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S. HRG. 118–41

ENSURING THE SAFETY AND WELL-BEING OF UNACCOMPANIED CHILDREN

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JUNE 14, 2023

Serial No. J–118–22

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PUBLISHING OFFICE
52–710 PDF WASHINGTON : 2024

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ENSURING THE SAFETY AND WELL-BEING OF UNACCOMPANIED CHILDREN

WEDNESDAY, JUNE 14, 2023

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice at 10:03 a.m., in Room 106, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Blumenthal, Booker, Padilla, Ossoff, Graham, Cornyn, Cruz, Hawley, Cotton, Kennedy, Tillis, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. This hearing of the Senate Judiciary Committee will come to order. I want to start with a little history. Back in 2002, over 20 years ago, this Committee held a hearing on bipartisan legislation entitled the Unaccompanied Alien Children Protection Act. It was introduced by our colleague, Senator Dianne Feinstein, along with Republican Senator from Kansas Sam Brownback. The bill was a response to a bipartisan concern that unaccompanied children seeking safe haven in the United States were being deported back to countries where they were not safe and where they might be persecuted.

Six years of debate followed on this issue and in 2008, listen carefully, the Senate unanimously passed the Trafficking Victims Protection Reauthorization Act, TVPRA. That bill included the Unaccompanied Alien Child Protection Act. It was signed into law, listen again, by President George W. Bush. Sadly, since then, the immigration debate has devolved into a much more partisan issue, and often then vulnerable children are the victims of that political battle. During the Obama administration, some Republicans falsely claimed that the DACA program, which the President initiated at my urging to protect Dreamers for deportation was the reason that unaccompanied children were fleeing to our border.

I've heard that argument made by one Senator on the floor repeatedly. When the Trump administration began and unaccompanied children were still coming, some Republicans claimed the TVPRA of 2008 was really to blame. They're ignoring the obvious. The world was and still is in the midst of the worst refugee crisis in modern history. And we used to believe a bipartisan approach to this would have a moral and legal responsibility created to protect vulnerable children who are fleeing persecution. We've received

about 10,000 or 12,000 migrant children in the City of Chicago sent to us from the Governor of Texas and other Republican leaders in States. I've made a point of trying to meet some of these people and understand what led them to this desperate situation.

It's heartbreaking. It was less than 2 weeks ago that I was at a Piotrowski Park shelter in the City of Chicago and met with 50 or 60 of these mothers and their kids. The kids are little kids who have made this death-defying journey to the United States. And you think to yourself, "Who in their right mind—what parent in their right mind would subject their kids to the danger of that journey? How desperate they would be to have that happen." You see it over and over again. They felt that they couldn't feed their children, or the children couldn't exist in a safe way in their countries any longer, and they were prepared to risk their lives and the lives of their children to make the journey.

This is an issue that should transcend politics. So I tried to be consistent in my oversight efforts, whether the President was Republican or Democrat. I vigorously opposed President Trump's inhumane family separation policy, and I immediately raised concerns following recent reports that unaccompanied children were being exploited. Ranking Member Graham and Immigration Subcommittee Ranking Member Cornyn, along with other Republican Members of the Committee, sent a letter asking me to hold this hearing. As I told them in response, I would accommodate this request because I was already working with Immigration Subcommittee Chair Padilla on today's hearing.

I also asked Senators Padilla, Graham, and Cornyn to join me in a document request to the Department of Health and Human Services to learn more about what went wrong and how to fix it. What we must not do is weaken the TVPRA and make it easier to deport unaccompanied children back into harm's way. Our laws require that these children are screened for human trafficking, housed in child-appropriate settings, reunified with any family in the United States while they await their immigration proceedings. But the tragedy is that these children are still at risk. Migrant children have been forced to work long hours in extremely dangerous conditions, from meatpacking plants and slaughterhouses, for example.

Well, many, many years ago when I was in college, I worked my way through college four straight summers in a slaughterhouse in East St. Louis, Illinois. I can tell you from my personal observation it is no place for a child. They could easily lose a limb or their life in this dangerous environment. Since 2018, our Nation has seen a nearly 70 percent increase in illegally employed children. Earlier this year, I demanded the Departments of Labor and Health and Human Services do more to protect these kids. Both have made some progress, but not enough. And let's not forget our responsibility on this side of the table. It's no secret that employers throughout our country are struggling to find workers.

Some States like Arkansas, actually loosen child labor laws in the hopes of addressing workforce needs. Let's consider another approach. Let's reform our immigration laws and allow adults to meet workforce needs instead of exploiting children fleeing abuse. I hope today's hearing will be an opportunity to revive the bipartisan spir-

it of many years ago and discuss how to protect unaccompanied children who are frightened and traumatized.

With that, I hand off to the Ranking Member, Senator Graham.

OPENING STATEMENT OF HON. LINDSEY O. GRAHAM, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator GRAHAM. Thank you, Mr. Chairman. I appreciate you having the hearing. I think this hearing will illustrate the differences between our side and yours about a problem we have in common. Nobody wants unaccompanied children to be abused, to be put in labor environments that are unhealthy. Bottom line is, the policies of this administration, Mr. Chairman, are not working. In FY 2020, there were 33,239 unaccompanied minor encounters at our border. In FY 2022, 2 years later, it's 152,057. There's been a 357 percent increase regarding unaccompanied minors at our border.

Have you ever asked, "What happened?" You should. We all want children to be well taken care of. But have you ever asked the question, "What is it in the last 2 years that's driven the numbers up 357 percent?" It's policy. The Biden administration has a policy that if you're an unaccompanied child not from Canada or Mexico, you will not be sent back to the country of origin. In FY 2022, the average age of an unaccompanied minor was around 14, 64 percent were boys.

The countries of origin: 47 percent from Honduras, 29 percent from El Salvador, and others 11 percent. Honduras, Guatemala—excuse me: Guatemala, 47 percent; Honduras, 29; El Salvador, 13. These three countries make up the bulk of unaccompanied minor encounters at the border.

Now, why is that? If you're an unaccompanied minor from that country, you're not sent back, and people know it. You're located in the United States at taxpayer expense. You're enticing more, not less. Here's a solution. Have a consistent policy. Send children back to their home country even if they're not from Mexico or Canada. This will stop overnight. The journey to get here is hell on earth. Only God knows what happens to young girls in particular.

So the reason we wanted this hearing is to highlight the problem and ask the Biden administration to consider changing policy. They have changed policy regarding post-Title 42. We're down to 3,500 a day, and we're celebrating that. But that's better than 10,000 a day. So, Mr. Chairman, the answer to why there's been a 357 percent increase in unaccompanied minors is policy. I'd love to work with you, but there's nothing we can do until you change your policy.

The three countries I just named have figured out that if you can get an unaccompanied minor here in the United States they never leave. Bottom line is, the *Flores* decision has also incentivized the use of children. If you come as a family unit, we can't detain a child. Then, the family most likely is released in the United States. We've created a demand for human smugglers to get children involved in the smuggling process. Because if you can get a child, whether it's a family member or not, you claim it to be a family, then the chance of you being deported has gone way down.

So we have incentivized the use of children in illegal immigration, and nothing will change until we change our policy. This idea of a family unit, it's obvious to me that more and more people in the human trafficking business, smuggling, have figured out that if you can get a minor child, not an unaccompanied adult male in the mix, the chance of the unit staying in the United States goes exponentially up. So, as we talk about the abuse, we all agree is bad, we'd like it to stop in terms of hiring children illegally. Count me in in stopping that.

But the reason we wanted this hearing is to try to persuade our friends on the other side that the policy choices of the Biden administration are creating an unending flow of children to this country. The idea of having a child in a family unit, whether they're family or not, the incentives for the smugglers to use children is through the roof. And we're now seeing children be recycled that came here, released in the United States, sent back to the country of origin, and the smugglers use them yet again. You're never going to break this cycle until you change policy. And there'll never be an immigration deal that codifies this strategy.

So a good-faith step in fixing our immigration problems is to change policy regarding unaccompanied minors. It's in the minor child's interest and it's in our national security interest and it's in our interests as a nation. This needs to change and stop. And a 357 percent increase in the last 2 years is going to continue in perpetuity until we change policy.

Chair DURBIN. Senator Graham, as you often say, "Count me in," I hope you understand I mean it. You and I have worked on this issue for how long? I don't know, more than 10 years. And we've tried to find bipartisan solutions, sometimes angering people on our own parties in the process. I met last week with Congresswoman Veronica Escobar from El Paso, who is working on a bipartisan approach in the House. I hope we can talk to her and talk about policy changes on a bipartisan basis. Happy to introduce now Senator Padilla, Chairman of the Immigration Subcommittee.

OPENING STATEMENT OF HON. ALEX PADILLA, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator PADILLA. Thank you, Mr. Chairman. Thank you, Ranking Member Grassley and Mr. Chairman, also for the opportunity to co-chair this hearing focused on not just protecting unaccompanied children, but also taking up the mantle in the fight against child labor exploitation, one of the dark sides of our Nation's history that, sadly, we continue to fight today. Now, every day in America—colleagues, every day in our United States of America, school-aged children wake up and get ready for their day. But instead of putting on their tennis shoes and their backpacks in cities and towns across the country, too many of them are putting on steel-toe boots and work belts.

And they're preparing to climb roofs, operate hazardous machinery, brave scalding hot kitchens in conditions that most Americans thought were outlawed long ago. These children wake up before the sun comes up to find day labor jobs or work in hazardous conditions overnight in slaughterhouses. These are no exaggerations. I think most Americans would be right to think that Congress has

already acted to prevent kids from working dangerous jobs for a long number of hours.

But, because of the dire financial needs of their families back home, coupled with the disastrous immigration policies of the prior administration, and a repeated willingness of corporations to turn a blind eye, more and more unaccompanied immigrant children are slipping through the cracks. Since 2018, just the last 5 years—since 2018, the Labor Department has seen an increase of 69 percent in children found to be employed illegally. In some instances, that's meant kids as young as 12 having to fight tired eyes during their school day only to go from there to work a night shift in a job.

For others it's meant missing school entirely, whether it's to put in more hours to send more money back home to their families or just to pay their expenses and survive here in America. As we will hear today from our witnesses, there are a few contributing factors that enable this fundamental moral failure to play out. While there have been some failures along the way to properly vet sponsors, most if not all children placed with sponsors could benefit from post-release services, especially for vulnerable minors after they are released.

But we can't ignore the root of this problem. The reality is that this problem is another direct result of our broken immigration system. During the Trump administration, our immigration system became so restrictive that families could not come to our border to apply for asylum together. This forced parents to send their kids alone so at least they could escape to find safety. And because of that policy, the kids who made it here are being put in heartbreaking positions. Positions that they likely wouldn't be in had their parents been able to lawfully seek asylum with them as our laws allow.

And so, yes, there is a larger context to consider here. And too often I hear my Republican colleagues complain about border security but refuse to take up or vote for meaningful reforms to our immigration laws that enjoy bipartisan support. And somehow, they're shocked when they learn of migrant children working long hours overnight in hazardous conditions? Or they limit the labor shortage without working to tap into the enormous pool of labor available to us, that's historically been available to us through existing visa programs and other areas of our immigration system.

Now, privately I hear a lot of support for modernizing our immigration laws and how it would be great for business, how it'd be great for their local economy, their State's economy, our national economy, but they withhold their support for expanding legal pathways for migrants to come here and help boost our economy. So we have to acknowledge the totality of this problem if we are to work together to update our outdated immigration system. And Mr. Chair, count me in as well. But, on top of that, as we've learned from multiple exposés over just the last several months, there is a pattern of willful ignorance that exists in America.

It would be misleading to say that this exploitation was happening entirely in the shadows. The major corporations who benefit from this exploitation seem more than happy to turn the lights off, close the door, and count their profits. And often, when we learn of child labor violations we hear excuses by ownership passing the

buck to subsidiaries and contractors. We hear corporate value statements reiterating zero tolerance policies, but those policies have become hard to take seriously when they're repeatedly issued for damage control.

They fall flat when the dust settles. In April of this year, Senator Hickenlooper and I wrote to 27 CEOs of major U.S. companies asking about their compliance with child labor laws. And here's what we heard back, well-written, carefully worded responses, but not much accountability. So that's not enough for me, because if the very companies who are employing these children dozens of hours each week aren't willing to take ownership of their shortcomings then nothing will change.

Yes, we have the laws on the books already, but now we need to support the Department of Labor and the Department of Justice in doing their work to enforce the law and hold employers accountable. So I'm looking to hearing more from our witnesses on just how dire conditions are for these children in reality today in the United States of America and what they see as a path forward to protect them, protecting children who should have never been in those circumstances to begin with. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Padilla. And I want to recognize the senior Senator from Texas, Senator Cornyn, who is the Ranking Member of the Immigration Subcommittee. Senator Cornyn.

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Chairman Durbin, for calling this hearing today in response to the letter we wrote on April the 27th. We mentioned in the letter that the first major indication of a problem with regard to what's happening to these children appeared in a Bloomberg story in 2021, which reported a Federal law enforcement investigation in which the Health and Human Services had released dozens of these children to the same sponsor—dozens to the same sponsor who exploited them for labor in upholstery processing and similar industries.

And then, next year, Reuters reported that dozens of children had simply disappeared in the Houston area and that the Houston Police Department was struggling to try to locate them. And then, earlier this year The New York Times dropped two major investigative bombshell stories exposing widespread exploitation of unaccompanied children. We're talking about 13-, 14-, 15-year-old kids forced to work in meatpacking plants and food manufacturing facilities.

Worse, The New York Times illustrated that senior Biden administration officials, like Secretary of Health and Human Services Xavier Becerra, knew—knew about the continued—about this and continued to move children out of Health and Human Services as fast as possible by loosening vetting requirements for sponsors. Two former officials were also aware of this scandal and that these children were being exploited on a major scale, that includes Labor Secretary Marty Walsh and White House Domestic Policy Advisor Susan Rice. To get to the bottom of this, my colleagues and I on this side requested the Chairman to bring these high-level Government officials in to get their explanation for what happened.

And I'm disappointed that they could not be troubled to appear here today. The truth is they don't care. President Biden does not care about the fate of 300,000-plus unaccompanied children that have been placed with sponsors in the United States since he became President. President Biden and his administration can't tell you where these children are. His administration can't tell you what they are doing, what is being done to them. Whether they're being exploited for labor, whether they're being sex trafficked, whether they're being abused or neglected. They simply don't care. Because if they did care, they would do something different.

So, while I appreciate the appearance of every witness here today, the truth is that nobody here today can shed light on the administration's policies and why they just simply decided to loosen vetting requirements. This is particularly relevant since last week the Office of Refugee Resettlement and Health and Human Services published the results of its self-audit, grading its own papers, and guess what? They gave themselves an A. They said, "No problem. Everything's all right." And that they had adhered to their own loosened vetting requirements and placement processes for sponsors. But this claim is laughable.

It would be laughable if it wasn't so sad, if it didn't make you angry, especially given the report in The New York Times which based on HHS's own data shows a massive increase in reports of abuse and neglect just months after President Biden came into office.

[Poster is displayed.]

Senator CORNYN. This chart, which I believe appeared in the New York Times story, shows that in 2018, the number of calls, reports of trafficking and abuse of migrant children. And you can see for yourself what happened since the time President Biden came into office.

Those numbers are skyrocketing. But the truth is these are just the ones that people called in about or complained about. Where are the other 300,000 children? They can't tell you, and they don't care. Well, taking a step back, the UAC, unaccompanied alien children crisis, is a symptom of a larger problem, basically, that the Biden administration has through its policies fomented a crisis on the border by creating pull factors. They let you know ahead of time if you make it to the border under certain circumstances, you are going to be welcomed into the interior of the United States, never to be heard from again.

Because only 12 percent of the people who actually show up for an asylum hearing actually qualify. But the transnational criminal organizations, the coyotes, the criminals who profit from this, they know that as long as they can continue to move people across the border into the United States that the Biden administration will not care, will not take steps to stop it. And we don't know what kind of human misery is being experienced. It ought to make everybody here angry. But it makes me angry that 108,000 Americans died last year of drug overdoses, including 71,000 from synthetic opioids from precursors shipped from China to Mexico and that come across the border.

And the cartels know if you flood the border with children, with asylum seekers, and others, that Border Patrol will be over-

whelmed. And so here comes the drugs, 108,000. And the Chairman mentioned DACA, the Deferred Action on Childhood Arrivals. These are young people who came as children who are now adults. And here we are 10 years later, there's not been one single bill marked up here in the Judiciary Committee or moved across the floor that would provide them some stability. And they've been tied up in litigation and are currently in litigation in the Southern District of Texas.

So, while some people pay lip service to the need to do reforms to fix the problem, nothing is being done. Our friends on the Democratic side happen to control the Committees, then the agenda. Senator Schumer decides what bills are introduced in the Senate as a whole and marked up and voted on, on the floor. We need to do better than this. We must do better than this. We must show that we care about the fate of these children by doing our jobs. And we're not doing it so far.

Chair DURBIN. Thank you, Senator Cornyn. I'd like to make a couple points, if I may. The hearing today is an effort to learn more from experts in the field on what we're facing, but it is not the last hearing by any means. I have invited Senator Cornyn and Senator Graham to join Senator Padilla and myself and to send letters to the agencies which Senator Cornyn has mentioned for specific documentary evidence as to what has happened particularly in the area of sponsorship and responsibility for these children.

I would say that the Biden administration recently faced the end of Title 42, which many people thought would lead to a dramatic increase in people at the border. The opposite is the case. And when it comes to children, over the last 30 days since the lifting of Title 42 the average encounters of unaccompanied children have dropped by more than 50 percent. That's good news. It's not sufficient, but it's a good move in the right direction. The solution for this problem facing America and many other countries is not to export these children, but it's rather to find a process that is orderly, that reduces the number who appear at the border on an unaccompanied basis, and reflects our values.

So I think that's the ultimate goal we all should share, and I hope we can move toward that goal. I'm now going to introduce the——

Senator CORNYN. Mr. Chairman, may I just ask a question?

Chair DURBIN. Sure.

Senator CORNYN. Am I to understand that—and I appreciate it that you've called this hearing, but that you expect to have other hearings where we'll have the Government officials responsible for administering these programs as witnesses?

Chair DURBIN. That's my intention, Senator Cornyn.

Senator CORNYN. Thank you for doing that.

Chair DURBIN. I think bringing these folks in to speak to us followed by the documentary evidence which we're asking for from the administration is the proper way to approach this. And I'd be glad to work with you in that regard. We continue to have annual oversight by this Committee of the relevant agencies that are under our jurisdiction. But, when it comes to ORR and HHS that is ordinarily outside our jurisdiction, but I think under the rubric of immigration law that we certainly can pursue that.

Senator CORNYN. Mr. Chairman, if I could just—forgive me for responding, but I just—you know, it feels like we're trying to leverage the welfare of these unaccompanied children for a larger immigration bill that you and I have been talking about for decades and have been unsuccessful in getting accomplished. I just think it's unfair to these children to leverage their fate on some unrelated immigration legislation, just as I feel like it's unfair to the DACA recipients who are awaiting some congressional action while they have been languishing in court for the last 10 years.

So that's what it feels like because we're saying we can't do anything in this area until we deal with unrelated immigration issues. Am I misconstruing what you're saying?

Chair DURBIN. Yes, you are. I haven't said that, and I don't intend that at all. We want to move on this problem because of the urgency involving vulnerable and unaccompanied children, period. Do I believe that the solution to this problem is comprehensive immigration reform? Yes. You know that it passed in the Senate years ago because of a bipartisan effort, and I hope we can return to that spirit. But no, I will not pin the fates of these children or DACA on some comprehensive package.

I'm prepared to deal with any and all of them on an immediate basis if we have some understanding as to what can pass this Committee and ultimately be successful on the floor of the Senate.

Senator CORNYN. Well, you know, Mr. Chairman, you and I have been talking about this for, my count, 20 years.

Chair DURBIN. And?

Senator CORNYN. And nothing has happened.

Chair DURBIN. Well, you've got to start voting for an immigration bill if you believe in them.

Senator CORNYN. Well, congratulations. They got it through the Senate, but it didn't pass the House.

Chair DURBIN. Well——

Senator CORNYN. It wasn't signed into law. So what have we accomplished?

Chair DURBIN. Well, I wish you would have supported it. It would have been helpful. It was a bipartisan effort, and it passed the United States Senate. I'm looking for a bill that will win at least 60 votes on the floor. I hope we have that same ambition and goal. At this point, I want to introduce the panel of witnesses. I'll welcome the Democratic witnesses and then turn to Senator Cornyn for the Republican witnesses.

Our first witness is Venus Bradley. She has a personal story to tell us. She's fostered five unaccompanied, non-citizen children and is adopting two sisters who came to the U.S. from Central America. Then, we have Lorie Davidson serving as vice president for Children and Family Services at Lutheran Immigration and Refugee Service. Our final majority witness is Terri Gerstein, director of the State and Local Law Enforcement Project at the Harvard Law School Center for Labor and a Just Economy, a senior fellow at the Economic Policy Institute. Senator Cornyn.

Senator CORNYN. Lora Ries is the director of the Border Security and Immigration Center at the Heritage Foundation. She has over 26 years' experience in the immigration and homeland security arena and has worked for the Department of Homeland Security,

the Department of Justice, and the House Judiciary Subcommittee on Immigration and Claims. She received her JD, as well as her BA, from Valparaiso University in Indiana.

Anne Basham is the founder and chair of the Interparliamentary Task Force on Human Trafficking and the CEO of Ascend Consulting, a human rights advocacy firm. She previously served as a senior advisor for the Department of Justice, Office of Victims of Crime, where she helped develop strategies for more than $2 billion in Federal funding to address human trafficking, terrorism, sexual assault, and child abuse. She earned her master's degree from the University of Virginia. Thank you.

Chair DURBIN. Thank you, Senator Cornyn. After the witnesses take the oath, they'll each have 5 minutes to speak and then 5 minutes questioning from each Senator in the Committee. I'd ask the witnesses to please rise. Please raise your right hand.

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that the witnesses answered in the affirmative. Ms. Bradley, you're first.

STATEMENT OF VENUS BRADLEY, FOSTER PARENT, DURHAM, NORTH CAROLINA

Ms. BRADLEY. Thank you. My name is Venus Bradley. My husband and I have been foster parents in Durham, North Carolina, for the past 7 years. In that time, we have taken in 25 children ranging in age from 2 to 17. Five of them have been immigrant children. In March 2020, we were placed with two sisters who were 15 and 17 at the time. I would like to share a little bit about their story and with their permission, of course. When they were 11 and 13, it was decided that they were going to be sent to America to come live with their father.

Their mother was a palm oil plantation worker. She worked long days, and she had her first baby at 14 years old. She knew the life that her children were going to have, and she was worried about their future. Their uncle was in the military, and he was beheaded. They knew who did it, and they were told that if they went to the police they would be killed, too. So their mom made the difficult decision to have a trusted relative take them on the long journey to the Mexican border. There they were taken into custody.

They were first taken to a detention center. They were immediately separated because one was a teenager, so she was put in a different room. And the younger one describes how she just cried for hours, along with a lot of other kids who cried long into the night. She says it was really cold. They were just given these little aluminum blankets and not much information. They didn't know what was going on, and they were there for 2 weeks. Eventually, they were moved to a children's home which was a little better. There were other kids there. There was school. They got to watch movies.

But there were also a lot of rumors. And the girls met kids who had been there for 2 or 3 years. And so they were very concerned about what was going to happen. They were very scared, and they also were still separated. They weren't allowed to, you know, sleep in the same room or anything like that. So there was still a lot of fears there. After 6 weeks, which was a short time, they were even-

tually moved to their father. And that relationship was fine for a while, but eventually turned sour and they reported abuse, and they were taken into foster care.

And when no safe relatives could be found, they were moved to us in foster care. When they came to us, they were very traumatized. They didn't trust adults. They had a lot of fear. The youngest had nightmares nightly. She had to take sleep aids to go to sleep. The oldest was very parentified, which means that she tried to be a mom to her little sister but didn't have any of the emotional skills to do it. And they really struggled in the beginning. And we tried to help them as much as we could with therapy, but it took a while before they were willing to trust and start dreaming of a future for themselves.

We're going to fast forward now. My oldest is 20. She just graduated with a cosmetology degree. She's passed her State boards. She's already got two job offers. My youngest just graduated high school on Monday. She's been accepted into a 4-year college. She's going to major in business, and she wants to go into real estate, I think. And before you think that that's a happy ending, my girls still have a lot of obstacles that are in their way besides the employment authorization documents that we have struggled to get and maintain. And we also have a huge visa backlog.

I was told it would take 3 to 8 years for my girls to get their green cards and that's after they've applied, which they did a year and a half ago. And so we are waiting, and they are eligible for nothing. They are not eligible for FAFSA. They're not eligible for student loans, scholarships, or even foster care finances. And that's been a real struggle for us trying to find them services and ways for them to grow and for them to actually be, you know, proud members of society, to be able to work, and eventually they hope to have their citizenships. They want to be American citizens.

They are lucky they have us, but there's a lot of kids in the system who just—they don't get anything. And then, they have people who aren't supporting them and they're not getting any services to help provide for them and they're struggling. So my takeaway is that these are kids. They're just kids. They have dreams and hopes for the future, and like my daughters they deserve and need support and care in order to achieve their dreams. Thank you.

[The prepared statement of Ms. Bradley appears as a submission for the record.]

Chair DURBIN. Thank you, Ms. Bradley. Ms. Ries.

STATEMENT OF LORA RIES, DIRECTOR, BORDER SECURITY AND IMMIGRATION CENTER, HERITAGE FOUNDATION, WASHINGTON, DC

Ms. RIES. Chairman Durbin, Ranking Member Cornyn, Senators——

Chair DURBIN. Sorry, we can't hear you.

Ms. RIES [continuing]. Thank you for inviting me to testify today on how we can ensure the safety and well-being of unaccompanied children. The historic border crisis our country is currently facing isn't only harming American communities and the integrity of our system, but migrants themselves, especially children many of whom arrive unaccompanied. Let's face it, this is a crisis within a

crisis, and it began in 2008 with passage of the Trafficking Victims Protection Reauthorization Act or TVPRA, a law that hasn't lived up to its name.

If we really want to ensure the safety and well-being of these vulnerable children, we must be honest about what caused the crisis and how to end it. What started in the mid-1980s as the *Flores* class action lawsuit about immigration detention conditions for alien minors and to whom such minors may be released has turned into a multibillion-dollar legal regime that encourages unaccompanied minors to come on a treacherous journey to the U.S., requires the Federal Government to release them into the custody of sponsors who too often end up abusing or trafficking them, and according to DHS's Enforcement Lifecycle Report, results in 94 percent of them remaining in the U.S.

Alejandro Mayorkas said repeatedly at the beginning and throughout his tenure as Secretary of Homeland Security that he would not send back unaccompanied minors. What did that tell parents, teenagers, and smugglers seeking to line their pockets? That this administration was opening the door wide open for unaccompanied minors to enter and stay in the U.S. And the parents, teens, and smugglers around the world heard it loud and clear. A historic 366,000 unaccompanied minors have been encountered just on the southwest border so far under the Biden administration.

For those who closely follow border security, border data is tracked month by month. Yet after 28 months of record entry of unaccompanied minors, the Biden administration has not changed its policies to prevent such minors from coming here. Instead, the administration's response has been, "Get them in faster." HHS Secretary Xavier Becerra was quoted by The New York Times complaining to staff about delays in releasing unaccompanied minors into the country, saying, quote, "If Henry Ford had seen this in his plants, he would have never become famous and rich. This is not the way you do an assembly line," unquote.

Secretary Mayorkas has likewise pushed for speedier processing of illegal aliens, including minors, into the U.S. In his joint proposed rule, Circumvention of Lawful Pathways, Secretary Mayorkas admits that the objective of the CBP One mobile application appointment scheme is for CBP, quote, "to process more individuals than would otherwise be possible," unquote. Like the border crisis itself, this administration's handling of unaccompanied minors is intentional. And beyond the historically high numbers, the results have been disastrous for the children involved and for Americans.

Unaccompanied children are regularly raped and exploited on their journey to the U.S. and their lives, sadly, do not improve once they enter the U.S. They are turned over to questionable, if not dangerous, sponsors, forced to work in unsafe conditions that violate child labor laws, go missing by HHS, and are sex trafficked. Furthermore, MS–13 and other gang members, who are often teenagers, easily enter the U.S. as unaccompanied minors. Too many Americans and migrants have needlessly died at the hands of vicious gang members who were released into our communities.

The Biden administration has also recently made the nonsensical decision to stop using DNA testing of suspected fake families at the

border. The results are very predictable, a return to more child smuggling, child recycling, and trafficking. Say you're a family and we'll take your word for it. Both the title and intent of Section 235 of TVPRA is, quote, "enhancing efforts to combat the trafficking of children," unquote.

And yet, from the historic volume of unaccompanied minors enticed by the law, the careless release of these minors to inadequately vetted sponsors, and the multibillion-dollar windfall in profits this administration's open border policies have given the cartels, it is clear this administration is only creating more abuse, exploitation, and human trafficking. Section 235 of the TVPRA and the *Flores* court interpretation are abject failures. Instead of exploring ways to accommodate the current flow of unaccompanied children, Congress should accept that laws and judicial orders have resulted in terrible consequences, and it should replace them with a rational and effective system to prevent the unlawful and dangerous flow of unaccompanied minors into the U.S. Thank you.

[The prepared statement of Ms. Ries appears as a submission for the record.]

Chair DURBIN. Ms. Davidson.

STATEMENT OF LORIE DAVIDSON, LCSW-C, VICE PRESIDENT, CHILDREN AND FAMILY SERVICES, LUTHERAN IMMIGRATION AND REFUGEE SERVICE, BALTIMORE, MARYLAND

Ms. DAVIDSON. Thank you, Chairman Durbin and Ranking Member Graham and Members of the Committee for the opportunity to appear——

Chair DURBIN. If you——

Ms. DAVIDSON [continuing]. Before you today.

Chair DURBIN [continuing]. Pull the microphone just a little bit closer. Appreciate it.

Ms. DAVIDSON. My name is Lorie Davidson, and I'm a licensed clinical social worker and the vice president for Children and Family Services at Lutheran Immigration and Refugee Service. LIRS is a faith-based organization that has been serving refugees and immigrants for over 80 years, including unaccompanied children from all over the world.

Chair DURBIN. I'm sorry. You've got to use the microphone directly in front of you there.

Ms. DAVIDSON. Okay. Sorry about that. Is that better?

Chair DURBIN. Yes.

Ms. DAVIDSON. There we go. Okay.

Chair DURBIN. There we go.

Ms. DAVIDSON. Excellent. Children separated from their parents are among the most vulnerable populations. And when they arrive in the U.S., they frequently have limited support and significant difficulty accessing services in their communities. This is a result of language and cultural barriers and unfamiliarity with U.S. laws designed to protect children, such as labor laws and mandatory schooling. While considerable progress to safeguard UC has been made through legislation such as TVPRA, it is imperative that we provide additional safety measures both prior to and following the release of unaccompanied children to a sponsor.

The custody of unaccompanied children falls within the purview of the Office of Refugee Resettlement which is a part of Health and Human Services. ORR is required to care for unaccompanied children until they are reunified with the sponsor. Prior to the release of unaccompanied children, ORR requires that potential sponsors complete a family reunification process which includes various types of background checks depending on the relationship of the minor and the proposed sponsor.

Over the last decade, ORR has frequently changed the requirements for complying with background checks. Following the influx of 2014, where images of children under Mylar blankets flooded the news, ORR rolled back policies around background checks. The following year, Senators Portman and McCaskill held a hearing very similar to the one we are here today. By 2017, ORR stated that all required—ORR started requiring all categories of sponsors and household members to undergo extensive background checks.

But, when the census became too high and children were being held in military bases, ORR began rolling back background check protections; 2021 brought additional changes in ORR's policies related to background checks. With the intention of releasing children to sponsors quickly, ORR adopted Field Guidance, which expedited releases and removed some background checks for certain categories of sponsors. During this period, cases of child labor exploitation were exposed in meatpacking plants. The recent cases of child labor highlighted by The New York Times echo the 2014 Ohio egg farm case.

We must learn from our past mistakes. Rolling back background checks in times of influx cannot continue to be the solution to move children out of influx care facilities. ORR must consistently and appropriately vet sponsors based on their relationship to the child 100 percent of the time. LIRS recognizes that even when sponsors are thoroughly vetted, children may still find themselves in unsafe and exploitative situations. To mitigate these concerns, all children must be provided with access to in-person post-release services immediately following their unification with a sponsor.

LIRS applauds ORR's efforts to expand the home study in post-release program. Unfortunately, there are over 18,000 children who are waiting for home study post-release services. Some of whom have been on the waitlist since 2021. Post-release services are a highly effective way to mitigate the risk of exploitation and ensure the safety of children. But to do so, they must be implemented immediately following release and they must involve in-person visits. Additionally, UC need access to ongoing legal services post release.

All unaccompanied children are in removal proceedings, yet most do not have access to legal counsel. This makes it very difficult for them to comply with their immigration case. Attorneys are also often the only trusted adult relationship that an unaccompanied child has and the only individual to help them understand their rights and to really understand if they are being exploited. Not only do attorneys screen children for protection cases, but they also assist in creating a repatriation plan if it's determined that it's safe for the child to return to their country.

