experience to care for the children.”

Tota also noted the misguided idea of using the URM program. He summed up his thoughts on what he has seen from the transfer and over the past twenty years:

“Having to build up this large infrastructure and rebuild the program away from the culture at INS. Early in the transfer, it was apparent that ORR could not rely on the URM framework for unaccompanied children. Over the past 20 years, ORR has gone through a tremendous amount of growth. The Unaccompanied Children's Program is now a multi-billion-dollar program. We had very few children in shelters in the early days, and now we've experienced caring for thousands of children. The capacity for this program has to be ongoing, and you cannot reduce capacity when the number of unaccompanied children is low. It's taken many years, but interagency, there's finally this realization that you can't build this capacity overnight, something that wasn't the mindset in the earlier days. Enhancements have been made for services for children, shelter care, and post-release legal services have been expanded since the early days. There's been a positive direction in growth and accountability to maintain oversight.”

The operational and legal challenges in the program were wrapped up in interagency issues between ORR and DHS. ORR had been tasked with the care and placement of unaccompanied children, but they could not operationalize their responsibility. In that void, DHS exerted its abilities and continued to make decisions that were no longer under its legal purview. The agencies, with their contrary missions, disagreed about the decisions and how they should be carried out.

Bena explained one of the interagency challenges.

“One of the interagency issues in the transfer was the consultation provision in the Homeland Security Act that required the ORR Director to consult with DHS offices



before the ORR Director determined where and when to release a child. This raised a lot of questions. Who was HHS supposed to consult with before the ORR Director decided where to place the child? How involved do both agencies need to be in consultations? DHS believed they had veto power over releases. They wanted to tell ORR when they could and couldn't release a child. And ORR and DHS didn't agree on the criteria for release."

Bena raised another interagency issue that may have continued long after the transfer of the program.

"The statute defined an unaccompanied child, but there was still confusion because both agencies interpreted the term differently. In the beginning, DHS argued that if a child came across the border by themselves but had a parent in the United States, that child was not unaccompanied, and they would deal with those children separately and refused to transfer those children to ORR. This was a tremendous deal because the HSA intended to move children away from the DHS infrastructure and be taken care of by ORR. This issue was clarified in the TVPRA of 2008, which made the language very clear about transferring children to ORR."

Other staff who were there at the time of the program transfer raised the transportation of unaccompanied children as an issue. ORR did not have the capacity to transport children. So, DHS wanted to make the decisions about the shelter or facility the children should be placed in. DHS insisted on transporting children only to shelters that were close to the southern border. But ORR, with little shelter capacity other than what had transferred from the INS, was growing its shelter capacity (away from detention centers) in different parts of the country. Staff also discussed the need to provide privacy for the children in many aspects of their care, which DHS disagreed with.

Programmatic, operational, and interagency disagreements plagued the transfer of the program and created a lack of understanding on each department's role and responsibilities in the earlier days.

## Legal

When the responsibilities for unaccompanied children were divided between ORR and DHS, there was no formal memorandum of understanding (MOU) established to clarify each department's roles.<sup>62</sup> Due to difficulties in agreeing to an MOU in 2004, one year after the

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<sup>62</sup> Daniel R Levinson, U.S. Department of Health and Human Services. Office of Inspector general (2008), <https://oig.hhs.gov/oei/reports/oei-07-06-00290.pdf>.



transfer, the two agencies developed a statement of principles as an interim agreement that stated “[t]his document does not resolve all outstanding issues.” As such, both departments lacked a specific agreement on exchanging information when children were transferred from DHS to ORR custody.<sup>63</sup> Additionally, it was not clear which department was responsible for ensuring the safety of children once they were released to sponsors or which department was responsible for ensuring sponsors’ continued compliance with sponsor agreements.<sup>64</sup>

Bob Keith was one of the negotiators who assisted with the memorandum and statement of principles between HHS and DHS.

“One of the more intractable problems was coming to terms with a formal black and white memorandum of understanding. Both agencies couldn’t agree on every detail, how to go about identifying sponsors, or what criteria would be used. We had the *Flores* agreement, which provided broad criteria, but we couldn’t go along with everything that DHS wanted. The DHS wanted HHS to be more involved in post-placement for children after release, ensuring that the children showed up for immigration hearings. Our position was that we would basically take care of the kids and identify and vet the sponsors, but that we had very limited responsibility after they were released to an adult relative or other approved sponsor. We couldn’t agree on the basics. We argued about who would pay for transporting the children and trying to come up with a statement of principles.”

In a 2005 report, the DHS OIG reported concerns about ORR’s release of children to sponsors.<sup>65</sup> These concerns implied that DHS believed that it was ORR’s responsibility to ensure the post-release safety of children. ORR had stated that its statutory mandate to ensure the well-being of unaccompanied children ended when children were released from ORR’s care.<sup>66</sup> Neither agency appeared to be monitoring or taking responsibility for children or sponsors post release, which prompted the OIG’s recommendation that HHS enter into an MOU with DHS to layout each department’s roles and responsibilities.

The DHS OIG stated, “DHS and HHS have failed to delineate their respective organizational functions regarding unaccompanied children who are apprehended, transported, and initially detained by the DHS – but who are subsequently transferred to the ORR. In addition, the responsibilities with the DHS for program oversight of UCs require further definition.”<sup>67</sup>

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

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

<sup>65</sup> Department of Homeland Security. Office of Inspector General, A Review of DHS’ Responsibilities For Juvenile Aliens (2005), [https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG\\_05-45\\_Sep05.pdf](https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG_05-45_Sep05.pdf).

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

<sup>67</sup> *Id.*



In 2008, the MOU was still an issue between both departments. HHS OIG recommended that HHS and DHS build upon the statement of principles and, at a minimum, have an MOU that would address the following:

- Each entity’s specific responsibilities for gathering and exchanging information when a child comes into Federal custody and is placed into a DUCS [ORR] facility.
- Each entity’s specific responsibilities for gathering and exchanging information about children who have been reunified with a sponsor to ensure that children are safe and that sponsors are adhering to agreements.

In February 2016, HHS and DHS entered into a memorandum of agreement (MOA) that further outlined each department’s role and responsibilities with a shared goal to protect unaccompanied children from mistreatment, exploitation, and trafficking.<sup>68</sup> In the MOA, the agencies agreed to establish a coordination structure to monitor and resolve issues and share information. The MOA also established a Senior Leadership Council comprised of high-level staff across various agencies that serves as the coordinating body for interdepartmental cooperation on children's care, processing, and transport.<sup>69</sup> ORR reported that the Senior Leadership Council meets about every other month and serves as a forum to discuss broader policy issues arising from operational concerns.<sup>70</sup> One activity that the Council had undertaken was developing a Joint Concept of Operations to formalize the working relationship between HHS and DHS, establish procedures for consistent interdepartmental coordination regarding unaccompanied children, and identify other areas that needed to be addressed.<sup>71</sup>

While the HSA was a significant step toward protecting rights and providing appropriate care for unaccompanied children, ORR had inherited a flawed system and weak statutory guidance and struggled initially without the infrastructure to make needed changes. The transfer left gaps and interagency challenges between DHS and ORR. But over the years, the agencies, Congress, and nonprofit and advocacy organizations have worked to make changes as the program continued to have tremendous growth. Although the implementation of the changes was often slow, it was made, and many of those changes have resulted in a better system of care for unaccompanied children. Future chapters of this retrospective on the program explore the changes in law, operations, and policies that have occurred over the last 20 years and their impact on the well-being of unaccompanied children who receive care from the federal government.

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<sup>68</sup> *Id.*  
<sup>69</sup> *Id.*  
<sup>70</sup> *Id.*  
<sup>71</sup> *Id.*



## CHAPTER TWO: THE FLORES SAGA

"In 1985, a 15-year-old unaccompanied girl was housed in the Mardi Gras Motel – a makeshift jail used to house 'detainees.' She was mixed with adults of both sexes. She shared sleeping quarters with seven other children and five adult women, none of whom were related to her. She was given no right to educational instruction, medical care, recreation, or visitation. Her name was Jenny Lisette Flores, and she was under the care and custody of the former Immigration and Naturalization Service (INS). Jenny Flores was the lead plaintiff for the *Flores* settlement agreement originally filed in 1985, and I would call her the Rosa Parks of the civil rights movement for immigrant children," Peter Schey said. Schey and Carlos Holguín from the Center for Human Rights and Constitutional Law and the National Center for Youth Law filed the original *Flores v. Reno* lawsuit.

At the time of the original filing of the *Flores* class-action lawsuit, the INS took in approximately 5,000 children annually.<sup>72</sup> The children ranged in age from toddlers to teenagers. Many fled their home countries due to human rights abuses, such as forced marriages, child labor, military recruitment, and armed conflicts. Others fled their homes due to neglect, abuse, or abandonment from a parent or guardian. The responsibility of the INS was to carry out and enforce the country's immigration laws, including those that pertained to children.

### Immigration and Naturalization Service Detention Policy

On September 6, 1984, to manage the influx of unaccompanied children arriving in California, Harold W. Ezell, Commissioner of the Western Region of the INS, implemented a policy for unaccompanied children.<sup>73</sup> It detained immigrant children and limited their release to a parent or legal guardian, except in unusual and extraordinary cases, to a responsible individual who agreed to provide care and be responsible for the welfare and well-being of the child.<sup>74</sup> This policy resulted in the lengthy or indefinite detention of immigrant children. Moreover, the detention conditions during this time were poor: children were strip-searched, held with unrelated adults, and denied educational and recreational opportunities.<sup>75</sup> According to Schey:

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<sup>72</sup> Testimony of Stuart Anderson, Executive Associate Commissioner, United States Immigration and Naturalization Service, Washington, D.C. "The Unaccompanied Alien Child Protection Act," Hearing before the Subcommittee on Immigration, 107th Cong.

<sup>73</sup> 83 Fed. Reg. at 45489.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*



“The INS created this policy of detaining minors to hold them as bait, to force their parents who were undocumented to surrender themselves. Once the parent appeared to get custody of their child, the INS wanted to place both the parent and child into deportation proceedings.”

## *Flores v. Reno*

The litigation history of the *Flores* settlement agreement originated in 1985 in the class-action lawsuit filed by the Center for Human Rights and Constitutional Law (CHRCL) and the National Center for Youth Law (NCYL).<sup>76</sup> The suit was filed against the former INS, challenging the detention, treatment, and release of immigrant children in federal custody.<sup>77</sup> Over many years, the case made its way through the courts, including an appeal to the U.S. Supreme Court, until the parties settled in 1997.<sup>78</sup> The settlement agreement required the government to release children from immigration detention without unnecessary delay. It provided an order of preference of the individuals to whom children could be released to, beginning with parents and including other caregivers such as aunts, grandparents, and adult siblings. The settlement also instructed that children must be placed in the least restrictive setting appropriate to their age and special needs, as well as detailed standards for the children’s care and services.<sup>79</sup>

The *Flores* settlement agreement was built on the notion that the INS must treat children in its custody with dignity, respect, and concern for their vulnerability as minors. With the goal of applying child welfare protections to vulnerable immigrant children, the settlement set national minimum standards for the detention and humane treatment as well as prompt release of all children under federal immigration custody. In 2001, the parties agreed to a modification of the settlement agreement, providing that it would continue until the INS published regulations implementing provisions in the settlement agreement. However, the INS never published implementing regulations. Although it had a regulation governing the release of minors, it never fully incorporated the *Flores* settlement agreement requirements into its regulation.<sup>80</sup> *Flores* was first assigned to Judge Robert J. Kelleher and, after his passing, was assigned to Judge Dolly M. Gee of the District Court of the Central District of California, who still presides over *Flores*.

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<sup>76</sup> Carlos Holguin & Peter A. Schery. Challenging INS Detention of Minors. *In Defense of the Alien*, 9, 152–164 (1996).

<http://www.jstor.org/stable/23140910>.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Stipulated Settlement Agreement, *Flores v Reno*, No. CV 85-4544- RJK(Px) (CD Cal 1997).

<sup>80</sup> 8 C.F.R. Part 236 (1998).



## The Flores Enforcement Action of 2004

The *Flores* settlement agreement has been invoked in numerous enforcement actions and individual petitions. On January 15, 2004, the first *Flores* enforcement action was filed. In the first enforcement action, which occurred shortly after the transfer of the program from the former INS to the Office of Refugee Resettlement (ORR), *Flores* counsel alleged violations of the settlement’s guarantee of safe conditions and prompt release of children. First, they alleged that the release of children to their parents was more time-consuming under ORR than under INS. Second, they alleged that children were being unnecessarily detained in secure detention facilities and were not receiving the appropriate medical care and educational and social services. The Office of Immigration Litigation and the U.S. Attorney's Office for the Central District of California handled the case. Schey said:

“The *Flores* counsel was given the ability to bring motions to enforce the settlement in front of the district court. In 2004, we filed the first motion to enforce. We [the *Flores* counsel] argued that children were not being placed in the least restrictive environment. Children were not being provided with adequate education and mental health services, denied access to legal counsel, subjected to arbitrary solitary confinement, and strip-searched. We also challenged the fact that if a child were under removal by an immigration judge, they would often take that child back into custody, even though it could take weeks, months, or years before removal is implemented. At the time, Judge Robert Kelleher required the federal government to file status reports detailing how they were compliant with *Flores*. The defendants provided additional status reports, but these reports didn’t solve the problems, and the first enforcement never got resolved. Nothing came out of the first enforcement except the government filing these reports.”

After invoking the first *Flores* enforcement action, the *Flores* counsel withdrew the action due to a lack of evidence of their claims. The government continued to file status reports detailing its compliance with *Flores*. According to a government attorney who worked on the case:

“The program had just been transferred from the INS to ORR, and although ORR did not have the best record-keeping at the time, it was clear that ORR’s intention was to provide care in the best interests of the children. There was a major shift in the type of facilities being used to house children – from county jails under INS to shelter care homes under ORR. Visits to shelters at the time showed improvements in programming. There was a slightly longer stay in ORR care because the agency was attempting to



ensure that releases to sponsors were safe. And taking the agency's focus away from the children and onto an enforcement action was not ideal at the time."<sup>81</sup>

## Family Detention Under the Obama Administration

In 2014, there was an increase in Central American mothers and their children crossing the U.S. border to seek protection. In response to this influx, the federal government expanded the family incarceration policy.<sup>82</sup> The Department of Homeland Security (DHS) raised the number of family detention beds from 90 to 3,700 in one year.<sup>83</sup> The Obama Administration continued the Bush Administration's policy of keeping families detained after their credible fear interviews. The Obama Administration was accused of adopting a "no release" policy as an aggressive deterrence strategy.<sup>84</sup> According to Schey:

"In 2015, we brought a motion to enforce the terms of the settlement. We argued that the no-release policy violated the terms of the settlement and violated Supreme Court precedent. The *Flores* counsel determined that children were not being properly released to relatives who were able to provide safe and secure housing for the child. The conditions of detention during this period were not in compliance with the terms of the settlement."

The American Civil Liberties Union (ACLU) filed two class-action lawsuits on behalf of Central American immigrant children and argued that the Obama Administration's mandatory detainment policy of Central American asylum seekers was being used as a deterrence strategy that violated the *Flores* settlement agreement.<sup>85</sup> The Obama Administration argued that the *Flores* settlement agreement pertained only to unaccompanied children; thus, the settlement's "preference to release" did not apply to families. The government also argued that the "no-release policy" was necessary to manage the humanitarian situation taking place at the border. In 2015, the U.S. District Court Judge Dolly Gee for the Central District of California ruled that the federal government's detention policy violated the terms of the *Flores* settlement agreement.

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<sup>81</sup> Personal correspondence with government official.

<sup>82</sup> Philip G. Schrag, *The Fight to End the Incarceration of Refugee Children in America* (2020).

<sup>83</sup> *Flores v. Lynch*, Case No. CV 85-4544-DMG (AGRx) (C.D. Cal. August 21, 2015).

<sup>84</sup> U.S. Department of Homeland Security, "Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants," November 20, 2014, [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf).

<sup>85</sup> *Id.*

## Accompanied v. Unaccompanied Children

In 2016, the U.S. Court of Appeals for the Ninth Circuit affirmed that the *Flores* settlement agreement applies to accompanied as well as unaccompanied children.<sup>86</sup> This ruling meant that *Flores* protections applied to children incarcerated with their parents. The ruling made it clear that all children in federal immigration custody, whether accompanied or unaccompanied, must be placed in the least restrictive setting possible and be transferred to a non-secure, licensed facility within five days of arrest or “as expeditiously as possible,” in the event of an emergency or influx.<sup>87</sup>

## Government Obligations Failing Under the *Flores* Settlement Agreement

In 2017, the U.S. Central District Court of California again found that DHS and its subordinate entities, the U.S. Immigration and Customs Enforcement (ICE) and the Customs and Border Protection (CBP), failed to comply with their obligations under the *Flores* settlement agreement.<sup>88</sup> DHS was incarcerating children and their parents in unlicensed facilities; some were being held for up to eight months, which was beyond the five-day time limit previously authorized in times of emergency influxes.<sup>89</sup> The district court also found that DHS had failed to meet other obligations regarding facility conditions, such as:

- inadequate provision of food;
- inadequate access to clean drinking water;
- unsanitary and unsafe conditions;
- freezing temperatures, and;
- inadequate sleeping conditions.<sup>90</sup>

## Proposed Rulemaking Regulations on the *Flores* Settlement Agreement

On September 7, 2018, DHS and the Department of Health and Human Services (HHS) published a notice of proposed rulemaking intended to promulgate regulations implementing *Flores* protections and, ultimately, terminate the *Flores* settlement agreement.<sup>91</sup> In the notice, the government sought to have ICE detain children with their parents and exempt family

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<sup>86</sup> *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016).

<sup>87</sup> *Id.* at 7.

<sup>88</sup> *Flores v. Johnson*, 212 F. Supp. 3d 864 (C.D. Cal. 2015).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> U.S. Department of Homeland Security and U.S. Department of Health and Human Services, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” *Federal Register* 83 (174) (2018): 45486–45534, available at <https://www.regulations.gov/document?D=ICEB-2018-0002-0001>.



detention centers from requiring that facilities detaining children be licensed by an appropriate state agency.<sup>92</sup>

In September 2019, District Court Judge Gee blocked the DHS and HHS regulations, stating:

“This regulation is inconsistent with one of the primary goals of the *Flores* settlement agreement, which is to instate a general policy favoring release and expeditiously place minors in the least restrictive setting appropriate to the child’s age and special needs.”<sup>93</sup>

According to the court, the proposed regulations would have undermined critical legal protections for accompanied children. The District Court dismissed the government’s argument to modify the *Flores* settlement agreement.<sup>94</sup> The Ninth Circuit largely upheld the District Court’s decision in December 2020.<sup>95</sup>

### Current Status of the *Flores* Settlement Agreement

“When *Flores* counsel first took on this litigation, I never expected the litigation to go on for this long. We [the *Flores* counsel] didn’t anticipate reaching a nationwide settlement for immigrant children. It’s been over 20 years, and this settlement agreement remains in effect until the federal government introduces final regulations to codify the agreement,” said Schey.

It’s been over 30 years since the class action lawsuit was originally filed in 1985. The *Flores* settlement agreement has lived through multiple administrations and has been invoked in numerous enforcement actions. While much has changed in thirty years, where does the *Flores* settlement agreement stand today? In a 2022 court filing, the Biden Administration stated that it would abandon the Trump-era regulations that would have led to an attempt to terminate the *Flores* settlement agreement protections for children in federal immigration custody.<sup>96</sup> The Biden Administration omitted the Trump-era HHS rule from its annual public agenda.<sup>97</sup> The administration will now presumably work on its own regulations to codify *Flores*.

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<sup>92</sup> *Id.*

<sup>93</sup> United States District Court Central District of California Civil Minutes—General, <https://youthlaw.org/sites/default/files/2022-03/9.27-Flores-Order.pdf>.

<sup>94</sup> *Id.*

<sup>95</sup> *Flores v. Barr*, 407 F. Supp. 3d 909 (C.D. Cal. 2019).

<sup>96</sup> DHS and HHS announce new rule to implement the *Flores* settlement agreement; Final Rule published to fulfill obligations under *Flores* Settlement Agreement DHS and HHS Announce New Rule to Implement the *Flores* Settlement Agreement | Homeland Security, <https://www.dhs.gov/news/2019/08/21/dhs-and-hhs-announce-new-rule-implement-flores-settlement-agreement>.

<sup>97</sup> 84 Fed. Reg. 44392, available at <https://www.govinfo.gov/content/pkg/CFR-2019-title45-vol3/pdf/CFR-2019-title45-vol3-part410.pdf>.



The *Flores* settlement agreement has been a critical component for protecting and safeguarding immigrant children in government custody. Since the inception of the *Flores* settlement agreement, programming for unaccompanied immigrant children has been subject to judicial oversight. *Flores* is still under the watch of the judicial branch; Judge Dolly M. Gee still presides over *Flores v. Garland* today. But the time has come to move away from judges overseeing the program.

Today, the Unaccompanied Children's Program is housed within the Office of Refugee Resettlement, part of the Administration for Children and Families at HHS, an agency whose mission is to protect the welfare of children and families. The Biden Administration's ORR should issue a rule implementing its portions of the settlement agreement and take the opportunity to increase protections for unaccompanied immigrant children, such as appointing more child advocates for vulnerable children and expanding the use of the Unaccompanied Refugee Minors Program. This programming for children should fall under the purview of the executive branch, specifically ORR at HHS, not a single judge in the judicial branch.

Moving forward, Congress should also perform its role, as it did in the Trafficking Victims Protection Reauthorization Act of 2008, and pass legislation to improve the care and ensure the safety for unaccompanied immigrant children, such as guaranteeing post-release services for all children, providing refugee benefits to children with Special Immigrant Juvenile Status (SIJS), and creating a Children's Corps, like the Asylum Corps, but with officers trained in both immigration law and child welfare. The principles of *Flores* have been vital to ensuring that immigrant children are protected while in immigration custody. However, we now need the administration and Congress to go further and enhance protections beyond those initially conceived in the *Flores* settlement agreement.