I believe that all children have a right to protection and that they're best cared for by their families. To ensure the safety and

well-being of unaccompanied children in our communities, Congress must focus on improving protections and ensuring adequate resources to make sure that all unaccompanied children receive in-person post-release services immediately following their release, and that they have access to ongoing legal representation to safeguard against labor and other types of exploitation. Thank you.

[The prepared statement of Ms. Davidson appears as a submission for the record.]

Chair DURBIN. Thank you. Ms. Basham.

STATEMENT OF ANNE BASHAM, FOUNDER AND CHAIR, INTERPARLIAMENTARY TASKFORCE ON HUMAN TRAFFICKING, FAIRFAX STATION, VIRGINIA

Ms. BASHAM. Thank you so much. Thank you, Chairman Durbin, Ranking Member Graham, and all Members of the Committee. It is an honor to testify before you today. And in this hearing, we have the opportunity to discuss one of the most important human rights issues facing our country right now. And that is the safety and well-being of unaccompanied children. To put this to you plainly, in March of this year, more than 12,000 unaccompanied children crossed the U.S. border, and this number has remained relatively consistent month after month.

Many of these children were between the ages of 11 and 15, the prime age targeted by sex trafficking. I am a mother of two teenage girls squarely within this age range, and I am especially distraught at the thought of the physical and sexual violence, human degradation, hunger, thirst that many of these children have experienced en route to the United States. And sadly, this is a prelude to the violence that many experience once they are in the U.S. when promises of a better life are shattered and many are sold repeatedly for sex and forced labor.

To address the root, though, I believe it is important to first understand who is crossing the southern border. And I know this was touched on earlier by Chairman Durbin, and I appreciate it: 47 percent of unaccompanied children were apprehended in the United States from—or were apprehended in the United States come from Guatemala, while an additional 40 percent come from Honduras and El Salvador. Last year, I was invited to speak at the Guatemalan Congress on the intersection between human trafficking and transnational crime.

I have met Guatemala's President Giammattei. And Guatemala's Secretary Against Sexual Violence Sandy Recinos is a colleague and a member of the International Human Trafficking Task Force that I lead. In February of last year, Guatemala passed a law which increased prison sentences for human smugglers from 2 to 5 years to 10 to 30 years. Guatemalan leadership clearly do not want their children to leave their country with smugglers, nor do they want their children to face the unspeakable violence that often awaits them on the journey to and after arrival in the United States.

Prior to arriving in the United States, these children and their parents are frequently in remote regions of Central American countries which are impoverished and somewhat isolated because of language barriers, which is not something that's often talked

about. For example, Guatemala alone has 24 different dialects. This means that it's difficult to communicate with parents the incredible risks that their children face if they leave in search of a better life. Coyotes are in a business, and they often trick or coerce mothers into paying children's hefty smuggling fees.

And the mothers do this because they believe that a better life awaits their children in the United States. Unfortunately, for many children this is simply not the case. Human trafficking is big business, and unlike other human rights abuses, it is a transnational organized crime, and it is the second largest criminal enterprise in the world. It is only surpassed by drug trafficking. It generates more than $150 billion annually for traffickers, and it actually funds every nation and movement that is currently threatening the security of our world today.

And that is why there is a critical intersection between human trafficking and illicit finance networks. For example, to put this globally, the Taliban particularly support their operations through the opium trade. And sex trafficking is a key component of their funding apparatus. Unlike drugs or weapons, however, a person can be sold over and over again. MS–13, one of the most notorious gangs operating in Guatemala, Honduras, and El Salvador, the three countries I mentioned, they operate similarly.

In 2015, the U.S. Treasury Department found that money generated by local MS–13 clicks engaged in sex trafficking, drug trafficking, murder for hire, extortion, money laundering—and I'm going to quote the U.S. Treasury Department "consolidated and funneled to the group's leadership in Central America." All of these factors contribute to a heightened risk of human trafficking, especially for children. Many of the Latin American children sent across the border alone or with smugglers have been taken by organized criminals and the cartels.

And what frequently follows, as we know and has been said here, is child sex trafficking or labor exploitation. We all know the story of The New York Times and the labor exploitation. But the Department of Homeland Security's HSI has been involved in the prosecution of sex trafficking cases involving children as young as 14 who were funneled across a human pipeline from Mexico to New York City. Other unaccompanied children enter the U.S. foster care system. And for children who have been raped, beaten, exploited, or starved on the long journey, this can be a very welcome transition. They are free from coyotes. They're shuttled through a version of the American life, but the U.S. foster care system is no sure haven.

Certainly, many U.S. families open their doors. They do it with integrity and self-sacrifice. My own parents were actually foster parents, and I was a foster sibling. And I applaud people like Venus Bradley here today who give these vulnerable children loving homes. We need more like that. But what we know, and this is so important for everyone to hear, is that the U.S. foster care system is already overly burdened with the number of children in the system outpacing the number of available families to provide a safe home.

And additional to that, we know that U.S.-born children in foster care are already the most vulnerable to trafficking. In fact, 60 percent—remember this, 60 percent of trafficking victims have been in

the foster care system at one time. So increasing burdens on the foster care system also puts vulnerable children more firmly in the crosshairs of traffickers. So there's so much more I could say, but I know in 2015 that President Obama made an incredible statement and he said, "To the people of Latin America, don't send your children unaccompanied, they may not make it."

If more Central American parents knew the truth of what their children would experience, many would think again before relinquishing them into the hands of violent criminals. And so I want to close with this, our country is divided on many issues. We know this. But on this we can all agree no child should be trafficked, and no child should be abused. And because of this I'm very hopeful that there are creative, compassionate, and comprehensive solutions. And I thank you again, Chairman Durbin, Ranking Member Graham, and the rest of the Committee for your time and attention to this. Thank you.

[The prepared statement of Ms. Basham appears as a submission for the record.]

Chair DURBIN. Thank you, Ms. Basham. Ms. Gerstein.

STATEMENT OF TERRI GERSTEIN, DIRECTOR, STATE AND LOCAL ENFORCEMENT PROJECT, CENTER FOR LABOR AND A JUST ECONOMY, HARVARD LAW SCHOOL, BROOKLYN, NEW YORK

Ms. GERSTEIN. Good morning, Chairman Durbin, Ranking Member Graham, and distinguished Members of the Committee. Thank you for the opportunity to testify today. To lay some initial groundwork, no one is against teenagers having jobs. What our child labor laws prohibit is work that is damaging to children in two ways. First, employers can't assign children to too many hours or to work at certain times of day like the night shift because of the harm to kids' education. Second, employers are not allowed to have children working on a set of hazardous occupations.

These jobs were chosen based on injury and fatality data, and they're among the most dangerous jobs for adults, so even more so for children who are at higher risk of workplace injuries. As we've heard, we are currently experiencing a serious upsurge in child labor violations. The Federal Labor Department reports a 69 percent increase in violations in the last 5 years. And of course, there's been extensive media reporting on this as well. These cases affect children who are immigrants and also children born here. Some cases involve companies we all know.

Chipotle, for example, paid over $9 million for child labor violations in Massachusetts and New Jersey. Other cases involve processing of products many of us eat every day like Cheerios. In Alabama, teenagers were working on manufacturing auto parts for a Hyundai supplier. In the most striking case, the Federal Labor Department found over 100 minors in several States working the night shift at meatpacking plants operated by large meat companies like JBS and Cargill. The children were working for a sanitation contractor, PSSI, that cleans the plants at night.

Children were cleaning the conveyor belt and meat processing machines, for example. Some had chemical burns. Some were missing classes or falling asleep in school. This work was performed at

the facilities of some of the biggest meat corporations in the world. All children are vulnerable at work, but immigrant children, as we've heard, are at heightened risk. They face language barriers, have uncertain legal status, limited access to resources, and they don't know U.S. laws or their workplace rights. As a result, too many have ended up in workplaces that knowingly flout our child labor laws.

Economists have posited that unethical employers' compliance with the law is a function of two things, the likelihood of detection and the gravity of potential consequences. Our current system is inadequate on both fronts. Three changes would help. First, the Labor Department needs far more resources. The Wage and Hour Division enforces our child labor laws, as well as a minimum wage and a bucket of other statutes. The Division currently has around 800 investigators to cover all of those laws in the entire country.

That's about 165 million workers and around 11 million workplaces covered by these laws, and we have only 800 investigators to do this work. These staffing numbers are eye-poppingly low. They're also historically low relative to prior decades, even though the economy has massively grown throughout the decades. Second, we need to hold lead corporations responsible for violations in their supply chains. When these cases come to light, large corporations deflect responsibility and point to contractors, subcontractors, suppliers, and staffing agencies.

Major corporations have the power to prevent violations. They can set contractual standards in their supply chains, monitor subcontractors, and make it clear they will stop working with anyone who violates child labor laws. They can also bring jobs in-house. If we really want to stop the exploitation of children, we need legal accountability at the top of the chain. This would mean strict liability for child labor violations in a supply chain, or at the very least, strict liability for repeat or widespread violations.

It would also mean the Government refusing to contract with lead corporations that have oppressive child labor in their supply chains. Third, we need stronger penalties. There are currently bills in Congress proposing this, which should be passed. But even very high penalties won't do enough if employers think they'll never be caught and if lead corporations never face consequences. This hearing is about ensuring the safety and well-being of unaccompanied children. The problem of oppressive child labor stems from unscrupulous employers violating the law. If employers didn't hire children for too many hours or assign them to do dangerous work, our child labor crisis would not exist. I believe we can do better. When teenagers go to work, migrants or U.S. born, we can and must keep them safe. I look forward to your questions.

[The prepared statement of Ms. Gerstein appears as a submission for the record.]

Chair DURBIN. Thank you very much for your testimony. It's a cliche on this side of the table to say that our immigration system is broken. But when you hear the testimony of these five witnesses, you can't reach any other conclusion. From one end of the table to the other, you have given us a litany of failings of our current immigration laws. And sadly, most of those failings that you've talked about really relate to innocent and vulnerable young people who

were caught up in a circumstance that was not their choice and whose lives are at stake in the process many times over. That is the reality. Ms. Bradley, thank you—you and your family for reaching out to help so many others. The two daughters that you've adopted, can both of them now legally work in the United States?

Ms. BRADLEY. They can. Thanks to our Congresswoman, we were able to push through their employment authorization cards so that they didn't expire. So they are both eligible to work full—yes, one of them has a job. She's worked for 2 years, and the other one is able to work at a salon as soon as she signs the contract. So yes.

Chair DURBIN. As you mentioned, they do not qualify for many government programs that other children may be eligible for. At this point, do you see them—let me ask you, what is their immigration status at this moment?

Ms. BRADLEY. At this point, they have a special immigration juvenile status, which they got when they came into foster care. It was approved by a judge, and they applied for their green cards in December 2021. And we're told we just have to wait three to 8 years for that to come. So that's their current status.

Chair DURBIN. I hope it's only 8 years.

Ms. BRADLEY. Yes.

Chair DURBIN. Ms. Davidson, you've talked about attorneys representing these young people and said they don't all have legal counsel. Is that correct?

Ms. DAVIDSON. That is correct.

Chair DURBIN. Do they have any representation at all?

Ms. DAVIDSON. So, sadly, most children do not, and we want to make sure that kids have access.

Chair DURBIN. If you could get closer to the microphone——

Ms. DAVIDSON. Yes, sorry.

Chair DURBIN [continuing]. I'd appreciate it.

Ms. DAVIDSON. Most children do not have legal counsel, and it's so important because it helps them comply with their immigration case, but it also gives them that trusted adult relationship to make sure that they have someone that they can talk to if they're concerned about their rights.

Chair DURBIN. What about the phenomena that I've heard described where it's difficult to have a sponsor or even a member of the family to step forward because they're worried because of their own immigration status, of identifying themselves to the Government to unite with the children? Have you run into that situation?

Ms. DAVIDSON. Yes, absolutely. I think, you know, particularly under the last administration when it was made clear that sponsor information would be used against them in immigration enforcement. So it is really difficult for sponsors to come forward. And we want these kids to comply with their immigration case because that's where they're guaranteed a right to have their case heard before a judge.

Chair DURBIN. Ms. Basham, this sexual trafficking and sexual abuse that takes place, I mentioned earlier that I met with some of the migrants that were sent to Chicago from Texas when the Governor decided to send them up, and sat down with them for several hours to talk about their experiences. There were no children involved in this interview process, at least of an age that they

could tell me much. But I do recall a young woman who was about 30 years old who could have sat at this panel and looked like she was at home. She was a college graduate who made that trip to the U.S.-Mexican border, and she clearly was raped in the process.

So the worst case, obviously, is human—pardon me, child sexploitation. But it happens obviously at many different levels, and yet they still make the journey knowing that danger lies ahead. I couldn't agree with you more that we have to find a way to educate, as President Obama tried with his statement, the families in these other countries about the dangers if they try to make this journey. What more do you think we could do at this point?

Ms. BASHAM. So that's a question that takes a lot more than 40 seconds to answer. But I'll tell you, one of the things that's currently in Congress that will help right now is—I know TVPA is controversial, but there's a portion of the Frederick Douglass Trafficking Victims Protection Act that should be introduced shortly, and it deals with prevention education. And I will tell you that when it comes to human trafficking, the biggest gap is in victim identification. Less than 1 percent of victims are ever identified. And if in general we had more prevention education and more children were able to come forward themselves and self-identify, if more teachers were able to identify, we would see a dramatic result throughout the country. So I think that's one legislative fix that's actually currently going to be in Congress shortly.

Chair DURBIN. Thank you very much. Senator Cornyn.

Senator CORNYN. Thank you to all the witnesses for being here today and sharing your perspective. I'd like to start with you, Ms. Basham. You've talked about the scourge, what I would call the evil of human trafficking. And you described the transit or the path of many of the victims of human trafficking from their home country up to the border. And then, of course, we've talked a little bit about how many of these children are unaccounted for now once they've been placed with sponsors in the country. Do you consider the status quo compassionate or humane?

Ms. BASHAM. So I can't speak to current immigration—I'm not going to speak today to current immigration policy, but I will tell you that currently in the United States, there are far too many children who are falling through the cracks. That is very obvious. That's something we can all agree with. So I think there are—absolutely when it comes to compassionate responses, the most compassionate is to make sure that every child has a loving family and very clearly most of the children coming or a lot of the children coming across the border, it's a nightmarish experience, to put it mildly. And that's where—well, I'll leave it with that.

Senator CORNYN. Well, like, I wonder, you know, why would we expect any different outcome when the people who are mainly in charge of immigration policy in this country are the transnational criminal organizations that get rich smuggling people from their home country, perhaps across the border into the United States? This is a huge money-making proposition. As someone pointed out to me years ago, the cartels are really commodity agnostic, and I found that to be a strange way to describe it. But, basically, they said they don't care about smuggling people or money, anything that's going to make them money—or drugs, I should have said.

They don't care whether they're smuggling people or drugs or anything else, weapons for that matter, all they care about is the money.

And Ms. Ries, I know you've spent a lot of time looking at the current policies. But I would wonder if you could talk a little more about what you see as the consequences of the current policy with regard to the welfare of these children once they are placed with sponsors and the fact that there are no follow-on services that are routinely available. In fact, the administration doesn't even know where these children are. Could you talk about the welfare of the child or these children?

Ms. RIES. Yes. In addition to the journey being horrific, as has been described by many, conditions are not necessarily better once they're here. And due to the volume of unaccompanied children among the volume of other illegal aliens coming to the U.S., HHS is releasing them very quickly. They've lowered their standards for vetting, and so some dangerous sponsors are taking them in. And we are seeing that HHS is not able to make contact with many of these unaccompanied children, 85,000 is a number that has been cited.

And if it is their responsibility for the care of these children, at the very least, it is key that enough information is shared and followed up on by HHS, by ORR. But you have to go upstream. And what is causing this is the very strong pull factors for unaccompanied minors to either be sent here or come on their own in the case of some older teens. If you turn off that magnet, you resolve a lot of these downstream effects.

Senator CORNYN. So you mentioned the pull factors, which is what the Border Patrol has routinely told me. And of course, coming from Texas with a 1200-mile common border, I've spent a lot of time along the border talking to the people who deal with this public health and safety crisis, this humanitarian crisis on a regular basis. But they talk in terms of the push factors which are things like violence and poverty. We all understand why those would push people to take this risky avenue of submitting themselves to criminal organizations to be smuggled into another country.

But talk a little more about the pull factors. These are things that the current policy does to actually make it easier for the cartels to smuggle people into the United States. And actually, it tells people, in effect, that we've got the welcome mat out, so please come.

Ms. RIES. Right. When the border has been thrown open, when Secretary Mayorkas has said we will not return unaccompanied minors, when whether minors or family units are then released into the communities of the U.S., those are the strongest pull factors for more illegal immigration. The President, the Vice President, the Secretary can tell people, "Don't come," but it is the results that are the strongest pull factor. When people south of the border learn that their friend, their family member got into the U.S., went to their location of choice in the U.S., is able to work, etc., that's the strongest message that goes back to both the cartels, the smugglers, and then more future illegal aliens.

Senator CORNYN. Thank you.

Chair DURBIN. Senator Whitehouse.

Senator WHITEHOUSE. Thank you very much. Ms. Gerstein, there are right now States around the country attempting to weaken child labor protections. What do those efforts to weaken child labor protections portend for unaccompanied children?

Ms. GERSTEIN. So yes, those are very disturbing developments, 14 States have had bills proposing to weaken child labor laws in the last couple of years. Two States have already passed laws weakening child labor laws, Arkansas and Iowa. These laws are going to put kids at risk. More kids are going to be in dangerous work. Iowa, for example, in certain circumstances is going to allow children to be working in hazardous occupations that are prohibited by Federal law. And this isn't just a question of cutting red tape.

It's going to result in kids actually being in workplaces that are truly dangerous for them. I would note also that in Iowa—the Fair Labor Standards Act, our Federal law, is a floor and all employers have to follow that. And so, in Iowa, passing a law like this actually puts employers in a bad situation because it can be very confusing to them. They could be following the State law and find themselves facing Federal penalties. So the entire trend is the opposite of what we need right now both for U.S.-born kids, for immigrant kids, and unaccompanied minors.

Senator WHITEHOUSE. And speaking of Federal child labor violations, how well can major companies insulate themselves from accountability for persistent child labor violations through the use of subcontractors and staffing agencies?

Ms. GERSTEIN. Many major corporations do insulate themselves from responsibility or try to deflect responsibility through using subcontractors, suppliers, staffing agencies, and more. Our labor law, the Fair Labor Standards Act, the definition of employee is to suffer or permit to work, which is extremely broad and really should include these circumstances. But the caselaw has developed in a way that makes it very hard to go up the chain and find a corporation to be a joint employer. That is something that should be fixed. There should be strict liability, as I said, either in regard to supply chains in general or certainly for repeat or widespread violations.

Senator WHITEHOUSE. Thank you. Ms. Davidson, as I understand it, unaccompanied children don't have a right in immigration proceedings to have legal counsel appointed, and they don't even have a right to have a guardian ad litem. I don't think there's a courtroom in the country where a minor would be put in the position of having to represent themselves without even a guardian ad litem. Is that a defensible situation? Should we try to repair that? How big of a problem is this problem of a lone child having to defend him or herself in an immigration proceeding?

Ms. DAVIDSON. Yes, most children do not have legal representation. Most unaccompanied children are trying to navigate this process on their own with language barriers and cultural barriers. And so giving access to legal counsel for children post release is critical. All of these children are in removal proceedings. We want them all to comply with their immigration case. And to do that they need to have someone who's helping them to navigate that process, so

they can stay in compliance and the judge can determine whether or not they have a right to stay.

Senator WHITEHOUSE. It strikes me, having spent a fair amount of time in the law, that whether you're in family court or whether you're in a civil proceeding or whether you're in juvenile proceedings, minors don't appear in those matters without either legal representation or a guardian ad litem or both. And I'm wondering if you can think of any other proceedings in which children appear without benefit of either legal representation or a guardian?

Ms. DAVIDSON. I do not know of any other circumstances in which a 3-year-old would have to represent themselves in court. It is indefensible.

Senator WHITEHOUSE. Yes. Thank you very much. Thanks, Chairman.

Chair DURBIN. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Thank you all for being here. And Mr. Chair, I understand that you and Senator Cornyn agree that we will be hearing from administration at a future hearing and getting the data. I think that that's very, very important if we want to solve a complex problem. The subject that we're discussing today is one part of a—it's really not that difficult policy proposition, but for the politics, but what I hear people on either end of the political spectrum here blame one administration or another.

The only thing that I believe is absolutely true is for about the last 40 years there have been bipartisan failures. Under Republican administrations, we can point back to 1986 with Reagan's decision to provide amnesty that created some of the pressures on the border. And each of the administrations I've observed, they've all failed. We haven't solved the problem. When you get into this, the reason why it's so important for us to get data is we've got to understand and come up with a common understanding of the problem.

If we have child labor—if we have any person working because they're essentially forced to, the person who made the decision to hire them should be subject to criminal penalties and fines, just simply—that simple. Let's talk about policies to do that. But then, let's also talk about the reality that 80 percent of the people who come to the United States and claim asylum are ultimately adjudicated as not having a credible fear claim. So how many of these children were carried across the border, were subjected to the kinds of atrocities that I have firsthand accounts of, being down at the border several times, because someone made a decision to come to this country, put their children at risk, and not have a valid, credible fear claim?

What about the families that leave one country, transit to a safe third country, and instead of choosing to apply for asylum there, then risk their child's life and limb by crossing the Rio Grande river? Every single person crossing the border now, if they want a good chance of surviving, have to pay a toll to the transnational criminal organizations. It was estimated that a year and a half ago, transnational criminal organizations were making $800 million a year in human trafficking. I fully believe that many of these chil-

dren who find themselves having to work, is in part having to pay the toll that they had to pay to get across the border.

Depending upon the country, that can range anywhere from about $5,000 to $50,000. So the reason that we wanted a hearing is to baseline each and every one of the challenges that we're confronted with and address them separately. I personally believe that a parent who chooses to subject their children to all of the risks that come from transiting the southern border should be held accountable if in fact they had an opportunity to go to a safe third country, get them out of what I will stipulate was a dangerous situation in their country of origin. But why on earth would you not try and take the safest path to get here legally?

Why on earth wouldn't you stop in a safe third country and say, "I have a difficult, dangerous situation in my country. I have documentation to prove it, and I'm applying for asylum"? What's wrong with that? So, sooner or later, we have to talk about the reality that parents are making bad decisions in the thousands. Eighty percent folks, 80 percent of the people who apply for asylum are adjudicated by Democrat, Independent, and Republican judges as not having a valid, credible fear claim. That's a big number.

So we have to start looking at this and teasing through it and then getting to immigration policies that work. Most people know that I've been on every bipartisan effort to try and get immigration reform, border security done since I've been in Congress for the last 9 years. But then, we talk past ourselves. We say, "Well, if we just have guest worker programs." What we don't talk about is how labor unions want to artificially increase the rates to the point to where you just won't have those jobs in the United States, and they could be living wage jobs. But that dirty little secret from the left never gets brought up, but it's real and we can point to proposals where that's a problem.

But I'll tell you who's watching this hearing probably more than anybody else. It's the cartels. When you grow an enterprise to $800 million a year, you can get pretty sophisticated. And we're letting the cartels play us like a piano by talking past each other and not coming up with sustainable, smart solutions to immigration reform, humanitarian accommodations for the families who are truly at risk and the children, and all of these other things that we could be working on. But my guess is in this hearing, we'll talk past each other quite a bit, and we're at risk of going another 4 or 5 years if we don't get this right in this Congress without any solution at all.

And the kids suffer, Border Patrol agents will die, 100,000 people will die of fentanyl overdoses and we'll be so close, but people do not have the political courage to step up and solve this problem. That's on us. It's not on you. Thank you, Mr. Chair.

Chair DURBIN. Thanks, Senator Tillis. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. As I referenced in my opening remarks, there's significant reporting just in the last several months alone by NBC News and The New York Times calling our attention to the labor violations found by the Department of Labor. Migrant children being exploited for their labor. So, in response to the reporting, as you partnered with Senator

Hickenlooper to send letters to 27 CEOs of the major companies accused of the wrongdoing in that most recent round of reporting.

Our letter demanded they take immediate steps to stop the ill treatment of children. And according to the findings and the reporting, migrant children have reportedly been working in unsafe conditions, in hazardous conditions, and in other unlawful circumstances. We asked the CEOs to carefully examine their hiring procedures. We asked them to examine their workplace safety policies, and we asked them to review their compliance with wage and hour laws to prevent any further exploitation of children and to share with us their assessments.

Now, their responses were—how should I say this?—overwhelmingly lackluster, often filled with finger pointing, "Not our fault, it's a subcontractor issue." "Not our fault, it's a subsidiary issue." Anything, but actually taking accountability. One would think that the Fair Labor Standards Act would protect all children from labor exploitation at all levels of the supply chain, but there's clearly a breakdown. My first question is for Ms. Gerstein. Can you explain the challenges that exist in enforcing child labor protections at all levels of the supply chain, and what would you encourage Congress to do to ensure that children are better protected?

Ms. GERSTEIN. So you're absolutely right. The lead corporations do point a finger and deflect responsibility to suppliers and subcontractors and staffing agencies. The Fair Labor Standards Act defines employee very broadly, but caselaw treats it very narrowly and makes it very hard to get accountability up the supply chain. What is needed is—the challenge is in enforcing child labor protections, one is the funding limitations on the Federal Department of Labor. They're grossly underfunded relative to the need. Another challenge is the difficulty in going up the supply chain.

These cases also are very resource intensive and difficult to enforce. If you look at the Federal Department of Labor's *PSSI* case, it was an investigation that involved 100—they found over 100 minors working at multiple States. They did surveillance and warrants and multiteam investigator investigations and interviewing many, many reluctant witnesses. These cases are hard to do, and the Department of Labor really needs the resources to do them effectively. In terms of liability up the supply chain, strict liability for the lead corporations for violations in their supply chain or at least strict liability when there are repeat or widespread violations.

And also Government contracting, the Government can use its contracting abilities to not do business with lead corporations that have these violations in their supply chains.

Senator PADILLA. Thank you. Now, on a different note, I do want to tell my Republican colleagues that there is actually an agreement. It's undeniable that we need to crack down on dangerous cartels and traffickers who exploit children. It's absolutely necessary. However, we must also recognize that parents and relatives who flee persecution should not be treated as criminals merely for trying to keep their children alive. Implementing policies, as the last administration did, that aims to criminalize these individuals inevitably leads to family separations, inflicting harm upon children, leaving them even more susceptible to exploitation.

Policies such as the Title 42 Public Health Order, right? It was a public health order, not an immigration law, which denied adults the chance to seek asylum, often left parents facing an agonizing choice. They were forced to decide between either staying with their children and risking continued persecution for the entire family or providing at least their children with an opportunity for stability and safety. So this policy created a dilemma that had profound consequences for many, many families, often leading to the heart-wrenching decisions and the exacerbation of vulnerabilities. Ms. Davidson, you testified that the continuous application of the Homeland Security Act of 2002, the TVPRA, and *Flores* is critically important to protecting kids from exploitation. Can you explain why a break in procedure has proven to be so harmful?

Ms. DAVIDSON. Yes, absolutely. When we're talking about these protections, this is the bare minimum. We're talking about things like giving a child access to food and water and to be held in humane conditions. And if we were to roll back any of those protections and not look at children in terms of their best interests and to make sure that they are in the least restrictive setting, that they're unified with their sponsor quickly, if we roll those back, we are putting children in grave danger. We saw over half a dozen children die in CBP custody under the Trump administration. And so we really have to prioritize these protections and make sure that they are in place for unaccompanied children.

Senator PADILLA. Thank you very much. Thank you, Mr. Chair.

Chair DURBIN. Thank you, Senator Padilla. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. I'm glad we're having this hearing. And thank you to all of the witnesses. Thank you for being here. I want to visit with you in just a second. But I just want to reiterate something that I heard the Chairman say that I agree with, which is that there really ought to be Government witnesses sitting there. And I tell you what I'm tired of. I've had Secretary Mayorkas sit in front of me in a different Committee, the Homeland Security Committee, where I asked him at length about the outrage of 250,000 migrant children unaccompanied crossing the border in the last 2 years and tens of thousands of them being sold into slavery.

Let's not mince words. They've been sold into slavery. When kids are being put into factories, forced to work overnight, forced to work in terrible conditions, they're not getting paid, they're not going to school, sometimes they're not getting fed, that's slavery. And what I heard from Secretary Mayorkas—don't take my word for it, you go look at the record, read the transcript. What he told me was, "Oh, it's not my problem. We don't have anything to do with it. Not my problem." Now, we have a new report from HHS where they say it's not their problem. Amazing how this works. Nobody's responsible.

These kids are literally being sold as slaves in the United States of America in the year 2023 and nobody's responsible. They don't want to come and testify to this Committee. You bet they don't. They don't want to be put under oath. They don't want to answer any questions. They don't want cameras here. They don't want to take any responsibility. Well, I tell you, it's somebody's fault. It's

not the kids' fault. Thank God for The New York Times. A phrase I never thought would come out of my mouth.

But really, I mean, thank the Lord that The New York Times did these series of reports, because otherwise we'd still be fed the lies—the lies from this administration that everything is fine and dandy, "We know just where the kids are. It's all great. They're all fine." No, it's not.

Is it fine that people like Carolina Yoc, who's 15 years old—and I apologize to her if I mispronounced her name. She's one of the folks, one of the young women that The New York Times caught up with. What is she doing? Midnight in Grand Rapids, Michigan, a conveyor belt carrying bags of Cheerios past a cluster of young workers.

Carolina, every 10 seconds, has to stuff a sealed plastic bag of cereal into a passing yellow carton. It's dangerous work, fast-moving pulleys and gears that had torn off fingers and ripped open a woman's scalp. The factory was full of underage workers like Carolina, who'd crossed the southern border by themselves, vulnerable, now spending late nights bent over hazardous machinery in violation of child labor laws. Carolina says, "Sometimes I get tired and feel sick." Her stomach often hurts. She was unsure if that was because of the lack of sleep, the stress from the incessant roar of the machines, or the worries she had for herself and her family in Guatemala.

This is totally, utterly, completely unacceptable. And I am sick unto death of this administration coming before this Congress and saying, "It's not our fault. We have nothing to do with it. We don't know where they are. The kids are fine. Somebody will do it. Somebody will get around to it." Ridiculous. Let's look at some of the things that we've learned about what's going on over at HHS that Secretary Becerra is doing. Here are some quotes from employees at HHS.

[Poster is displayed.]

Senator HAWLEY. At least five Health and Human Services staff members said that they were pushed out after raising concerns about child safety. This is all from The New York Times, by the way.

"Mr. Becerra told the Office of Refugee Resettlement director that if she could not increase the number of discharges of children, he'd find somebody who would." Next, "20 percent of kids have to be released every week or you get dinged." It's a conveyor belt of children being forced through the system. And what's the priority of HHS? Just get them out as fast as we can. They go to factories, they go to slave labor.

I've written to the FBI and asked the FBI, where are the 80,000 plus children this administration's lost? They don't know. I've said it's your responsibility to go get them. It's a direct violation of child labor laws.

They're not doing anything. Nobody's doing anything. It's outrageous. It's absolutely outrageous. And the fact that the administration won't come and sit there and answer questions to this Committee is absurd, and it is nothing more than cowardice. They don't want to answer questions. They don't want to be responsible. They don't want to take responsibility for this. So let the record reflect

that this administration has let tens of thousands of children be sold into slavery and they are doing nothing about it.

And I hope, Mr. Chairman—I'm glad you said that we would be holding additional hearings. We need to have additional hearings. There need to be administration witnesses there, and we need to figure out what in the world is going on and who's to be held accountable for this. Because I tell you what's not an acceptable answer—it's not acceptable to say, "It's not my problem." We wish the kids the best. The kids are in danger. The kids are in slavery. The kids are being exploited, and it should not happen in the United States of America. Thank you, Mr. Chairman.

Chair DURBIN. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thanks for holding this hearing, and I, too, am glad that we're going to have others, because I'm hoping that we'll have bipartisan support not only for enforcement of prohibitions against exploiting child labor, but also perhaps for comprehensive immigration reform as Senator Tillis said. We need to confront the broken system that currently is our immigration legal apparatus.

Not only stronger border security, a faster, more reliable asylum process, visas for people who will have jobs that are vitally needed here, and a path to citizenship for our Dreamers, but also enforcement of labor law violations now on the books. And I want to ask you, Ms. Gerstein—thank you for your very extensive report in your testimony. What kind of grade would you give Federal law enforcement of our child labor prohibitions under OSHA?

Ms. GERSTEIN. Well, the child labor prohibitions are located within the Fair Labor Standards Act and the Wage and Hour Division has responsibility for enforcing them. But, obviously, OSHA enforces workplace safety and health. I think, you know, I think, they're doing a very good job given the extremely limited resources that they have been provided. Our Federal labor agencies have been starved for funding for decades. They have not been supported in a way that is necessary to help them do their jobs. In the meantime, the economy has grown tremendously.

We also have the rise, for example, of forced arbitration that prevents people from being able to bring cases in court and adds greater pressure to public agencies. The decline of union density, unions help make people more able to report violations because there's less fear of retaliation. And so, with all of this added pressure, the growth of the economy, the labor agencies are just really, really underfunded. Under the current acting Labor Secretary Julie Su and the incredibly—there are so many civil servants and people within the Labor Department who are really doing the best that they can and being strategic.

The *PSSI* case was really, really well investigated and well done, but they're not given the tools and the resources they need to do their job effectively.

Senator BLUMENTHAL. To put it very simply, our enforcement mechanisms are being starved?

Ms. GERSTEIN. Absolutely.

Senator BLUMENTHAL. And they were under the previous administration? In fact, the number of OSHA inspectors under President Trump fell to the lowest number in 45 years, correct?

Ms. GERSTEIN. Yes. And the Wage and Hour Division, for example, had 400 more inspectors in the late 1970s than we have now. And one expert did some calculations and found that if you look at the number of investigators to workplaces, that Wage and Hour at its inception in the 1930s had 64 times as many investigators per workplace as it does now.

Senator BLUMENTHAL. And having been a prosecutor, I think we have a number of prosecutors on the Committee, deterrence depends on enforcement. Respect for the law depends on reliable and effective apprehension and prosecution. It also depends on penalties. Right now, the maximum penalty, I think, is $15,000 for violating the child labor laws. Is that correct?

Ms. GERSTEIN. Yes, it's a little over $15,000.

Senator BLUMENTHAL. And would you agree that increasing the penalties would also have a strong effect in deterring these kinds of violations and protecting children?

Ms. GERSTEIN. I think it's critical that we increase the penalties. I think that alone will be inadequate unless funding is also increased, and unless we find a way to hold lead corporations responsible and accountable.

Senator BLUMENTHAL. So I invite my Republican colleagues who speak vociferously and vehemently on this topic to join the Child Labor Prevention Act, which would increase the maximum fines for violations and establish new criminal penalties, now we're talking, criminal penalties for child labor and hold employers accountable. There's also the Child Labor Exploitation Accountability Act, which is sponsored by our colleague, Senator Booker. I am a co-sponsor of these measures. But, unless we take these kinds of practical steps, resources, penalties, more effective enforcement, we can make all the speeches we want, we can use all the rhetoric we please, but it won't have an effect on employers who exploit children because for them it's all about the money. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Blumenthal. Since the Senator for Missouri is still here, there are two points I'd like to make about—that he mentioned in testimony. We did not invite representatives of HHS or DHS to this hearing today. We did not today. What we have done with these expert witnesses is have the first hearing. We are having a document production. I invited Senator Graham, Senator Cornyn to join Senator Padilla and myself for documentation to follow forward.

On the 85,000 sponsors—or children that are unaccounted for, it is my understanding that after they have identified—ORR has identified a sponsor and the children are placed with that sponsor, the follow-up to find out how they are doing is a very poor one on my estimation. It's a series of telephone calls. Three telephone calls to the sponsor, and if they have not answered after the third call, they're listed as not being reached. We had testimony here from witnesses that these young people have no legal representation necessarily. And so it's up to the sponsor to link up with ORR, and it's not happening, which I think is a deficiency in the system. That's very obvious. I think Senator Ossoff is next.

Senator OSSOFF. Thank you, Mr. Chairman. I just want to associate myself with Senator Blumenthal's remarks.

Chair DURBIN. Excuse me, Senator Ossoff. I've made a grievous error.

Senator OSSOFF. Wow. We'll get through this together, Mr. Chairman.

Chair DURBIN. Senator——

Senator OSSOFF. It's all right, you know, it's all right.

Chair DURBIN. Senator Graham is next. I'm sorry.

Senator GRAHAM. I'll be brief. Senator Hawley, yes, we do need to have the administration here and hopefully we will. So let's see if we can find some common ground here. Of all the witnesses, how many of you agree with the following statement that the system is broken and needs to be fixed? Who thinks the system is working? Let's do it the other way. Raise your hand. Well, nobody raised their hand. So bottom line is I think it's broken, and I'd like to fix it. Now, how do you fix it? You punish people who exploit children as one fix. You change your policy so it's not so incentivized to have unaccompanied minors come. Ms. "Gerstein," is that right?

Ms. GERSTEIN. Yes, that's right.

Senator GRAHAM. Why do you think there's been a 300 plus percent increase in unaccompanied minors coming to the border since 2020?

Ms. GERSTEIN. I'm not here to talk about that today. My expertise is in labor law enforcement.

Senator GRAHAM. Fair enough. Ms. Basham, can you give us an answer to that question?

Ms. BASHAM. Well, I don't know for certain, but I will tell you this, that it's probably a combination of factors. And I do know when it comes to human trafficking in general we can talk about all sorts of things, but the root cause is actually the criminals themselves. And so, when we talk about push factors and pull factors, those have to be addressed because at the end of the day it's a crime of luring.

So they are luring the mothers to oftentimes hand over their children and they don't really know what's ahead of them. So I know Chairman Durbin spoke of, you know, a terrible testimony that you'd heard in Chicago, and I do not believe that many of those who are coming know what lies ahead, that's first. And I also believe that the root is actually the criminals themselves. And so, as I think Senator Tillis said earlier, you know, this is really a crime where we are dealing with—they're making money off the sale of people.

They could be making money off the sale of drugs, they could be making money off the sale of weapons, but they're making money off the sale of people. And so you have to deal with that one.

Senator GRAHAM. Is the Taliban involved in this, you mentioned?

Ms. BASHAM. So the Taliban, I don't believe—I have no evidence of that directly with this. But I will tell you that sex trafficking itself is a huge money-making operation for every single terrorist network in the world. So, whether we're dealing with ISIS or we're dealing with Boko Haram in West Africa, whether we're dealing with what I would call adversarial nations, they all use versions of human trafficking to fund their operations. All of them.

Senator GRAHAM. So, Mr. Chairman, there are three countries, Guatemala, Honduras, and El Salvador, that make up the vast ma-

jority of unaccompanied minors. So I would recommend that we have the ambassadors of those countries come and talk to the Committee. We don't have to do it publicly, but privately and see if we can find some kind of agreement with the countries to do more on their end. I'm willing to help them do more. I'm certainly willing to punish them if they don't. So it seems to me that one of the reasons you have so many more coming is that the narrative is if you get an unaccompanied child to the United States, chances are they're not going to be sent back to these three countries.

We need to change our policy and treat these three countries and really all countries as if they were Canada and Mexico. This noncontiguous policy is incentivizing this. And the money to be made—Ms. Basham, I will go back to you. The average unaccompanied minor doesn't just leave the house and walk to America. Somebody guides them through. Is that correct?

Ms. BASHAM. Correct.

Senator GRAHAM. And who are these somebodies?

Ms. BASHAM. Smugglers.

Senator GRAHAM. Smugglers?

Ms. BASHAM. Coyotes.

Senator GRAHAM. So there is a criminal enterprise built around unaccompanied minors, and we know what countries are the biggest offenders. So why don't we start, Mr. Chairman, with trying to find some agreement with these countries to deal with this problem? And I'm willing to do incentives, carrot sticks, maybe that will help. It can't hurt. When it comes to stopping the problem, you're going to need immigration reform. And I'm hoping we can find some foothold on immigration reform. But the explosion in numbers, 300-and-something percent increase in 2 years, there's a way to stop it if you want to and slow it back down and get the numbers down.

Mr. Chairman, that's going to require a policy change. This administration has to come to grips with the fact that their policies are failing miserably in this area. Thank you.

Chair DURBIN. I'll sign up for that meeting with the ambassadors. That's a good idea. Now, let's try Senator Ossoff.

Senator OSSOFF. Thank you, Mr. Chairman. Thank you for holding this hearing. Thank you to the panelists for your hard work and for lending your expertise to the Senate. I think for all Americans and particularly for parents, it's just heart-wrenching to hear, to know what so many children are going through who are in such vulnerable positions and let down at every stage along the way. So I just want to actually just open this up and ask each of you to make one recommendation to Congress that you think is practical and achievable right now to reduce the suffering of vulnerable children who are entering our country unaccompanied. Beginning with you, please, Ms. Gerstein.

Ms. GERSTEIN. Adequately fund labor enforcement and create up chain liability. I know that's two, but I said it quickly.

Senator OSSOFF. Ms. Basham?

Ms. BASHAM. I think increasing victim identification, specifically through education widespread throughout the school systems.

Senator OSSOFF. Ms. Davidson?

Ms. DAVIDSON. Need to adequately resource post-release services and legal services to make sure children are protected.

Senator OSSOFF. Ms. Ries?

Ms. RIES. Secure the border to prevent the flow.

Senator OSSOFF. Ms. Bradley?

Ms. BRADLEY. I will repeat what Ms. Davidson said as well, that being able to make sure that the children are protected after they have been released to their sponsors would be good.

Senator OSSOFF. Thank you, Ms. Bradley. And Ms. Davidson, I've co-sponsored Senator Hirono's bill, the Fair Day in Court for Kids Act, to ensure that unaccompanied minors do have representation as they move through the adjudication process. Can you explain to the Committee how a lack of legal representation impacts an unaccompanied child who is moving through adjudication or detention or the ORR system, please?

Ms. DAVIDSON. Absolutely. So unaccompanied children are some of the most vulnerable children. Most of these kids don't speak English. They don't have a strong understanding of how the immigration system works, yet they are in removal proceedings. And so it's imperative that these children have legal counsel, so that they have their day in court that they're able to share their story, and then a judge is going to determine whether or not they qualify for relief. And without that attorney, I mean, it's just ludicrous to think of small children having to represent themselves in immigration court. And so making sure we have resources for legal services for children post release is critical.

Senator OSSOFF. Ms. Davidson, I want to talk about the unaccompanied children who end up in foster care. And quite a number do wind up in foster care for some period of time. Senator Blackburn and I have launched an inquiry focused on the abuse and neglect of children in foster care in the United States. What sort of process, in your view, Ms. Davidson, should we undertake to ensure that unaccompanied minors who wind up in foster care systems don't suffer abuse or neglect or wind up lost to the system?

Ms. DAVIDSON. Yes, I think first we want to work on preventative measures. So making sure that children and family have the support that they need, so that we can care for them without having to put children into foster care unnecessarily. But children in foster care need to be protected. And we need to make sure that local Child Protective Services understand some of the additional vulnerabilities of unaccompanied children, such as the fact that they have no legal immigration status. And once we have really provided additional training for CPS to understand the needs of these children, I think we protect them because we want children to feel like they have that trusted adult. Somebody that they can tell if they're worried about abuse or neglect.

Senator OSSOFF. Thank you, Ms. Davidson. Thank you, Mr. Chairman.

Chair DURBIN. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. And I'm so pleased that Senator Ossoff mentioned the work that we're doing looking at foster care. I think that's going to be important to making certain that children are properly cared for. Mr. Chairman, I

know that you and Senator Hawley discussed the fact that we have no Government representative here today. And HHS——

Chair DURBIN. I mentioned they were not invited.

Senator BLACKBURN. I think that they're—my understanding was that there was a choice not to invite someone. The point is, Secretary Becerra needs to come before us. I've got a letter I sent to him on April 27th. It was after a hearing at the Finance Committee where he could not give me an answer of what has happened to 85,000 children—85,000 unaccompanied children. HHS is responsible for them, and they can't find them. They don't know if they're dead or alive or trafficked or being worked because they can't find them. The Office of Refugee Resettlement has lost about a third of the children that they're supposed to be caring for.

I think this is shameful. I have not received a response from the Secretary on what has happened to 85,000 children. I will ask to put my letter in the record because he has had this time. The point is, they don't know where these children are and they cannot find them, and they're not doing anything about it. I think that it is shameful, and we need to call him before this Committee and find out what has happened with these 85,000 children that they cannot find. Ms. Ries, I want to come to you. You mentioned the southern border as something that could be done to stem this.

I've been on the border several times. I see exactly what you're talking about. And it is why last week I introduced the End Child Trafficking Now Act. It would require a DNA test to establish familial relationship. This is something that had been put in place under the Trump administration, but like most Trump era border policies, the Biden administration chose to end that. It is a 45-minute test. It tells you if a child is related to a person or not. It would put a stop to much of this child recycling, which is disgusting.

And I would just like for you to speak for a moment about why it is so critical for the CBP to establish that familial relationship right there at that border with that adult and that child standing in front of them.

Ms. RIES. Because we have seen in the past, and we will soon see again, an increase in fake families. The cartels respond to border operations. And if CBP is going to stop taking DNA tests when they suspect a fake family, or if they have seen this child again with a different adult before, then they're going to send more fake families through, which means more suffering of kids, more trafficking, and more terrible results. So it was a bad decision, and they really need to reverse course and continue to test. When the agents who have developed expertise on this suspect fake families, they should be testing them.

Senator BLACKBURN. And the numbers that I have seen are as many as 30 percent of the children being presented as a family member at the border are being trafficked. Does that match up with the numbers that you have?

Ms. RIES. There have been several that have been discovered. So it is effective. And for any family, any child that can be saved from smugglers and adults who are lying and claiming that this child is theirs with obviously ill intent, then that is well worth it.

Senator BLACKBURN. One of the things that I had noticed as I was preparing for this hearing, Secretary Becerra pressured the Office of Refugee Resettlement to speed up sponsor transfers for unaccompanied alien children. Going so far as to say, and I'm quoting him, "If Henry Ford had seen this in his plants, he would have never become famous and rich. This is not how you do an assembly line." Now, Secretary Becerra's comment is repulsive, but I think it's also revealing. It confirms what we already know, that Secretary Becerra has no regard for what happens to these children that are released into the country.

So I would just like to—well, and I'm over time. Ms. Ries, I'm going to ask you just to send in writing to me how you perceive Secretary Becerra's attitude. What does it do to harm the system and to make children less safe?

Ms. RIES. I will do that. And just to follow up on your DNA question, one statistic: Between April and June of 2019, ICE was able to identify approximately 275 fraudulent families in just a matter of a couple of months.

Senator BLACKBURN. Thank you.

Senator PADILLA [presiding]. Thank you. On behalf of the Chair and for clarification for the record, DHS does conduct DNA testing and continues to when there's a question about the validity of a parent-child relationship, and additional scrutiny is placed on individuals who are not related to the child to ensure that a child is not being trafficked. The Chair recognizes Senator Booker.

Senator BLACKBURN. Mr. Chairman, I think—and let's say for the record, I think that policy was ended on May 31st.

Senator PADILLA. We're giving you the most current——

Senator BLACKBURN. And they're relying on documents——

Senator PADILLA. The Chair has provided the most current information. We can continue the discussion after.

Senator BLACKBURN. Thank you.

Senator PADILLA. Senator Booker.

Senator BOOKER. Mr. Chairman, thank you. And I want to thank all the witnesses. I think there's been valuable perspective given on all components of this problem, from what's happening at the border all the way to U.S. labor laws. I have been sitting here and have some appreciation for colleagues of mine on both sides of the aisle who don't see this as a political blame game, but are trying to find constructive solutions to this problem. It's the only way we're going to deal with it. This is clearly a deplorable reality in any country, this violation of human rights and the exploitation of children. But to have it happen in the United States is so shameful and so outrageous.

It should inspire the best of all of us to look to real constructive solutions. And it is so outrageous that this continues to happen year after year in the United States of America. There are children being exploited by companies and others who are absolutely deplorable. Let me get to my, hopefully, constructive questions. Earlier this year, I introduced the Child Labor Exploitation Accountability Act, which would hold corporations accountable for the exploitation of children and workers by simply saying that frequent violators, repeat violators of worker safety laws shouldn't be eligible for Federal contracts paid for with taxpayer dollars.

I think that if when someone does this once, it should have real significant penalties. These are rational economic entities. If they know they were going to pay a severe price for it, then you would see it less happening. And so this is a legislation that, in my opinion, would increase penalties that would change behavior. Monetary penalties or debarment is important to address child labor laws. Ms. Gerstein, would you agree, just really simply?

Ms. GERSTEIN. Yes, I agree. Government contracting should support good, high-quality jobs and at the very least, jobs that are legally compliant, not jobs that are—not companies that are violating child labor laws.

Senator BOOKER. Right. And the acting Chairman, who is an extraordinary friend of mine—the United Farm Workers asked 100 Senators to go out and work a day in the fields. He and I went out and actually did it. Some of the hardest work of my life. And just talking with the women I was working with and hearing their stories of sexual harassment, of wage theft, that alone shouldn't go on. But, when you talk about child labor, one of the things that seems to me needed is funding for the Department of Labor. Just having the resources to do their work as the acting Chairman sort of whispered to me earlier. Could you just comment on that for a moment?

Ms. GERSTEIN. Yes. The Federal Department of Labor is grossly underfunded. The Wage and Hour Division has record low numbers of investigators. OSHA as well is at very low numbers. There's some statistics about how each workplace at current OSHA staffing levels would be investigated every like 150 years or so. The Solicitor of Labor's office doesn't have enough resources either. You know, I'm really encouraged to hear a lot of concern by the Members today about the exploitation of child workers, but if we really want to address this, we need to fund the agencies that are charged with enforcing our laws.

Senator BOOKER. I mean, that's common sense to me that this is a functional way to enforce the law. I think there's bipartisan agreement on having resources for border enforcement. I think there's bipartisan agreement when it comes to our local police departments to keep us safe. But the people who are enforcing the law for labor, the people that should be out there doing a better job stopping this exploitation don't have the resources they need.

The final sort of point that I have is that there are consequences for industries—and I want to focus in this last question on industry, the meatpacking industry, which is more concentrated today, more corporate concentration than it was when Upton Sinclair wrote "The Jungle" and exposed the horrific practices that were going on. You are now seeing in that industry horrific practices and labor violations, including child labor. And I'm wondering if you think your commentary on—I'm seeing some move toward unionization which there was far more. It used to be a middle-class job to be working in these things.

Now, it is a job where you see immigrants and exploitation. Is there any hope that union organizing that's starting to go on can offer any antidote to what's happening?

Ms. GERSTEIN. Well, there's tremendous support for unions among Americans. In surveys, 50 percent of workers say they would join a union if they could, 70 percent of people surveyed say

they have a positive impression of unions, and yet only 6 percent or so of private sector workers are actually unionized. And that's because our Federal labor law, the National Labor Relations Act, is really outdated and needs to be updated. At the same time, unions really do offer a better job and—better jobs and opportunities to people.

They raise standards when they're present in industry, not just for members, but also throughout the entire industry. And one interesting—in relation to meatpacking, one interesting development after the Department of Labor's *PSSI* case is that JBS created JBS Sanitation and took some of these jobs instead of outsourcing to a subcontractor—to the contractor, PSSI took some of these jobs inhouse and has an agreement with UFCW. And now, these are going to be good union jobs instead of jobs that are being done by exploited young immigrant children.

Senator BOOKER. Thank you. Thank you, Mr. Chairman.

Senator PADILLA. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. Every day the disaster on our southern border continues to get worse. This disaster is a true humanitarian crisis, and it is the result of deliberate political decisions by Joe Biden and Kamala Harris that have inflicted unspeakable horrors on millions of illegal immigrants: 6.6 million illegal immigrants have crossed illegally into this country since Joe Biden became President. And it has, in particular, done enormous damage to children. We're here today because the Biden administration has utterly failed.

It has failed to secure the border, and it has encouraged parents to send their minor alien children on a dangerous trip to the United States unaccompanied. And it's failed to protect these children after they were let into the United States. The Democrats running this Committee have also failed. As we're holding a hearing to discuss the issues facing HHS's placement of unaccompanied minors, but we don't even have a single official from HHS here to answer our questions. Xavier Becerra should be sitting right in the middle of this panel, under oath, being forced to answer difficult questions about his absolute dereliction of duty when it comes to caring for these kids.

But the Democrat leadership of this Committee doesn't want Secretary Becerra to face those hard questions because it would reveal his utter negligence and the children who are being harmed as a result. And so the absence of HHS is not an accident. It's not an omission. They just forgot. It's a deliberate decision: Let's protect the Biden administration from accountability. And concomitant with that decision is a decision to say the children being harmed are not important enough to the Democrat Senators on this Committee to overcome their partisan desire to play politics and protect the Biden administration from the consequences of their own failure.

[Poster is displayed.]

Senator CRUZ. Take a look at this image. This image was captured from a video shot in El Paso on March 24th, 2023, where a smuggler abandons a 1-year-old child, a Guatemalan boy, on the riverbank. This 1-year-old child has now entered the unaccom-

panied minor alien child system currently administered by the Biden Health and Human Services.

According to the Department of Health and Human Services, approximately 127,000 unaccompanied minors entered the United States during Fiscal Year 2022. So 1 year, 127,000 kids all alone; 2021, again, according to HHS, 107,686 unaccompanied minors entered the United States.

Compare that to the last year of the Trump presidency, where that number was approximately 30,000. A 7-year low. Now, let me be clear, even one child in the custody of human traffickers is horrific and wrong. But 127,000? This administration—no wonder Secretary Becerra is too scared to sit there. He should be embarrassed of that record. Health and human services received $7.8 billion last year just for unaccompanied minor children.

Troublingly, on February 24th, 2022, HHS admitted in a letter to Representative Andy Biggs that it could not contact approximately 20,000 minor children it placed in 2021. In 1 year, 20,000, it just lost them. No wonder Secretary Becerra is not sitting at that table. On March 22nd, 2023, Senator James Lankford pressed Secretary Becerra on a portion of The New York Times exposé indicating that HHS had failed to account for 85,000 previously placed alien children.

Becerra disputed the question saying it was unrealistic, but he failed to offer any concrete evidence or data or statistics. On April 25th of this year, I joined Senator Marco Rubio and my colleagues in a letter addressing HHS failures on this score, which actively highlighted the fact that the Biden administration loosened vetting, fired HHS staffers who filed complaints, and ignored HHS contracted organizations who voiced concerns. After The New York Times published a second exposé, the administration announced the Department of Labor was taking action. What action? Action addressing child labor.

Well, child labor is abhorrent. But how about the hundreds of thousands of children who are being smuggled in by human traffickers, who are being abused, who are being sexually abused, who are being physically abused, and whom the Biden administration has lost? This is a humanitarian crisis, and it is a man-made crisis produced by political decisions from this White House. And every American, whether Democrat or Republican, should be horrified at this state of affairs.

Senator PADILLA. Thank you to the witnesses, members of the public who are here today, Members of the Committee who have participated in today's hearing. I do want to reiterate what Chairman Durbin announced a couple of times earlier in the hearing. And number one, that the document requests are into the administration for the additional information and data that's been discussed. Also that there will be additional hearings on this topic in this Committee, including one with Government representatives. This is the first of, not the only, hearing on this topic.

And also, on behalf of Senator Durbin, I want to thank the witnesses for participating here today. Now, one of the biggest concerns that I've had over the past several months and again today as I've listened to the testimony from our witnesses is about accountability. Time and time again I've seen a stunning lack of ac-

countability and a willingness to pass the buck on something as outrageous as child labor exploitation. And let me be more precise. We're talking about billion-dollar companies, household names in America, who are more than happy to report and brag about their profits each and every year.

Corporations who spend heavily on hiring consultants to analyze every step of their supply chain, their manufacturing process, make recommendations on how to eke out ever more efficiencies, productivity, and profit. Yet when it comes to responsibility of who's working for them, who's making these profits even possible, they claim ignorance. It's offensive that CEOs of these companies want us to believe that they don't know what's happening in their facilities or what's happening with suppliers or the contractors that they choose to employ.

It's a shock to the conscience. And there's no longer room for ambiguity for who's at fault. As you heard from Ms. Gerstein today, employers across the Nation indeed have the means to prevent this exploitation from happening. But, all too often, their choice to look away has become more profitable and those profits have become their priority. We must enforce the laws to hold these employers accountable and ensure that our Federal agencies are working and working together to better protect these children, all children. And it's clear that we must work together to enact some of the reforms mentioned here today to do better for their sake. With that, I thank you all once again. This hearing is adjourned.

[Whereupon, at 12:19 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List
Hearing before the
Senate Committee on the Judiciary

"Ensuring the Safety and Well-Being of Unaccompanied Children"

Wednesday, June 14, 2023
Dirksen Senate Office Building, Room 106
10:00 a.m.

Lorie Davidson, LCSW-C
Vice President for Children and Family Services
Lutheran Immigration and Refugee Service (LIRS)
Baltimore, MD

Venus Bradley
Foster Parent
Durham, NC

Terri Gerstein
Director, State and Local Enforcement Project, Center for Labor and a Just Economy
Harvard Law School
Brooklyn, NY

Lora Ries
Director
Border Security and Immigration Center, Heritage Foundation
Washington, D.C.

Anne Basham
Founder and Chair
Interparliamentary Taskforce on Human Trafficking
Fairfax Station, VA

United States Senate Committee on the Judiciary

Written Hearing Testimony
Anne Basham
CEO, Ascend Consulting
Founder & Chair, Interparliamentary Taskforce on Human Trafficking

"Ensuring the Safety and Well-Being of Unaccompanied Children"
June 14, 2023

Chairman Durbin, Ranking Member Graham and members of the Committee,

It is an honor to testify before you today on ensuring the safety and well-being of unaccompanied children. My name is Anne Basham, and I am the CEO of Ascend Consulting, a human rights advocacy firm, and I am also the Founder and Chair of the Interparliamentary Taskforce on Human Trafficking which is a consortium of Members of Parliament and Congress, government leaders, and lived-experience experts from around the world with the shared mission of combatting human trafficking through educating lawmakers and collaborating on policy solutions.

Today, in this hearing we have an opportunity to address one of the most important human rights issues facing our country right now, and that is the safety and well-being of unaccompanied children. In March alone of this year, more than 12,000 unaccompanied children crossed the U.S. border, and this number has remained relatively consistent month after month. [1] Many of these children were between the ages 11-15: the prime age targeted for sex trafficking. As a mother of two teenage girls in this age range, I am especially distraught at the thought of the physical and sexual violence, human degradation, hunger and thirst that these children often experience en route to the United States. Sadly, this is just a prelude to the violence that many experience once they are in the U.S., when promises of a better life are shattered and many are sold repeatedly for sex or as slave laborers.

To address the root, it is important to first understand who is crossing the Southern border. 47% of unaccompanied children apprehended in the United States come from Guatemala, while an additional 40% come from Honduras and El Salvador.[2] Last year I spoke at the Guatemalan Congress on the intersection between human trafficking and transnational crime. I have met Guatemala's President Giammattei, and Guatemala's Secretary Against Sexual Violence, Sandy Recinos, is a colleague and member of the international human trafficking taskforce I lead. In

[1] https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters/usbp-sw-border-apprehensions
[2] https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf

February of last year Guatemala passed a law which increased prison sentences for human smugglers from 2-5 years to 10-30 years. Guatemalan leadership clearly do not want their children to leave their country with smugglers, nor do they want their children to face the unspeakable violence that often awaits them on the journey to and after arrival in the U.S.[3]

Prior to arriving in the United States, these children and their parents are frequently from remote regions of Central American countries which are often impoverished and somewhat isolated because of language barriers. For example, Guatemala alone has 24 different dialects[4]. This means that it is difficult to communicate with parents the incredible risks their children face if they leave in search of a better life. Coyotes often trick or coerce mothers into paying children's hefty smuggling fees, and the mothers do this because they believe that a better life awaits their children in the United States. Unfortunately, for many children, this is not true.

Human trafficking is big business, and unlike other human rights abuses it is a transnational organized crime and the second largest criminal enterprise in the world – only surpassed by drug trafficking. It generates more than $150 billion annually and funds every nation and movement that is currently threatening the security of our world today. This is why there is a critical intersection between human trafficking and illicit finance networks. For example, the Taliban partially support their operations off the opium trade, and sex trafficking is a key component of their funding apparatus; unlike drugs or weapons, a person can be sold over and over again[5].

MS-13, one of the most notorious gangs operating in Guatemala, Honduras, and El Salvador, operates similarly. In 2015, the U.S. Treasury found that "[m]oney generated by local MS-13 cliques" engaged in sex trafficking, drug trafficking, murder-for-hire, extortion, and money laundering was "consolidated and funneled to the group's leadership in" Central America[6]. All of these factors contribute to a heightened risk of human trafficking for children especially.

Many of the Latin American children sent across the border alone or with smugglers have been taken by organized criminals in the cartels.[7] What frequently follows is child sex trafficking or labor exploitation. The problem exists not in border towns alone. It has spread deep within the United States — in big cities, suburban neighborhoods, and rural communities. Most of you have probably read the *New York Times* story on the labor exploitation of children as young as 13

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[3] https://www.reuters.com/world/americas/guatemalan-congress-approves-tougher-sentence-human-traffickers-30-years-2022-02-02/

[4] https://translatorswithoutborders.org/language-data-for-guatemala#:~:text=There%20are%2025%20languages%20spoken,Indigenous%20languages%20%2D%20Gar%C3%ADfuna%20and%20Xinca.

[5] https://www.washingtontimes.com/news/2021/sep/16/how-sex-trafficking-funds-the-taliban-and-terroris/

[6] https://home.treasury.gov/news/press-releases/jl10026

[7] https://nypost.com/2021/04/17/how-bidens-border-policy-will-increase-child-sex-trafficking-to-us/

working throughout the night in meat-processing plants[8]. The Department of Homeland Security's HSI has been involved in the prosecution of sex trafficking cases involving children as young as 14 who were funneled along a "human pipeline" from Mexico to New York City.

Other unaccompanied children enter the U.S. foster care system. For children who have been raped, beaten, exploited, or starved on the long journey to the U.S., this can be a frightening but welcome transition: they are free from the coyotes and shuttled through a version of the "American life" they have seen on TV and social media, with clean clothes to wear, regular meals to eat, and beds to sleep in.

But the U.S. foster care system is no sure haven. Certainly, many U.S. families who open their homes to foster children do so with integrity and self-sacrifice. My parents were foster parents like this, and I was a foster sibling as a child. I applaud people like Venus Bradley here today who give vulnerable children loving homes. We need more of them. But we know that the U.S. foster care system is already overly burdened with the number of children in the system often outpacing the number of available families to provide a safe home[9]. Additionally, U.S.-born children in foster care are already the most vulnerable to trafficking. In fact, 60% of trafficking victims have been in the foster care system at one time.[10] Increased burdens on the foster care system put already vulnerable children more firmly in the crosshairs of traffickers and other abusers.

The reality is that it is difficult to reconnect unaccompanied minors with their families once they arrive in the United States, so many parents never know what their children have experienced, and they are unable to warn other parents of the dangers these children face. In 2014, President Obama made a statement to the people of Latin America saying, "Don't send your children unaccompanied…they might not make it." [11] If more Central American parents knew the truth of what their children would experience, many would think again before relinquishing them into the hands of violent criminals.

Our country is divided on many issues, but on this we can all agree – no child should be trafficked, and no child should be abused. Because of this I am hopeful that there are creative, compassionate, and comprehensive solutions that we can all agree on which will help unaccompanied children stay safe and with families who love them.

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[8] https://www.nytimes.com/2023/02/17/business/child-labor-packers-sanitation.html
[9] https://www.kxii.com/video/2022/06/01/children-experiencing-foster-care-outpacing-available-local-homes/
[10] https://nfyi.org/mission/
[11] https://abcnews.go.com/Politics/obama-warns-central-americans-send-children-borders/story?id=24320063

Thank you again, Chairman Durbin, Ranking Member Graham and members of the Committee for your time and attention today. I am sincerely grateful for your focus on this issue and protecting children. I look forward to answering your questions.

Testimony of Venus Bradley
Before the Senate Judiciary Committee
"Ensuring the Safety and Well-Being of Unaccompanied Children"
June 14, 2023

My name is Venus Bradley. My husband and I have been licensed foster parents in Durham, North Carolina for the past seven years. In that time, we have fostered 25 children, ranging in age from 2 to 17. In March 2020, we accepted a placement for two sisters who were 15 and 17 at the time. With their permission, I would like to tell you a bit about them and their experiences.

When they were 11 and 13, they were asked if they wanted to go live with their biological father in America. Neither girl had any memory of him. But as a palm oil plantation laborer who had her first baby at 14 years old, their mom knew firsthand what broken dreams looked like. They had an uncle, who was in the military, that was beheaded. The family was threatened with death if they reported it to the authorities. The femicide rate along with rampant physical and sexual violence in their country was a huge factor in their mother's difficult decision to arrange for the girls to travel to the United States. Their mom saw sending her children to the United States as an opportunity to protect and even save her children from an uncertain future. And so, a family member agreed to escort the girls to the US border where they could eventually reunite with their father.

The journey was long. They were escorted by a trusted family member to a place where they could turn themselves over to authorities and safely come into the US. Originally, the girls were separated when they were taken into custody by Customs and Border Protection. My younger daughter described how she cried for hours, terrified she would never see her sister again. Because one was a teenager, she was put into a room with other teens. They were given thin silver blankets, which weren't enough to stave off the cold. They could hear the other children crying, often well into the night. No one told them what was happening, which made them more fearful that something bad would happen. They had their father's phone number and address, but the older girl struggled to get anyone to listen to her.