## CHAPTER THREE: PROTECTIONS FOR UNACCOMPANIED CHILDREN IN THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008

In 2000, Senator Dianne Feinstein (D-CA) introduced the Unaccompanied Alien Child Protection Act (UACPA),<sup>98</sup> portions of which were subsequently incorporated and passed into law in the Homeland Security Act of 2002 (HSA).<sup>99</sup> As a result, Congress transferred authority over the care and custody of unaccompanied immigrant children from the Immigration and Naturalization Service (INS) to the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR). Advocates anticipated that the transfer of the program to a social services agency would address gaps in care, offer better protection, and result in a program focused on child welfare and the particular vulnerabilities of children.

In the subsequent years, however, certain areas of the program, such as the screening of children at the border for human trafficking, legal representation of children in immigration proceedings, and the responsibilities of HHS versus the Department of Homeland Security (DHS), among other issues, remained problematic.

In 2007, Senator Feinstein again introduced the UACPA bill, which was incorporated in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).<sup>100</sup> The TVPRA of 2008 created and enhanced the means to address both forced labor and sex trafficking and established procedures for vulnerable unaccompanied immigrant children arriving at the border.

The bill required family reunification whenever possible, provided for pro bono legal representation for children, and required additional training for the Department of Homeland Security (DHS) personnel and other government officials who come into contact with unaccompanied children. Section 235 of the TVPRA increased many protections for unaccompanied children seeking relief from removal, including Special Immigrant Juvenile Status and asylum, and provided procedures for those in immigration custody and at risk for removal. The TVPRA of 2008 was sponsored by Senator Joe Biden (D-DE), Representative Howard Berman (D-CA), and the late Representative Tom Lantos (D-CA) and was passed by unanimous consent.

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<sup>98</sup> Unaccompanied Alien Child Protection Act of 2001, S. 121 (107<sup>th</sup> Cong. 2001-2002).

<sup>99</sup> The Homeland Security, 6 U.S.C. §279.

<sup>100</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235.



## Section 235, Enhancing Efforts to Combat the Trafficking of Children

According to Senator Feinstein:

“The TVPRA strengthened federal trafficking laws for unaccompanied immigrant children by requiring that unaccompanied children from Mexico and Canada who did not have claims of asylum be screened for trafficking. It ensured that appropriate steps would be taken before returning children to their home countries or placing them with sponsors.”

The TVPRA of 2008 added provisions that govern the rights of unaccompanied children. Section 235, Enhancing Efforts to Combat the Trafficking of Children, directly guides the treatment of unaccompanied children.

Section 235 directed the Secretary of DHS, in conjunction with other federal agencies, to develop policies and procedures to ensure that unaccompanied children in the United States who are removed are safely repatriated to their countries of nationality or of last habitual residence. This provision also outlined essential legal procedures for unaccompanied children from contiguous (countries sharing a common border) and non-contiguous countries. Children from Mexico and Canada must be screened within 48 hours of apprehension to determine whether the child has been subject to trafficking or is susceptible to being trafficked.

The TVPRA also included other legal protections for unaccompanied children, including access to counsel, legal orientations, and child advocates. The law adjusted the requirements for Special Immigrant Juvenile Status (SIJS). The law also directed the Secretary of HHS to determine when to conduct a home study along with follow-up services for children. The TVPRA also directed ORR to consider the child's “best interest,” as opposed to only the child’s interest, as was written in the Homeland Security Act. This specific child welfare language puts more emphasis on the needs of the child. In addition to offering more protections to children, the TVPRA of 2008 created specific guidelines for the different roles of HHS and DHS.

The TVPRA set forth provisions respecting:

- (1) notification by DHS of unaccompanied children in its custody, and the transfer of those children to the Department of Health and Human Services (HHS);
- (2) age determinations;
- (3) safe placement with sponsors;
- (4) legal and child advocate access;
- (5) immigration status adjustment and asylum protections; and
- (6) assistance eligibility.



“In addition to creating protections for children who were victims of human trafficking, the TVPRA required that children from non-contiguous countries be transferred to the care and custody of Health and Human Services within 72 hours. Children were also given the ability to make their asylum claims to trained asylum officers or immigration judges. Perhaps most importantly, it established procedures to ensure that unaccompanied children received appropriate care while in the custody of the U.S. government, including counsel for legal proceedings and advocates to protect them from mistreatment and exploitation,” said Senator Feinstein.

## Care and Custody

The TVPRA of 2008 set new standards for how children should be treated while in the custody of the federal government, the mental health services they must receive, and the conditions under which they are repatriated. The TVPRA of 2008 marked for the first time how federal officials would be required to follow child welfare principles, including the “best interest of the child.” As mandated by the TVPRA, ORR is required to place unaccompanied children in the least restrictive setting that is in the “best interest” of the child.<sup>101</sup>

When making a placement determination or recommendation, ORR and care providers consider the following factors as they pertain to the child:

- Trafficking or other safety concerns.
- Any special needs or issues requiring specialized services.
- Prior sexual abusiveness.
- Danger to self, danger to the community, and risk of flight.<sup>102</sup>

A child should not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense. The placement of a child in a secure facility is reviewed, at a minimum, on a monthly basis.

## Home Studies

Prior to the TVPRA, a home study was not required for unaccompanied children.<sup>103</sup> A home study is an in-depth investigation of the potential sponsor’s ability to ensure the child’s safety

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<sup>101</sup> TVPRA of 2008. § 235(c)(2).

<sup>102</sup> *Id.*

<sup>103</sup> The *Flores* settlement agreement allowed for “suitability assessments” in certain situations at the discretion of the government.



and well-being.<sup>104</sup> The process consists of background checks of the sponsor and adult household members, a home visit(s), a face-to-face sponsor interview and possibly interviews with other household members, and post-release services (PRS).

Pursuant to the TVRPA of 2008, the Secretary of HHS determines whether a home study is necessary. A home study must be conducted if:

1. The child is a victim of a severe form of trafficking in persons;
2. The child is a special needs child with a disability as defined by section 3 of the Americans with Disabilities Act of 1990;
3. The child has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened;  
or
4. The child's sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.<sup>105</sup>

The Secretary of HHS is required to conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted and is authorized to conduct follow-up services in cases involving children with mental health or other needs who could benefit from ongoing assistance from a social welfare agency.<sup>106</sup> These follow-up services are better known as post-release services (PRS).

For approximately 20% of the most vulnerable unaccompanied children in ORR care,<sup>107</sup> PRS specialists provide additional assistance in locating, accessing, or connecting children and their sponsors to community resources. These resources may include education, health care, mental health services, and identifying legal representation. Post-release services are one part of the safety precautions for youth that include home studies, sponsor verification, background checks, assessments, in-custody therapeutic services, and ORR wellness checks (well-being calls). Post-release services also are intended to follow the child in the event that the child changes addresses.

ORR offers PRS to unaccompanied children that receive a home study. ORR also uses its discretion to offer post-release service delivery in some additional cases. Unaccompanied children who receive discretionary post-release services are limited to 90 days.

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<sup>104</sup> Administration for Children and Families (ACF) (2022), ORR Guide: Children Entering the United States Unaccompanied. Washington DC: Office of Refugee Resettlement, section 2.4.2. Available at <https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-2#2.4.2>.

<sup>105</sup> TVPRA of 2008. § 235(c)(2).

<sup>106</sup> TVPRA of 2008. § 235(c)(3).

<sup>107</sup> Office of Refugee Resettlement (2021), "Facts and Data." Available at: <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.



It is common for youth in the UC provider network to have weakened interpersonal connections. A core principle of both trauma-informed care and trauma-responsive care is that youth benefit from positive interactions with adults. The roles of case managers (in shelters) and PRS specialists (after release) present opportunities for youth and sponsors to form strong therapeutic alliances based on trust and stability. For the most vulnerable youth, PRS support is critical as most unaccompanied children who enter care have suffered some level of traumatic exposure. Given the heightened rates and risk of trauma before, during, and after migration,<sup>108</sup> the provision of post-release support is important to children’s immediate needs as well as their long-term developmental outcomes.

While the provision of home studies and post-release services for vulnerable children was a step in the right direction, there is minimal policy from ORR for PRS specialists to follow. Essentially PRS providers are borrowing policy and care practices from child welfare organizations. Current post-release services for some children may be too limited in scope and do not necessarily meet the therapeutic needs of unaccompanied children. USCRI has recommended in the past and continues to recommend that Congress pass additional requirements for home studies and post-release services. In addition, to the extent possible under the current law and budget constraints, ORR should increase flexibility in PRS eligibility and access to case support so that individual needs determine the length and intensity of support.

### Special Immigrant Juvenile Status

The Immigration Act of 1990 established Special Immigrant Juvenile Status (SIJS) for children: who were declared dependent on a juvenile court in the United States; who were eligible for long-term foster care; and for whom it would not be in their best interest to return to their country of origin. SIJS is legal relief made available to unaccompanied children who have been abandoned, neglected, or fleeing an abusive parent in their home country.

The TVRPA of 2008 made significant changes to SIJS.

- Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that the juvenile court finds that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.

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<sup>108</sup> Sarah A. MacLean et al., *Mental Health of Children held at a United States immigration detention center*, 230 *Social Science & Medicine*, 303–308 (2019).



- Expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court.
- Provided age-out protections so that SIJ classification may not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJ petition, regardless of the petitioner's age at the time of adjudication.
- Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJ classification instead of expressly consenting to the juvenile court order.
- Altered the "specific consent" function for those children in federal custody by vesting this authority with the Secretary of Health and Human Services rather than the Secretary of the Department of Homeland Security.
- Added a timeframe for adjudication: the U.S. Citizenship and Immigration Services (USCIS) shall adjudicate SIJ petitions within 180 days of filing.

The TVPRA of 2008 expanded the definition of SIJS to the following:

- (i) A child who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.<sup>109</sup>

The expansion of this definition allowed for the court to consider family reunification with one or both of the child's parents and allowed for more vulnerable and mistreated children to qualify for this form of legal relief. Once someone with SIJS has been a lawful permanent resident for five years, they may be eligible to become a U.S. citizen. Although U.S. citizens can petition for their spouse, children, and parents, if children obtained legal status through SIJS, they are not able to petition for their parents.

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<sup>109</sup> TVPRA of 2008. § 235(d)(1)-(d)(6).



## Procedural Protections

The TVPRA distinguished legal procedures for unaccompanied children from contiguous (Mexico and Canada) countries and non-contiguous countries. Children from contiguous countries are residents or nationals of Mexico and Canada. They must be screened within 48 hours of apprehension to determine if:

1. The child has been trafficked.
2. The child has a credible fear of returning to their home country.
3. The child is able to make an independent decision to withdraw an application for admission into the United States, also known as voluntary departure.

If an immigration officer determines that the child must be returned to Mexico or Canada, they must be returned to appropriate employees or officials, such as a child welfare agency. Furthermore, the United States must enter into agreements with those countries to ensure that children who are repatriated will not be trafficked.