Eventually, the two sisters were reunited once they were put into the care of a child welfare agency and moved to a children's home, but they weren't given a lot of information there either. The children's home had a lot of kids. Hundreds it seemed. They didn't count but described it as "soooo many kids." Some of the children had been there for two and three years. This worried them. At least there they had beds, food, games, movie nights, and school. There were a lot of rules, but it was made easier by having friends. While they were allowed to see each other, they still didn't sleep in the same room. Generally, they think of this time as stressful, but not too bad.

Still, leaving their home and mother behind for a new country was extremely traumatic for them and they both worried about their safety and future. They were in a different country, didn't speak the language, didn't know what was happening, weren't together, and were worried that they would be like the kids who had been stuck there for years. There was no one to reassure them and the adults felt more like minders with their list of rules and regulations. After six weeks total in U.S. government custody, they were eventually flown to their biological father.

The girls had no way of knowing that this family reunion that they dreamed of would eventually turn sour. The better life their mother wanted for them, slowly turned into something like a Cinderella story, marked with deeply controlling behavior and physical abuse. Eventually, the girls disclosed the abuse to an Aunt and school counselor who helped them report it to the authorities. Once the abuse was reported, the system functioned as it should have. The allegations were taken seriously. As their father could no longer take care of the girls, the Durham County Department of Social Services stepped in and removed the girls from their home, first to a family friend and then, a few weeks later, to us. As most cases in foster care go, justice was slow and it took nearly two and a half years before their father was convicted and sentenced to prison. But justice did come.

When our daughters came to live with us in March 2020, we had no idea what we had signed up for. Beyond being on COVID lockdown with strangers, both of our girls had a lot of healing to do. The younger one had nightmares to the point that she had to take over-the-counter sleep aid. The older girl struggled with parentification, which is when a child is forced to take on a parental role that they are ill-equipped for emotionally and psychologically. They struggled with trust, anger, resentment, independence, and guilt. Their social and emotional development were stunted. They were like little mice in our home, afraid to make a noise, afraid to ask to do anything, and afraid of what we would say if they didn't help us around the house.

The trauma they have endured has altered their brains permanently. It took a lot of time to build a connection with them, to get them to a place where they could properly heal and even dream for the first time. I asked my daughter once what she used to dream she would be when she grew up. Most children will tell you, a firefighter, a ballerina, or a teacher. "We didn't have dreams," is what she told me. "It's hard to dream when you don't see a future for yourself."

In May, our oldest daughter got her Cosmetology license. She said she wanted to help people feel beautiful. It took her two years, but she is now officially licensed and, at the time of writing this, has two job offers at salons and three more interviews to go. She hopes to own her own salon one day, one that has stylists who speak several

languages and a diverse clientele. She lives independently in her own apartment, although it isn't uncommon for her to ask me a lot of questions throughout the week.

Our younger daughter graduated high school this Monday and will be attending a 4-year college in the fall, and has already accrued 22 credit hours from our local community college. She is still an undecided major, but is leaning towards business and real estate. It isn't uncommon to see her scrolling through Zillow, just looking at the houses and dreaming. Kinesiology is also on the table as she has developed an interest in physical fitness and athletes. They are the first in their family to graduate high school, go to college, or be certified in anything. Because both girls became adults before we could adopt, we are now in the process of two adult adoptions, which should be finalized by the end of the summer. While their legal status won't change, it will officially make us family.

Before you think they both girls have had a completely happy ending, I want to tell you the obstacles that are still in their way.

Neither girl has a green card. Despite receiving Special Immigrant Juvenile Status, having the authorization to work in the US, social security cards, and submitted green card applications…they are ineligible for many of the services that other young people trying to plan for their future have access to because they are trapped in a years-long visa backlog preventing them from getting their permanent residence. They are ineligible for FAFSA, so no federal aid, loans, or grants. I have no idea how we are going to pay for her college. Right now the plan is for her to live at home, commute an hour to school, and we will find a way to pay a monthly bill out-of-pocket. It's certainly not what we were promised and not something we had saved for either. The foster care system, which usually helps young people as they become adults, also will not help without that green card. So the services like price matching for a car, independent living stipend, insurance assistance, college tuition assistance, and more, are not a possibility for them and certainly aren't helping them as they move into adulthood.

I know there are a lot of kids who don't get these things. But my kids, and other unaccompanied children like them, through no fault of their own, ended up in the United States without a parent or guardian to care for them. These children are already vulnerable based on the situations they have come from. When we add the lack of support they often get in the United States, it creates opportunities for people to exploit them and barriers to their future.

My girls were lucky. They have us. A lot of kids who end up in the foster care system find themselves in a legal limbo that never gets better. It is worse for immigrant children. Children who have been found by a court to be abused, abandoned, or neglected by a parent can apply for a green card, but the green card process is years long at this point

given the visa backlog. We were told it would take 3-8 years to get the green card *after* submitting the application. That's after waiting years for their visa number to come up so they could apply for green cards.

These days, anytime we go to sign up for something, the first question my girls ask is, "Am I eligible?" I can see the disappointment in my daughter's eyes when her university spoke about studying abroad and she knew she couldn't. Or the realization that she was ineligible for any funding and many scholarships. Obtaining a driver's license, a typical right of passage for many teenagers, was a logistical nightmare and one we have to repeat with every EAD card renewal, which is every two years. These are kids, and now adults, who have hopes and dreams. They are brought here with the hopes that they will have a life better than what they left behind. Investing in these kids is investing in their stability, mental & physical health, and ultimately, their dreams. My girls are just one story out of many, but they hope that by hearing what they have been through, other kids will be able to find the help and stability they need. Thank you.

Lutheran Immigration and Refugee Service

WRITTEN TESTIMONY BY

Lorie Davidson, Vice President for Children and Family Services

Lutheran Immigration and Refugee Service

For a Hearing of the

U.S. Senate Committee on the Judiciary

on

"Ensuring the Safety and Well-being of UCs"

Wednesday, June 14, 2023, at 10am

Thank you, Chairman Durbin and Ranking Member Graham, and Members of the Subcommittee for the opportunity to appear before you today. My name is Lorie Davidson, and I am a licensed clinical social worker and the Vice President for Children and Family Services at Lutheran Immigration and Refugee Service (LIRS). I have had the honor of working with Unaccompanied Children (UC) and their families for over a decade and in my current role, I oversee LIRS's national network of UC providers.

LIRS is a faith-based organization that has been serving refugees and migrants for over 80 years, including unaccompanied children from all over the world for over 40 years. LIRS believes all children, regardless of their immigration status, deserve protection. Since 2004, LIRS has worked alongside the government and with a national network of community-based partners to provide appropriate services for unaccompanied children. These services help to identify the unique vulnerabilities of unaccompanied children to exploitation and to protect their best interests. While considerable progress to safeguard UC has been made through legislation, we must continually improve family reunification practices so that incidents of trafficking or other harm are more readily prevented, identified, or mitigated.

This testimony will focus on the following information: 1) the unique vulnerabilities of unaccompanied children, 2) LIRS's experience serving this population, 3) a look at current protection provisions, 4) a review of ORR policy and practices, and 5) LIRS's recommendations for ensuring the safety and well-being of UC.

Unique Vulnerabilities of Unaccompanied Children

Children separated from their parents are among the most vulnerable populations. For migrant

children, risks to their physical and emotional well-being often begin in their home countries. As discussed in a joint study between LIRS and the Boston College of Social Work, a majority of the unaccompanied children coming to the United States report having fled violence, abuse in the community and at home and poverty in Central America.[1] The migration journey can be an additional source of trauma. As an LIRS report on UC protection finds, children separated from their parents due to, or during, migration are vulnerable to sex trafficking, child labor, kidnapping, and ransom extortion.[2] Once these children arrive in the U.S, they frequently have very limited support and significant difficulty accessing services in their communities as a result of language and cultural barriers, immigration status, lack of access to legal counsel and child advocates, and unfamiliarity with U.S laws designed to protect children such as labor laws and mandatory schooling. Given these unique vulnerabilities, it is imperative that Congress strengthen current laws governing the care and custody of unaccompanied children and that organizations continue to be able to advocate for appropriate services for these children and surface when they do not.

LIRS's Experience Serving Unaccompanied Children

LIRS collaborates with the Office of Refugee Resettlement (ORR) to provide services mandated under the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 and the Homeland Security Act of 2002. These services safeguard unaccompanied migrant children's best interests and recognize their vulnerability to exploitation and abuse. LIRS provides these services through direct service provision and through networks of community-based agencies with expertise in professional child and family services and in serving immigrant communities. These services include:

- **Transitional Foster Care (TFC) and Shelter** services that provide short term care for youth who are awaiting family unification.
- **Long Term Foster Care (LTFC)** services for children without any family or a viable sponsor in the U.S.
- **Specialized placements** for particularly vulnerable minors including pregnant and parenting teens and those who require additional support.
- **Home Study (HS)** services include an in-person visit to the potential home and meeting with the sponsor and other adult caregivers. Home studies are viewed by child welfare experts as a key tool to assess the suitability of potential sponsors and home placements.
- **Post Release Services (PRS)** are provided to children after they leave ORR custody to connect them to community services and ensure compliance with immigration proceedings. PRS is provided in accordance with best practice standards of providing flexible, individualized case management services in the community by child welfare professionals.
- **Safe Release Services (SRS)** to assist sponsors in filling out the family reunification

[1] Thomas M Crea, Anayeli Lopez, Theresa Taylor, and Dawnya Underwood. "Unaccompanied migrant children in the United States: Predictors of placement stability in long term foster care." *Children and Youth Services Review, 73 (August 2016):* 93–99.
http://dx.doi.org/10.1016/j.childyouth.2016.12.009

[2] Lutheran Immigration and Refugee Service. *At the Crossroads for Unaccompanied Migrant Children: Policy, Practice, and Protection. (*LIRS, 2015) https://www.lirs.org/assets/2474/lirs_roundtablereport_web.pdf

packet and complying with background check and fingerprint requirements.
- LIRS is also one of two organizations that partners with the Department of State to administer the **Unaccompanied Refugee Minor (URM) Program**, which serves children with refugee status, who are resettled from abroad, and former unaccompanied migrant children who have obtained legal status in the United States.

As the only Office of Refugee Resettlement service provider that serves unaccompanied children throughout all stages of care, LIRS is grateful for the opportunity to identify gaps in protection and make recommendations to improve U.S. policies and practices for these children.

Laws on Protection of Unaccompanied Children

In 1997, the U.S. government reached a legal settlement in the case of Flores v. Reno, a class action lawsuit filed on behalf of immigrant children detained by the U.S. government. Under provisions of the agreement known as the *Flores* settlement, the government was required to promptly release children from custody to a suitable sponsor, such as a parent, relative, or responsible adult guardian without unnecessary delay. The settlement also required the federal government to place children in state-licensed programs, barring exceptional circumstances and provided detailed child welfare standards the government should adhere to in the process of detaining, releasing and caring for children under its custody.

The protections accorded to unaccompanied children under *Flores* were a result of over a decade of litigation in response to the U.S. government's detention policy, which had resulted in children being detained for extended periods of time. Prior to the *Flores* settlement, unaccompanied migrant children were sometimes held in detention centers alongside adults. These facilities were often ill-equipped to meet child welfare standards or the unique needs of children, including their physical and emotional well-being. As a result of *Flores,* the federal government was obligated to place children in the least restrictive setting appropriate to the child's age and special needs, separate unrelated adults from children during transport and detention, and ensure they were treated with "dignity, respect, and with special concerns." Despite the protections unaccompanied children have received under *Flores*, its interpretation and enforcement has been repeatedly influenced by changes in political administrations and shifts in immigration policies.

Until the Homeland Security Act passed in 2002, the former Immigration and Naturalization Services (INS) was responsible for the care and custody of unaccompanied children. An immigration enforcement agency, the INS lacked adequate child welfare guidelines and human resources for providing appropriate care to children, particularly for those who had special needs or experienced trauma. Human and child rights advocacy groups raised concerns regarding overcrowded and unsanitary conditions of INS facilities, lengthy detention stays, lack of appropriate healthcare, and limited access to education for children. The prolonged detention also negatively impacted children's development and meaningful access to due process as they navigated complex immigration proceedings. Congress acted, and under Section 462 of the Homeland Security Act, responsibilities for the care and placement of unaccompanied children were transferred from INS to the Office of Refugee Resettlement (ORR). Some of these key responsibilities include providing safe and secure shelters to house children while they are in ORR custody, access to case management services, and facilitating the sponsorship and release

of children to a suitable sponsor.

In the years following the *Flores* Settlement and Homeland Security Act of 2002, gaps in the care of unaccompanied children remained. Therefore, in 2008, Congress unanimously passed the Trafficking Victims Protection Reauthorization Act (TVPRA) to ensure the safety of children apprehended at the border. The TVPRA emphasizes the importance of protecting the rights and well-being of unaccompanied children who are victims of trafficking and abuse. It set new guidelines for the treatment and care of children in federal government custody, the services they must receive, and the procedure for their repatriation. The TVPRA required federal officials to follow child welfare standards for the first time and to prioritize the "best interests of the child," a standard in line with international agreements and conventions. With the TVPRA, Congress intended to better identify trafficking survivors, disrupt cross-border trafficking, provide services to children while in the custody of ORR, identify those children in need of protection, provide safety screening of potential sponsors, and safely reunify them with family as they pursue their legal relief claim in immigration court. These protections have saved children's lives. Any attempts to roll back these protections would subject children to increased risk of trafficking, exploitation, and abuse.

However, while the TVPRA did establish important child protection and due process protections, it did not provide all the protections that child welfare experts believed to be critical. Unaccompanied children still lack the guarantee of legal representation or advocates who work on behalf of their best interests. Due to increases in the number of children fleeing Central America and policies that increased family separation, ORR has also been forced to make hard choices about family reunification procedures that do not fully protect children while safeguarding their rights to family unity and trying to meet its obligations under the law.

ORR Policies and Procedures for Safe and Timely Release

The following highlights some of ORR's reunification practices and provides recommendations for ways these procedures could be strengthened to better protect and care for unaccompanied children.

Screening Children for Trafficking Concerns in ORR Custody

Upon admission to ORR care provider facilities, case managers and clinicians are tasked with completing a detailed assessment to identify the needs of the minor and to screen for trafficking indicators, including specific questions asked to ascertain if there is a risk of child trafficking. These questions include information about the child's journey and if they owe any debt to another individual. Other questions are aimed at determining if the child was ever coerced or forced into doing something that they did not want to do in exchange for money or something of value. Children are also assessed to find out if they (or their family) were ever threatened for money owed. To establish a risk of trafficking, the child is asked a series of questions regarding any work that was done while they were living in their country of origin and any work that was done along their journey to the United States. If there is a suspicion of trafficking, the care provider can raise the case with the Office of Trafficking in Persons (OTIP) who can determine if a referral is appropriate. Regardless of whether trafficking indicators are discovered while the

child is in ORR custody, there is no guarantee that trafficking will not occur once they are released. To mitigate the potential risks of exploitation and trafficking, sufficient background checks and sponsor vetting must occur, and post release services must be available for all children immediately following their release.

Issues with Large Congregate Care Settings

Currently there are several types of care offered within the ORR network including: individual community based transitional and long-term foster care placements, small family centric group homes, small scales shelters, specialized placements for children who need additional supports, large congregate care settings, and Influx Care Facilities (ICF) that can house thousands of children at one time. Although ORR had to utilize ICFs and Emergency Intake Sites (EIS) in early 2021, they have made great strides in reducing the reliance on these settings. All of the EIS sites have closed and there are currently less than 150 children in ICFs.

ORR refers unaccompanied children to LIRS and other licensed care providers, who operate residential programs such as foster care, group homes, residential centers, and other similar facilities that house and provide services to unaccompanied children while they're undergoing immigration proceedings, or the agency is in the process of identifying a suitable sponsor. Congregate care settings are typically meant to provide temporary shelter and care for children, but without a fixed duration or standard timeframe for the length of stay in these settings, children can spend days without access to appropriate supports and services to ensure their wellbeing. Overcrowding, lack of privacy, and limited access to legal counsel and mental health services are some of the challenges unaccompanied children face when placed in large congregate care settings such as ICFs. This environment poses significant risks to the mental and physical well-being of children, particularly after they've undergone a long and traumatic journey. Given this background and what we know about the important role family unity plays in a child's development, reunification with family members must be prioritized over congregate care settings. Small community-based settings are a viable alternative when family reunification is delayed or not immediately feasible. However, recent trends in ORR funding indicate a growing number of large contractors with limited to no child welfare expertise seeking to provide social services to children. As a result, similar concerns over the inadequate care unaccompanied children receive in congregate settings could be replayed by these larger contractors. In order to shift reliance on congregate settings or large contractors, ORR should preemptively invest in small community-based shelters while prioritizing family reunification whenever it is possible.

Sponsor Vetting

As part of the family reunification process, ORR requires the completion of a family reunification process. Sponsors are required to provide photo identification, a copy of their own birth certificate, a copy of the child's birth certificate and documents to prove the child's relationship to the sponsor. If the sponsor is not a child's parent or legal guardian, then that person must submit proof of address. Unfortunately, in the past, traffickers have provided fraudulent documents to sponsor children despite the efforts ORR has made to verify the identity of anyone claiming a familial relationship. This is why LIRS believes that appropriate background checks based on the relationship of the sponsor to the minor should be performed for

every sponsor, even when a familial relationship is claimed.

Depending upon circumstances specific to each reunification, ORR has historically used a range of background checks to determine if a child would be at risk under the care of a sponsor. The following checks may be requested of potential sponsors and household members:

- An **internet background check (IBC)** to determine if the individual has a criminal history;
- A **national FBI criminal history (digital fingerprint)** check to determine if the individual has a criminal history; ***or*** an **FBI identification index** used in lieu of a FBI criminal history check when fingerprints cannot be obtained; and
- A **Child Abuse/Neglect check (CA/N check)** to determine if there is a history of child abuse or neglect, and a state criminal history repository check to determine if there are further criminal offenses. These checks can be run in every state the sponsor or household members reported they have lived in the last 5 years.

ORR has repeatedly changed the requirements for complying with background checks throughout the last decade. In 2014, ORR rolled back policies around background check requirements for some categories of sponsors in order to implement an expedited release process in cases in which there were no apparent risk factors and a TVPRA statutory required home study (trafficking, child abuse or neglect, child disability, or sponsor risk to child) was not mandated. Even when background checks were requested, children were released to sponsors prior to receiving CA/N check results.

In 2015, ORR continued to change policies around background checks, permitting a procedure for waiving CA/N checks when there was no indication of child abuse or neglect. While this policy was updated to require category 3 sponsors (distant relatives and unrelated adults) to undergo CA/N checks in order to further improve the screening of non-relative sponsors, we saw an increase in labor trafficking cases of unaccompanied children during this period.
By 2018, all categories of sponsors and household members were required to undergo IBCs and most were required to complete FBI fingerprinting checks. Completing these checks for biological parents and legal guardians slowed down the ability to unify children with their families. In May of 2018, the Trump administration issued a Memorandum of Agreement (MOA) with ICE, CBP, and ORR which allowed ICE to run criminal and immigration background checks on all categories of sponsors to determine the suitability of the sponsor. The MOA also stipulated that ORR provide ICE with the name, date of birth, address, fingerprint results, and any other biographic date for all adult members of a potential sponsor's household.

The implementation of the MOA coincided with increased ICE activity in immigrant communities in the interior of the country, compounding the chilling effect of the MOA and resulting in significant fear for potential sponsors to engage in the reunification process. This chilling effect across immigrant communities had a significant impact on reunifications. In 2018, the average length of care for a child in ORR care soared to over 60 days, which strained the permanent bed capacity of ORR and forced them to rely heavily on Influx Care Facilities. By December of 2018, ORR had begun to roll back fingerprinting requirements for some household members and certain categories of sponsors as a way to speed up releases.

In 2019, ORR revised certain release procedures to their pre-MOA status. These changes included removing the fingerprint requirement for Category 1 sponsors unless a home study was conducted and removed the requirement for each member of the household to submit their immigration status as part of the reunification process.

2021 brought additional changes in ORR's policies related to background checks with the intention of releasing children to sponsors quickly. In response to the influx of UC in 2021, ORR adopted Field Guidance (FG) 10 and FG 11 which expedited releases and removed some background check requirements for certain categories of sponsors, alternative adult caregivers, and household members. ORR also implemented FG 20 which removed enhanced background check requirements for some Category 1 sponsors who were required to undergo a home study.

LIRS recognizes that the creation and implementation of new policy and Field Guidance was critical in ensuring that UC were released expeditiously during the COVID-19 pandemic and influx of 2021. However, given the current stability of the census and having had the opportunity to observe the impact FG has had on the release process, LIRS offers the following recommendations:

- Rescind Field Guidance 11 and reinstate internet background checks for alternate adult caregivers and household members of non-Category 1 sponsors, ensuring that the results are received and reviewed prior to release.
- Reinstate third party reviews for all cases.
- Track and monitor the impact of changes to fingerprint background check requirements and revise policy accordingly.

The recent cases of child labor in the spotlight today echo the circumstances exposed in 2014 when human traffickers subjected underage migrant children to exploitative working conditions at a major egg producer in Ohio. Concerns regarding sponsorship and the services unaccompanied children need in order to ensure their safety were raised in the public and in hearings as a result of these labor trafficking cases. Yet we are facing a similar situation today. Rolling back background checks in times of influx cannot continue to be used as the solution to move children out of influx care facilities quickly. ORR must consistently and appropriately vet sponsors based on their relationship to the child 100% of the time. ORR should expand its permanent licensed bed capacity to ensure that children awaiting reunification are safe and cared for in child friendly settings.

LIRS agrees that timely reunifications are in the best interest of children; however, expedited releases should not be prioritized at the expense of child safety. Therefore, LIRS recommends that all sponsors who are not non-biological parents or legal guardians and their household members undergo, at a minimum, public records checks, and that distant relatives and unrelated adults undergo a more rigorous background screening process that may include a national criminal history check, sex offender history check, and CA/N check.

Releasees to Category 3 sponsors

Understanding the benefits and challenges of releasing UC to Category 3 unrelated sponsors, LIRS offers the following recommendations to ensure a safe and timely release:

1. Develop standard procedures for verification of relationship and verification of address for Category 3 sponsors to ensure consistency across regions and across Federal Field Specialists and require a home study for all Category 3 Sponsorship cases in which verification of relationship cannot be clearly demonstrated.
2. Consider implementing a cap on the number of unrelated children that can be released to a single Category 3 sponsor and to a single household address.
3. Create objective criteria for Federal Field Specialists when making a release following safety concerns or following a negative home study recommendation to ensure consistency among ORR staff.

Home Study and Post Release Services

Currently under TVPRA, a small percentage of children are *required* to have a home study to assess the appropriateness of the sponsor and safety of the placement. These children include those who are victims of severe trafficking, children with special needs or disabilities (as defined by ADA), children who have been victims of physical or sexual abuse and sponsors where there is a concern a risk of abuse, maltreatment, exploitation or trafficking. In 2015, ORR changed its policies and now requires home studies before releasing a child to a non-relative sponsor who is seeking to sponsor multiple children under the age of 12 or who is looking to sponsor 2 or more unrelated children. Still, even with these increases in home studies, the vast majority of children are placed with sponsors who have not undergone a home study. To mitigate this potential risk, all children should be immediately assigned a post release services case manager who can visit the home within the first 14 days following release.

TVPRA only mandates post-release services for children who receive a home study. However, in addition, ORR provides post release services to a percentage of children who are deemed by ORR to be especially vulnerable or in need of extra follow-up services. LIRS applauds ORR's efforts to expand the Home Study and Post Release Services program, aiming to ensure that 100% of UC receive PRS by the end of 2024 and for the implementation of the innovative three-tiered system which allows for greater flexibility to meet the individualized needs of UC, However, there are currently over 18,000 children waiting for HSPRS services, some of whom have been on the waitlist since 2021. Post release services are a highly effective way to mitigate risk of exploitation and ensure the safety of children, but to do so they must be implemented immediately following the release of the child and involve an in-person visit. Given the current length of the waiting list and recent policy changes to reduce the home study process to 10 calendar days, LIRS make the following recommendations:

- Ensure that all children have immediate access to post-release services and Congress should appropriate funds accordingly.
- Require that all children receive at least one in person home visit to check on the released child's well-being within 14 days of release and to assess for safety and stability.
- Rescind the 2023 policy which shortened the home study period for all cases to 10 calendar days regardless of the level of complexity or nature of the concerns. Instead

create a more flexible system in which providers can request up to 5 additional days to complete the home study process for cases in which the provider needs additional time to effectively assess the safety and appropriateness of a potential sponsor and placement.
- Create a system within the UC Portal to flag high-risk cases such as those in which the UC is released following a negative home study or other safety concerns have been identified to ensure that PRS providers prioritize these cases rather than allowing these cases to be placed on the current waitlist.

Data tracking and Information Sharing

Recognizing the important role that accurate data collection has on the provider's ability to adequately assess the suitability of a sponsor and the current limitations of the UC Portal, LIRS offers the following suggestions when considering future upgrades to the UC database:

- Create the ability for ORR and providers to identify and/or flag high risk cases prior to unification so that these cases can be prioritized for PRS.
- Enhance the database so that it has the capability of cross-referencing sponsors using various data sets (unique identifier, address, and name spelling variation} and require ORR staff and providers to verify the record when the database detects a potential duplicate.
- Ensure that providers can easily flag sponsors and addresses of concern inducing additional fields such as the name of apartment complexes or mobile home parks.

Expanding Permanent Licensed Bad Capacity with Small Community-Based Providers

In consideration that while awaiting family reunification, children should be placed in settings best equipped to provide them with safe and appropriate care that meets child welfare standards LIRS recommends:

- Reduce reliance on Influx Care Facilities by expanding permanent licensed bed capacity.
- Prioritize funding for small, community-based state licensed programs including transitional foster care, family centric group homes, small congregate care facilities with 24 youth or less, and specialized placements for youth with additional physical and mental health needs.
- Develop a federal licensing scheme that exists outside of ORR to oversee programs in states such as Florida and Texas that are withholding state licensure for programs serving UC.

Legal Representation

Although the Homeland Security Act of 2002 indicated Congress' intention was for children to receive "qualified and independent legal counsel...appointed to represent the interests of each such child" and the TVPRA states that "to the greatest extent practicable" ORR should provide children with "counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking," most unaccompanied children do not have an attorney to represent them. LIRS applauds ORR's goal of ensuring legal representation to all UC

by 2027 as attorneys are trusted adults who are vital in identifying risks of trafficking and exploitation among other things. According to Kids in Need of Defense, children with legal representation throughout the duration of their proceedings have a 95% success rate in receiving protections or lawful immigration status. This status is critical in ensuring that older teenagers are able to obtain work authorization which reduces vulnerability to exploitation and allows them to access safe and legal employment opportunities.

All of these standards – from background checks, home studies, post release services, and ongoing legal representation – acknowledge and meet the unique vulnerabilities of children arriving unaccompanied to the U.S. They must be practiced rigorously and consistently for them to work. Congress has time and again demonstrated its intent to protect unaccompanied children from exploitation and predation. Any efforts that would send children back to harm or eliminate existing protections for them and their loved ones through immigration enforcement violate the TVPRA and Congress' own overwhelmingly bipartisan repeated commitment to safeguard children. It is incumbent on Congress to support ORR and service providers with the resources to ensure child safety.

Conclusion

Thank you for the opportunity to provide you and the Committee with information on LIRS's role in serving unaccompanied children. We believe all children have a right to protection and are best cared for by their families. Congress must focus on improving existing laws and ensuring adequate resources to provide all unaccompanied children access to post release services immediately following reunification and access to ongoing legal representation to safeguard against labor and other types of exploitation. LIRS appreciates ORR's increased focus on safe and timely release of UC and looks forward to continuing to work with this Committee and ORR to strengthen child welfare practices during family reunification so that we may better ensure children's long-term stability and well- being.

Economic Policy Institute

CLJE CENTER FOR LABOR & A JUST ECONOMY AT HARVARD LAW SCHOOL

Testimony of Terri Gerstein
Harvard Center for Labor and a Just Economy
Economic Policy Institute

U.S. Senate Judiciary Hearing
"Ensuring the Safety and Well-Being of Unaccompanied Children"
June 14, 2023

Chairman Durbin, Ranking Member Graham, and distinguished members of the Committee, thank you for the opportunity to testify today about the importance of stopping the exploitation of children in violation of our nation's child labor laws.

My name is Terri Gerstein and I am the Director of the State and Local Enforcement Project[1] at the Harvard Center for Labor and a Just Economy.[2] I am also a Senior Fellow at the Economic Policy Institute, a nonprofit, nonpartisan research think tank studying the economic wellbeing of low- and middle-income workers and families.[3] I work with state and local labor enforcement agencies nationwide, offering training, technical assistance, convenings, and more to help them build their capacity to protect workers' rights. Previously, I enforced state labor laws for over 17 years in New York, including as Labor Bureau Chief, Deputy Section Chief, and Assistant Attorney General in the New York State Attorney General's Office and as a Deputy Commissioner in the New York State Department of Labor.

I. Introduction

With the school year ending, many teenagers are anticipating starting summer jobs. Many of us can remember our own first work experiences, whether during the summer or after school; often they're a source of growth and learning. Indeed, recognizing the value of these experiences, our laws allow teenagers to work. However, state and federal laws contain important safeguards to ensure that children are not put at risk in highly dangerous jobs, and also to avoid harming their development through excessive work schedules that interfere with schooling.

Most Americans likely thought that oppressive child labor was a problem of the past, something from a century ago that we learn about from history books. But it turns out, that's not the case. Our country is currently facing a child labor crisis, affecting not only children who are immigrants, but also those who were born here. The federal labor department has reported a

69% increase in child labor violations in the past five years; state labor enforcers have observed notable increases as well. Serious violations have occurred in a range of industries and worksites, from meatpacking plants to fast food restaurants to automobile factories, from construction sites to food processors.

This problem is complex. However, the following measures are urgently needed to stop these abuses:

- Significantly increasing funding to the U.S. Department of Labor (USDOL) for enforcement purposes;
- Increasing civil and criminal penalties for employers' child labor violations; and
- Creating methods of holding lead corporations responsible for violations within their supply chains.

All children deserve a good start in life: the opportunity to get an education, and initial work experiences that are beneficial and not exploitative. With focused attention on this problem, sufficient resources, and law reform, we can again make oppressive child labor a thing of the past.

II. Children are legally permitted to work in many jobs

The federal child labor law, located within the Fair Labor Standards Act (FLSA), contains two general sets of prohibitions: one prohibits employers from employing minors in very dangerous jobs, and the other limits the hours children under 16 can be assigned to work, in order to safeguard their ability to get an education.[4] State laws vary, but they generally also contain the same two provisions (i.e. barring hazardous occupations and limiting hours of work). Many contain additional protections as well, such as limitations on work hours for older minors (16 and 17) or the requirement that minors obtain a work permit from their school, labor department, or state education agency.

Both federal and state laws allow children, even those as young as 14, to work in a broad range of jobs: work in offices, stocking shelves at grocery stores, working as a cashier, handling most duties at restaurants, working in retail, and much more.

III. Oppressive child labor is extremely harmful to young people

While age-appropriate work can be valuable for children, oppressive child labor in violation of the law is terribly harmful to them: It places them in serious physical danger and interferes with their opportunity to get an education.

When children work in prohibited hazardous occupations, it places them in serious physical danger, risking injury and even death. The risk of children working in hazardous occupations is not theoretical. When I worked in the New York Attorney General's Office, our team

prosecuted a case involving a 17-year-old high school senior, Brett Bouchard, who was working at an Italian restaurant in upstate New York, near the Canadian border. His arm was severed at the elbow when his employer assigned him to clean machinery that was prohibited for minors. Brett underwent multiple surgeries to have the arm surgically reattached.[5]

Like Brett, children today are being placed at great risk. Many also have the added vulnerability of being immigrants, not knowing English, sometimes being unaccompanied and on their own. The jobs included in federal (and most state) laws as "hazardous occupations"[6] are terribly dangerous. They are among the most dangerous out there *for adults*, and are even more perilous for children. Prohibited hazardous work includes, for example, mining; demolition; roofing; work involving exposure to radioactive substances; and work involving use, cleaning, or maintenance of various kinds of power-driven machines, such as those used in meat-processing plants.[7]

Importantly, the jobs included in hazardous occupations were not chosen at random, nor were they selected 85 years ago when the FLSA was first passed. The regulations were most recently updated in 2010, based on data from the National Institute of Occupational Safety and Health, focusing on the jobs with the highest incidence of serious workplace injury and fatalities.[8] There was virtually no opposition to that regulatory update, and very limited comments were submitted.

Young workers are also at higher risk of workplace injuries in general. Young workers have much higher rates[9] of non-fatal injuries on the job and the highest rates[10] of injuries that require emergency department attention. Due to the vulnerability and inexperience of young workers, data on these workers is likely an undercount due to fears or barriers in being able to speak up and report dangerous situations or child labor law violations.

In addition, when employers require children to work excessive hours, in violation of legal limitations on children's working hours, it harms young people's social and educational development, impeding their ability to get an education. Exceedingly long work schedules beyond the legal limits are damaging to children's education.[11] Studies have found that working more than 20 hours per week leads to higher dropout rates[12] and lower grades[13]and interferes with sleep.

IV. There has been an unacceptable upsurge in child labor violations, involving hazardous work and excessive work schedules.

A. Government statistics indicate a significant and growing problem.

The Wage and Hour Division (WHD) of the USDOL is responsible for enforcing the FLSA's child labor provisions. The WHD has reported a 69% increase in overall child labor violations in the past five years.[14] The Economic Policy Institute analyzed WHD data[15] and has reported:[16]

According to DOL, the number of minors employed in violation of child labor laws in fiscal year 2022 increased 37% over FY2021 and 283% over FY2015…The number of minors employed in violation of hazardous occupation orders increased 26% over FY2021 and 94% over FY2015….These numbers represent just a tiny fraction of violations, most of which go unreported and uninvestigated.

Child labor violations are on the rise

Minors employed in violation of child labor laws and hazardous occupation orders, fiscal years 2015–2022



Notes: Minors are workers less than 18 years old. Hazardous occupation orders ban minors from working in nonagricultural and agricultural occupations the Department of Labor defines as particularly hazardous for minors, or detrimental to their health or well-being.

Source: EPI analysis of Department of Labor (DOL) child labor violations data.

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Authorities have also noted an increase in child labor violations at the state level, in New York[17] for example, and Massachusetts, where the attorney general noted that within the past three years, the Office's Fair Labor Division had cited 127 employers for violating commonwealth child labor laws.[18]

B. Media reporting has uncovered serious violations

Media reporting has also uncovered extensive child labor violations involving immigrant children. The stories are heartbreaking and deeply concerning; they illustrate the unique vulnerability of migrant children, as well as the unscrupulous conduct of employers that hire them. Notable examples are as follows:

Reuters in a series of stories[19] found migrant children, some as young as 12, were manufacturing car parts at suppliers to Korean auto giant Hyundai in Alabama and working in chicken processing plants in the state. Notably, in the case of the car part suppliers, the children were hired by a staffing company to work for a subcontractor for Hyundai. This kind of outsourcing, multi-layered "fissured" supply chain structure helps household-name lead corporations deflect responsibility for child labor violations, allowing them to blame a subcontractor or staffing agency and evade accountability for what happens during the manufacturing of their products. Reuters coverage describes a fourteen-year-old girl working at the automobile plant "just over four feet tall, with rosy cheeks and a timid smile," as well as two brothers, aged 13 and 15, who were "staying with other factory workers in a sparsely furnished house owned by the president of the staffing company that hired them." Articles also report that two adult workers said they raised concerns with management; one was ignored, the other told to focus on production; other adult workers said they noticed the minors but fearing for their own jobs, they didn't speak up.

The New York Times published an extensive exposé[20] regarding widespread child labor violations at a range of employers in various industries nationwide, including at processing plants for household-name foods like Cheerios and Nature Valley, J. Crew and Fruit of the Loom. As in the cases reported by Reuters, these examples include violations at subcontractors working for lead corporations; for example, Hearthside, a food processor where a 15-year-old was working, makes and packages food for other companies, including Frito-Lay, General Mills and Quaker Oats. Notably, the coverage includes an interview showing that employers do have the ability to discern when children are applying for jobs, and to avoid hiring them, belying many employers' position that it's the children's fault for seeking work. Specifically, the article describes a meat plant's human resources manager who actively tries not to hire children even if they "use heavy makeup or medical masks to try to hide their youth."

The Boston Globe reported[21] on minors working at factories and fish processing plants. The article describes, for example, one youth who "had come from Guatemala on his own to join his father, desperate to escape a poor, violent country where two of his childhood friends were shot to death. From 7 p.m. to 7 a.m., Walter trimmed plastic with sharp knives and retrieved hot molds stuck inside machines, then went straight to Framingham High School, bleary eyed, often falling asleep in class."

C. Federal and state meatpacking cases demonstrate the types of violations and challenges in addressing them

Both the United States Department of Labor and the Minnesota Department of Labor and Industry have filed lawsuits seeking and obtaining injunctions against corporations found to

have used illegal child labor in violation of requirements regarding hazardous occupations as well as hours of work. The court pleadings in these cases are demonstrative of some of the more important elements of modern child labor: the difficulty of the cases; the uses of subcontractors; and the danger of the work.

1. **Packer Sanitation Services, Inc. Ltd. (PSSI) case by the USDOL**

In this case, the USDOL found that PSSI had employed more than 100 children in violation of child labor laws in multiple states across the country. The labor department sued PSSI, and ultimately obtained a consent order and judgment,[22] in which the company agreed to comply with the FLSA's child labor provisions in all of its operations nationwide, and to take steps to ensure future compliance, including hiring an outside compliance specialist. The company also paid $1.5 million in civil money penalties for the violations.

Subcontracted model: PSSI is a food sanitation contractor that performs cleaning for the nation's largest meatpacking companies, including JBS (the largest meatpacking company in the world), Cargill, Tyson Food, and Turkey Valley Farms. Again, we see an example of lead corporations using a subcontractor as a way of seeking to avoid accountability; indeed, on PSSI's website, it woos potential clients by noting that outsourcing can "take the liability and risk off your facility's record."[23]

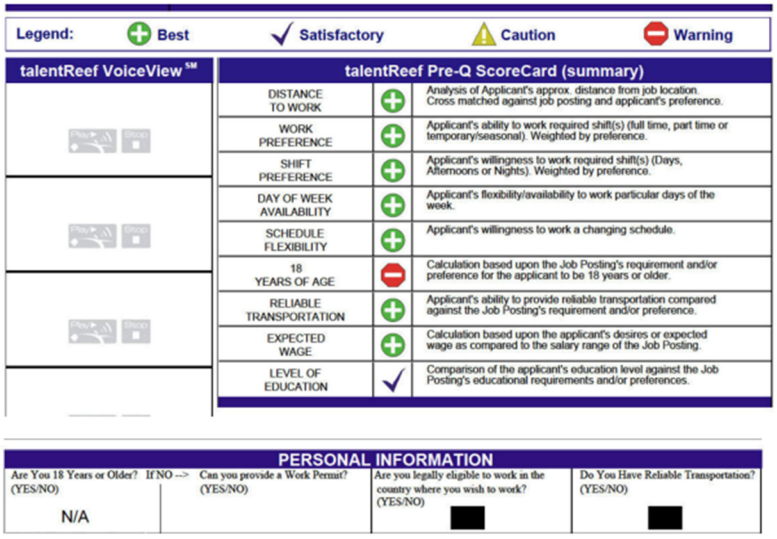
Extensive investigation: The court filings in the case (Walsh v. Packers Sanitation Services, Inc., Ltd., U.S. District Court, District of Nebraska, No. 4:22-CV-03246) include declarations from eleven WHD investigators and officials who worked on the case. They describe an extensive and detailed investigation: after receiving a tip that minors were working night shifts, the DOL team performed night-time surveillance on multiple sites and occasions, interviewed many school officials, obtained court warrants for multiple locations, conducted on-site visits at multiple locations from 10 pm to 2 a.m. with teams of around eight Spanish-speaking investigators, took photographs and conducted on-site worker interviews, and obtained, reviewed, and compared extensive company and school records. The document production at 50 agreed-upon PSSI facilities included the digital equivalent of approximately 100,000,000 pages of records. All of this was for *one* company, to seek a court order mandating that they follow the law.

Investigator declarations provide important details: Although matter of fact in tone, the investigators' declarations include wrenching details, such as a description of a 14-year-old who had sustained injuries from chemical burns, and who was "falling asleep in class and/or missing class as a result of work." More examples:

> "The minor children interviewed were a mix of boys and girls. In general, the minor children performed cleaning work either by hand, scrubbing machinery and equipment, or with a hose. Chemicals were sprayed on the areas to be cleaned. Minors wore hard hats, ear plugs, goggles, steel toed boots, rubber pants and jackets, gloves, and a harness."

> Minor Child L worked as a sanitor for PSSI in the "loin room"; the equipment listed in that room includes: "three buster saws to cut product, twenty-five trim conveyors to transfer trim products, kidney fat puller to pull meat off sides, scissor chain to move cattle, various saws to cut product, and conveyors to transfer parts of the carcasses."
>
> "Minor Child P's work at PSSI involved cleaning the conveyer belt, machines that process the meat, pick up meat from the floor, and uses a pressure hose. They also worked on the kill floor. Minor Child P attends the Worthington High School and is currently in ninth grade."

In addition, investigators discovered that PSSI was lax indeed about ensuring compliance with child labor laws. One USDOL-filed court document contains a screen shot from a hiring page in the documents produced by PSSI; six minor children failed to answer a question about their age and were flagged with a red "warning" sign. They were hired anyhow.[24]



Legend: Best | Satisfactory | Caution | Warning

talentReef VoiceView℠	talentReef Pre-Q ScoreCard (summary)		
	DISTANCE TO WORK	⊕	Analysis of Applicant's approx. distance from job location. Cross matched against job posting and applicant's preference.
	WORK PREFERENCE	⊕	Applicant's ability to work required shift(s) (full time, part time or temporary/seasonal). Weighted by preference.
	SHIFT PREFERENCE	⊕	Applicant's willingness to work required shift(s) (Days, Afternoons or Nights). Weighted by preference.
	DAY OF WEEK AVAILABILITY	⊕	Applicant's flexibility/availability to work particular days of the week.
	SCHEDULE FLEXIBILITY	⊕	Applicant's willingness to work a changing schedule.
	18 YEARS OF AGE	⊖	Calculation based upon the Job Posting's requirement and/or preference for the applicant to be 18 years or older.
	RELIABLE TRANSPORTATION	⊕	Applicant's ability to provide reliable transportation compared against the Job Posting's requirement and/or preference.
	EXPECTED WAGE	⊕	Calculation based upon the applicant's desires or expected wage as compared to the salary range of the Job Posting.
	LEVEL OF EDUCATION	✓	Comparison of the applicant's education level against the Job Posting's educational requirements and/or preferences.

PERSONAL INFORMATION

Are You 18 Years or Older? (YES/NO)	If NO --> Can you provide a Work Permit? (YES/NO)	Are you legally eligible to work in the country where you wish to work? (YES/NO)	Do You Have Reliable Transportation? (YES/NO)
N/A		[redacted]	[redacted]

2. **Tony Downs Foods. Co. case in Minnesota**

In this case, the Minnesota Department of Labor and Industry (Minn. DLI) received a tip that minors were working the overnight shift at a processing plant that makes packaged meat products. As was the case in the Reuters reporting, Minn. DLI was informed that someone had raised a concern about the underage workers with the company but was "told not to ask

questions." Minn. DLI ultimately found children working in hazardous occupations and in violation of the state's limitations on minors' hours; the agency obtained an injunction in the case (State of Minnesota v. Tony Downs Foods Co., 83-CV-23-131, Filed 3/15/23), which remains ongoing.

Extensive investigation: Again, the investigation was resource intensive and required considerable skills and time to effectuate. Agency investigators spoke with school officials asking whether they had concerns about students working overnight, working excessive hours, missing school, falling asleep in class, or at risk of dropping out, and school officials said they did have such concerns. Nine investigators executed an on-site investigation in the middle of the night; the team included a Spanish speaking former police officer (eight years of service) and a Spanish speaking former immigration attorney with experience representing families and children. (The minors generally spoke Spanish as their second language, presumably with an indigenous language as their native tongue). Investigators found eight minors working in the plant, and they learned of other minors who had worked there in the past.

Dangerous workplaces: According to court pleadings, the worksite had industrial sized power machinery, mixers, grinders, conveyer belts, ovens, and forklifts. Photographs of the facility show the highly industrial and hazardous nature of the equipment. There was also a freezing process using ammonia which is highly toxic. A young-appearing worker, who turned out to be fifteen, worked in the area where meats were flash frozen with ammonia. Many of the children regularly worked until 1 or 2 a.m.

Readily-identifiable children: The investigators from Minn. DLI identified minors based on their appearance: one was described as "very small in stature (likely under five feet tall) and had young-looking facial features." An investigator wrote that he "observed another individual of slim build, small stature, and young-looking facial features standing near conveyor belts; they were so cold that they were shaking."

D. Additional child labor cases demonstrate the breadth and extent of violations

Numerous additional cases brought by federal and state authorities demonstrate the extent of violations.

Some well-known fast-food companies and/or their franchisees have committed serious violations of child labor laws, most commonly involving infractions related to seriously excessive work hours, but sometimes also including hazardous prohibited work, such as allowing minors to use specific frying or cooking equipment that is disallowed because of the risk of injury. The USDOL found that three franchisees collectively operating 62 McDonalds locations in Kentucky, Indiana, Maryland, and Ohio employed 305 children to work more than the legally allowed hours; at least one also performed tasks prohibited for young workers.[25] The youngest workers were ten years old. The investigations led to assessments of $212,544 in civil money penalties against the franchisees. Chipotle, too, is a notable offender: the burrito chain has paid more than $9 million based on thousands of child labor violations in New Jersey

(2022)[26] and Massachusetts (2020).[27] In recent years, state enforcers have also found child labor violations include locations of Burger King, Dunkin', Wendy's, Qdoba, Dave & Busters, Taco Bell, and multiple franchisees of Dunkin (in 2021, 2022, and 2023).[28] Meanwhile, the USDOL has found child labor violations at Sonic locations in Kansas[29] and Nevada,[30] as well as a Zaxby's franchisee,[31] Dunkin',[32] another McDonalds,[33] Arbys,[34] Crumbl Cookies,[35] and more. A North Carolina Chick-Fil-A allowed three workers under 18 to operate, load, or unload a trash compactor prohibited as hazardous. (The company also paid certain employees in meal vouchers rather than wages).[36]

Numerous recent cases also involve youth assigned to do hazardous work prohibited for minors, such as my office's prior case mentioned earlier: the New York Attorney General prosecuted an employer for assigning a minor to hazardous work that ultimately led to the teen's arm being severed.[37] The USDOL found 14 and 15-year-olds in Maine assigned to use fryers prohibited by law, as well as to operate a power-driven meat-slicer, also not permitted.[38] A Pennsylvania meatpacking plant employed minors, including two under 16, to work in dangerous prohibited slaughterhouse operations.[39] A lathe mill in Ohio employed a 15-year-old worker illegally in a hazardous occupation: operating a sawmill, leading to serious injury to the teen "when he became entangled in the gears of a powered wood processing machine.[40]

In many cases, the oppressive child labor occurred in the context of multiple, additional types of labor violations. This is not uncommon: In my experience enforcing New York's labor laws, employers that violate one law often violate a cluster of workplace laws. For example, employers that failed to pay overtime in many cases also created false payroll records to hide their violations, along with under-reporting workers' wages for unemployment insurance, workers' compensation, or tax purposes. In this way, child labor violations are often part and parcel of an overall approach of employer impunity and disregard for workplace laws.

For example, in one federal case, a 15-year-old worker fell approximately 20 feet off the roof of a two-story Orlando home.[41] The Occupational Safety and Health Administration (OSHA) found that the employer "failed to install a guardrail, safety net or personal fall arrest system for employees doing roofing work," improperly used ladders, and failed to train workers to recognize fall hazards. The WHD investigated once the minor's age was known, and not only found violations of the FLSA's hazardous occupation and hours provisions, but also discovered that the employer had misclassified some workers as independent contractors, did not pay proper overtime, and didn't pay people for all hours worked. Another USDOL case, this time in Pennsylvania, involved a 17-year-old who fell 24 feet from the roof of a home. The employer was found to have violated not only child labor laws, but also to have misclassified workers as independent contractors, failed to pay overtime, and failed to keep accurate payroll records, as well as exposing other workers to dangerous fall hazards.[42]

The statistics, media reporting, and enforcement cases all demonstrate: child labor violations are widespread throughout the country, in a range of industries, and there is an urgent need to address them.

V. Immigrant children are especially vulnerable.

Many adults who have been U.S. citizens their entire lives, even those with graduate degrees and high levels of formal skills, often fear speaking up at work or reporting legal violations by their employers because they fear retaliation and don't want to lose their jobs. This is a reasonable fear; even though our workplace laws prohibit such retaliation, it frequently occurs. Imagine, then, the barriers facing teenagers—regardless of their background—in asserting their rights at work.

In addition, immigrant workers, both those who are documented and undocumented, may be less likely to report violations for a host of reasons: language barriers, inaccessible enforcement agencies, unfamiliarity with the law, and concerns about retaliation as well as potential immigration consequences for themselves or their co-workers. Immigrant workers experience higher rates of wage theft, as well as workplace fatalities and injuries.[43]

Consider, then, the special vulnerability of immigrant children, including—but not limited to—unaccompanied minors.

These children have typically come to the United States fleeing trauma and violence in their home countries. Boston Globe reporting, for example, describes a 16-year-old who worked the overnight shift at a plastics factory and then a greenhouse: "He had come from Guatemala on his own to join his father, desperate to escape a poor, violent country where two of his childhood friends were shot to death."[44]

Sometimes children come to the country alone, without their parents, and plan to send money home to their families to help them subsist. Children typically arrive without knowing English, and for many who are indigenous, Spanish is their second language. They do not know the laws of this country, or their legal rights on the job. They want to work, and perhaps they have experience working on a farm back home, but they do not have any idea what it will be like at a meatpacking plant. As a 15-year-old working for a food processor told the New York Times, "I didn't have expectations about what life would be like here…but it's not what I imagined."[45] Lacking work authorization, knowledge, networks, children end up in punishing workplaces violating child labor laws, unable to get a job that is appropriate for their age.

In fact, many of these children will ultimately qualify for employment authorization; some, for example, because they are seeking asylum, and others because they may apply for Special Immigrant Juvenile Status. But many do not have access to immigration lawyers. For those who do, the process for obtaining employment authorization is often lengthy.

The special vulnerability of immigrant children workers makes even more urgent the need to take action to stop child labor violations.

VI. Our current system is inadequate to address the child labor crisis.

Noncompliance with workplace laws has been described as a "rational" profit-maximizing decision made by unethical employers in response to low enforcement rates and deficient penalties. Scholars who have analyzed employer costs and benefits of noncompliance find that such "employers will not comply with the law if the expected penalties are small either because it is easy to escape detection or because assessed penalties are small."[46] A broader way of understanding this calculus is that labor law compliance is a product of the likelihood of detection and the seriousness/severity of consequences if detected.

Currently, our system fails on both fronts: the likelihood of detection is exceedingly small, and the consequences of detection are insufficient. Enforcement resources for the USDOL, and for the Wage and Hour Division and Solicitor of Labor's office, in particular, are grossly insufficient. Two other factors exacerbate this situation: first, the likelihood of detection is further decreased by the unlikelihood of complaints by child workers, given their heightened vulnerability. Second, the likelihood of detection is reduced because of the decline of union density: unions increase worker reporting of violations, presumably because of reduced fear of retaliation; also, union stewards are on-site job monitors who can raise issues about violations without fearing reprisals.

The consequences for violating child labor laws are also insufficient to deter violations. Civil and criminal penalties are very low, and there are no damages available for victims. Further, our laws generally make it far too difficult to hold lead corporations accountable. Lead companies' use of "fissured" business models[47] with outsourced subcontractors and staffing agencies means that these large multinational corporations—those with the greatest ability to prevent child labor in their supply chains—often avoid responsibility for child labor violations—including repeat and widespread violations—occurring in plain sight among the workers directly handling and preparing their products.

A. Labor enforcement agencies have grossly insufficient resources to address the problem of child labor

The WHD has grossly insufficient resources to effectively enforce our child labor laws. As an initial matter, WHD does not enforce only child labor laws: the agency also enforces the FLSA's minimum wage and overtime provisions, as well as the Family and Medical Leave Act, and also laws covering federal contract workers, work visa programs, migrant and seasonal agricultural workers, and more. There are an estimated 164.3 million workers covered by these protections, and an estimated 11 million workplaces. In November 2022, there were 810 WHD investigators.[48] This means that there is one WHD investigator per approximately 13,580 workplaces. The ratio of investigators per worker is even more stark: one WHD investigator per approximately 202,824 workers. This is two fewer than in 1973 (the first year that data is available), and 422 fewer than the peak year of 1978. Meanwhile, the U.S. economy has grown considerably since then; investigators now are responsible for almost three times as many

workers as in 1973. One expert has calculated that WHD in 1938 had 64 times the relative number of inspectors to workplaces.[49] State labor agencies are similarly generally inadequately funded to fulfill their missions, including enforcing child labor laws.[50]

Child labor investigations, as described above, are extremely resource intensive, requiring extensive work by teams of investigators for an extended period of time. The pleadings in the USDOL's PSSI case and the Minn. DLI's Tony Downs case demonstrate the complex and challenging nature of these cases. Significantly, these two cases are simply for injunctive relief—the goal is simply to get a court order directing the companies to follow already existing law which they should have been following in the first place! Further, the PSSI case did not include charges seeking liability by lead corporations such as JBS or Cargill that used PSSI. (Such joint employment was not applicable in the Minnesota case). Nor did either case seek damages for the exploited child workers, since no such damages are available under the law for child labor violations. And yet these two cases are extremely complex requiring extensive time, resources, and staff work. If our lawmakers are serious about eradicating oppressive child labor, Congress should allocate significantly more funding to WHD, as well as to the Solicitor of Labor which provides the lawyers to bring these cases in court.

Low union density exacerbates this situation. Where they're present, unions help prevent violations; they empower ordinary workers to speak out about malfeasance, and provide eyes and ears on the ground that stop abusive practices. But U.S. union density is at record lows (around six percent[51] for private sector workers) despite the current popularity of unions unions[52] and of organizing.[53] This is in large part because our federal labor laws are outdated[54] and make it harder than it should be for workers to form and join unions; moreover, funding for the National Labor Relations Board has also stagnated in recent years and last year was facing potential furloughs before getting limited additional funds.[55]

B. It is too easy for lead corporations to evade accountability for violations occurring on their worksites, in relation to their products, and in their supply chains

In the PSSI case (described above), other enforcement cases, as well as media reports, there were widespread and blatant child labor violations in the supply chains of major national corporations. Yet it is too easy under current law for these corporations to deflect responsibility for these violations, instead pointing a finger at subcontractors and staffing agencies.

It is the lead corporations, more than any entity, that have the ability to prevent child labor violations in their supply chains. They can extensively monitor their subcontractors, and can also terminate contracts immediately where child labor is found. As two legal experts from the National Employment Law Project recently wrote in Fortune, "Big corporations have the power to ensure compliance with labor and employment laws among their labor contractors and prevent the exploitation of children within their supply chains. They can set minimum labor standards in their supply chains, regularly audit their subcontractors and suppliers to ensure compliance, and cease working with subcontractors and suppliers that violate minimum labor

standards. A subcontractor will do whatever it takes to stay in the good graces of major brand names."[56]

Further, there is no law of nature that requires large corporations to subcontract. (Like many people, I was surprised to learn that my Cheerios may have been made and packaged by a company called Hearthside, and not by General Mills). Companies that currently use a subcontracting business model, if they want to be sure to avoid child labor violations, can take these jobs in-house. Indeed, JBS recently announced the creation of "JBS Sanitation" in partnership with the United Food and Commercial Workers International Union (UFCW): instead of subcontracting work to PSSI to be performed by exploited and vulnerable migrant children, JBS is "creating hundreds of union jobs across the country" with "competitive wages and benefits."[57] (In contrast, Cargill has said it "will take time," perhaps months, to sever ties with PSSI.)[58]

Household-name major multinational corporations have the power and ability to make sure oppressive child labor is not used to produce their products - not used by themselves directly or by subcontractors, staffing agencies, or franchisees. However, our laws make it more difficult than it should be to hold them accountable. This is so even if there are repeat child labor violations within supply chains for the same corporation: it is an uphill battle to hold lead corporations responsible and they have ample legal resources to resist such cases in court.

The definition of "employ" under the FLSA is extremely broad—"to suffer or permit to work"—which would seem on its face to readily allow accountability for lead corporations in supply chains. Yet the case law that has developed over the years makes it much more difficult than it should be to get a finding of joint employer status, often focusing on factors very particular to the individual worker, such as who hired the worker, set their pay, directly supervised the work, and similar considerations.

As NELP's legal experts recently wrote,

> We…need laws that ensure large corporations with the power to eradicate child labor in their supply chains use that power. Major brands should be held strictly liable for egregious labor violations in their labor supply chains. They should be held responsible regardless of whether they knew about the violations. Strict liability will make corporations detect and root out exploitative working conditions among their contractors and suppliers, and eliminate the Dickensian conditions suffered by migrant children.[59]

Lead corporations may claim they didn't know about child labor violations in their supply chains; clearly, they have the ability to learn of such abuses and in some instances, given the widespread nature of violations, it somewhat defies credulity to think that the companies at the top of the chain didn't know. At the very least, though, it's hard to imagine any reason at all not to impose strict liability on lead corporations for second and subsequent violations discovered

in their supply chains; at that point, there is no question regarding their knowledge and ability to remedy.

Finally, the government can and should ensure that it does not enter into contracts with corporations that have a history of child labor in their supply chains. One example of this approach: the recently-proposed Child Labor Exploitation Accountability Act would prohibit the Department of Agriculture from entering into contract with companies that have committed egregious labor law violations and/or contracted with vendors that have committed and failed to rectify serious labor violations.[60]

C. Penalties are too small to deter violations

Currently, the penalties are too low to deter violations. At the federal level, civil monetary penalties are in the $15,000 range per child. State penalties can be even lower; for example, Colorado's penalty for a first-time child labor violation is a puny $20 to $100.[61] Fortunately, there are currently proposals in Congress to significantly increase child labor penalties. This should be done, but it alone will be insufficient. A lead corporation is not likely to be deterred by even substantial penalties if it can readily deflect accountability to its subcontractors, and those subcontractors will likely be unmoved by high penalties if their violations are highly unlikely ever to be detected.

While there is criminal liability for child labor violations under the FLSA, it is limited to a misdemeanor for willful violations, and prosecutions happen rarely, if ever. Increased criminal sanctions for employers should be considered.

VII. Additional measures could address the child labor crisis

In addition to the above changes (increased enforcement funding, accountability for lead corporations, and increased penalties), some additional measures could also help address the current crisis.

The simplest of these would be extending by sixty days the statute of limitations for FLSA's "hot goods" provision, which allows the USDOL to obtain a court order halting the shipment of goods produced in violation of child labor laws. For child labor law violations, the department must do this within 30 days, which is far shorter than the 90-day "hot goods" period for minimum wage and overtime violations. Stopping tainted goods from reaching consumers is a powerful way to ensure that corporations take responsibility; increasing the hot goods period for child labor to 90 days, consistent with the minimum wage provisions, would be an easy, uncomplicated legislative fix that would help the labor department fight child labor.

Enabling migrant teenagers who are applying for immigration status to more quickly obtain employment authorization would help. Work authorization helps immigrants obtain better jobs, with above-board, age-appropriate employment with safe companies that do not violate

the law.[62] Many migrant children wish to work and to send money home to their families; as stated at the outset of my testimony, minors above 14 are allowed to work and there are plenty of safe, lawful employers currently looking for workers. Many children entering the country are applying or will apply for asylum or special immigrant juvenile status (SIJS); as such, they are entitled to employment authorization, but these processes are slow. Enabling such children to have work authorization more quickly would help them avoid exploitative and dangerous jobs.

All government leaders can play a role by using their public profile to heavily publicize child labor violations when they occur. Research in the workplace safety and health context[63] has found that OSHA press releases deterred violations by peer employers. Government leaders can also publicly seek answers from lead corporations with child labor violations in their supply chains, as Senators Alex Padilla and John Hickenlooper did in April of this year.[64]

Some additional law reform measures to consider include:

- Creating a private right of action for child labor violations. Currently the only method for enforcing these laws is through government enforcement. Adding a private right of action would expand the pool of cases being brought and serve as a resource multiplier by allowing nonprofit, pro bono, and private lawyers to sue for violations.
- Creating and funding a right to counsel for unaccompanied minors in their immigration cases would increase the chances that child labor violations would be detected, since children's lawyers would likely be aware of their work activities.
- Creating a *qui tam* right of action for whistleblowers who learn of child labor violations. Allowing them to receive a portion of penalties recovered would incentivize reporting of violations to the government.
- Adding liquidated or compensatory damages to the child labor statute would help compensate victims for their experiences, while also creating additional deterrence preventing employer violations.
- Finally, New York State has an innovative "tagging" provision applicable to the garment industry; it allows the state labor department to attach a tag on unlawfully manufactured apparel labeling it as such, which would no doubt hurt sales. Similar measures could be useful at the federal level.[65]

VIII. States should strengthen, not weaken their own child labor laws.

States, and in some cases localities, can also take action to protect children from exploitation. They can implement the measures described above, including increasing labor enforcement funding, enhancing child labor penalties, imposing strict liability, and more. In addition, states can pass laws related to workers' compensation to further deter child labor violations and compensate victims. For example, some states have higher payment amounts for permanent workplace injuries suffered by children, given that the injury will affect their lives for a longer period of time than it would an adult. A bill proposed in Colorado would allow a child or their parent to bring a tort lawsuit for damages, and not be limited only to workers' compensation as a remedy, if an injury occurs during a week in which the minor was engaged in work prohibited

by state child labor law, or in which the employer intentionally required the minor to work excessive hours.[66] Facing a child labor crisis not seen in decades, the solution is to improve our laws and enforcement.

In contrast, weakening child labor laws is the absolute wrong approach right now. Yet paradoxically, there is a movement afoot in a number of states to do precisely that.[67] Bills to weaken child labor standards have been introduced in fourteen states in the past two years alone. Two states—Arkansas and Iowa—have enacted notable rollbacks that will place vulnerable children at risk, and are poorly considered in other ways as well.

Arkansas has eliminated a prior requirement for children to obtain an employment certificate issued by state labor officials. Passed in the guise of protecting parents' rights, the new law will do precisely the opposite: among other things, applications for the now-eliminated employment certificate required submission of proof of age and written consent of the minor's parent of guardian.

Meanwhile, Iowa has enacted "one of the most dangerous rollbacks of child labor laws in the country," according to the Economic Policy Institute.[68] The bill changes state law to allow employers to hire children as young as 14 for previously prohibited hazardous jobs in industrial laundries or as young as 15 for light assembly work; to allow state agencies to waive restrictions on hazardous work for 16 to 17-year-olds in a list of dangerous occupations, including demolition, roofing, excavation, and power-driven machine operation; to allow restaurants to hire teens as young as 16 to serve alcohol; and to extend permissible work hours for children as young as 14 to work six-hour nightly shifts during the school year.

This rollback is irresponsible and will put children in harm's way, placing them in dangerous workplaces that are high-risk for adults and even more so for minors. In addition, multiple provisions in the new state law conflict with FLSA's child labor provisions. Indeed, the U.S. DOL Solicitor of Labor Seema Nanda sent a letter to an Iowa legislator last month explaining how the new law contradicts FLSA requirements.[69]

In this way, Iowa lawmakers have put state's employers in a difficult situation. The FLSA is a floor, not a ceiling; employers must follow the FLSA no matter what. (If state law is stronger, they must follow that also.) Iowa employers may rely on the new state law, and later find themselves facing significant penalties because of FLSA child labor violations. Iowa legislators perhaps believed they were serving employers' interests, but in fact they were placing employers on a path toward potentially violating federal law.

IX. To the extent that a labor shortage exists, fourteen-year-olds are not the solution

Some have pointed to a "labor shortage" as one reason for relaxing child labor laws. But to the extent such a shortage exists, enlisting vulnerable teens to fill our workforce needs is not the solution. There are other methods to address labor needs in certain sectors. (It's worth noting,

as well, that if child labor laws are relaxed because of a purported labor shortage, they're unlikely to be tightened up again once conditions change.)

As an initial matter, reports of a "labor shortage" are exaggerated. As Josh Bivens of the Economic Policy Institute has recently pointed out, there is no longer any evidence of an economy-wide labor shortage relative to pre-pandemic trends (the number of prime-age adults working is now higher than 2019 levels).[70]

Other commentators have noted that more than a labor shortage, we have a good jobs shortage.[71] In the words of a Center for American Progress report, "there is a simple solution: make workers a better offer." Indeed, research published in 2022 showed that those surveyed would take meatpacking jobs if they paid just a little better, around $2.85 more per hour.[72] Benefits like health insurance, retirement benefits and signing bonuses also would encourage them. Other factors could also help lure prospective employees, such as paid sick leave (which millions of workers still lack) or predictable schedules.

In addition, unionization can help attract workers.[73] For example, a solar installation company struggled to find workers amid an electrician shortage, but reported that once the company became unionized, it opened up a new pool of workers from the International Brotherhood of Electrical Workers.[74] Unions can reduce turnover and increase employee retention; this union advantage has been cited as a reason for recent success of unionized UPS in hiring and recruiting compared with FedEx and Amazon, which struggled to attract workers in recent years.

To the extent there is a labor shortage, however, it can be addressed without putting children in danger. There are other ways to increase the pool of available workers. For example, thousands of asylum seekers in the United States are legally entitled to be granted employment authorization.[75] Additional funding to enable swifter processing of these applications would help them enter the workforce more swiftly; these are age-appropriate adult workers with legal status, already present in the country. Advocates[76] and a coalition of more than fifty mayors[77] have proposed additional measures to speed up processing of employment authorization applications.