Children from non-contiguous countries are:

1. Referred to the Department of Health and Human Services, Office of Refugee Resettlement, within 72 hours for screening and placement in the least restrictive setting possible;
2. Placed in removal proceedings;
3. Placed in the care of a family member, ORR shelter, or foster home pending a removal hearing; and
4. Provided access to counsel, to the greatest extent practicable, to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.<sup>110</sup>

The rules for children from non-contiguous countries added needed clarity to the responsibilities of DHS versus HHS. It placed more responsibility with HHS, and gave stricter guidelines, such as the requirement to transfer children to HHS within 72 hours of their apprehension, on how the agencies should coordinate their roles.

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<sup>110</sup> *Id.* at § 235(a)(5)(D), § 235 (c)(5).



## Other Services Provided in the TVPRA

In addition to clarifying agency roles, modifying the SIJS requirements, and ensuring child welfare protections, the following services were also provided for in the TVPRA:

- **Legal Orientation Presentations:** The Secretary of HHS must cooperate with the Executive Office for Immigration Review to ensure children receive legal orientation presentations that provide information on due process rights and highlight the importance of appearing in immigration proceedings.<sup>111</sup>
- **Access to Counsel:** HHS must ensure that all unaccompanied children in its care are provided with counsel “to the greatest extent practicable” to ensure legal representation and make every effort to utilize the services of pro bono counsel.<sup>112</sup>
- **Child Advocates:** The Secretary of HHS was authorized to appoint independent “child advocates” for trafficked and unaccompanied children to promote the child's best interest.<sup>113</sup>

## USCRI and The Children’s Village Recommendations

USCRI and The Children’s Village continue to advocate for Congress to pass legislation making post-release services for all unaccompanied children a legal requirement. USCRI and The Children’s Village also recommend that ORR be required to appoint child advocates for the most vulnerable children, specifically those expected to be in custody longer than 90 days and children who meet the current requirements for a home study. And for children without family or appropriate sponsors in the United States, we recommend an expansion of the Unaccompanied Refugee Minors program to create additional placements and more appropriate services for unaccompanied children.

USCRI and The Children’s Village want to surround and strengthen unaccompanied immigrant children with quality care and services that are in their best interests.<sup>114</sup> We want these children to feel supported and cared for by trained and compassionate caregivers. We want to provide opportunities to help the children overcome the obstacles they have faced and will face as they continue their journey to a dignified life.

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<sup>111</sup> *Id.* at § 235 (c)(4), § 235 (c)(5), § 235 (c)(6).

<sup>112</sup> TVPRA of 2008 § 235(c)(5).

<sup>113</sup> TVPRA of 2008 § 235(c)(6).

<sup>114</sup> “In the Best Interest of the Child,” USCRI policy paper, October 2019. Available at: <https://refugees.org/wp-content/uploads/2020/09/USCRI-Best-Interest-Oct2019.pdf>.



## CHAPTER FOUR PART ONE: HOME STUDIES AND POST-RELEASE SERVICES FOR UNACCOMPANIED CHILDREN

When a child is referred to the Office of Refugee Resettlement (ORR) by the Department of Homeland Security (DHS), ORR's intake specialists must make a placement determination for the child within ORR's network of care providers. The placement must be in the least restrictive setting and in the child's best interest. While the child is in ORR care and custody, he or she will receive an array of services in accordance with the *Flores* settlement agreement, federal laws, regulations, policies, and state licensing standards.

After a child is admitted to ORR care and custody, trained care providers begin the process to release the child to family members or other sponsors. The process for the safe and timely release of an unaccompanied child from ORR custody involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, and in some cases home studies; and post-release planning.

Although the *Flores* settlement agreement has a provision that requires detailed standards for the children's care and services, it does not mandate home studies or post-release services in any particular situation. The Trafficking Victim's Protection Reauthorization Act (TVPRA) of 2008 included a provision that mandates the Department of Health and Human Services (HHS) to conduct a home study for certain unaccompanied children. This provision was incorporated into law to ensure services are in place to promote the child's safety, well-being, and stability while they are in immigration proceedings. Section 235(c)(3)(B) goes on to state that children receiving home studies must also receive follow-up services during the period of their removal proceedings. It permits the agency to conduct follow-up services in cases involving children with mental health or other needs. The TVPRA of 2008 mandates that a home study is conducted if:

- 1) The child is a victim of a severe form of trafficking in persons;
- 2) The child is a special needs child with a disability as defined by section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102);
- 3) The child has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened;  
or
- 4) The child's sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.<sup>115</sup>

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<sup>115</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457.



## Home Study

A home study is conducted for any case in which the child meets the home study requirements set forth by the TVPRA. A home study is an in-depth investigation of the potential sponsor's ability to ensure the child's safety and well-being. The process generally includes background checks of the sponsor and adult household members, a home visit(s), a face-to-face sponsor interview and possibly interviews with other household members, and post-release services.<sup>116</sup>

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*Raquel fled Guatemala with her brother in search of a better life and opportunities after being separated from their family during a volcanic eruption. They were apprehended by the Department of Homeland Security (DHS) at the southern border, handed over to the Office of Refugee Resettlement (ORR), and sent to an ORR-funded shelter. Upon release from the shelter, Raquel received post-release services because she was being reunited with an unrelated sponsor, which is considered a risk factor for reunification. After a couple of months of successful post-release services, Raquel's brother disclosed to a schoolteacher that Raquel was being sexually assaulted by the owner of their home, who lived in the apartment upstairs. Raquel's case worker alerted local child protective services, and Raquel was removed from the home immediately and placed into foster care with her brother. During that time, Raquel was connected with an immigration attorney and a child and family lawyer from the public council service due to the sexual assault allegations. Raquel attended school consistently, made new friends, and was referred to the Office of Trafficking in Persons (OTIP) at HHS, where she qualified as a victim of trafficking. At Raquel's closure visit, she asked her case worker if she could video call her parents in Guatemala. Surrounded by crops that extended for miles, Raquel's mother and father smiled and said, "Gracias por todo lo que usted hizo; le salvo la vida a mi hija" (Thank you for everything, you saved my daughter's life).*

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A home study assesses the potential sponsor's ability to meet the child's needs, educates and prepares the sponsor for the child's release, and builds on the sponsor assessment conducted by the care provider staff to verify or corroborate information gathered during that process. Any child receiving a home study must also receive post-release services (PRS) during the pendency of the child's removal proceeding. These services must end when the child turns 18 years of age, when the child's case is terminated, or when the child is granted voluntary departure or immigration status.<sup>118</sup>

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<sup>116</sup> Administration for Children and Families (ACF) (2022), ORR Guide, section 2.4.2. Available at: <https://www.id.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.4.2>.

<sup>117</sup> Information was provided for by USCRI home study and post-release service regional supervisor Leah Jacobs Varo. A pseudonym was given to protect the identity of the unaccompanied child.

<sup>118</sup> Administration for Children and Families (ACF) (2022), ORR Guide, section 2.4.2. Available at: <https://www.id.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.4.2>.



## Post-Release Services

PRS is synonymous with follow-up services. They are services provided to an unaccompanied child based on the child's needs after he/she leaves ORR care. PRS providers, funded by the Office of Refugee Resettlement within the U.S. Department of Health and Human Services, coordinate referrals to supportive services in the community where the unaccompanied child resides and provide other child welfare services as needed.<sup>119</sup>

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*At 14 years old, Jimena left El Salvador to flee from her father, who had sex trafficked her, and to escape brutal violence, extortion, and sexual assault at the hands of multiple family members. Jimena arrived in the U.S. pregnant with her step-grandfather's baby and was placed in a shelter. Upon release from the shelter, she was reunited with her maternal aunt after a positive home study recommendation. Jimena was connected with a post-release services provider and provided prenatal care for her unborn child. Jimena disclosed to her case worker that she was forced to prostitute herself in her home country, and the case worker made a referral to OTIP. Jimena qualified as a victim of trafficking and has been receiving assistance through the Trafficking Victim Assistance Program (TVAP) since March 2022. This program has connected her with healthcare, food stamps, and other government financial support. Jimena regularly saw her school counselor for mental health support as she waited for a mental health appointment at her local clinic. She reported feeling safe and beginning to develop friendships since enrolling in school. Although she has a long road ahead of her, Jimena has begun to face the effects of her past trauma and is looking forward to a bright future for herself and her baby here in the United States.*

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Even if the child did not receive a home study, ORR refers a child to PRS if:

- The child was released to a non-relative sponsor, or
- The release was determined to be safe and appropriate, but the unaccompanied child and sponsor would benefit from ongoing assistance from a community-based service provider.<sup>121</sup>

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<sup>119</sup> ACF (2022), ORR Guide, section 6.2. Available at: <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-6#6.2>.

<sup>120</sup> Information was provided for by USCRI home study and post-release service regional supervisor Leah Jacobs Varo. A pseudonym was given to protect the identity of the unaccompanied child.

<sup>121</sup> *Id.*



While ORR does not offer a model for PRS, they do provide a list of mandatory service domains to which organizations providing PRS must comply. These services include:

1. ensuring the safety of the placement;
2. making referrals to legal services;
3. assisting with school enrollment and engagement;
4. linking children to medical services; and
5. arranging for mental health services.

Post-release services aim to connect unaccompanied children to local resources, legal service providers, mental health clinics, and other organizations. These programs connect children to vital services that facilitate successful integration into their new communities across the country.

To understand home studies and PRS better, I sat down with Criselda Gonzalez, the Director of Home Study and Post Release Services at USCRI.

"Post-release providers assist children by advocating and assessing their needs and then connecting them to the appropriate resource. By connecting children to the appropriate resource, we teach them how to use their voice and acclimate to a different culture they're not used to. As providers, we walk children through different processes so that eventually they feel empowered enough to do things on their own."

Larger cities with established communities may have a more robust and diverse network of services and providers compared to small rural areas.

"Let's look at Tennessee, for example. In Chattanooga, you have a limited number of resources compared to Nashville, where you have an abundance of resources. In many instances, we have seen the church play a bigger role in rural areas to serve unaccompanied children and their families," said Gonzalez.

According to Gonzalez, another challenge for PRS providers is having children "age out" when they turn 18.

"As providers, we create a post-18 plan that will help the future young adult start planning out next steps, such as identifying a vocational trade school. But there is an absence of more robust aftercare for those who need it," said Gonzalez.



## Conclusion and Recommendations

Home studies and post-release services provide unaccompanied children with the vital services needed to facilitate their successful integration into new communities across the country. More importantly, post-release services are a safety tool, allowing PRS providers to ensure that release decisions by ORR are safe.

### **Congress should pass legislation that requires every child released from the Office of Refugee Resettlement to receive post-release services.**

Congress has only specified that certain children receive home studies and post-release services. By singling out certain children to receive specialized follow-up services, Congress implicitly instructed that all children should not receive those services.

To ensure that the agencies and organizations tasked with providing for the safety and well-being of UC after release have the necessary tools and support to carry out their mission, USCRI and The Children's Village recommend that Congress clarify in law and provide appropriations for ORR's responsibility for the children's ongoing safety after release. Post-release services would serve as a safety net to ensure that releases are safe and remain safe. The most realistic way to ensure safe releases is to follow up. If post-release services were provided for all children, case managers would go into all UC homes—they would be able to identify child welfare concerns, and problems with placements and, if necessary, could remove children from unsafe situations. The services also would connect all children and their families to resources in their communities, as opposed to the low percentage connected under the current system.