Finally, while the question of comprehensive immigration reform is outside of the scope of my expertise, measures that increase the pool of age-appropriate adult workers would help address any labor shortage that might exist, in a far more lawful and safe manner than relaxing state labor laws to enable more exploitation of vulnerable teens.

X. **Conclusion: Our country can and must protect children**

The focus of this hearing is on ensuring the safety and well-being of unaccompanied children. It should be clear from my testimony that the problem of oppressive child labor—whether affecting unaccompanied children or teens born in the United States—stems from employers violating the law: companies that exploit children, make them work excessive hours that endanger their education, and hire them to work in hazardous situations that endanger their bodies and lives. Child labor also results from large corporations that use subcontracting models and willfully turn a blind eye to child labor violations in their supply chains, even when violations are repeated or widespread.

Put simply, if employers did not hire children to do dangerous work for long hours in violation of the law, our child labor crisis would not exist.

We can do better, though. When teenagers go to work—migrants or U.S.-born alike—we can and must keep them safe.

Thank you again for the opportunity to testify. I look forward to your questions.

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The Heritage Foundation

CONGRESSIONAL TESTIMONY

Ensuring the Safety and Well-Being of Unaccompanied Children

Testimony Before
Committee on the Judiciary

United States Senate

June 14, 2023

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My name is Lora Ries. I am the Director of the Border Security and Immigration Center at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

An effort to truly ensure the safety and well-being of unaccompanied children requires an understanding of how we arrived at the unaccompanied alien children (UAC) crisis we currently face—a historic 366,000 UACs encountered just on the southwest land border, so far, during the Biden Administration.[1] To do so, we must go back to the beginning of the *Flores* class-action lawsuit.

In the 1980s, an alien minor named Jenny Flores was being detained by the Immigration and Naturalization Service (INS) after she was caught illegally entering the U.S. to join her mother, who was also living here unlawfully.[2] Fearing deportation, the mother was unwilling to go to the INS facility to get her daughter released. Jenny Flores had a cousin who was lawfully in the U.S., but INS refused to release Flores to anyone who was not a legal guardian for the welfare of the minor.[3]

A number of organizations sued the government in 1985, demanding the INS screen other available adults and release children to them "if they appeared to be competent and not molesters and things of that nature." They also sought to improve the detention conditions of facilities in which the INS held

[1]The CBP nationwide number of UACs encountered was 368,207. U.S. Customs and Border Protection, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters (accessed June 11, 2023).
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minors to meet minimum child welfare standards.[4] The lawsuit eventually went to the U.S. Supreme Court, which held that the INS's regulation was rationally connected to the government's interest in preserving and promoting the welfare of detained juveniles and was not punitive.[5] The Court also stated that "the period of detention that may result is limited by the pending deportation hearing, which must be concluded with reasonable dispatch to avoid habeas corpus."[6]

Despite the Supreme Court ruling in favor of the INS, then-INS Commissioner Doris Meissner signed the *Flores* settlement agreement in 1997, making concessions on behalf of the government. Under the agreement, the government must release minor aliens "without unnecessary delay" to the minor's parent, legal guardian, other adult relative, other individual designated by the parent/guardian, or "an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility."[7]

In an attempt to codify provisions of the *Flores* agreement, companion bills were introduced in Congress, starting in 2000 with the Unaccompanied Alien Child Protection Act (UACPA). This bill went further than the *Flores* agreement, however.

The UACPA: (1) provided for the parole of UACs into the U.S.; (2) created a right to both a guardian ad litem and access to counsel; (3) expanded protections for alien minors, using the rarely used Special Immigrant Juvenile (SIJ) program; (4) waived statutory requirements to apply for a green card and asylum; and (5) created the category of UACs in "asylum and refugee-like circumstances."[8]

The stated intent of the bill was to protect alien minors, but the bill significantly lowered the bar for UACs to receive immigration benefits and services—providing easily foreseeable consequences that parents would intentionally send their children unaccompanied across the border in the hopes of gaining a family foothold in the U.S. for later reunification in the U.S.

Meanwhile, in 2002, responsibility for UACs was transferred from the INS to another government bureaucracy, the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS), further fragmenting the immigration bureaucracy across federal agencies.[9] The Homeland Security Act transferred functions to the ORR, including making placement determinations for all UACs in federal immigration custody, implementing policies with respect to the care and placement of UACs, and ensuring that qualified and independent legal counsel is timely appointed to represent the interests of each child.[10]

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[4]Ibid., and Matt Sussis, "The History of the *Flores* Settlement: How a 1997 Agreement Cracked Open Our Detention Laws," Center for Immigration Studies, February 11, 2019, https://cis.org/Report/History-Flores-Settlement (accessed June 12, 2023).
[5]*Reno v. Flores*, 507 U.S. 292 (1993).
[6]Id.
[7]*Flores v. Reno*, Stipulated Settlement Agreement, 1997, https://www.aila.org/File/Related/14111359b.pdf (accessed June 12, 2023).
[8]The Unaccompanied Alien Child Protection Act of 2000, S. 3117, 106th Cong., 2nd Sess., https://www.congress.gov/bill/106th-congress/senate-bill/3117/text (accessed June 12, 2023).
[9]Homeland Security Act of 2002, Public Law 107–296, § 462(b).
[10]Ibid.

After four failed attempts to pass the UACPA through both chambers of Congress, it was folded into the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),[11] which became law—and negatively changed the course of U.S. immigration.

Section 235 of the TVPRA, "Enhancing Efforts to Combat the Trafficking of Children," begins by stating:

> to enhance the efforts of the United States to prevent trafficking in persons, the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Secretary of Health and Human Services, shall develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.[12]

However, the remainder of section 235, and the implementation of it, have had the opposite effect. Section 235(a)(2) distinguishes between UACs from contiguous and non-contiguous countries. For UACs from contiguous countries, the law provides they should be returned to their home countries of Canada or Mexico, but for those from everywhere else, the law requires they be transferred to HHS, placed in removal proceedings, provided access to counsel and child advocates, and be eligible for easier and expedited immigration benefits.

One such example is the Special Immigrant Juvenile (SIJ) visa. Section 235(d) of the TVPRA requires adjudication of an SIJ application within 180 days and waives several grounds of inadmissibility: public charge, labor certification, presence without admission or parole, misrepresentation, stowaways, immigrants without documentation, and unlawful presence in excess of 180 days. The law also provides assistance to SIJs, including federal reimbursement to states.

Predictably, the number of UACs coming to the U.S. skyrocketed after the TVPRA was enacted. In 2010, the U.S. Border Patrol apprehended less than 20,000 UACs. By 2013, the number doubled to nearly 40,000. In 2014, nearly 70,000 UACs were apprehended. In 2019, the number of UACs was approaching 80,000. The number rose to almost 147,000 in 2021 and over 152,000 in 2022.

Likewise, the number of SIJ applications also grew significantly after the TVPRA loosened the requirements. The SIJ classification was established by Congress in 1990 to provide a pathway to legal status for children in the U.S. foster care system who required court intervention to protect them from parental abuse, abandonment, or neglect. U.S. Citizenship and Immigration Services (USCIS) noted in 2019 that "the SIJ classification has increasingly been sought by juvenile and young adult immigrants solely for the purposes of obtaining lawful immigration status and not due to abuse, neglect or abandonment by their parents."[13]

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[11] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457, § 235(a)(2).
[12] Ibid. at § 235(a)(1).
[13] News release, "USCIS Clarifies Special Immigrant Juvenile Classification to Better Ensure Victims of Abuse, Neglect and Abandonment Receive Protection," U.S. Citizenship and Immigration Services, October 15, 2019, https://www.uscis.gov/news/uscis-clarifies-special-immigrant-juvenile-classification-better-ensure-victims-abuse-neglect-and-abandonment-receive-protection (accessed April 7, 2020).

In 2010, approximately 1,600 SIJ applications were filed with USCIS.[14] By 2014, the number of SIJ applications filed jumped to over 5,800. One year later, the number was over 11,000 applications. In 2016, the number approached 20,000 SIJ applications. With the exception of 2020, when the number of applications dropped to 18,000 due to COVID-19, the number has remained north of 20,000 and it jumped to almost 32,000 in 2022.

In addition to the TVPRA's benefits for UACs, the *Flores* agreement has been revisited multiple times, including in 2015, when the Obama Administration sought to carve out an exception for minors who had arrived in the U.S. with their parents during a border surge from Central America. The Administration wanted to detain some of them for as long as it took to process their cases, but California federal judge Dolly Gee denied the request and instead ordered the Obama Administration to release detained minors and their mothers.[15] This expanded the scope of *Flores* by adding *accompanied* minors to operations that previously covered only unaccompanied minors. This meant that family units with a child would be ordered released from detention. Judge Gee went even further, interpreting the *Flores* settlement language "without unnecessary delay" to mean no more than 20 days of detention was allowed.[16]

Because removal proceedings are not completed within 20 days, U.S. Immigration and Customs Enforcement (ICE) began releasing UACs and family units from detention into American communities to comply with the new *Flores* order, resulting in "catch and release." Not surprisingly, the number of family units—and *claimed* family units—coming to the southwest border soared. In 2015, the Border Patrol apprehended over 39,000 family units in the southwest sectors.[17] That number rose to over 107,000 in fiscal year 2018,[18] and with the exception of 2020 due to COVID-19, has been over 450,000 family units in each of fiscal years 2019, 2021, and 2022.[19]

After the Department of Homeland Security (DHS) learned that illegal aliens and smugglers were taking advantage of the *Flores* family unit expansion and posing as fake family units for release into the U.S., DHS began a family DNA testing pilot in 2019.[20] Family unit fraud can lead to, or stem from, other crimes, including immigration violations, identity and benefit fraud, human smuggling, human trafficking, and child exploitation. In the pilot, border agents would test the DNA if they

[14]U.S. Citizenship and Immigration Services, "Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year, Quarter, and Case Status Fiscal Years 2010-2023," https://www.uscis.gov/sites/default/files/document/data/I360_sij_performancedata_fy2023_qtr1.pdf (accessed June 11, 2023).
[15]*Flores v. Johnson*, 212 F. Supp. 3d 864, 871-73 (C.D. Cal. 2015). In 2016, a three-judge panel of the Ninth Circuit Court of Appeals reaffirmed that *Flores* applies to all children, regardless of whether they are accompanied. *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016).
[16]*Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015).
[17]U.S. Customs and Border Protection, "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016," https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016 (accessed June 11, 2023).
[18]U.S. Customs and Border Protection, "U.S. Border Patrol Southwest Border Apprehensions by Sector FY2018," https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions (accessed June 11, 2023).
[19]U.S. Customs and Border Protection, "Southwest Land Border Encounters," https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters (accessed June 11, 2023).
[20]U.S. Department of Homeland Security, "Privacy Impact Assessment for the Operational Use of Familial DNA," September 10, 2021, https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp071-operationaluseoffamilialdna-september2021.pdf (accessed June 11, 2023).

suspected family fraud from unusual behavior or reasonably believed that they observed the same child(ren) on multiple occasions with different adults claiming a parent-child relationship.

Despite successfully identifying fraudulent families, the Biden Administration decided to end family DNA testing at the border when the contract ended on May 31, 2023.[21] This termination decision will knowingly result in the same conditions that existed before DHS began DNA testing—smuggling and recycling of children to appear in fraudulent families at the border and more child trafficking once inside the U.S.

Homeland Security Secretary Alejandro Mayorkas frequently labels his open-border policies and operations as "safe, orderly, and humane," including his stated policy that UACs would be allowed entry to the U.S. and would not be returned. However, there is nothing safe or humane about enticing unaccompanied alien children to come to our border in the hands of cartels, which regularly rape girls and too often abandon toddlers near the border or drop them over the border wall.

Unfortunately, life does not improve for UACs once they enter the U.S. With the historic numbers of UACs released into the U.S., this Administration has lowered its standards for sponsors who may take the UACs into their homes. The results have been neither humane nor—in some cases—legal. *The New York Times* recently published a series of articles on UACs working overnight in slaughterhouses, replacing roofs, and operating machinery in factories, all in violation of child labor laws.[22] Furthermore, HHS has lost track of at least 85,000 UACs in the U.S.[23] An HHS whistleblower recently testified before the Subcommittee on Immigration Integrity, Security, and Enforcement of the House Judiciary Committee that "the U.S. Government has become the middleman in a large scale, multi-billion-dollar, child trafficking operation run by bad actors seeking to profit off the lives of children."[24]

In addition to the actions of cartels and smugglers to exploit America's wide-open door for UACs, gang members likewise enter among the UAC population. Whether teenagers themselves, or adults who falsely claim they are minors, this dangerous portion of UACs cannot be overlooked. Needless crime and death have resulted from the entry of such gang members into the country when they simply should not be here. For example, a 17-year-old MS-13 gang member sexually assaulted and strangled a 20-year-old autistic woman to death in Aberdeen, Maryland, in July 2022, three months after entering the U.S. illegally as a UAC.[25]

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[21]U.S. Customs and Border Protection, "End of Contract for Deoxyribonucleic Acid (DNA) Testing for Suspected Family Unit Fraud," May 2023, https://justthenews.com/sites/default/files/2023-05/LEAKED%20MEMO_Redacted.pdf (accessed June 11, 2023).
[22]Hannah Dreier, "As Migrant Children Were Put to Work, U.S. Ignored Warning," *New York Times*, April 17, 2023, https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html (accessed June 12, 2023).
[23]Hannah Dreier, "Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.," *New York Times*, February 25, 2023, https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html (accessed June 12, 2023).
[24]Tara Lee Rodas, "The Biden Border Crisis: Exploitation of Unaccompanied Alien Children," testimony before the Subcommittee on Immigration Integrity, Security, and Enforcement, Committee on the Judiciary, U.S. House of Representatives, April 26, 2023, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/rodas-testimony.pdf (accessed June 12, 2023).
[25]U.S. House of Representatives Committee on the Judiciary, "House Judiciary Report Faults Biden Admin for Release of Alleged MS-13 Member Now Charged with Murder," May 23, 2023, https://judiciary.house.gov/media/in-the-news/house-judiciary-report-faults-biden-admin-release-alleged-ms-13-member-now (accessed June 12, 2023).

The best way to ensure the safety and well-being of unaccompanied children is to remove the pull factors for UACs to come to the U.S. This means ending the offer of immigration benefits to someone because they are a UAC, including the benefits offered in the TVPRA, Judge Gee's interpretation of *Flores* that both unaccompanied and accompanied alien children should be released within 20 days, and the various exceptions to rules and enforcement for UACs, including the latest "Circumvention of Lawful Pathways" rule finalized by the Biden Administration.[26]

Preventing UACs from coming to the U.S. means a child does not suffer at the hands of cartels and smugglers south of the border, and the child will not be turned over to a sponsor who may be unvetted or unknown to the minor. It also means preventing children from being forced into labor and sex trafficking once in the U.S. Instead of exploring ways to better accommodate the current UAC flow, Congress should accept that laws and judicial orders have resulted in terrible consequences and finally overturn them.

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[26]Circumvention of Lawful Pathways, *Federal Register*, Vol. 88, p. 31314 (May 16, 2023), https://www.federalregister.gov/documents/2023/05/16/2023-10146/circumvention-of-lawful-pathways (accessed June 12, 2023). This rule took effect on May 11, 2023.

AFL-CIO

STATEMENT FOR THE RECORD

Senate Judiciary Committee Hearing
Preventing Child Labor and Ensuring the Safety and Well-Being of Unaccompanied Children
Wednesday, June 14, 2023

The AFL-CIO is a federation of 60 affiliated unions representing more than 12.5 million workers across all sectors of our economy. Our members work in every state in the nation and they come from every region of the world. We represent working people with all types of immigration status, including undocumented workers, DACA and TPS holders, non-immigrant visa beneficiaries, legal permanent residents, refugees, and citizens. Together, we strive to ensure that every person who works in this country receives decent pay, good benefits, safe working conditions, and fair treatment on the job. Since the AFL's first national convention in 1881, we have called for strong laws to prevent child labor abuses, and we renew that call today.

Unions are outraged at the recent rise in corporate exploitation of children, most often immigrants, in dangerous workplaces around the country. This unconscionable reality has been enabled by failings of both labor and immigration policy that must be addressed holistically and urgently. We stand ready to work with lawmakers to advance real solutions that will lift labor standards across our industries, guarantee workers equal and enforceable rights, and ensure that migrant children arriving in our communities receive the support and protection they deserve. This statement will outline concrete recommendations to advance four key priorities, each of which is addressed in more detail below.

Real solutions:
#1 – Strengthen labor laws and standards
#2 – Hold employers accountable
#3 – Regularize the status of our current immigrant workforce
#4 – Enhance humanitarian pathways and processing

Real Solution #1 – Strengthen Labor Laws and Standards

We hear a lot about a labor shortage these days, but far too little about the crisis caused by the shortage of good, safe jobs. People are no longer willing to work for meager wages without childcare support, paid leave or critical safety and health protections. Around the country, workers are taking collective action in record numbers to demand a fair share of the wealth we help to create, and for the first time in decades, working people are seeing significant gains in pay, safety and health protections and standards for work that have been chronically undervalued.

Rather than halting or reversing this much-needed progress, lawmakers should stand with workers and seize this opportunity to raise the floor for workplace standards. Better employment

conditions and higher standards not only help to attract and retain workers, but also reduce poverty and curtail patterns of abuse that open the door to child labor. Simply put, we need better, safer jobs that ensure full rights and pay family-sustaining wages. To support this, Congress should:

Raise wages. Millions of working people who are vital to our economy and who anchor communities throughout the nation still work in poverty. Unless and until they can earn family sustaining wages, too many parents will have to confront painful choices about whether to send their children to work rather than school. No family should have to weigh such options in our wealthy nation, which is why we must commit to expanding access to dignified and fairly-paid work for all. Creating more precarious, low wage jobs is not going to cut it. We must raise the federal minimum wage, remove exceptions to the requirement for paying the federal minimum wage, and find innovative ways to revitalize communities that have lost their economic base. Congress should start by passing the Raise the Wage Act (117th: S.53) and use any and all other available policy levers to lift wage levels, including through our work visa programs and our federal procurement system. Raising wages will not only help to lift working families out of poverty, but also create broad bottom-up stimulus that helps spur inclusive economic growth.

Eliminate exclusions from our federal labor laws. To prevent exploitation in our workplaces, all workers must be able to count on the full protection of our labor and employment laws. The exclusion of agricultural and domestic workers from federal labor protections is a shameful legacy of our slave economy and has no place in modern society. The Children's Act for Responsible Employment and Farm Safety (117th: H.R. 7345) would be a critical first step to close existing loopholes that allow for children to work in agriculture at very young ages, under harsh conditions.

Protect the right to organize. Like it was for generations before, the labor movement is a natural home for immigrants and refugees struggling to achieve economic security and social justice. Everyone who has a job should have the chance to join a union, particularly those who are at the greatest risk of abuse when seeking to navigate workplace issues on their own. With union membership comes representation at work, the added protection of a collective bargaining agreement, increased training opportunities, and a means to promote social cohesion.

Congress must pass the PRO Act (118th: S.567, H.R.20) to strengthen the rights of all workers to form or join a union and engage in collective bargaining and protected concerted activity to improve their working conditions. In a country where we rely on workers to enforce our labor laws by reporting violations, the support of a union plays a pivotal role in empowering workers to speak out. This is especially important in efforts to root out child labor and other egregious violations.

Importantly, a collective bargaining agreement disproportionately helps those who need it most. Unions underpinned the growth of the middle class, and even today a unionized worker makes 10% more on average than a comparable non-union worker, and has better access to many benefits. Comparatively, a union job helps women more than men, black workers more than white, and Latinas most of all. Indeed, a union contract may be the single

best tool we have to close racial and gender gaps in pay and conditions. Removing the barriers to union organizing is particularly important for those, like immigrants, who have been marginalized and structurally excluded in our economy.

Prevent states from eroding standards. Across the country, both violations of child labor laws and proposals to roll back protections are on the rise. State legislators attempt to justify rollbacks in long-standing protections by claiming that employers cannot find workers, often in the most dangerous and low-paying industries. Children must not be used to fill in gaps when employers are unable to attract and retain workers. We must take urgent action to reverse these trends and to ensure that state legislation does not undermine standards that help protect all workers.

Real Solution #2 – Hold employers accountable

For decades— even centuries— employers have tried to increase profits by making children work. So the fact that the current surge in child labor is happening amidst record-breaking corporate profits is reprehensible, but hardly surprising. Robust government oversight is needed to hold employers accountable, but enforcement strategies must be thoughtfully developed to avoid compounding the harm to victims of workplace abuse. With that in mind, we urge lawmakers to:

Increase penalties. To prevent further child labor exploitation, we need to fix the fundamental flaws and loopholes that allow employers to operate with a sense of impunity. That starts with increasing penalties for corporations that violate the law. The Department of Labor must have adequate funding to investigate dangerous workplaces and enforce the Fair Labor Standards Act. And employers must be held jointly liable for the violations of any third party subcontractors or temp agencies with which they do business.

Congress should substantially raise maximum fines by roughly a factor of 10 and establish minimum fines for the first time by supporting the Combatting Child Labor Act (118th: H.R. 2956). In addition, we must prevent employers with frequent violations from selling goods to USDA by supporting the Child Labor Exploitation Accountability Act (118th: S. 1288, H.R. 2822).

Protect workers who report violations. If we want to combat rampant wage theft, reduce death and injury on the job, and halt the resurgent abuse of child labor in the 21st century, we need workers to be willing to report violations and speak up when they see problems. And when immigrant workers find the courage to take action that helps enforce our labor laws, we must protect them. That is what the POWER Act (118th: H.R. 1828) is designed to do.

For too long, employers have used immigration threats as a tool to scare workers into silence, thus allowing egregious abuses to persist unchecked. Now, thanks to new procedures the POWER Act would support, instead of being at risk when they speak up, workers will be protected when they speak up—in fact, they will be protected *because* they speak up, and in so doing, help to keep all of us safe on the job.

Shift enforcement priorities to protect workers, rather than punish migrants. It is striking—and tragic—that decades of enforcement-only immigration approaches have prioritized the detention and deportation of migrant families over the protection of workers. Now is the time to strengthen and utilize mechanisms to protect all working people, regardless of immigration status. We call for a shift of emphasis away from viewing migrants as criminals, and toward holding employers accountable for criminal violations of worker rights. The United States currently spends twelve times as much on immigration enforcement as it does on labor standards enforcement, with similarly disproportionate staffing. Lawmakers should rebalance this investment to ensure safe and fair workplaces for all.

Require community benefits and workforce agreements. As vitally important new federal investments roll out, it is essential that we harness those resources to create good, safe jobs and inclusive opportunities. For example, recent reports have revealed the extent of worker abuses in the auto manufacturing sector in the South, including exploitation of guestworkers, incarcerated workers, undocumented workers, and child migrants.[1] Absent interventions to improve these deplorable conditions, critical federal investments in domestic electric vehicle production could perpetuate child labor and other egregious violations.

Requiring community benefits agreements that include clear commitments on labor standards, workers' rights and workforce development pathways on such projects will ensure that companies that seek to access federal incentives sit down with unions and community organizations to promote fair and equitable workplaces, high quality family-supporting jobs, and the ability to attract and retain a diverse, skilled and stable 21st century workforce.

Improved coordination between agencies. There needs to be a stronger, more coordinated approach to preventing and combating child labor in the U.S. This requires improved *and proactive* coordination between the Wage and Hour Division and other agencies within the U.S. Department of Labor like the Occupational Safety and Health Administration, as well as externally with other departments and agencies such as the U.S. Departments of Homeland Security and Health and Human Services. Often, coordination is only enacted when there is a referral, rather than a preventive approach; Congress should call for enhanced agency collaboration on bad acting employers, in particular as it relates to the safety and well-being of unaccompanied children.

Real Solution #3 – Regularize the Status of our Current Immigrant Workforce

Any policy that creates tiered rights in our labor market is unjust and bad for workers. This is why we cannot accept a subclass of millions of exploitable undocumented workers and must fight for a path to citizenship for all. The right way to use immigration policy to raise wages and standards is by expanding rights and protections to as many workers as possible. As we lift up working families, we reduce the economic vulnerabilities that too often force children into the workforce. Here's how we lift the floor:

[1] Child workers found throughout Hyundai-Kia supply chain in Alabama. *Reuters*. December 16, 2022. https://www.reuters.com/investigates/special-report/usa-immigration-hyundai/

Enact a broad and inclusive pathway to citizenship for all those who live and work here. Nearly four decades of Congressional failure to pass meaningful immigration reforms have created a near permanent subclass of millions of exploitable workers in our country. That is unacceptable, and it is how immigration policy becomes cheap labor policy. From the perspective of the labor movement, the right way to fix this prolonged injustice is to enact a path to citizenship for all those whose labor helps our country to prosper.

The fight for a broad pathway to citizenship has proven a long one, but it remains our North Star. Providing workers with a path to permanence will also enable family reunification and reduce much of the desperation caused by prolonged separation of parents and children.

As a down payment on that broader goal, we support an immediate path to permanence for DACA and TPS holders whose status was threatened by the Trump administration, and who play such a vital role in our workforce, our communities, and our unions. In the Senate, we are calling for swift passage of the DREAM (118th: S. 365) and SECURE (118th: S. 879) Acts.

Expand TPS protections. Congress gave the President the power to designate Temporary Protected Status for countries that have been destabilized by conflict and disasters, and Congress should urge the President to use that authority as expansively as possible to address pressing needs today. The Biden administration has been making important TPS announcements, and we urge them to do still more. If the Department of Homeland Security were to designate or redesignate all the countries that meet the statutory conditions, millions more people could become eligible for work permits, generating far-reaching benefits both at home and abroad. And securing temporary status for more people now will provide working families with a measure of stability while we keep up the fight for permanence.

Recent reports suggest that many of the victims of child labor abuses around the country are Guatemalan migrants, often indigenous, who have been displaced by conditions that clearly warrant a TPS designation.[2] According to the U.S. Department of State's most recent report on human rights in Guatemala, the country is plagued by significant human rights issues, including crimes and violence targeted at indigenous groups, LGBTQI+ persons, individuals with disabilities, and activists and union leaders.[3] Additionally, data from the World Bank ranks Guatemala in the top five countries in the world most affected by floods, hurricanes, and earthquakes.[4] Recent natural disasters have had devastating consequences on the lives and livelihoods of millions of Guatemalans, especially in rural areas.[5] The resulting damage

[2] Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. *The New York Times*. February 25, 2023. https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html?smid=url-share

[3] 2022 Country Reports on Human Rights Practices: Guatemala. U.S. Department of State. https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/guatemala

[4] https://climateknowledgeportal.worldbank.org/country/guatemala/vulnerability

[5] Guatemala Assistance Overview. USAID Bureau for Humanitarian Assistance. https://www.usaid.gov/sites/default/files/2022-11/USAID-BHA_Guatemala_Assistance_Overview-August_2022.pdf

to crops and homes has led to severe socioeconomic impacts, including persistent loss of livelihoods, food insecurity, and lack of safe drinking water.

TPS designation for Guatemala, and other countries facing similar conditions, would provide vital support to families who cannot return to their home countries, and whose precarious immigration status may otherwise push them into the shadow economy where they are more likely to face abusive employers, low wages, and the economic instability that may incentivize child labor.

Close gaps in our social safety net. Many of the policy changes we need to support immigrant working families are not directly about immigration reform. If we want people to be able to live and work safely, and children to be in school rather than on the shop floor, that means they need access to quality nutrition, healthcare and education, including higher education. They need driver's licenses and the safety net of unemployment insurance for rough times. Many of these decisions are made at the state level, where we see both progress and shameful attacks, up to and including recent efforts to rollback basic child labor protections.

Real Solution #4 – Enhance Humanitarian Pathways and Processing

Successive waves of immigrants and refugees have always helped to build, serve and feed our nation. Today is no different. Far from posing a threat, newly arriving migrants can make valuable contributions to our society when afforded the proper support to allow them to integrate effectively and safely into our communities. However, the alarming rise in child labor abuses makes clear that newcomers, including unaccompanied children, do not receive adequate support today. Policy solutions must promote permanent, safe pathways and strengthen integration strategies.

In the context of escalating mass human displacement, the imperative to increase resettlement commitment and capacity is real, as migrant youth know all too well. Now is the time to radically center and scale up humanitarian pathways. By welcoming more refugees, asylum seekers and climate migrants, we can also promote economic growth. But workers need the right kind of growth—we need worker-centered growth that generates shared prosperity and closes gaps in income and opportunity, rather than growth in exploitation that accelerates the concentration of wealth and power in the hands of few. We urge lawmakers to:

Restore and enhance asylum processing. The United States has obligations under national and international law to ensure that people will not be returned to dangerous situations—obligations the government cannot meet through expedited legal proceedings and removals. Our laws require a fair hearing for asylum seekers regardless of their country of origin. The AFL-CIO rejects any proposed changes that would limit due process for vulnerable populations at the border or run counter to established U.S. and international norms regarding the detainment of children and refugees.

Rather than limiting access, policymakers should explore possibilities to expand criteria for asylum to include victims of gender-based violence, gang violence, and climate change. A pilot regional program for climate migrants would be an important step forward.

Set ambitious refugee resettlement numbers, including a target for the region. Amidst unprecedented levels of global displacement, resettlement needs are enormous and ever-expanding. After nearly shutting down our refugee program in the previous administration, the U.S. should renew our commitment as a world leader in resettlement. Doing so would have the added benefit of helping to expand the workforce, including in industries that have been using the purported labor shortage as a rationale to call for rollbacks in child labor protections.

Keep families together. Any policies that separate children from their families generate a host of other serious consequences, including the potential to fuel child labor abuses. Without family support, the population of young migrants entering our communities is at heightened risk of being preyed upon by exploitative employers. The Departments of Labor and Health and Human Services have activated a taskforce to root out child labor, and to do that we must promote family unity.

Ensure due process and access to counsel. Anyone seeking refuge in our country should be afforded full and fair due process, including legal support to help navigate our complex immigration system. In particular, all unaccompanied children should receive access to lawyers to ensure that their rights are respected and that they are able to clearly present their claims for protection. Unaccompanied children have unique vulnerabilities that require special care and attention, as too often they arrive in our country scared, exploited, or otherwise in need of assistance.

Expedite processing. Processing backlogs at U.S. Citizenship and Immigration Services are disruptive to the economy and strain the ability of immigrant and nonimmigrant workers to support their families. In particular, unions are alarmed by delays in the granting of work permits[6], which leave thousands of people unable to support themselves financially and force too many into the informal economy. This can be particularly problematic for vulnerable populations such as those applying for asylum or Special Immigrant Juvenile Status (SIJS).

Work permit delays are not only counterproductive in a historically tight labor market, but also open the door to labor exploitation and employer abuse. The same is true for delays in processing petitions for other forms of humanitarian protection, such as Special Immigrant Juvenile Status for migrant youth who have been abused, neglected, or abandoned by one or both of their parents, which the law requires to be processed within 180 days.
For working-age youth ages 16 and above, a prompt SIJS designation can mean the difference between exploitation in an unauthorized underground economy and lawful employment with a work permit. We therefore urge USCIS to take all necessary actions to promptly process and approve SIJS petitions and comply with the statutory time period.

The functions of USCIS serve the national interest and warrant a base appropriation of revenue to reduce the reliance on fees for core agency functions. While we continue to advocate for core funding, we also call on lawmakers to improve the speed and efficiency of

[6] See for example, "Work-Permit Backlog for Immigrant Spouses Takes Toll on Professional Women," *Wall Street Journal*, April 17, 2021. https://www.wsj.com/articles/work-permit-backlog-for-immigrant-spouses-takes-toll-on-professional-women-11618668088

processing so that immigrants can seek safe employment and families will not be forced to consider sending their children to work as a means of survival.

Safeguard worker rights in parole programs. In recent years, the government has increasingly relied on parole programs to help meet pressing human needs and respond to world events. Unions support and sympathize with these motivations. However, as with any new migration pathways, we want to ensure that adequate guardrails are in place to prevent exploitation, including of young migrants. The limited duration of parole programs, the lack of a clear process for renewal, and the possibility of termination by future administrations requires us to think proactively now about how to protect the lives and livelihoods of parolees in the near future.

In particular, we are concerned that the structure of parole programs creates a potential for abuse by those seeking to exploit its sponsorship aspect.[7] This is especially concerning in the context of child labor, where it has been reported that many children caught in this predicament face pressure to make money to pay their sponsors for "smuggling fees, rent and living expenses."[8] Unions continue to call on lawmakers to focus on improving and expanding permanent humanitarian pathways that would give migrant families the stability necessary to live and work in our country safely and with dignity.

Promote effective workforce integration of newcomers. We have seen many cautionary tales of what can happen when policymakers fail to plan effectively for community and workforce integration of newly arriving migrant populations, and the resurgence of oppressive child labor in 2023 is perhaps the most damning. For our part, unions are committed to welcoming more immigrants, refugees and asylum-seekers into our communities and helping them integrate into the workforce safely, into good union jobs.

Conclusion

Unions have outlined a set of concrete and practical solutions to address the urgent structural issues that are enabling the exploitation of children and migrants in our workforce today. Companies employing children in violation of the law are looking for ways to undercut the demands of a dynamic workforce that is winning better pay conditions through collective action—therefore, raising the floor and enforcing it is essential. Let's work together to reduce the shortage of good jobs in our country and build an immigration system that ensures equal and enforceable rights for all workers, regardless of where we were born. It's time for real solutions that will relegate oppressive child labor to the history books where it belongs.

[7] Scammers Target Hopeful Applicants to Biden's humanitarian parole program. *NBC News*. February 6, 2023. https://www.nbcnews.com/news/latino/scammers-target-hopeful-applicants-bidens-humanitarian-parole-program-rcna68694

[8] Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. *The New York Times*. February 25, 2023. https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html?smid=url-share

Statement for the record

by the Child Labor Coalition and National Consumers League

Senate Judiciary Hearing,

"Ensuring the Safety and Well-Being of Unaccompanied Children"
June 14, 2023

The Child Labor Coalition (CLC), representing 39 organizations that are concerned about rising hazardous child labor in the U.S. is submitting recommendations to Congress and federal agencies here to help mitigate the current crisis. The CLC's members include organized labor organizations such as the National Education Association and the Solidarity Center, a number farmworker groups such as Farmworker Justice, Justice for Migrant Women and the Association of Farmworker Opportunity Programs, human rights groups such as Human Rights Watch, and numerous groups that provide services to prevent child labor in the developing world. A complete list of CLC members can be found here: www.stopchildlabor.org.

Our recommendations are for the U.S. Congress, federal agencies, and the White House:

- Current civil monetary penalties for child labor violations are too low. Congress must Increase child labor fines by a factor of 10 (the House in Build Back Better legislation included increased child labor fines at this level in the last congressional session). Congress should also establish minimum child labor fines. Senator Schatz, S.637, Rep. Scholten, H.R. 2388, and Rep. Kildee, H.R. 2956, have each introduced legislation to raise fines significantly. The Child Labor Coalition has endorsed all three bills.
- Congress must establish **criminal penalties** for child labor violations involving repeat violations and willful violations that involve death or serious injury to minors.
- Congress must provide increased resources to hire more Wage and Hour investigators. The current inspectorate is woefully inadequate to police the country's 11 million workplaces. The current total of under 800 investigators should be doubled by 2030 by adding 120 investigators per year for the next seven years. The immediate goal should be to have 1,600 by 2030.
- DOL should establish and maintain an Interagency Task Force to Combat Child Labor Exploitation to improve information sharing and coordinate responses. DOL and HHS have agreed to do this and must ensure the Task Force has adequate resources. Congress must provide adequate funding.

- DOL must hold **all employers**, including factory owners and those that benefit from illegal child labor, accountable for child labor violations in its supply chain. The agency has said it will do this, but congressional appropriations language should mandate it.
- Wage and Hour should review state bills that are in development and that seek to weaken current protections to point out where those laws conflict with federal law and to warn states that stricter protections hold—as mandated by law.
- DOL should employ targeted child labor investigations and target states that weaken child labor laws with enforcement. DOL says it will do targeted investigations. Congress should mandate this in appropriations language. Meat-packing and secondary and tertiary suppliers of manufactured goods must be included.
- U.S. DOL should enhance collaboration with state Departments of Labor. All DOL regional directors should attend Interstate Labor Standards Association Meetings when possible. The joint task force between feds and ILSA to be revived to increase collaboration.
- Congress should create a resource pool from child labor fines to fund greater enforcement as well as victim assistance to ensure that victims of child labor exploitation have the resources to recover from their exploitative experiences.
- U.S. DOL has not updated occupational safety rules for child farmworkers—called Hazardous Occupations Orders-- in four decades. These updates need to begin immediately. These 15 protections have not been updated in 40 years. Goal: two a year until all the rules identified by NIOSH have been updated. U.S. DOL is abdicating its responsibility to protect children who work on farms.
- DOL must list work in tobacco as a Hazardous Occupations Order immediately – all parties agree that tobacco should not be harvested by youth under 16 (even major tobacco companies have acknowledged this). Child farmworkers in tobacco routinely suffer nicotine poisoning from their work with symptoms that include fainting, nausea, vomiting, headaches, and fatigue. Some children describe it as "feeling as if I was going to die." Current voluntary agreements to ban children under 16 are not effective; nor are they enforceable by Wage and Hour.
- Congress must also work to fix this problem by banning child labor in U.S. tobacco for All minors. Senator Durbin's "Children Don't Belong on Tobacco Farms Act," S. 1921, would accomplish this. Rep. DeLauro introduced a companion bill in the U.S. House, H.R. 4020.
- Congress should require an annual reports on the status of child labor to include both agriculture and non-agriculture by U.S. DOL. The report should include a summary of investigative findings, as well as progress and challenges in its work to reduce illegal child labor.
- U.S. DOL must work to make privacy protocols flexible enough to ensure victims of child labor can receive help from NGOs trying to provide assistance.
- U.S. DOL should require companies with multiple violations to develop a plan of action with specific benchmarks that the Wage and Hour will monitor in future compliance inspections (annually). This provides a roadmap for the company and its subcontractors, a tool for inspectors to ascertain whether the company is in good faith following through with their plan, and the mechanism for increasing the level of penalties and fines if they fail to follow through.
- U.S. DOL should pursue collaborative, proactive approaches to educate employers to proactively obey child labor law.
- DOL and HHS should increase effort to educate unaccompanied minors, parents and guardians about workplace dangers, U.S. child labor law, and how they can report workplace safety

concerns to either Wage and Hour or the Office of Refugee Resettlement National Call Center. We support the mandated follow-up call by HHS to all safety concern calls agreed to in the DOL/HHS memo of 2/27/2023.

- HHS must increase case management capacity to ensure that the welfare of unaccompanied minors is checked at relatively frequent intervals.
- Congress should require HHS to improve its sponsor-vetting process for unaccompanied minors to protect the safety of vulnerable children.
- Congress must pass the *Children's Act for Responsible Employment and Farm Safety*—which was reintroduced in Congress by Rep. Ruiz and Rep. Grijalva. It would raise the minimum age of farm work from the current 12 to 14 and raise the minimum age for hazardous work in agriculture from 16 to 18 – the same as all other job sectors.
- The U.S. should ratify ILO Convention 138 on the minimum age for work which has been ratified by 175 nations. The U.S. is the ONLY "developed" economy in the Western Hemisphere or Europe not to ratify this important protection.
- Congress should require a new update to the Government Accountability Office child labor report of 2018.
- The Senate HELP Committee should hold a hearing on the surge in child labor in 2023.
- The Bureau of Labor Statistics must collect data on children who work in agriculture under the age of 14.
- The BLS, the USDOL National Agricultural Workers Survey and the USDA Census of Agricultural Workers must better align data sets to capture all children working in the U.S.
- With many injuries to child farmworkers going unreported, NIOSH and the CDC should enhance current occupational injury reporting for children who work in agriculture.
- The Biden Administration should appoint a White House level Children's Commissioner to ensure that children's safety is not being comprised by employers and that children receive their share of federal spending. A cross-agency overseer of children could help ensure that adequate progress is being made in efforts to end dangerous and illegal child labor and that no federal decisions unintentionally harm children.
- Congress should add a mandate to USDOL's International Labor Affairs Bureau's global child labor reports to include evaluation of the U.S.

CWS Statement to the Senate Judiciary Committee, pertaining to its hearing "Ensuring the Safety and Well-Being of Unaccompanied Children"

Church World Service (CWS) is a 77-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions, as well as resettlement offices and affiliates, home study and post release services, and asylum seeker case management services. Home study and post-release services are a growing part of CWS's work, with offices across the country providing trauma-informed case management that helps ensure unaccompanied children (UCs) have a safe and stable home placement where they can learn, grow, and thrive. From the desperate circumstances and limited options that spur UC's decision to travel to the border, to the inhumane detention conditions upon arrival, to the lack of legal support or case management after release, Congress must act to create migration systems that address the inadequacies of the current protection system and center children's safety, health, and wellbeing.

CWS urges Congress to hold the administration accountable for fully restoring the asylum system and strengthening and improving the Central American Minors (CAM) program. Children arrive alone at the border because they and their families are desperate, because they lack other options. Severe asylum restrictions, including the Biden administration's recent asylum entry and transit ban, result in family separations and encourage increasing arrivals of unaccompanied children as families are unable to easily seek or receive protection by crossing the border together. The CAM program provides options for unaccompanied children to seek protection in the U.S. without the need to make the dangerous trek to the border, but long backlogs and processing delays mean the program is only a real option for a small number of prospective migrants. Ensuring strong asylum protections and efficient and effective refugee and CAM processing will allow for safe, alternative pathways and lower the number of UCs arriving at the border in extremely vulnerable conditions.

CWS urges congress to support the deployment of appropriate and trained personnel to improve conditions for UCs in DHS custody. For unaccompanied children who do arrive at the border and are encountered by Customs and Border Protection, many face prolonged stays in inhumane CBP detention facilities. Others are separated from the indirect family members and guardians they traveled with. Congress has repeatedly directed DHS to hire child welfare professionals to oversee conditions and care for detained children, but the agency has not followed through. Congress must continue to put pressure on the administration to deploy these professionals in settings where children are detained. In addition, Congress should work to ensure DHS increases pediatric staffing in CBP facilities, allocate resources to co-locate Health and Human Services specialists in DHS facilities to keep more families together, and allow NGOs to help with humanitarian needs and children's best interests.

CWS urges Congress to increase funding for home studies, post release services, and legal representation for unaccompanied children. Recent reporting from the New York Times has revealed that hundreds of unaccompanied children are being exploited for their labor across the United States. Robustly funded and properly implemented post-release services and home studies ensure family reunifications are and remain safe and stable and ensure critical care for UCs after they have been released to sponsors. CWS and other agencies currently provide these home study and post release services, but currently lack funding and capacity to support all arriving children. Many children also lack access to legal representation, preventing them from a fair hearing and sometimes even leading to children representing themselves in convoluted immigration court proceedings. Congress must increase funding for the Office of Refugee Resettlement, which oversees home study, post release, and legal services for UCs.

Unaccompanied children are among the most vulnerable individuals who arrive in the United States. Most are fleeing extreme violence and many have suffered violence or abuse. Some are the victims of human trafficking. They face particular risks and are in need of special protections, something Congress has long recognized – including via the passage of the bipartisan Trafficking Victims Protection Act of 2008, a bill that requires arriving children be placed in the least restrictive setting that is in their best interests. But current policies – and a lack of adequate funding from Congress – have all too often left children in danger. Through careful oversight and robust funding, including via the specific actions outlined above, Congress can take action to improve conditions for UCs and establish protections that live up to our values.



Statement for the Record by Kids in Need of Defense (KIND)

"Ensuring the Safety and Well-Being of Unaccompanied Children"

U.S. Senate Committee on the Judiciary

June 14, 2023

Kids in Need of Defense (KIND) is the leading U.S.-based organization dedicated to the protection of unaccompanied migrant children. KIND was founded by the Microsoft Corporation and United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie. We have served more than 30,000 unaccompanied children in removal proceedings and formed pro bono partnerships with over 755 corporations, law firms, law schools, and bar associations. KIND's social services program facilitates the coordinated provision to unaccompanied children of counseling, educational support, medical care, and other services. KIND also helps children who are returning to their countries of origin to do so safely and to reintegrate into their home communities. KIND's programs in Mexico and Central America work to address the root causes of forced migration and help protect the safety and well-being of migrant children at every phase of their migration journey.

Unaccompanied children are among the world's most vulnerable individuals. They have traveled hundreds or thousands of miles to the United States, often completely on their own, to escape extreme violence, sexual abuse, human trafficking, and other dangers. Many of these children have fled northern Central America, a region gripped by humanitarian crises. With no protection in their countries of origin, children are forced to make a dangerous journey, and if they arrive to the United States, are immediately thrust into a complicated and protracted legal system. These children face daunting obstacles in their transition to the United States, including limited resources, language barriers, and the need to navigate the complex U.S. immigration system, often on their own.

Recognizing the unique vulnerability of unaccompanied children, Congress created fundamental procedural protections designed to help these children fairly access protection and navigate immigration proceedings to prevent their return to harm or exploitation. These safeguards, enacted on a broad bipartisan basis through the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), build upon foundational child welfare safeguards for all children in federal immigration custody that are embodied within the *Flores* Settlement Agreement, signed by the federal government in 1997.

The necessity of these protections—and government-wide efforts to ensure the wellbeing of unaccompanied children—have only grown in importance in light of recent media articles and investigations documenting devastating and widespread labor exploitation of unaccompanied migrant children throughout many U.S. companies and industries. Many children have worked long hours or overnight shifts in factories producing goods or cleaning dangerous industrial equipment. Harmful conditions have led to chronic illness, the loss of limbs, and other severe

injuries. These reports have garnered critical attention to the need for a coordinated, whole-of-government effort to eradicate such exploitation, protect unaccompanied children's safety, and empower these children to thrive in communities across the nation.

KIND strongly supports interagency efforts to prevent and combat child labor exploitation and to uphold TVPRA and *Flores* protections, which play an important role in reducing children's vulnerability and facilitating their access to legal processes and supportive services that can advance safety and stability and mitigate risks of exploitation. We remain deeply concerned, however, about recent congressional proposals that seek to deter migration by weakening existing legal protections for unaccompanied children and other protection seekers and that would only compound the challenges and risks facing this vulnerable population.

KIND shares below several recommendations for preserving and fully realizing the aims of vital safeguards previously enacted by Congress and for additional steps that Congress and the Biden Administration can take to better ensure the wellbeing of unaccompanied children.

Uphold the TVPRA and *Flores* Agreement

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)[1] and *Flores* Settlement Agreement (*Flores* or FSA)[2] together serve as the foundation for the protection of unaccompanied children in the U.S. immigration system. Central to ensuring the safety and well-being of unaccompanied children is the preservation of the safeguards provided in *Flores* and the TVPRA.

The *Flores* Agreement sets forth minimum standards for the treatment, release, and detention of children in immigration custody as well as independent monitoring and oversight provisions to ensure children's care aligns with basic child welfare principles. The FSA requires the government to treat children with concern for their particular vulnerability as minors. Standards require that facilities in which migrant and refugee children are initially held be safe and sanitary and provide for children's basic needs, among them food and water, bathroom needs, medical assistance, and contact with family with whom they were apprehended. The FSA also establishes a general policy favoring the release of children from detention "without unnecessary delay" to caregivers in the community and sets forth priorities for children's placement during immigration proceedings, with a preference for release to parents and legal guardians and other adult relatives.

The TVPRA was passed by Congress on a broad, bipartisan basis after careful consideration of ways to prevent the return of unaccompanied children to harm, including human trafficking. The TVPRA requires that unaccompanied children be screened for fear of trafficking, persecution, or other harm prior to any repatriation or return, and that they be cared for by the Department of Health and Human Services (HHS), which is tasked with identifying the least restrictive placement appropriate for the child in the federal government's care while it works to reunify the child with a safe family member or other sponsor who can care for them during their immigration proceedings—provisions that reflect safeguards in the FSA. Additional TVPRA safeguards aim to

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[1] William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008).
[2] Flores v. Reno, No. CV 85-4544-RJK (C.D. Cal. Jan. 17, 1997).

improve the fairness of immigration proceedings by providing children with an opportunity to have their asylum claims first considered in a non-adversarial interview setting more appropriate for children, rather than in immigration court, and by allowing children time to find a lawyer and present their cases in full removing proceedings rather than facing summary removal at the border. It also directs HHS to ensure to the "greatest extent practicable" that children have attorneys to represent them and provides for access to independent child advocates who can support the best interests of child survivors of trafficking and other vulnerable children.

Congress must reject any amendments, legislation, or other proposals that would weaken the TVPRA and *Flores*. Measures to improve the U.S. immigration system generally, and advance orderly and humane border processing specifically, should ensure, not imperil, the protection and wellbeing of unaccompanied children. KIND urges policymakers to support practical measures that would improve border management *and* appropriate treatment of children, while eschewing deterrence-based approaches that threaten the very harms to those children that Congress has worked for decades to prevent. Ultimately, meaningful reforms will build upon rather than erode the fundamental protections provided for in the TVPRA and *Flores*.

Provide Robust of Post-release Legal Services

In its work providing legal and social services to thousands of unaccompanied children, KIND has witnessed the fundamental role that legal representation plays not only in assisting unaccompanied children in navigating their immigration proceedings and securing humanitarian protection against dangers they fled in their countries of origin, but also in identifying and safeguarding children against other threats to their well-being, including labor exploitation.

Many if not most unaccompanied children who are released from ORR custody in the United States still lack attorneys. HHS has set a vital goal of achieving legal representation of all unaccompanied children by FY 2027.[3] Consistent with this objective, and its statutory mandate to ensure legal counsel "to the greatest extent practicable," HHS should robustly allocate funding provided by Congress for the expansion of legal services for this vulnerable population. Congress, for its part, should increase relevant funding levels.

Attorneys often function as unaccompanied children's most trusted advocates in situations of exploitation. By law, the attorney-client relationship is a confidential one. That confidentiality, coupled with the unique rapport built over months or years of representation, can mean that a lawyer is the sole authority-figure to whom children feel safe disclosing information about mistreatment. Indeed, children experiencing labor trafficking may be restricted in their ability to communicate or be forced to move between states or jurisdictions. Out of reach of others in whom they may confide, some children may only be able to reach out to their attorney for help. With the child's permission, attorneys can report incidences of exploitative labor and coordinate with other professionals, helping extricate children from abusive work environments.

Without lawful immigration status, many unaccompanied children remain at risk of deportation to the same harms they fled. Unscrupulous employers and criminal actors frequently prey upon

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[3] Administration for Children and Families, "FY 2024: Justification of Estimates for Appropriations Committees;" (https://www.acf.hhs.gov/sites/default/files/documents/olab/fy-2024-congressional-justification.pdf).

children's fear of removal, their age, and financial insecurity to lure or force children into exploitative conditions or to compel them to remain in them. Without an attorney, it is virtually impossible for unaccompanied children to navigate the complex and adversarial U.S. immigration system so as to obtain immigration benefits that serve as bulwarks against unsafe working conditions, wage theft, and other labor abuses. Attorneys play a vital role in evaluating children's eligibility for legal protection, counseling children on potential options, and helping children to complete applications for relief where eligible. Such assistance frequently entails specialized experience working with survivors of harm and exploitation and collaboration with social workers and other relevant professionals to ensure the child's immediate and long-term safety and wellbeing. For many children, legal assistance is lifesaving, and both prevents deportation to danger and enables them to escape situations of harm, abuse, and exploitation in the United States. With permanent protection, children can gain the stability needed to begin healing from trauma and to pursue long-term goals and security.

Expand Post-Release Social Services

HHS should facilitate linguistically and culturally appropriate social services for all unaccompanied children for a minimum of 180 days following their release from ORR custody and for longer periods when caseworkers determine children require additional support. Such services may include in-home visitation by social workers, support with children's educational enrollment and progress, connection to medical and mental health providers, and other assistance designed to uphold the safety of sponsorship settings, promote children's integration into local communities, and provide children with tools for building secure and prosperous lives in the United States. Commendably, HHS has set a goal of providing post-release social services to all unaccompanied children by FY 2025.[4] It is vital that ORR realize that aim and that Congress appropriate funding accordingly.

Such post-release legal and social services represent an essential complement to pre-release sponsor suitability assessments, together forming a protective matrix helping ensure this vulnerable population's safety, including against the risk of labor exploitation. Under the TVPRA and *Flores* Settlement Agreement, which serve as the dual foundation for the protection of unaccompanied children in the U.S. immigration system, unaccompanied children must promptly be placed in the least restrictive setting that is in the best interest of the child, with prioritization of placement with qualified parents, guardians, or other relatives. This requirement reflects recognition not only of the importance of safe placements, but also that prolonged government detention in congregate care settings and separation from family members are detrimental to the mental and physical health of children, often producing severe and enduring psychological trauma.

In short, children must not remain in government custody for needlessly extended periods of time when there are safe sponsors available. These harmful outcomes occurred under the prior Administration when, for example, a 2018 information-sharing agreement between DHS and ORR that threatened the use of sponsor information for immigration enforcement purposes

[4] HHS, "Departments of Labor and Health and Human Services Announce New Efforts to Combat Exploitative Child Labor" (Feb. 27, 2023); https://www.hhs.gov/about/news/2023/02/27/departments-labor-and-health-andhuman-services-announce-new-efforts-combat-exploitative-child-labor.html.

deterred good-faith sponsors, including loving family members, from coming forward to care for unaccompanied children, directly and needlessly protracting those children's government detention.[5]

It is vital, then, that ORR perform sponsor suitability assessments that are at once safe and expeditious. KIND supports ORR's recent audit of its sponsor suitability process, the identification of any procedural improvements promoting reunifications that serve both these ends, and agency efforts to ensure that currently required vetting guidelines are adhered to uniformly. Through a safe, timely placement process, combined with the provision of legal and social services to all unaccompanied children following placement with sponsors, ORR can help ensure the welfare of unaccompanied children both during and after their stay in government custody.

[5] DHS, "HHS and DHS Joint Statement on Termination of 2018 Agreement" (Mar. 12, 2021); https://www.dhs.gov/news/2021/03/12/hhs-and-dhs-joint-statement-termination-2018-agreement.



Testimony for the Record of

Kristyn Peck, Chief Executive Officer of Lutheran Social Services of the National Capital Area

For a Hearing of the

U.S. Senate Committee on the Judiciary

Regarding

Ensuring the Safety and Well-Being of Unaccompanied Children

Dirksen Senate Office Building Room 106

June 14, 2023

I would like to thank Chairman Durbin and Ranking Member Graham and all the members of the Senate Judiciary Committee for holding this hearing on Ensuring the Safety and Well-Being of Unaccompanied Children. We are grateful for the opportunity to share our written recommendations for protecting vulnerable children seeking safety in our country.

I am Kristyn Peck, Chief Executive Officer of Lutheran Social Services of the National Capital Area (LSSNCA). My 20-year career has been focused on administering services for and advocating on behalf of persons forced to flee their homes and seeking protection in the United States, child welfare administration and reform, and the intersection of child welfare and migration. One of my first jobs as a professional social worker in 2005 was as an advocate for children in the custody of the Office of Refugee Resettlement (ORR). My first case was of a 16-year-old girl from the Ivory Coast who had been destined to live with her "uncle" and was apprehended upon arrival at the airport. Through a psychosocial evaluation, I learned that there was a financial arrangement between her family and this man for him to get her safely to the United States and find her a job to pay her travel debts. It became clear through family tracing efforts that he was not her uncle. During my rapport-building with her, I learned that he was grooming her during phone calls, and she thought he was her boyfriend. There were plenty of indicators that if he was approved as her sponsor, she would be at risk for human trafficking, and I recommended she not be released to his care. This is an example of how the system can work to protect children. Since that time, I have served as a director of national programs providing family reunification and foster care services for unaccompanied children at the United States Conference of Catholic Bishops (USCCB); overseeing child welfare reform as the founding CEO of West Michigan Partnership for Children; and for the last two and a half years as the CEO of LSSNCA.

LSSNCA has served the greater Washington, D.C. metro area for more than 100 years. We began welcoming persons fleeing violence and persecution and seeking safety in the United States in 1941, and we continue that tradition today, providing case management, mental health services, workforce development, legal services, and foster care. Between 2021 -- 2022, we served more than 7,000 individuals from more than 48 countries. We have been serving unaccompanied children through ORR's Unaccompanied Refugee Minors (URM) program since 1974. The first child we served in this program was a 10-year-old from Cambodia who needed open heart surgery to survive. The surgery was delayed because there was no one to pay for it, and LSSNCA guaranteed the hospital payment if they performed the operation. With the support of our generous community, LSSNCA paid off the bill over the course of a year. Today, we provide Safe Release Support for unaccompanied children in federal custody by conducting fingerprinting of potential sponsors; transitional foster care for unaccompanied children in immigration proceedings; and foster care for unaccompanied children with refugee status or another qualifying form of humanitarian immigration relief through the URM program.

Mr. Chairman, my testimony today will highlight LSSNCA's recommendations for how the United States can strengthen its response to ensure the safety and well-being of unaccompanied children. Underlying our recommendations is our fundamental belief that all children should be treated as we would want our own children to be treated. Many of these recommendations are not new and this is not the first time I have testified or submitted testimony on protection needs of unaccompanied children and recommendations to the U.S. government for strengthening our response. I made similar recommendations to the House Judiciary Subcommittee on Immigration and Border Security on December 10, 2014 when I was the Associate Director of Children's Services at USCCB's department of Migration and Refugee Services[1] and also submitted testimony for the record in front of the same Subcommittee on February 4, 2016.[2] Many organizations that serve and advocate on behalf of unaccompanied children and asylum-seekers have also called for increased protections for unaccompanied children for more than a decade, and so I am demanding a sense of real urgency be paid to these recommendations which are of immediate and critical consequence.

The conditions outlined in "Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S." by Hannah Dreier of *The New York Times*[3] are preventable and the solutions are known, and have been known, for years. Yet, as *The New York Times* reported, background check processes for sponsors were rolled back rather than strengthened and quick releases have been prioritized over thorough vetting of sponsors and proposed placements. This is occurring as we are seeing a national increase in child labor. Mr. Chairman, by not adequately resourcing the Office of Refugee Resettlement's (ORR) Division of Unaccompanied Children Operations (DUCO) nor holding it accountable to prioritize robust vetting of placements and other measures to ensure safety, and by not holding states accountable for enforcing a minimum standard of child labor laws, the U.S. government is complicit in the exploitation of unaccompanied children.

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1 The impact on local communities of the release of unaccompanied alien minors and the need for consultation and notification: Hearings before the Subcommittee on Immigration and Border Security of the House Judiciary Committee, 113th Cong. P 53-81 (2014) (Testimony of Kristyn Peck). Available: https://www.congress.gov/113/chrg/CHRG-113hhrg91742/CHRG-113hhrg91742.pdf

2 Another Surge of Illegal Immigrants Along the Southwest Border: Is this the Obama Administration's New Normal?: Hearings before House Judiciary Subcommittee on Immigration and Border Security. 114th Congress (2016) (Testimony of Kristyn Peck. Available: Kristyn-Peck-Testimony_Surge_at_Southern_Border.pdf (justiceforimmigrants.org)

3 Dreier, H., & Luce, K. (2023, February 25). *Alone and exploited, migrant children work brutal jobs across the U.S.* The New York Times. https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html

Mr. Chairman, let me first comment on Senate Bill 1473,[4] which was introduced by Senators Krysten Sinema (I-AZ) and Thom Tillis (R-NC) as well as the House Companion Bill HR. 3234.[5] These bills would severely curtail the human and legal right to seek asylum at the U.S.-Mexico border. LSSNCA believes the underlying premise of these bills contradict U.S. asylum law, and our commitments to international human rights treaties. Fleeing war and persecution in search of a better life has always been a part of the human experience and is a major theme in the world's religions. The right to seek asylum is a cornerstone of U.S. and international law, dating back to World War II,[6] which prompted the largest forced displacement of humans the world had ever seen, until today.[7] There was a notorious incident where the U.S. turned away a German boat with almost 1,000 passengers – mostly Jewish asylum-seekers – and almost a quarter were murdered in the Holocaust.[8] Following the atrocities of the Holocaust, more than a dozen countries, including the United States, agreed to never again close their doors on people fleeing persecution and seeking protection. This was the birth of the 1951 Refugee Convention.[9] Underlying the Convention and its 1967 Protocol is the core principle of non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom.[10]

As it relates to unaccompanied children, LSSNCA is gravely concerned that Senate Bill 1473 would subject the most vulnerable of migrants seeking protection – children traveling alone – to expulsion or detention without access to due process.[11] We know that many of the children arriving at our doorstep are fleeing life or death situations, and that expulsion would send them

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4 SAFEGUARD Act of 2021, S. 1473, 117th Cong. (2021). Retrieved from: https://www.congress.gov/bill/117th-congress/senate-bill/1473

5 To authorize the immediate expulsion of inadmissible aliens attempting to enter the United States by fraud or without a necessary entry document, and for other purposes, H.R. 3234, 118th Con. (2023). https://www.congress.gov/bill/118th-congress/house-bill/3234

6 UN High Commissioner for Refugees (UNHCR). (2017) A guide to international refugee protection and building state asylum systems. Handbook for Parliamentarians Pp 15-18. Retrieved June 7, 2023 from https://www.refworld.org/docid/5a9d57554.html

7 Zampano, G., Moloney, L., & Juan, J. (2015, September 22). Migrant crisis: a history of displacement. *The Wall Street Journal*. Retrieved June 7, 2023, from http://graphics.wsj.com/migrant-crisis-a-history-of-displacement/

8 United States Holocaust Memorial Museum. (n.d.). *Voyage of the St. Louis*. United States holocaust memorial museum. https://encyclopedia.ushmm.org/content/en/article/voyage-of-the-st-louis

9 *The 1951 refugee convention.* UNHCR UK. (n.d.). Retrieved June 9, 2023 from https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention

10 UN High Commissioner for Refugees (UNHCR). (2017) A guide to international refugee protection and building state asylum systems. Handbook for Parliamentarians Pp 17-20. Retrieved June 7, 2023 from https://www.refworld.org/docid/5a9d57554.html

11 "LSSNCA urges Members of Congress to oppose recently introduced legislation: S.1473 and H.R. 3234", Retrieved June 7, 2023 from: https://lssnca.org/newsroom/news.html/article/2023/05/30/lssnca-urges%09members%20of-congress-to-oppose-recently-introduced-legislation-s-1473-and-h-r-3234

back to death.[12] [13] It is our moral and legal obligation to allow them to pursue humanitarian relief through our immigration court system. Those who are found eligible for immigration relief would become contributing members of communities; repatriation should only occur for those who are not found eligible.

We also oppose the use of detention as a deterrent to migration. We believe detention penalizes those seeking safety and protection, and conflicts with religious teachings to welcome the stranger. Detention inflicts further trauma and harm on individuals who have already been subjected to violence and persecution and has detrimental effects on children whose brains are still developing. According to the American Association of Pediatrics, "qualitative reports about detained unaccompanied immigrant children in the United States found high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems. Additionally, expert consensus has concluded that even brief detention can cause psychological trauma and induce long-term mental health risks for children."[14]

Children who have experienced acute or ongoing trauma frequently experience delays in speech, reading ability, and school readiness: "Trauma-induced changes to the brain can result in varying degrees of cognitive impairment and emotional dysregulation that can lead to a host of problems, including difficulty with attention and focus, learning disabilities, low self-esteem, impaired social skills, and sleep disturbances."[15]

LSSNCA's recommendations today will focus on four areas: **1.) ensuring meaningful access to protection**, **2.) strengthening family reunification policies and procedures**, **3.) developing and deploying a screening process for sponsors of unaccompanied that includes intelligence from the Administration for Children and Families' Office on Trafficking in Persons (OTIP), the Department of Labor (DOL), the National Center for Missing and Exploited Children (NCMEC) and federal law enforcement**, and **4.) improving enforcement of existing state child labor laws**.

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12 *Forced to Flee Central America's Northern Triangle: a neglected humanitarian crisis*. Doctors Without Borders. (2017, May). Retrieved June 8, 2023 from https://www.msf.org/sites/default/files/msf_forced-to-flee-central-americas-northern-triangle_e.pdf

13 Angelo, P. (2021, March 22). Why Central American migrants are arriving at the U.S. border. Council on Foreign Relations. https://www.cfr.org/in-brief/why-central-american-migrants-are-arriving-us-border

14 Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. (2017) *American Academy of Pediatrics*. 139(5):e20170483. Retrieved June 7, 2023 from Detention of Immigrant Children | Pediatrics | American Academy of Pediatrics (aap.org)

*Names have been changed to protect the identities of program participants.

15 Child Welfare Information Gateway. (2017). Supporting brain development in traumatized children and youth. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. Retrieved June 7, 2023 from https://www.childwelfare.gov/pubpdfs/braindevtrauma.pdf

Underlying these recommendations is the "best interest of the child principle" which is used in the domestic child welfare system. The Children's Bureau indicates that "best interest determinations are generally made by considering a number of factors related to the child's circumstances and the parent or caregiver's circumstances and capacity to parent, with the child's ultimate safety and well-being the paramount concern."[16]

Before I discuss our recommendations in more detail, I would like to share more about the conditions children are fleeing, which underscores their need for protection.

Most of the unaccompanied children we serve report having been subjected to violence and persecution within the microcosm of their own communities. Children report being targeted by gangs and threatened with their lives for sex, labor, and participation in gang activities while they try to make their way to school. In Central America, the failure of systems and institutions that are supposed to protect communities from bad actors has been well documented.[17] These environments, ones we would not hope for our own children to grow up in, leave families with no other choice but to ensure their children escape to a safer life.

The children we are welcoming at our borders are kids like Allan* who fled Honduras. According to the World Bank, Honduras has high levels of poverty and inequality. More than half of its population is under the age of 24 years old, and Honduras' homicide rate is the third highest in Latin America.[18] Allan, who was habitually threatened by gang members was eventually kidnapped by them, and physically assaulted as a warning to his family to comply with their financial demands. His family took these threats seriously, as prior to this, his brother, Jose, had been murdered by the gang. Allan continued to be physically and verbally attacked following the kidnapping. His mother, who could not protect him, knew he needed to be in the United States to live a safe and fulfilling life.