The key to providing post-release services to all UC is that it must be written into the law, and Congress must provide funding.

### **USCRI and The Children's Village support the policy that allows a child's case manager to determine the time period for post-release services. Like recommendation one, we suggest that this policy be written into law.**

In addition to providing post-release services for all UC, the time period for post-release services should be left to the discretion of each child's case manager. Sometimes, post-release services are unnecessary until a child turns 18 or receives immigration status. In other cases, a limit of 180 days, such as the limit for discretionary post-release services under the current ORR policy, may be too short for many children. Post-release services case managers are best positioned to make the decision.



At the time of the writing of this report, ORR was conducting a pilot of an enhanced post-release services program. Under the pilot, more unaccompanied children were receiving post-release services, but at different levels, with some children receiving minimal follow-up and others receiving extensive, more in-depth services. As one of the main PRS providers, USCRI will continue to monitor the effectiveness and best practices for home studies and post-release services.



## CHAPTER FOUR PART TWO: SPECIAL IMMIGRANT JUVENILE STATUS

In the 1990s, following advocacy by the Santa Clara Child Welfare Agency and other organizations, Congress passed a federal law to assist certain undocumented youth in obtaining lawful permanent residency through Special Immigrant Juvenile Status (SIJS).<sup>122</sup> SIJS provides legal protection for certain undocumented immigrant youth who have been abused, abandoned, or neglected by one or both parents by allowing them to legalize their immigration status and become lawful permanent residents and eventually U.S. citizens.

“As a social worker at Santa Clara County, I worked on helping undocumented minors who were in long term foster care, also known as permanent placement, apply for amnesty and legal residency relief to reside in the United States. Most of the children in my caseload got approved, but in the process of applying, the Immigration and Naturalization Services (INS), changed their stance on me applying for the remaining undocumented children, because I was not the legal parent. As the social worker for these children, I disagreed. As a child welfare social worker, I was considered a “prudent parent,” and I would be able to apply for permanent placement on behalf of these undocumented minors since there were no parents available to file for them,” said Ken Borelli, co-author of the original SIJS legislation.

“In fact, a whole subcategory of children in the child welfare system nationwide didn’t have parents to file for them. Many children in foster care at the time lost out on this window of opportunity to file for amnesty,” said Borelli.

“The situation was very complex, and we didn’t know how to proceed, so I went to the Juvenile Court and spoke to Judge Leonard Edwards and explained the situation to him. He referred me to his father, Congressman Don Edwards [D-CA, and others on his staff including now Congresswoman Zoe Lofgren [D-CA] to work on the Special Immigrant Juvenile Status legislation. It is important to recognize that when the bill was written it was purely a piece of child welfare legislation. Its origins, however, have now metamorphosed into an entirely different immigration relief option, I think primarily through default, since no major piece of immigration relief legislation has been able to pass Congress, which is a sad observation of the times,” said Borelli.<sup>123</sup>

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<sup>122</sup> Immigration Act of 1990, Pub. L. No. 101-649, § 153 (1990).

<sup>123</sup> Zoom Interview by Jenny Rodriguez with Ken Borelli, co-author of SIJS.



The Immigration Act of 1990 established the SIJ classification for children:

- 1) declared dependents on a juvenile court in the United States;
- 2) eligible for long-term foster care; and
- 3) for whom it would not be in their best interest to return to their country of origin.

To qualify for SIJS, children must first be subject to the jurisdiction of a state juvenile court. The court will issue a finding on the harm they experienced and state that it's not in the child's best interest to return to their country of origin. Children must then file a petition to U.S. Citizenship and Immigration Services (USCIS) to be classified as a SIJ. Upon receiving an approved petition from USCIS, the last piece is for children to apply for adjustment of status to become a lawful permanent resident of the United States.

### SIJS in the early 2000s

To understand the earlier days of SIJS, I sat down virtually with Kristen Jackson, Senior Staff Attorney at Public Counsel, who has worked on SIJS issues since the fall of 2003.

"When I started working on SIJS in the early 2000s, a small network of attorneys collaborated across the country. The number of children applying for SIJS was much smaller than it is today. That's the biggest difference in the program. The [Trafficking Victims Protection Reauthorization Act of 2008] TVPRA expanded eligibility for SIJS applicants, increased access to legal representation, and connected children with lawyers knowledgeable about SIJS. These critical components lead to an expansion of the pool of applicants," said Kristen Jackson.<sup>124</sup>

The TVRPA of 2008 made significant changes to SIJS:<sup>125</sup>

- Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that the juvenile court finds that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.
- Expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court.
- Provided age-out protections so that SIJ classification may not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJ petition, regardless of the petitioner's age at the time of adjudication.

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<sup>124</sup> Zoom Interview by Jenny Rodriguez with Kristen Jackson, attorney at Public Counsel.

<sup>125</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457.



- Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJ classification instead of expressly consenting to the juvenile court order.
- Altered the "specific consent" function for those children in federal custody by vesting this authority with the Secretary of Health and Human Services rather than the Secretary of the Department of Homeland Security.
- Added a timeframe for adjudication: USCIS must adjudicate SIJ petitions within 180 days of filing.

"During the early days, there was no policy manual for SIJS, and we operated under the regulations issued by the federal government in the 1990s. As soon as the TVRPA of 2008 passed, we started reevaluating cases immediately. Attorneys started filing for guardianships and SIJS in places where that had never happened before. At that point, adjudications were not centralized, and there were varying degrees of training and people getting up to speed with the program. Things were rocky at the beginning, but that didn't last for too long," said Jackson.<sup>126</sup>

The TVPRA of 2008 expanded the definition of SIJS to the following:

- (i) A child who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody of an agency or department of a State or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.<sup>127</sup>

Rachel Prandini, an attorney at Immigrant Legal Resource Center, said, "SIJS was originally drafted to provide a pathway to citizenship for young people in foster care who had been removed from their parent's home. In 2008, that eligibility was expanded to include any child who can't reunify with one or both parents."<sup>128</sup>

"One of the biggest changes brought on by the TVPRA was the expansion of the SIJS definition that allowed for the court to consider family reunification with one or both of

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<sup>126</sup> *Id.*

<sup>127</sup> TPVRA of 2008. § 235(d)(1)-(d)(6).

<sup>128</sup> Zoom Interview by Jenny Rodriguez with Rachel Prandini, attorney at Immigrant Legal Resource Center.



the child's parents and allowed for more vulnerable and mistreated children to qualify for this form of legal relief. Prior to the TVPRA, we would screen out many children who lived with one parent or might reunify with another. The change in the statute opened the door for us to represent many more children who wouldn't have received help before the passage of the TVPRA," said Jackson.<sup>129</sup>

Once someone with SIJS has been a lawful permanent resident for five years, they may apply to become a U.S. citizen. Although U.S. citizens can petition for their spouse, children, and parents, young people who obtained legal status through SIJS are never able to petition for their parents.

## SIJS Backlog

In the past, immigrant children have been able to apply for their green cards and work permit along with SIJS petitions. Once a child's petition for SIJS was approved, many children received their work permits and green cards within six months to a year. In 2016, this time period changed due to an oddity in how SIJS children are classified under immigration law; children from countries that have reached their visa limits are unable to apply for their green cards and work permits for years.<sup>130</sup> Strangely, the pathway to a green card for an SIJS child is categorized under the "employment-based" immigration visa system which has country-specific and worldwide annual visa limits.<sup>131</sup>

As of December 2022, the backlog impacts children from all countries, though it is particularly pronounced for children from Honduras, Guatemala, El Salvador, and Mexico. The backlog for children from those countries has them waiting anywhere from two to five years before they can apply for their green cards.<sup>132</sup> The wait time for green cards varies depending on immigration trends. During this time, children approved for SIJS cannot access federal financial aid for college, struggle into independent adulthood, and find themselves at risk of trafficking, deportation, and homelessness.<sup>133</sup>

"The SIJS community was taken aback when the SIJS backlog started; we had no idea there was a visa cap. When I started working on SIJS, there was no backlog; young people could get their work permits and green cards very quickly and saw immediate

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<sup>129</sup> Zoom Interview by Jenny Rodriguez with Kristen Jackson, attorney at Public Counsel.

<sup>130</sup> Rachel Davidson & Lailia Hlass. "Any Day They Could Deport Me" *The End SIJS Backlog Coalition and The Door*, <https://door.org/any-day-they-could-deport-me/> (2021).

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

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*



results in the process. But now, with the SIJS visa backlog, there are more barriers that young people face while waiting a long time for their visa," said Jackson.

### Action Needed by Congress

It is unknown how much or how long the program will continue to expand, but Congress needs to write corrective legislation to address and end the visa backlog impacting SIJS. The visa backlog is creating more barriers in the children's lives, many of which are the exact harms that SIJS was created to eliminate. USCRI wants to surround and strengthen unaccompanied immigrant children with quality care and services in their best interests.<sup>134</sup> We want to provide opportunities, including access to immigration relief, such as SIJ status, to help the children overcome the obstacles they have faced and will face as they continue their journey to a dignified life.

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<sup>134</sup> "In the Best Interest of the Child," USCRI policy paper, October 2019. Available at: <https://refugees.org/wp-content/uploads/2020/09/USCRI-Best-Interest-Oct2019.pdf>.



## CHAPTER FIVE: HAITI EARTHQUAKE

On January 12, 2010, a 7.0 magnitude earthquake devastated Haiti, and an estimated 92,000 – 220,00 people were killed and many more injured. The earthquake ravaged the country, causing a significant loss of homes and severe damage to infrastructure, including schools, healthcare facilities, and orphanages. Many children living in orphanages at the time were in the process of being adopted by families in the United States. Recognizing this, the U.S. government undertook efforts to evacuate those children from Haiti. Based on their lack of immigration status and parents in the United States, children in the process of being adopted were categorized as unaccompanied children, and the Office of Refugee Resettlement (ORR) became responsible for coordinating and implementing their care and placement, as mandated by the Homeland Security Act of 2002.

"I got a call from my adoption agency and was told that my then-husband and I were vetted with a successful home study. They told us that two young Haitian boys in Pittsburgh needed a home. Without hesitation, my husband and I said, yes, we'd love for these boys to be a part of our family. This was not a regular adoption, and we didn't have anyone working on the Haitian side to help with the adoption. We navigated the adoption ourselves and completed so much paperwork. After ten months, our sons Rocky and King settled with us in Colorado. Rocky and King overcame many obstacles in Haiti and witnessed terrible things. Still, they are incredibly resilient. I'm proud to see the incredible young men they have become," said Mardi Ketchum, mother to King and Rocky, two Haitian children airlifted to Pittsburgh.