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16 Child Welfare Information Gateway. (2020). Determining the best interests of the child. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. P.2 Retrieved June 7, 2023 from https://www.childwelfare.gov/pubpdfs/best_interest.pdf

Restrepo, D. (2021, March 5). Central Americans are fleeing bad governments. *Foreign Affairs*. Retrieved June 8, 2023 from https://www.foreignaffairs.com/articles/central-america-caribbean/2021-03-05/central-americans-are-fleeing-bad-governments

18 Padilla, M. T. (2021, June 27). Unaccompanied children on the move: From Central America to the US via *Mexico*. E-International Relations. Retrieved June 8, 2023 from https://www.e-ir.info/2021/06/27/unaccompanied-children-on-the-move-from-central-america-to-the-us-via-mexico/

RECOMMENDATION 1: ENSURE MEANINGFUL ACCESS TO PROTECTION

a. Keep avenues to asylum open

The life-or-death situations children and families are fleeing in Central America are well-documented and require multiple safe pathways to protection. While the administration has recently introduced increased in-country processing and expanded refugee allocations[15], these measures may not be accessible to all nor offer the needed protections surrounding seeking asylum in-country. Thus, the legal and human right to seek asylum at our borders, as codified in U.S. and international law, must remain a viable avenue to protection. LSSNCA strongly opposes any efforts by the U.S. government to restrict access to asylum, expel children and families before they have a meaningful opportunity to petition for asylum with support of an attorney, or support interdictions of families and children in Mexico before they have access to asylum proceedings.[19]

b. Increase information accessibility for unaccompanied children on their rights and resources

LSSNCA recommends that ORR/DUCO, OTIP, and DOL collaborate on developing literature, training, and tools to educate children on their rights, the ORR/DUCO release process, resources, and the information on the process to request such resources. This information should be victim-centered, trauma-informed, and culturally relevant, and in languages representing the languages spoken and read by unaccompanied children. This information should also continuously be reinforced and revisited during post-placement visits. By empowering children with information on risk factors of human trafficking, child labor laws, and abuse and neglect in child-friendly language, unaccompanied children can be active participants in ensuring their own safety.

c. Provide unaccompanied children pro bono legal representation

The United States immigration system is considered quite complex, and because it is considered part of our civil laws and not our criminal laws, there is no right to paid government counsel for those who cannot afford an attorney. This means that most

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19 LSSNCA's Public Comment Regarding the Notice of the Proposed Rulemaking: Circumvention of Lawful Pathways. (The Administration's Proposed Asylum Restrictions). (2023, March 27). *Lssnca.Org*. Retrieved June 9, 2023 from https://www.regulations.gov/comment/USCIS-2022-0016-12303

children entering the labyrinth of the immigration system, do so on their own. Statistically, these same children have experienced trauma in their home country or during their journey to the United States, including robbery, violence, and sexual assault.[20] Their history of trauma[21] and their undocumented status heighten their vulnerability to exploitation and human trafficking.[22]

The Congressional Research Service found that immigration judges are 100 times more likely to grant relief to unaccompanied children with legal representation than to those without it.[23] Similarly, analysis of Executive Office of Immigration Review (EOIR) data from 2005 to 2017 shows that 90 percent of unaccompanied children without legal representation were issued an order of removal, while those who received legal representation were more than seven times more likely to obtain legal relief.[24] This finding is in line with expert studies[25] demonstrating that asylum-seekers with legal counsel are more likely to receive legal protection than those without. LSSNCA recommends robust funding for ORR/DUCO to ensure all unaccompanied children in its custody and released from its custody have access to a pro bono immigration attorney. Children who receive immigration relief are able to work legally in the United States, decreasing their vulnerability to trafficking and exploitation.

d. Develop specialized children's dockets

LSSNCA recommends the use of specialized children's dockets which would ensure that the system reflects the unique vulnerabilities children present and ensure child-appropriate procedures. For instance, LSSNCA would encourage the Executive Office for Immigration Review to revert from its December 2017 EOIR Operating Policies and

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20 *Children on the Run.* United Nations Commissioner for Refugees Office for the United States and the Caribbean. (2016). https://www.unhcr.org/us/media/children-run-full-report

21 Jaeckl S, Laughon K. Risk Factors and Indicators for Commercial Sexual Exploitation/Domestic Minor Sex Trafficking of Adolescent Girls in the United States in the Context of School Nursing: An Integrative Review of the Literature. *The Journal of School Nursing.* 2021;37(1):6-16. doi:10.1177/1059840520971806

22 David, F., Bryant, K., & Joudo Larsen, J. (2019). (rep.). *International Organization on Migration.* Retrieved June 9, 2023 from https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf.

23 Congressional Research Service, Unaccompanied Alien Children: An Overview, at 17, Sept. 1, 2021. Retrieved June 9, 2023 from R43599 (congress.gov)

24 Bryant, E., Snider , A., & DiBennardo, B. (2022, January 28). *No child should appear in Immigration Court Alone.* Vera Institute of Justice. Retrieved June 7, 2023 from https://www.vera.org/news/no-child-should-appear-in-immigration-court-alone#:~:text=While%20the%20U.S.%20government%20may,children%20face%20deportation%20proceedings%20alone.

25 See e.g., Refugee Roulette: Disparities in Asylum Adjudication 60 Stan. L. Rev. 295 (2007-2008) (https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub)

Procedures Memorandum (OPPM) 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children to an OPPM with more elements from its 2007 OPPM which included encouraging more child-friendly practices in the court room, allowing an approach more in line with the "best interest of the child," and support for considering age, lack of counsel and/or capacity differences in evaluating testimony.[26] For further information, I am including as a reference document a memo from May 2023 from Kids in Need of Defense (KIND) which outlines additional elements necessary for a robust and successful children's docket: training for judges and the Department of Homeland Security (DHS) attorneys representing the government; child focused adjudications; and coordination with legal and social service organizations.[27]

RECOMMENDATION 2: STRENGTHEN FAMILY REUNIFICATION POLICIES AND PROCEDURES

Children are placed in the custody of ORR/DUCO upon apprehension by DHS and released to the care of sponsors in local communities. Some children receive a home study before being released to sponsors in accordance with the requirements of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.[28]

LSSNCA has recommendations for strengthening home studies and post-release services which we believe if enacted would mitigate the risk of abuse, exploitation, and trafficking of unaccompanied children released to communities.

a. Increase criteria for who receives a home study

Home studies assess the protective capacity of a potential sponsor and all members of the household to ensure the safety and well-being of a child released to their care. They take into account the unique vulnerabilities of the child and the skills and the experiences of the prospective caregiver. Home studies include a psychosocial evaluation, assessment of the home and community, and psychoeducation for the sponsor on the child's unique

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26 U.S. Department of Justice, Executive Office for Immigration Review. (2017) Operating Policies and Procedures Memorandum 17-03. Retrieved June 7, 2023 from https://www.justice.gov/eoir/file/oppm17-03/download

27 "Specialized Children's Dockets in Immigration Court", Kids in Need of Defense. (May, 2023). Retrieved June 7, 2023 from https://supportkind.org/wp-content/uploads/2023/05/KIND-Childrens-Dockets-Memo-May-2023.pdf

28 William Wilberforce Trafficking Victims Protection Reauthorization Act, Section 235 (c)3b. P.L. 110-457, Con.110 (2008). Retrieved June 7, 2023 from https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf

needs and identification of skills and resources to meet those needs. Home studies also greatly benefit sponsors as they receive education on community resources, trauma-informed parenting, and the immigration system.

However, despite the value of a home study in ensuring safe placements, they are grossly underutilized. The percentage of unaccompanied children in ORR/DUCO custody over the past few years who were released to sponsors and received a home study varied from 7.41 percent in fiscal year 2018 to 4.46 percent in fiscal year 2021 to 6.69 percent in fiscal year 2022.[29] [30]

Many sponsors participating in LSSNCA's Safe Release Support program have expressed to our staff that they wish they knew more about the post-release process. LSSNCA's Safe Release Support program, however, is funded to fingerprint potential sponsors and does not include the post-release support. Accordingly, while our staff currently does not formally participate in home studies or post-release services, they often find themselves explaining to sponsors where the children are being held and how the process works; providing referrals for psychosocial support; and educating sponsors on the importance of enrolling children in school and attending immigration appointments. This information is invaluable to the success of program participants and is generally provided during the home study process – but only to those who are fortunate enough to receive a home study.

Unaccompanied children are particularly vulnerable to exploitation and trafficking due to the following risk factors: undocumented status, history of trauma, and separation from family. LSSNCA believes all unaccompanied children would benefit from a home study prior to release from ORR/DUCO care. At a minimum, LSSNCA recommends that ORR/DUCO review the data of children released from its custody into exploitative, abusive, or neglectful situations and identify additional risk factors that could be explored during a home study and included as mandatory criteria for a home study. Risk factors could include more than a year separation from the proposed sponsor or having never met

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29 *Unaccompanied Children Fact sheets and data*. U.S. Department of Health and Human Services, Administration Children and Families Office of Refugee Resettlement. (2023). Retrieved June 9, 2023 from https://www.acf.hhs.gov/orr/about/ucs/facts-and-data

30 Unaccompanied children released to sponsors by State. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement. (2023, June 5). Retrieved June 9, 2023 from https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state

the proposed sponsor; medical or mental health diagnosis; LGBTQIA+ identity; history of substance abuse.[31]

b. Require an evidence-based model for home studies

Not all home studies are created equal, and LSSNCA recommends that ORR/DUCO require its subcontractors to use an evidence-based model. LSSNCA employs the SAFE (Structed Analysis Family Evaluation) Model for home assessments for our domestic adoption and foster care programs. The SAFE Model includes a psychosocial evaluation of the potential caretaker and requires three (3) home visits to complete whereas ORR/DUCO only requires interviews with the caretaker and one (1) home visit. Interviews with other household members and references are not mandatory. The SAFE Model is effective because it utilizes multiple information gathering tools to assist with focused interviewing. When all the information gathered using these tools is analyzed a home study worker can identify strengths of the potential caretaker as well as risk factors that could impact their ability to provide a safe environment for a child. The timeline set forth by ORR/DUCO for home studies to be completed within 10 days of a referral is not adequate to fully assess the potential sponsor household for safety and gather necessary psychosocial information about the sponsor. LSSNCA believes home study timelines should be extended to at least 30 days.

c. Increase education requirements for home study caseworkers

Conducting a home study, or home assessment, is a honed professional skill set. The qualifications for home study workers as outlined in the Funding Opportunity Announcement released by ORR/DUCO on March 16, 2023, require that the worker "have a Bachelor of Social Work (BSW) degree or an equivalent degree in education, psychology, sociology, or other behavioral science equivalent. HS [Home study] caseworkers must be bilingual in English and Spanish or have access to professional interpretation services."

This language is too flexible and would allow for the hiring of individuals without the necessary practical and professional skills to conduct a home assessment. Undergraduate

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31 " Kinnish, K., Barba, A., Blacker, D., Dierkhising, C., Garrett, R., Grady, J.B., Greenbaum, V.J., Griffin, D., Rubiales, R., Spring, G., Wozniak, J., and Child Sex Trafficking Collaborative Group. (2021). Child sex trafficking: Who is vulnerable to being trafficked. Los Angeles, CA, and Durham, NC: National Center forChild Traumatic Stress. Retrieved June 7, 2023 from https://www.nctsn.org/sites/default/files/resources/fact-sheet/child_sex_trafficking_who_is_vulnerable_to_being_trafficked.pdf

degrees in education, psychology, and sociology do not prepare professionals for work in child welfare and/or clinical safety assessments. LSSNCA recommends language from the National Association of Social Workers Standards for Social Work Practice in Child Welfare, "the knowledge requirements considered fundamental to all social work practice, which are met by the completion of BSW and MSW programs within colleges and universities accredited by CSWE, must include knowledge about the history and development of social work, including child welfare. Social workers in child welfare shall also possess working knowledge related to child and adult development, impact of trauma, parenting and family dynamics, and in communities where child and family reside."[32]

d. Prioritize safe release over quick release

One of the concerns noted by caseworkers interviewed by *The New York Times* was pressure to release children quickly. "But as more and more children have arrived, the Biden White House has ramped up demands on staffers to move the children quickly out of shelters and release them to adults. Caseworkers say they rush through vetting sponsors." [33]

We understand ORR/DUCO's interest in limiting time children spend in congregate care as evidence supports that children do best when placed in the least restrictive, most family-like setting.[34] However, we also know that conducting a home assessment takes time. A home assessment that adequately assesses safety and the ability of the sponsor to protect the child requires multiple in-person visits with all household members, interviews with references outside the household, a psychosocial assessment, coaching sponsor on understanding trauma, identifying their own trauma and coping mechanisms and sharing of community resources. Expectations for a meaningful home assessment and decision about release in less than 30 days are unrealistic.

Furthermore, thorough background checks are an essential component of assessing the safety and suitability of a prospective sponsor and placement. This is a tool utilized in

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32 National Association of Social Workers. (n.d.). NASW standards for Social Work Practice in Child Welfare. Retrieved June 7, 2023 from: https://www.socialworkers.org/LinkClick.aspx?fileticket=zV1G_96nWoI%3d&portalid=0

33 Dreier, H., & Luce, K. (2023, February 25).

34 Barth, R. (2002). (rep.). Jordan Institute for Families, School of Social Work, University of North Carolina at *Chapel Hill*. Retrieved June 9, 2023 from %20https:/resourcecentre.savethechildren.net/pdf/2344.pdf/.

domestic child welfare and under federal law in Title IV-E of the Social Security Act.[35] Title IV-E requires states to include provisions for criminal records checks, including fingerprinting in FBI national crime databases; checks for child abuse and neglect history in the state in which the prospective caregiver resides and where the caregiver has lived in the preceding five years; and criminal records checks, including fingerprinting based checks of the national crime databases of any other adults living in the home of the prospective caretaker. ORR/DUCO has identical background check requirements except for the FBI national criminal history check, which is only mandated under certain circumstances. In addition, *The New York Times* reported that the Biden Administration "began paring back protections that had been in place for years, including some background checks and reviews of children's files, according to memos reviewed by *The New York Times* and interviews with more than a dozen current and former employees."[36]

LSSNCA recommends Congress sufficiently resource ORR/DUCO to prioritize thorough home assessments over arbitrary benchmarks for release; increase its placement continuum to include more least restrictive, family-like settings, like Transitional Foster Care over large-scale congregate care facilities; and that ORR/DUCO be held to the same standard as domestic child welfare entities assessing the safety and suitability of placements, to include requiring FBI national criminal history checks of all sponsors and household members.

e. Ensure release decisions are made by a multidisciplinary team (MDT)

Multidisciplinary reviews are used as best practice in child welfare because they are a holistic approach bringing together professionals with unique expertise from multiple, diverse disciplines, as well as family members and other stakeholders leading to more informed decision-making. This collaborative approach allows for coordination of services and development of an effective plan to address the unique needs of the child.

LSSNCA recommends that the MDT include representatives from Safe Release Support who develop rapport with sponsors during the safe release process and have valuable information to contribute. During the fingerprinting process, LSSNCA staff, who speak the same language as the potential sponsor, are generally the potential sponsor's first encounter with someone in the release process. Often, the potential sponsors explain their own situation and how well they know the child. It is not unusual for a sponsor to be a

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35 Title 42 U.S. Code § 671 (a)(20). State plan for foster care and adoption assistance. Retrieved June 8, 2023 from https://www.law.cornell.edu/uscode/text/42/671

36 Dreier, H., & Luce, K. (2023, February 25).

distant aunt or uncle who was not given notice that the child was arriving. Given the Safe Release Support staff's deep experience meeting and assisting hundreds of sponsors through this initial step, Safe Release Support workers are often able to observe a potential trafficker or an ill-equipped sponsor and act as a first line of defense against an unsafe placement for the child.

f. Ensure all unaccompanied children receive a minimum of monthly in-person post-release services

Post-release services are a critical component of unaccompanied children's safety net. Post-release services provide ongoing safety assessments and comprehensive needs assessments for the child and family; monitor progress toward goals; and connect families to culturally competent service providers in the community. Post-release services strengthen reunifying families by addressing immediate needs such as school enrollment, connections to pro bono immigration services, and access to healthcare. For decades, advocates have recommended that post-release services be provided to all children released from ORR/DUCO custody recognizing the fragility of the reunification period and urgency of ensuring resources are in place to support the family. LSSNCA is thrilled that ORR/DUCO is on track with support from Congress to achieve its goal of "providing all children with PRS [post-release services] by the end of FY2024."[37] However, LSSNCA is concerned that ORR/DUCO's Level 1 Post-Release Services allows flexibility for virtual visits. Knowing the high vulnerability of unaccompanied children to exploitation and trafficking, virtual visits do not allow for a comprehensive safety assessment. Virtual visits allow for manipulation of the home environment and cannot guarantee a child/youth is being interviewed outside the presence of the caretaker, as is best practice. Children must be given the opportunity to make any necessary disclosures in a safe and confidential space. Therefore, LSSNCA supports ORR/DUCO's goal to ensure post-release services for all children but opposes virtual visits.

g. Ensure accountability of ORR/DUCO over safe releases

In the domestic child welfare system, the federal government establishes benchmarks to measure child safety and well-being. States are held accountable for these benchmarks by the federal government, and states that chronically underperform are often required to

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37 Testimony of Robin Dunn Marcos. Committee on Oversight and Accountability U.S. House of Representatives Subcommittee on National Security, the Border, and Foreign Affairs. (April 18, 2023). Retrieved June 8, 2023 from Robin-Dunn-Marcos-Testimony-4.18.23.pdf (house.gov)

reform their system. System overhauls often include improved and increased capacity for data collection and continuous quality improvement so safety and well-being can be assessed in real-time, and proactive decisions about new policy directives or practice changes can be made to better protect children.

One of the core competencies of the domestic child welfare system is protecting children from further maltreatment, and when children placed in settings the system deemed to be safe and appropriate are abused or neglected in such placements that counts as maltreatment in care. However, children released to the community by ORR/DUCO are no longer in the care and custody of a regulatory body. If a placement breaks down or a child is determined to be in a situation of abuse, neglect, exploitation, or trafficking, it is the role of the local child welfare system to investigate and determine if there are immediate safety concerns and/or whether or not those concerns warrant the child being separated from the caregiver or if in-home supports can be put in place to avoid further maltreatment. At times, these local responses do not account for the situations that children who have been in ORR/DUCO custody find themselves. Many states are unable to intervene if the abuser is not a parent. If maltreatment or exploitation occurs in the ORR/DUCO approved placement, this information is not necessarily reported back to ORR/DUCO. Therefore, unless the child is receiving post-release services through ORR/DUCO, there is a jurisdictional gap in which no entity has authority over the placement nor is either entity collecting data to inform practice and policy changes if the placement breaks down.

On June 2, 2023, HHS released the findings from an internal audit conducted by ORR/DUCO on compliance with its own processes.[38] As it related to vetting and release processes, this audit found that ORR/DUCO got a *gold star* – it was either fully compliant or its lowest metric was 98.3 percent compliant. This underscores the flaw in ORR/DUCO's performance and quality improvement process – clearly, given what we have learned about unaccompanied children released from ORR/DUCO custody, ORR/DUCO's vetting and release processes are not achieving the intended outcome of safe placements.

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38 In Newly Released Audit Report, HHS Announces New Accountability Team, Additional Efforts to Protect the Safety and Well-being of Unaccompanied Children. (2023, June 2). *HHS.Gov*. Retrieved June 8, 2023 from https://www.hhs.gov/about/news/2023/06/02/in-newly-released-audit-report-hhs-announces-new-accountability-team-additional-efforts-protect-safety-well-being-unaccompanied-children.html

LSSNCA believes that the Program Accountability Team referenced in the HHS Internal Audit released on June 2, 2023 is a step in the right direction. The Audit states that the Program Accountability Team "will be responsible for assessing and addressing potential child exploitation risks associated with the unaccompanied children program. The new team will play a key role in working with an outside entity to conduct an in-depth review of vetting and placement processes across all sponsor categories."[39] The next step is for an outside accountability body to hold ORR/DUCO accountable for performance outcomes, rather than compliance with processes, and that those outcomes include a specific focus on the safety of children released from its care.

RECOMMENDATION 3: DEVELOP AND DEPLOY A SCREENING PROCESS FOR SPONSORS THAT INCLUDES INTELLIGENCE FROM OTIP, DOL, THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN (NCMEC), AND FEDERAL LAW ENFORCEMENT

ORR director, Dunn Marcos, indicates in her testimony[40] multiple avenues for ORR/DUCO staff and care providers to report safety concerns to local law enforcement, local child welfare, ORR/DUCO, OTIP, the DHS Homeland Security Investigations Division, and DHS's Center for Countering Human Trafficking. Categories of incidents requiring a report include "any suspicion that the child has run away, is at risk of or posing a danger to themselves or others, or is at risk of human exploitation, trafficking, or other abuse."

LSSNCA applauds ORR/DUCO's efforts in February 2023, as outlined in Director Dunn Marcos' testimony, "to enter into a data sharing Memorandum of Agreement (MOA) with OTIP and the National Center for Missing and Exploited Children (NCMEC) to increase information-sharing and visibility on unaccompanied children who are referred to NCMEC and who may be at risk of trafficking or exploitation."[41]

LSSNCA recommends one-way information sharing of data and trends from the entities named in Director Dunn Marcos' testimony, the DOL, and any other entity responsible for investigating human trafficking and child labor, to ORR/DUCO to fortify ORR/DUCO's screening process for sponsors of with the goal of preventing the exploitation, abuse, and human trafficking of unaccompanied children.

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39 Ibid

40 Testimony of Robin Dunn Marcos. (April 18, 2023)

41 Ibid

RECOMMENDATION 4: ENFORCE LOCAL CHILD LABOR LAWS

Since 2021, approximately 250,000 unaccompanied migrant children have entered the United States.[42] Many of these children are now a part of the American supply chain,[43] working in manufacturing, construction, and service industries across the country in violation of applicable laws. A low U.S. unemployment rate, the desire of children to send money home, the expectation that children will contribute money to their sponsor's household as well as rank exploitation are all contributing factors to this unlawful trend. As has been documented by the recent *The New York Times* piece as well as the DOL, many of these children are working in dangerous and difficult jobs, sometimes overnight, and often in violation of federal labor laws in place to protect children. Instances of unlawful employment of minors have risen 69 percent since 2018, and the volume of workplace labor law violations outstrips the federal government's investigatory resources.[44]

Despite these shocking facts, a number of states have recently passed legislation weakening their own child labor protections. Arkansas, for example, has enacted the "Youth Hiring Act of 2023," which purports to "restore decision-making to parents concerning their children" by removing the requirement that children under 16 prove their age through the state's Division of Labor.[45] This change assists businesses in accessing underage workers who may not know their rights in the workplace and makes it easier for employers to claim they were unaware of the child's age. On May 26, 2023, Governor Kim Reynolds of Iowa signed into law[46] a bill that would loosen child labor restrictions and expand working hours during the school year for children past what is

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42 Dreier, H., & Luce, K. (2023, February 25). *Alone and exploited, migrant children work brutal jobs across the U.S.* The New York Times. https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers exploitation.html

43 Harvard Law Review. (2023, March 21). What the Child Labor Crackdown is Missing [web log]. Retrieved June 7, 2023 from https://harvardlawreview.org/blog/2023/03/what-the-child-labor-crackdown-is-missing/

44 Departments of Labor, Health and Human Services Announce New Efforts to Combat Exploitative Child Labor (2023, February 27). *Dol.Gov*. Retrieved June 7, 2023 from https://www.dol.gov/newsroom/releases/osec/osec20230227.

45 Youth Hiring Act of 2023, A. 195 (Arkansas 2023). https://www.arkleg.state.ar.us/Bills/Detail?id=HB1410&ddBienniumSession=2023%2F2023R

46 Oladipo, G. (2023, May 27). Republican Iowa governor rolls back state's child labor law protections. *The Guardian*. Retrieved June 7, 2023 from https://www.theguardian.com/us-news/2023/may/27/republican-iowa-governor-rolls-back-child-labor-law-protections

allowable under federal labor law.[47] The law also allows children to apply for exemptions to work in fields that currently exclude children under the age of 16.[48]

It should be noted that state legislators introducing these measures do so in the knowledge that they conflict with federal law. Indeed, lawmakers in Ohio called on Congress to "change the Fair Labor Standards Act re: minors". [49] [50] In this time of low unemployment and stubborn inflation, prominent economic thinkers and leaders continue to advance the axiom that the suppression of wages is a necessary component of efforts to curb inflation. LSSNCA urges Congress and the Administration to view a solution to the current labor shortages in low-wage, invisible jobs, a shortage that is in part fueling the desire for child labor, by increasing wages and benefits to attract more workers to fill the positions.[51] Migrant children are especially vulnerable when corporations seek to fill undesirable, low-wage, dangerous jobs quickly and quietly. While the DOL, Health and Human Services, DHS, the United States Department of Agriculture, and other agencies are working together to investigate unlawful child labor, much more needs to be done to stop this immoral practice.

a. Increase fines against employers who violate child labor laws

At a minimum, the per-instance fines against employers who unlawfully hire child laborers must be substantially increased. This year, the fines for child labor did increase, but only very modestly. The fine for a single infraction of child labor standards increased from $14,050 to $15,138; even a repeated, willful infraction that causes serious injury or death to a minor child is capped at $137,602.[52] The current fines are not nearly enough to function as a deterrent to multi-billion dollar industries that engage in this practice.

b. Fully fund Department of Labor to investigate child labor

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47 Nanda, S., & Looman, J. (2023, May 10). *senate.iowa.gov*. Retrieved June 9, 2023 from https://www.senate.iowa.gov/democrats/wp-content/uploads/2023/05/DOL-Child-Labor-Law-Response.pdf.

48 S.F. 542, an Act relating to youth employment, providing for a minor driver's license interim study committee, and making penalties applicable (Iowa 2023). Retrieved June 7, 2023 from https://www.legis.iowa.gov/legislation/BillBook?ga=90&ba=sf542

49 Sherer, J., & Mast, N. (2023). (rep.). *Economic Policy Institute*. Retrieved June 7, 2023 from https://www.epi.org/publication/child-labor-laws-under-attack/.

50 SCR 14, Urge Congress to change Fair Labor Standards Act re: minors, 1134th GA. (Ohio 2022). Retrieved June 7, 2023 from https://www.ohiohouse.gov/legislation/134/scr14

51 Cass, O. (2023, June 2). The labor-shortage myth. *The Atlantic*. Retrieved June 8, 2023 from https://www.theatlantic.com/ideas/archive/2023/06/labor-shortage-low-unemployment-inflation/674263/.

52 USDOL, Wages and the Fair Labor Standard Act website, dol.gov/agencies/whd/flsa

Congress must fully fund and support the DOL's capacity to investigate and inspect work sites that are known or suspected to have hired children unlawfully. Corporations must operate in the knowledge that unannounced inspections are a certainty, rather than just another operational risk.

c. Require minimum standards for state child labor laws

The Department of Justice must, in partnership with other agencies, seek to enjoin states that are knowingly passing legislation regarding child labor that directly conflicts with federal standards. These laws are introduced and passed in response to pressure from business interests eager to employ cheaper workers who are less willing to enforce their rights in the workplace. Too often, desperate migrant children are caught in this illegal and immoral trap. The federal government must lend its regulatory and enforcement powers to the urgent effort to end this abuse.

CONCLUSION

Chairman Durbin, Ranking Member Graham, members of the Senate Judiciary Committee, protecting unaccompanied children from exploitation, trafficking, and abuse should be a non-partisan issue. Regardless of immigration status, all children deserve to be protected. It is our responsibility as leaders, as parents, aunts, uncles, siblings, and grandparents, and as people of faith to rise above political agendas and prioritize the safety and well-being of vulnerable children.

The solutions are at our disposal, and by not acting upon them, we are all complicit in the continued harm that these children experience. With the right policies, oversight, and resources, we can help ensure that all children, regardless of their background or immigration status are protected from exploitation.

Let this be the example where Congress comes together, across party lines, to afford unaccompanied children the protection and support they need and deserve to lead dignified and fulfilling lives.

Thank you for your attention to this timely and critical issue.

YOUNG CENTER FOR IMMIGRANT CHILDREN'S RIGHTS

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Young Center for Immigrant Children's Rights Statement for the Senate Judiciary Committee pertaining to its hearing entitled, "Ensuring the Safety and Well-Being of Unaccompanied Children" on Wednesday, June 14, 2023

Immigrant children travel to the United States from across the world to reunify with family and to find a safe place to grow up. What they often experience at our borders, however, is family separation and detention-like conditions. Children who are deemed to be "unaccompanied" by Customs and Border Protection (CBP) are sent to the custody of the Office of Refugee Resettlement (ORR) where most of them spend weeks to months in congregate care shelters waiting for family members to sponsor them out of custody. A child is considered "unaccompanied" if they arrive at the border without a parent or guardian; they may have arrived with family but are routinely separated from kin who may lack legal guardianship of the child.

Recent and devastating media reports have documented the horrific experiences of some unaccompanied youth who face labor exploitation by American companies who hire children for dangerous work. Let us be clear: exploitative child labor is not new, and this is not the first-time children who fled their home countries have been subjected to new violence on arrival to the United States. However, nationwide trends of increasing child labor violations, weakening child labor protections in several states, and tighter immigration restrictions reflect multi-system failures, and highlight the need to prioritize policy changes that will keep all children safe. Recent reporting by the New York Times focused on ORR's responsibility to keep children safe and did not emphasize the role that corporations play in child labor exploitation. Nor did the articles suggest policy solutions to tackle the poverty and insecurity these families face, largely as a result of their immigration status, making them more vulnerable to exploitation.

As a result, some policy-makers and advocates have pushed for quick solutions from ORR in the form of more in depth sponsor vetting, the rolling back of ORR guidance memos that facilitated children's quick release to parents and well-known family members, and an increase in the use of background checks and home studies before children are released to family. Unfortunately, while mistakes were surely made in the implementation of ORR's existing protocols, more rigorous vetting, including for parents, are unlikely to keep children safe as they do not get at the underlying problems driving exploitative child labor. On the contrary, these quick fixes can have the disastrous effect of keeping children in federal custody longer and expanding surveillance of immigrant families.

For nearly 20 years, the Young Center for Immigrant Children's Rights has stood with unaccompanied children seeking safety in the U.S. Every day, our independent Child Advocates push decision makers to prioritize children's best interests by bear witness to their experiences in federal detention, their fight to reunify with family, and their need for stability in the community while they wait for the government to hear their requests for protection and permanency. We recognize that changes in agency policy alone will not fix this problem; however, Congress can make many improvements that could help unaccompanied children avoid exploitation. We provide the following recommendations:

Increasing Funding for Legal Services, Child Advocates and Post-Release Services

Congress must ensure that every immigrant child in federal custody – and who will ultimately appear in immigration court – has an attorney, and Child Advocates if they need them. Attorneys guide children through the immigration process and can identify rights violations, such as exploitation and trafficking. Congress should invest in post-release services for a minimum of six months for all children living with sponsors. Services should include support to meet basic needs, case management, support enrolling in school, access to health care, and foster connections to local communities.

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Increasing Percentage of Children in Home-Based or Small-Scale Placements
Congress can mandate that ORR phase out the use of large-scale institutionalized settings which deprive children of individualized care from a trusted adult. Large facilities with high numbers of children also require large caseloads for case managers. Smaller facilities and family-based placements (foster care) allow adults to build trust with children, providing more opportunities for children to share their stories thereby helping ORR to make more informed sponsor placement decisions.

Restrictions on the Use of Unlicensed Facilities
Unlicensed facilities, such as emergency intake sites, are not well-equipped to keep children safe. These facilities often have poor conditions and inadequate case management services which make it less likely that children will feel safe sharing information relevant to their placement. Congress can mandate stricter restrictions on the use of unlicensed facilities and require guidelines on how cases of abuse or neglect are handled to decrease the risks of unsafe sponsor placements.

Separation of Children from Non-Legal Guardians
When unaccompanied children are separated from family members who they trust, they become even more vulnerable than they already were. When that family member is then detained or deported, the child may no longer have a trusted adult to live with while applying for protection, forcing ORR to look for more distance relatives or unrelated adults to sponsor a child out of federal custody. Congress can mandate that agencies work together to keep unaccompanied children with their extended family members at the border whenever possible, by-passing federal custody, conserving government resources and avoiding unnecessary family separation.

Creation of Ombudsperson within HHS to Advocate for the Rights of Immigrant Children
An Ombudsperson would have the resources to hear and investigate children's individual complaints and develop a plan for follow up or referrals for children who call for support after being released. An Ombudsperson would also have the time, resources, and training to evaluate ORR's sponsor vetting policies and develop the right balance to ensure children are promptly and safely released to sponsors. Congress has already shown its support for an ORR Ombudsperson office in the FY2023 Omnibus Act, recommending $10 million for the Office's creation. Congress should include this request in the bill text for FY2024 appropriations.