### Action to Safeguard Orphan Welfare

Shortly after the earthquake, on January 18, 2010, the Department of Homeland Security (DHS) Secretary Janet Napolitano, in coordination with the Department of State (DOS), announced a humanitarian parole policy allowing orphaned children from Haiti to enter the United States temporarily on an individual basis to ensure that they received the care they needed.<sup>135</sup>

"While we remain focused on family reunification in Haiti, authorizing the use of humanitarian parole for orphans who are eligible for adoption in the United States will allow them to receive the care they need here," said Secretary Napolitano.<sup>136</sup>

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<sup>135</sup> Secretary Napolitano announces Humanitarian Parole Policy for certain Haitian orphans Secretary Announces Humanitarian Parole Policy for Certain Haitian Orphans | Homeland Security (2010), <https://www.dhs.gov/news/2010/01/18/secretary-announces-humanitarian-parole-policy-certain-haitian-orphans>.

<sup>136</sup> *Id.*



The program criteria were as follows:

- (1) Children who have been legally confirmed as orphans eligible for intercountry adoption by the Government of Haiti and are being adopted by U.S. citizens.
- (2) Children who have been previously identified by an adoption service provider or facilitator as eligible for intercountry adoption and have been matched to U.S. citizen prospective adoptive parents (PAP).<sup>137</sup>

The children were then placed into one of two categories:

**Category 1:** Haitian adoption completed; adoptive family awaiting completion of the process through the U.S. embassy to secure travel documents for entering the United States

**Category 2:** Haitian adoption process begun but not completed; child legally eligible for adoption and matched to a U.S. family, i.e., the child was in the queue for adoption prior to January 12, 2010.

### The Haitian Orphan Process

To understand the Haitian children's evacuation and adoption process better, I sat down virtually with Dr. Elaine Kelley, who served as the Associate Director for Child Welfare at ORR during the period following the Haiti earthquake.

*“The Haitian adoption process in 2010 typically took three to four years, but given the circumstances of this unprecedented crisis, the U.S. government worked diligently with the Haitian government to speed up the adoption process.”*

Dr. Kelley provided the steps of the adoption process for the orphaned Haitian children.

**Step one:** At the U.S. Embassy in Port-au-Prince, DHS issued a humanitarian travel letter for children who met the established criteria.

**Step two:** At the port of entry (Miami), DHS/Customs and Border Protection (CBP) reviewed documents and:

- (1) If Category 1, CBP released the child immediately to the adoptive parent.

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<sup>137</sup> *Id.*

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- (2) If Category 2, CBP released the child to the Department of Health and Human Services (HHS), specifically ORR.

The Category 2 child was then transported to His House, an ORR-funded childcare facility. His House provided food, shelter, and safety for the children while ORR representatives met with PAPs and made determinations about the release of the children into the care of PAPs.

### Step three: HHS/ORR Process — His House, Miami

While children were at His House, ORR staff reviewed home studies, Federal Bureau of Investigation (FBI) clearances, identity documents, and other information about PAPs to determine if they could provide appropriate care for the children. During this time, PAPs could see the children they planned to adopt, play with them, and get to know them better. Once ORR was satisfied that the family appeared able to provide for the physical and mental well-being of the child, ORR would release the child to the PAP, who was awarded physical custody. The ORR release was based on safety and child well-being and was not meant to serve as federal approval for adoption. Only a court in the PAP state of residence was authorized to determine whether the family met state adoption criteria, i.e., evidence of adoptability (child is relinquished and eligible for adoption) and evidence that the family could provide for the child's needs.

### Category 2 Haitian Orphans

Haitian orphans classified under Category 2 who entered the humanitarian parole program were deemed to be unaccompanied children because they met the legal definition of an unaccompanied child as they were:

- (1) under 18 years of age;
- (2) without immigration status (humanitarian parole, which the children received, is not considered a lawful immigration status, although the U.S. government authorizes entry and is aware of the parolee's presence); and
- (3) without a parent or legal guardian to provide care and take physical custody.

If a child met the legal definition of an unaccompanied child at the port of entry in Miami, DHS/CBP released the Category 2 children into the care and custody of ORR.

### The Pittsburgh 12

Sisters Jamie and Ali McMutrie, originally from Pennsylvania, lived in Haiti when the earthquake struck. The McNutrie sisters had dedicated their lives to caring for orphaned children and ran the BRESMA orphanage in Haiti. Following the earthquake, Ali made her way to the U.S. Embassy, wanting to evacuate the children at the orphanage, but received no



assistance. Because they feared for the children’s safety, the McNutrie sisters acted fast, without concern for the children’s legal situations, and utilized every resource and connection possible, including the help of Governor Ed Rendell (D-PA). Governor Rendell helped secure a private plane to Haiti to help evacuate Haitian children. After a 22-hour odyssey, Governor Rendell and other aid providers in Port-Au-Prince successfully airlifted 53 Haitian children to the Children’s Hospital of Pittsburgh, Pennsylvania. Unfortunately, not all the children were eligible for adoption in the United States.

“It’s important to understand that certain children living in Haitian orphanages at that time were not there to be adopted. Some children were sent there by their parents because they couldn’t afford to feed, house, or care for them. When the BRESMA orphanage was evacuated, one major problem was that not all 53 children were awaiting adoption. In fact, 12 of the children had not been legally relinquished for adoption, but due to the widespread chaos after the earthquake, the primary concern was for the safety and well-being of all 53 children, so all 53 flew to Pittsburgh” said Dr. Kelley.

The case of these 12 children was complicated and politically sensitive. Their fate was unclear. The United States and Haiti struggled to determine how best to proceed.

"A meeting was proposed between HHS, DHS, the State Department, and the Haitian Prime Minister's office. This meeting was convened to discuss the situation of these 12 children and to learn what the intentions were of the biological parents when they placed their children in the BRESMA facility. With great difficulty, due to the displacement of families after the earthquake, and with the help of the U.S. Embassy and the American Red Cross, we located the parents of these children. The Haitian government met with them to discuss their intentions and their children’s futures. To assure the parents that their children were safe, they were shown pictures of them at the Holy Family Institute in Pittsburgh, an ORR-funded childcare facility where ORR had placed them for temporary care. The parents were then asked if they wanted their children returned to Haiti, which we would have immediately arranged, or if they had decided to legally relinquish their parental rights. Every parent decided to relinquish their child for the purposes of adoption. I still keep in contact with some of the U.S. families who adopted these children, and from my understanding, some still keep in touch with the families in Haiti. It has been wonderful to see how these children have flourished and adjusted to their new lives, with many now in high school or college or pursuing careers," said Dr. Kelley.

The earthquake exacerbated the number of Haitian orphans creating a crisis to which both the Haitian and U.S. government responded. The response to the earthquake presented many



challenges to federal agencies in the United States and Haiti. I sat down with Eskinder Negash, President and CEO of USCRI, who was the Director of ORR at the time.

“When the catastrophic earthquake struck Haiti, the Office of Refugee Resettlement was faced with an unprecedented event. For an agency with no experience or policy manual to help us navigate during this difficult time, the agency maximized its efforts to respond as quickly as possible. In just 38 days, more than 835 flights left Haiti, ORR processed more than 700 Haitian orphans and evacuated 28,000 U.S. citizens and their families. ORR staff worked day and night on repatriation efforts following the catastrophic earthquake,” said Eskinder Negash.

### Help Haiti Act of 2010

There were some practical issues that PAPs faced: unexpected timing of the child’s arrival; the family needing to prepare financially or otherwise; changes in family dynamics; challenges in securing social security numbers; cultural/language adjustment of children; issues with school enrollment; and loss of original legal documents.

On December 9, 2010, President Obama signed the Help Haitian Adoptees Immediately to Integrate Act of 2010 (Help HAITI Act of 2010).<sup>138</sup> This new law made it possible for certain Haitian orphans paroled into the United States to become lawful permanent residents (LPR) of the United States (i.e., receive green cards). If adopted by a U.S. citizen before his/her eighteenth birthday, the child was deemed to meet the requirements of sections 320 and 322 of the Immigration and Nationality Act (INA) and automatically became a U.S. citizen and eligible to apply for a certificate of citizenship.<sup>139</sup>

The Help Haiti Act helped address issues that Haitian orphans faced in the United States. This help was imperative as Haitian orphans who experienced the earthquake went through traumatic events. Many lost their parents and then moved to a new country where few people knew their culture or spoke their language. Many of these children benefited from this Act and have become successful.

“I am in awe of the amazing young men that both Rocky and King have become. Rocky (now 18) is a straight-A student. He's a leader both in and outside of school, an incredible athlete, and was nominated by his peers to represent them at a leadership conference. King (now 22) graduated high school in 2020 and is working while pursuing

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<sup>138</sup> 8 U.S.C. 1101 and 1182.

<sup>139</sup> Only Haitian children who entered the special orphan humanitarian program qualify for the benefits of the Help Haiti Act, i.e., a Haitian child entering under humanitarian parole for medical purposes is not eligible.



his associate degree. He hopes to pursue a career in real estate and is the best role model for his younger brother, always lending a helping hand. I can't imagine what their lives would've turned out like had they not been brought to the U.S.," said Ketchum, mother to King and Rocky, two Haitian children airlifted to Pittsburgh.



## CHAPTER SIX: INFLUX OF CENTRAL AMERICAN UNACCOMPANIED CHILDREN

### The First Significant Increase of Unaccompanied Children at the Southern Border

The Unaccompanied Children's Program in the Office of Refugee Resettlement (ORR) at the U.S. Department of Health and Human Services (HHS) housed fewer than 8,000 children annually from 2003 through 2011.<sup>140</sup> Not until 2012 did the trajectory for the number of children entering the United States unaccompanied change significantly. Although 2012 was not considered a year for one of the major influxes, 2012 saw a significant and rapid increase in unaccompanied children at the southern border. In 2014, the number of children reached an all-time high and a crisis point.

The influx of unaccompanied children overwhelmed the system put in place by the Homeland Security Act of 2002. To understand the challenges posed by the increasing number of children arriving at the southern border, I sat down with Eskinder Negash, President and CEO of USCRI, who was the Director of ORR at the time.

“The UC influxes of 2012 and 2014 posed new challenges for ‘our tiny office,’ but ORR emerged intact and stronger for it, due to the exemplary dedication of staff, partners, and leadership,” said Negash. “One of the main challenges for ORR was the lack of bed capacity, which meant that custody could not be transferred from DHS to ORR within the 72-hour requirement. ORR met this challenge through joint efforts, such as inter-agency coordination, to add temporary bed capacity into its network,” said Negash.

### Coordinated Federal Agencies’ Efforts

In the summer of 2014, in response to the influx of unaccompanied children arriving at the border, President Obama declared “an urgent and humanitarian situation.”

“The influx of unaccompanied children across the southwest border of the United States has resulted in an urgent humanitarian situation requiring a unified and coordinated Federal response,” he said in a presidential memorandum.<sup>141</sup>

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<sup>140</sup> U.S. Department of Health and Human Services. Administration for Children and Families, Latest UC Data – FY2019 HHS.gov (2019), <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data>

<sup>141</sup> The White House, Office of the Press Secretary, Presidential Memorandum. The White House, Office of the Press Secretary, Presidential Memorandum—Response to the Influx of Unaccompanied Alien Children Across the Southwest Border (2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr>.



The Obama Administration coordinated a federal response with representatives from key agencies headed by the Federal Emergency Management Agency (FEMA) Administrator, Craig Fugate. The Administrator's role was to "lead and coordinate the Federal response efforts to ensure that Federal agency authorities and the resources granted to the departments and agencies under Federal law ... are unified in providing humanitarian relief to the affected children, including housing, care, medical treatment, and transportation."<sup>142</sup>

## Unaccompanied Children and The Department of Defense

ORR coordinated with the U.S. Department of Defense (DOD) to house children temporarily on military bases to manage the first major increase of unaccompanied children across the Southern border. Lackland Air Force Base in San Antonio, Texas, was the first military base to house the children. At the time of the influx in 2014, U.S. Customs and Border Protection (CBP) apprehended almost 80% more children compared to the prior year; CBP apprehended 38,759 children in fiscal year (FY) 2013 and in FY 2014 that number rose to 68,542.<sup>143</sup>

The U.S. system was overwhelmed, and the reality was that insufficient space existed to house the number of apprehended unaccompanied children.

According to Wendy Young of Kids in Need of Defense (KIND), an advocacy organization for unaccompanied immigrant children, the system Congress had in place as of 2014 "was designed for about 6,000 to 8,000 kids a year."

CBP kept children in temporary facilities not suited for children, and ORR in an effort to quickly move children out of CBP facilities quickly again turned to DOD in hopes of using other military bases as it was using Lackland. Military emergency facilities expanded to Fort Sill in Oklahoma and Naval Base Ventura County in California.<sup>144</sup> Over the course of four months, 7,700 children were housed on these military bases, which closed in August 2014.<sup>145</sup>

Negash recalled the implementation of temporary solutions to accommodate the influx of unaccompanied children: "ORR fostered a collaborative relationship with DOD in creating temporary solutions to ensure unaccompanied children were appropriately

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<sup>142</sup> *Id.*

<sup>143</sup> FY2008-FY2013: United States Border Patrol, "Juvenile and Adult Apprehensions—Fiscal Year 2013." FY2014-FY2018: Customs and Border Protection, "U.S. Border Patrol Southwest Border Apprehensions by Sector FY2018." FY2019-FY2021: U.S. Border Patrol, "Southwest Land Border Encounters," <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>144</sup> Office of Refugee Resettlement Year in review - FY2014, The Administration for Children and Families, <https://www.acf.hhs.gov/orr/outreach-material/office-refugee-resettlement-year-review-fy2014>.

<sup>145</sup> *Id.*



housed. Following a request from HHS to DOD, DOD searched their inventory of facilities, using HHS criteria for potential sites for HHS use.”

## Additional U.S. Government Efforts

On June 30, 2014, the Obama Administration asked Congress for \$3.7 billion to address the crisis along the southern border. This funding would support domestic enforcement, repatriation, and reintegration of migrants; associated transportation costs; and additional immigration judges, prosecutors, and immigration litigation attorneys to ensure cases were processed fairly and as quickly as possible.<sup>146</sup> This request was met with pushback and a failure of Congress to provide emergency funding in response to the influx.

In September 2014, the Obama Administration announced a new Central American Minors program (CAM), a refugee and parole program that provides certain qualified children who are nationals of El Salvador, Guatemala, and Honduras, as well as certain family members of those children, an opportunity to apply for refugee status and possible resettlement in the United States.<sup>147</sup>

“In response to the influx in 2014, President Obama ordered a government-wide coordinated response, which opened the door for collaboration between agencies to assist ORR and DHS. Although impactful, the CAM program was introduced after the crisis was abated and therefore not helpful in mitigating the 2014 influx,” said Negash.

## Aftermath

When Vice President Joe Biden visited Central America in June 2014, he warned families in Central America not to come to the United States or send their children there. The government paid for advertising campaigns to educate families in Central America about the danger of the journey to the United States. The U.S. government also expanded the use of family detention for migrant families in an effort to deter more children and families from coming to the United States.

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<sup>146</sup> Letter from the president -- regarding emergency supplemental appropriations request to address the increase in child and adult migration from Central America in the Rio Grande Valley areas of the southwest border; and wildfire suppression National Archives and Records Administration, <https://obamawhitehouse.archives.gov/the-press-office/2014/07/08/letter-president-regarding-emergency-supplemental-appropriations-request>.

<sup>147</sup> U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR), “State Letter 15-01: In-Country Refugee/Parole Program for Children in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States – Eligibility for ORR Benefits and Services” (letter to state refugee coordinators, national voluntary agencies, and other interested parties, January 7, 2015).



In FY 2015, fewer children were apprehended at the southern border. This could have been due to the Mexican government apprehending migrants en route to the United States, the federal government cracking down on smuggling efforts, the deterrence strategy by the U.S. government, or many other factors in the originating countries. Nevertheless, the influx in 2014 changed how the federal government and federal agencies would respond to surges or crises in the future.

“Due to the influx and the ensuing response, ORR was able to increase its network of permanent licensed bed capacity. This is the most effective way to meet an increase flow of UC into ORR care,” said Negash. “The influx also opened a pathway for cross-departmental collaboration, which greatly assisted ORR in locating and procuring federal properties to house children temporarily in influx situations.”



## CHAPTER SEVEN: PREVENTION OF SEXUAL ABUSE

Unaccompanied children (UC) are at risk for sexual abuse; many children have left their country of origin due to sexual assault, and far too many are sexually abused on their way to the United States. In 2012, Senator Patrick Leahy (D-VT) introduced the Violence Against Women Act of 2013 (VAWA 2013), which received bipartisan support and added new protections for victims of violence and human trafficking. VAWA was signed by President Obama in 2013.<sup>148</sup>

Section 1101 of VAWA 2013 directed the Secretary of the Department of Health and Human Services (HHS) to publish a final rule adopting national standards for detecting, preventing, reducing, and punishing rapes and sexual assaults in detention facilities against unaccompanied children in custody.<sup>149</sup>

Before VAWA 2013, the Office of Refugee Resettlement (ORR) at the Department of Health and Human Services (HHS) was already drafting procedures appropriate for its care provider facilities.<sup>150</sup> So by December 24, 2014, ORR had issued its Interim Final Rule (IFR). The IFR proposed standards and procedures to prevent, detect, and respond to sexual abuse and sexual harassment involving unaccompanied children in ORR's care provider facilities. The standards outlined in the IFR build on standards set by VAWA 2013.<sup>151</sup>

In the IFR, ORR proposed regulations that could significantly improve the safety of unaccompanied children in ORR facilities. The standards achieve three objectives: preventing, detecting, and responding to sexual abuse and sexual harassment in ORR care provider facilities. ORR care provider facilities must follow standards separated into the 11 categories used by the National Prison Rape Elimination Commission (NPREC) to discuss and evaluate prison rape prevention and elimination recommendations.<sup>152</sup>

The IFR focused on the following 11 areas to achieve the three goals of preventing, detecting, and responding to sexual abuse and sexual harassment in ORR care provider facilities:

- 1) prevention planning;
- 2) responsive planning;
- 3) training and education;
- 4) assessment for risk of sexual victimization and abusiveness;

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<sup>148</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 (VAWA 2013).

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

<sup>150</sup> See preamble to 45 C.F.R. § 411.

<sup>151</sup> 45 C.F.R. § 411.6.

<sup>152</sup> ACF (2022), ORR Guide, Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children. Available at: <https://www.acf.hhs.gov/orr/standards-prevent-uac-sexual-abuse>.



- 5) reporting;
- 6) official response following a UC report;
- 7) ORR incident monitoring and evaluation;
- 8) interventions and discipline;
- 9) medical and mental health care;
- 10) data collection and review; and
- 11) audits and corrective actions.

ORR mandated that all its care provider facilities designate a Prevention of Sexual Abuse (PSA) coordinator and manager. The PSA compliance manager has the authority to develop, implement, and oversee the care provider facility's efforts to comply with provisions outlined in VAWA 2013 and the IFR. On October 11, 2021, ORR began to audit facilities housing unaccompanied children on their compliance with ORR's IFR and policies and procedures related to the prevention of sexual abuse, sexual harassment, and inappropriate behavior. ORR has yet to publicly disclose aggregate compliance scores and data on audits they have conducted.

HHS has stated, "Sexual violence and abuse are an assault on human dignity and have devastating, lifelong mental and physical effects on an individual. HHS is committed to a zero-tolerance policy against sexual abuse and sexual harassment in its care provider facilities. It seeks to ensure the safety and security of all unaccompanied children in its care."<sup>153</sup>

ORR has set a zero-tolerance policy for sexual abuse, sexual harassment, and inappropriate sexual behavior at all care provider facilities and makes every effort to prevent, detect, and respond to such conduct. While there are still many cracks to be filled, we encourage the agency to implement the full range of available protections to protect unaccompanied children.

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<sup>153</sup> 45 C.F.R. § 411.6.



## CHAPTER EIGHT: RECOMMENDATIONS FOR THE FUTURE OF THE UNACCOMPANIED CHILDREN'S PROGRAM

*"A mi me gustaria luchar por mis sueños y no permitiré que nadie apague la luz que me mantiene firme para."*

"I would like to fight for my dreams, and I will not allow anyone to turn off the light that keeps me going." These are the words of a 13-year-old unaccompanied child at a shelter funded by the Office of Refugee Resettlement (ORR) at the U.S. Department of Health and Human Services (HHS). Many unaccompanied children have fled their home countries due to human rights abuses, such as forced marriages, child labor, military recruitment, and armed conflicts. Others have come to the United States to reunite with their families. And still others have left behind poverty in search of a better future.

As discussed in the retrospective, before the early 2000s, children were apprehended and detained by the former Immigration and Naturalization Service (INS). The Homeland Security Act of 2002 (HSA) transferred the care of this vulnerable group of children to ORR in HHS. But the HSA provided few details on how children should be treated in care, the requirements for determining whether a child should be released from custody to a parent or sponsor, or the need for legal services and follow-up assistance after release. The transfer of responsibility for the children also left gaps and interagency challenges between the Department of Homeland Security (DHS) and ORR.

Over the years, the agencies, Congress, and nonprofit and advocacy organizations have worked to make changes as the program has grown tremendously. While many improvements have been implemented for the Unaccompanied Children's Program, there are still many improvements to be made to meet the critical needs of the moment and to anticipate the needs for the program's future. In this chapter, the U.S. Committee for Refugees and Immigrants and The Children's Village offer recommendations for the future of the Unaccompanied Children's Program in the United States. Our recommendations are based on the direct care we provide for children through shelters, home studies and post-release services, trafficking assistance, legal representation, and repatriation in El Salvador and Honduras.

### **Recommendation 1:**

**Make post-release services for all unaccompanied children a legal requirement.**

Congress has only specified that certain children receive home studies and post-release services. To ensure the safety of all unaccompanied children after release, we recommend that Congress clarify in law and provide appropriations for ORR's responsibility for the children's ongoing safety after release and require post-release services for all unaccompanied children.



This would ensure that the agencies and organizations tasked with providing for the safety and well-being of UC after release have the necessary tools and support to carry out their mission. Post-release services would serve as a safety net to ensure that releases are safe and remain safe.

The most realistic way to ensure safe releases is to follow up. If post-release services were provided for all children, case managers would go into all UC homes— they would be able to identify child welfare concerns and problems with placements and, if necessary, could remove children from unsafe situations. The services also would connect all children and their families to resources in their communities, as opposed to the low percentage connected under the current system. Currently, post-release services may change per administration. To ensure continued safety for unaccompanied children, Congress should expand the program through legislation.

### **Recommendation 2:**

**Require ORR to appoint child advocates for the most vulnerable children.**

Child advocates are underutilized and not clearly provided for under current law. We recommend that ORR be required to appoint child advocates for the most vulnerable children, specifically those expected to be in custody longer than 90 days and children who meet the current requirements for a home study.

As with post-release services, the key to providing child advocates for certain children and mandating specific responsibilities for those advocates is that it must be written in the law, and Congress must provide funding.

### **Recommendation 3:**

**Allocate funding so all unaccompanied children released from ORR custody have attorneys.**

Under the Trafficking Victims Protection Reauthorization Act of 2008, the Department of Health and Human Services (HHS) is required to “ensure to the greatest extent practicable” that all unaccompanied children “have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.” The expansion of legal services is needed to successfully end and prevent the labor exploitation of unaccompanied children, as well as other exploitative practices. It should also be noted that some of these children are old enough to work in a safe workplace. Work authorization should be provided to those who want or need to work and are old enough to do so in a safe workplace. Without work authorization, unaccompanied children are left vulnerable to exploitation while experiencing immense financial pressures. Lack of access to proper representation heightens the risk that children will not receive protections they are afforded under the law.



#### **Recommendation 4:**

**Expand the Unaccompanied Refugee Minors program.**

The Refugee Act of 1980 provided child welfare services for refugee children. Among the services created was the Unaccompanied Refugee Minors (URM) program, which allowed refugee children unaccompanied by a parent or other close relative to receive services through the states' foster care programs.

We recommend an expansion of the URM program to create additional placements and more appropriate services for unaccompanied children without family in the United States who receive immigration status making them eligible for URM care. Their unique circumstances make them difficult to place in regular URM programs. Their lack of family in the United States puts them at risk for remaining long-term in ORR custody. Although ORR has foster care programs for unaccompanied children it would be more beneficial for the children to enter a URM program specifically designed for their special behavioral and developmental needs, and it would allow them to exit federal custody, transfer to a long-term placement, and benefit from the state-funded programs available through foster care.

#### **Recommendation 5:**

**Develop new and creative support programs for unaccompanied children after release.**

While many unaccompanied children receive referrals to community resources, such as education, legal services, and medical and mental health, new and more creative programming could better reach these children in their new environment. We recommend a mentoring program to help unaccompanied children navigate their unique situation in the United States. Unaccompanied children post-release could be paired with a mentor who is a former unaccompanied child to help guide and advise them. This connection would allow the unaccompanied child to feel understood by someone with first-hand lived experience, have a trusted contact who understands their situation, and foster a connection with a person who can serve as an example of the possibilities for them in the United States.

#### **Recommendation 6:**

**Ratify the United Nations Convention on the Rights of the Child (UNCRC).**

The UNCRC is the most widely adopted human rights pact in the world, signed and ratified by every country recognized by the United Nations, except the United States. The treaty was the first to establish international standards on the rights of children. If the United States wants to continue to promote child rights internationally, and affirm the rights of children domestically, the country must ratify the UNCRC. The treaty has been signed and ratified by 196 countries, making it the most ratified treaty in the world.



Many of our state laws continue to contravene the UNCRC, violate the rights of children, and harm their mental and physical wellbeing. While ratification of the treaty is not necessary to amend these state laws, ratification will put pressure on states that are out of compliance with the treaty to change their laws that harm children and provide a guide to federal and state legislatures on the best practices to protect child rights.

Furthermore, its ratification would provide the United States with enhanced legitimacy internationally when advocating for children's rights. Currently, other countries can point to our failure to ratify the UNCRC when U.S. representatives admonish them for violating the rights of children. The United States could finally ratify the Convention and demonstrate its commitment to the protection of children's rights.

### Conclusion

It's been 20 years since the Homeland Security Act of 2002 transferred the Unaccompanied Children's Program to the Office of Refugee Resettlement. Over the years, the involved federal agencies, Congress, and nonprofit and advocacy organizations have worked to make changes as the program continued to have tremendous growth. Although the implementation of the changes was often slow, it was made, and many of those changes have resulted in a better system of care for unaccompanied children. USCRI and The Children's Village will continue to highlight the experiences of the past, using them to inform our current work with unaccompanied children, and building on them to make recommendations for program improvements so that all children can move through their journeys in safety, with their rights protected, and with hope for their futures.

## THE CHILDREN OF TOMORROW



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Unaccompanied children have an unwavering amount of resilience. Despite the challenges in their young lives, they persevere. In the following, I present notes from unaccompanied children sharing their dreams and aspirations for their futures.

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<sup>154</sup> Photo was provided by an ORR funded shelter.



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<sup>155</sup> My goal will be to take charge of my future because I believe in myself, and I am deciding to be happy.

## Mis metas

### Mi futuro

yo quiero ser una Enfermera  
para cuidar a los ancianos  
enfermos y niños enfermos.  
y tambien ser policia  
ayudar a resolver una  
problema.

### Decido ser feliz

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<sup>156</sup> I want to be a nurse to take care of sick elderly people and sick children. Also, I would like to be a police officer to help solve a problem.



<sup>157</sup> In the future, I want to be a soldier and be able to travel. I also want to be a police officer and veterinarian. As Barbie says, "you can be what you want to be".

## Mis metas

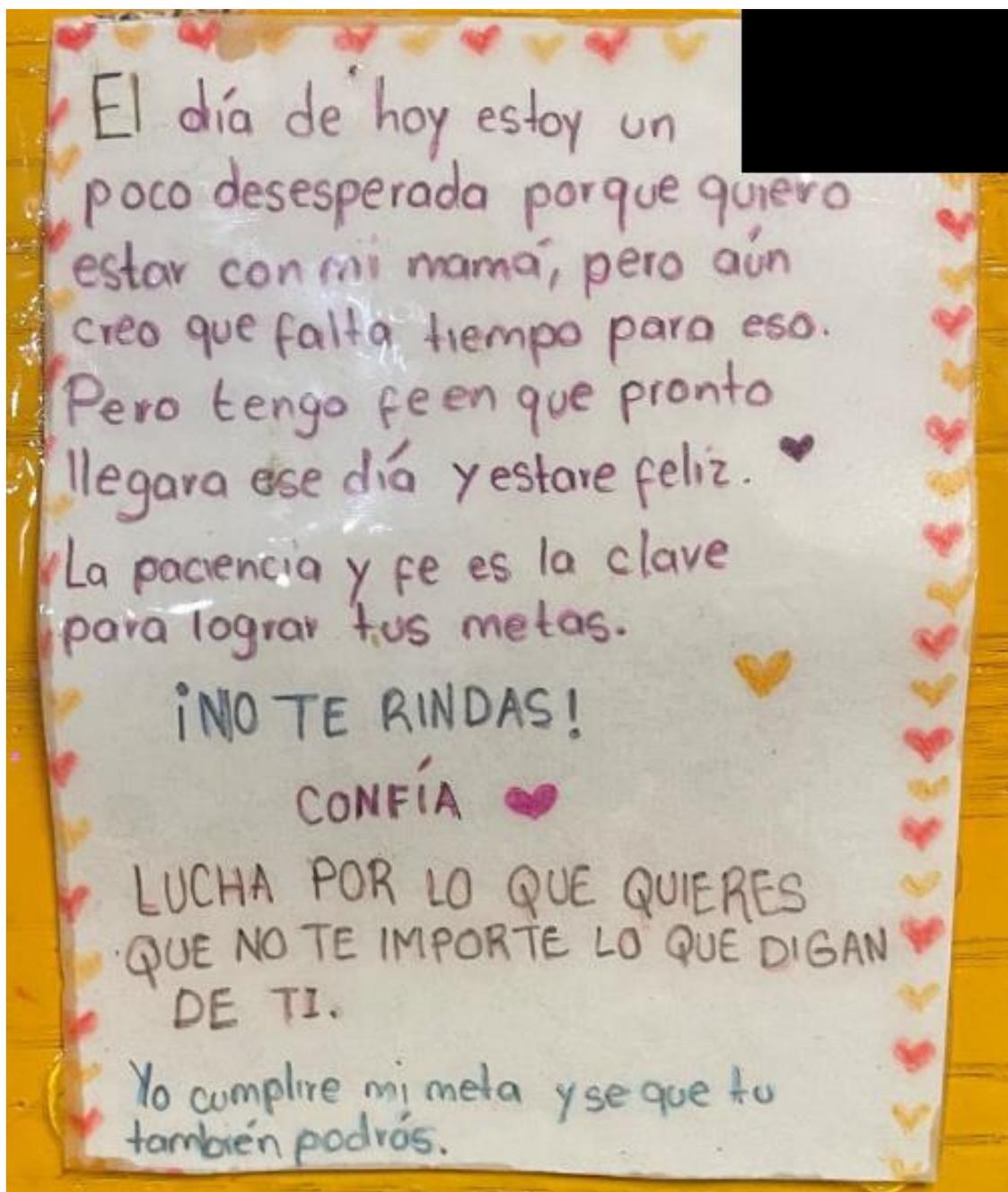
### Mi futuro

Mis metas son a que yo  
termine mis estudio con P1er  
Mi sueño que siempre soñaba  
terminar mi carrera y ser  
una Maestra Profesional  
sacar a mi familia siempre  
adelante

### Decido ser feliz

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<sup>158</sup> My goals are to finish school, to fulfill my lifelong dream of becoming a teacher, and to move my family forward.



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<sup>159</sup> Today I am feeling hopeless because I want to be with my mom, but I think we need more time for that to happen. But I have faith that that day will come soon, and I will be happy. Patience and faith are the keys to achieving your goals. Don't give up! Have faith. Fight for what you want. Don't care about what others say about you. I will achieve my goal, and I know that you can, too.

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## ABOUT THE AUTHOR

Jenny Rodriguez is a policy analyst at the U.S. Committee for Refugees and Immigrants. She is a former AmeriCorps volunteer and Bill Archer Fellow.

### About USCRI:

The U.S. Committee for Refugees and Immigrants (USCRI), established in 1911, is a nongovernmental, not-for-profit international organization dedicated to addressing the needs and rights of refugees and immigrants. Its vision is for a world where immigrants, refugees, and uprooted people will live dignified lives with their rights respected and protected in communities of opportunity. USCRI protects immigrant children who arrive in the U.S. without parents or resources, ensuring children receive the legal, social, and health services they require. USCRI advocates for the rights of refugees and immigrants both nationally and globally, helping drive policies, practices, and laws. Visit [www.refugees.org](http://www.refugees.org).

### About The Children's Village:

Founded in 1851, The Children's Village (CV) is a charitable organization that believes that all children, everywhere, deserve a chance to flourish. CV reaches more than 17,000 children, teens, and families each year through family reunification and support, community and school-based programs, alternatives to incarceration, trafficking and homelessness prevention, and housing for all. Learn more at [www.childrensvillage.org](http://www.childrensvillage.org).

