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ENSURING THE SAFETY AND WELL-BEING OF UNACCOMPANIED CHILDREN, PART II

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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ENSURING THE SAFETY AND WELL-BEING OF UNACCOMPANIED CHILDREN, PART II

WEDNESDAY, OCTOBER 25, 2023

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

The Committee met, pursuant to notice, at 10:04 a.m., in Room G50, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Blumenthal, Hirono, Booker, Ossoff, Welch, Butler, Graham, Grassley, Cornyn, Lee, 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 will come to order. Today, we've gathered for the Committee's second hearing examining safety and well-being of unaccompanied children who seek refuge in the United States.

We held the first hearing in June in response to a disturbing New York Times investigation exposing the exploitation of these children. At that hearing, we heard from child welfare and labor experts.

Today, we'll hear directly from the executive branch officials about what steps the Federal Government is taking to confront this problem. I know there is bipartisan interest in this issue.

Several Republican Members asked me to hold today's hearing, which I was happy to do. I told them I'm happy to accommodate the request because I was already working to schedule it. It's a major challenge for our Nation and we need to face it honestly.

In fact, there is a long history of both parties working together to protect these children.

In 2008, the Senate unanimously passed the Trafficking Victims Protection Reauthorization Act, known as TVPRA. This legislation's protections for unaccompanied children were championed by our late colleague, Senator Feinstein. The bill was signed into law by Republican President George W. Bush.

As a result, our laws now require that unaccompanied children arriving in the United States be screened for human trafficking, housed in child-appropriate settings, and reunited with family in the U.S. while they await their immigration proceedings outcome.

These laws enshrine our Nation's moral and legal responsibility to protect children—vulnerable children, many of whom are fleeing

persecution. But the tragic reality is these children are still at risk once they arrive here.

Since 2018, our Nation has seen a nearly 70 percent increase—70 percent increase in underage children working in positions in violation of child labor laws.

And several States have responded to our labor shortage, amazingly, by passing laws and making it easier for children to work in many dangerous jobs. It's hard to imagine, but that is a fact.

Now, when I was in college, I spent four summers working in a meat packing plant in East St. Louis, Illinois. I can tell you, it's no place for a kid. You can lose a limb or a life.

The accounts of children as young as 12 years of age working in slaughterhouses and factories make us think of the 1830s and 1930s, and not the modern times.

I hope today's hearing will be an opportunity to continue the bipartisan spirit that led to current laws protecting unaccompanied children, who often have risked their lives to make a trek to this country.

I want to remind everyone, these unaccompanied children are just that, children.

And I'd like to share the story of one of them, a teenager named Eric. He came to the United States as an unaccompanied child. Took a job to help his family back home. His employer stopped paying him. He took Eric's birth certificate and immigration documents. He threatened to call immigration if Eric stopped working, and even worse, he threatened to harm Eric's family in his home country.

Fortunately, Eric had the support of an adult who stepped in. A trusted, post-release risk services social worker funded by the Department of Human Services. His social worker connected him to Federal law enforcement, as well as medical and legal services.

We all—I hope we all agree: No child should ever be abused, exploited, or trafficked.

That's why I've tried to be consistent in my oversight efforts whether the President is a Republican or Democrat. I vigorously opposed, and still do, the Trump administration's family separation policy.

Earlier this year, I demanded that the Biden administration do more to protect migrant children. They've made progress since then, but certainly much more has to be done.

We cannot forget the responsibility of the United States Congress. It is easy to criticize the executive branch, but first we should look in the mirror.

It has been decades—three, in fact, three decades since Congress passed meaningful immigrant legislation.

Instead of lobbying partisan attacks, let's come together across the aisle to fix our broken immigration system, secure our border, and protect these children.

I reject the extreme that says, "Not one more immigrant." And I've heard my colleagues in Congress say that, "Not one more immigrant."

And I also reject the extreme that says, "We're doing just fine. The status quo is acceptable."

We've got to find middle ground here that is reasonable, thoughtful, and reflects American values in a world which is teeming with refugees and people who are desperate to find new places to live.

Imagine what's going on in the Middle East. We're going to feel it soon on the Southern Border, if we haven't already.

We should provide adequate funding to increase enforcement against child labor violations once children are here, and ensure these children have access to the services they need.

We also need new safeguards to strengthen the promise of TVPRA. This week I'm introducing legislation to improve sponsored vetting, placement, help children navigate the legal system, and better protect minors in Government custody.

I welcome my colleagues from either side of the aisle to join me in that effort.

And with that, I hand things off to the Ranking Member, Senator Graham, for his statement.

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

Senator GRAHAM. Thank you, Mr. Chairman. You do have a history of trying to find common ground to fix hard problems associated with immigration.

I've been working in that regard for a long time, many times with you. I've never seen anything like this.

Since 2020, the number of the unaccompanied minors has gone up by 312 percent. I think you'll find sympathy on our side to make sure people are well taken care of, but you'll also find on our side a desire for the safety and well-being of the American people.

This is entitled, "Ensuring The Safety and Well-Being of Unaccompanied Children."

What about the safety and well-being of the American people from illegal immigration?

[Poster is displayed.]

Senator GRAHAM. CNN, not Fox: Smugglers associated with ISIS are getting people into the country.

October the 21st [holds up document]: Border Patrol stopped record number of people on Terror Watch List at Southern Border.

October the 23rd [holds up document]: CBP memo sounds alarm on Hamas, Hezbollah fighters potentially using Southern Border to enter U.S.

I'm a strong supporter of aid to Ukraine. It is a fight that matters to us. The Ukrainians are fighting like tigers. I'm all for giving them more lethal aid and assistance so they can repel the Russian invader.

I'm all for helping our friends in Israel, who are in the fight for their very existence.

But we've got to do something to help the American people. And the American people have an unsecured border. The American people are being overrun with illegal immigration. The unaccompanied children have increased since 2020 by 312 percent.

Whatever the Biden administration is doing is not working.

As to the supplemental, there will have to be policy changes to get my support.

I will not go back to South Carolina and say, "We helped Israel, we helped Ukraine, but we did nothing meaningful on our own border." Our asylum system is being gamed, the parole system is being abused.

And after coming back from Israel, I can tell you what these Hamas fighters are capable of. But I can't say it here because it's so terrible. Their desire to kill the Jews is unlimited. And they would kill us, too, if they could get here.

So Mr. Chairman, now is the time to find a solution to the asylum, parole problem so we can have some breathing space to find a way to better protect America.

I cannot in good conscience tell you that money will fix this.

The proposal by President Biden to secure our border has more to do with processing illegal immigrants than it does to turn them around.

My goal is to come up with policies that will stop the flood of illegal immigration, which a terrorist could easily weave themselves into, not expedite their entry—not more money for blue States or housing these people to take some burden off them.

Every American should want their border secured. I'm sure every American wants to take care of children when we find them. You just can't have every child throughout the world dropped on our doorstep.

This is a process that needs to change. It's bad for the children.

But I can't stress to you enough the broken border that's existed under the Biden administration, along with the rise of radical Islam in Afghanistan, now Hamas, is a cocktail for the American people to be viciously attacked.

I have run out of patience. It is now time to change policy as part of a package to up our allies.

It would be ironic to me that we helped Israel and Ukraine and did nothing on our own border that would change the trajectory of illegal immigration. Everything in the Biden proposal doesn't make anybody want to turn around.

That's what I'm seeking, is to have people turn around.

Chair DURBIN. Thank you, Senator Graham.

Today, we welcome four witnesses.

The first is Joseph Salazar, director for Central America, Bureau of Western Hemisphere Affairs at the Department of State. Thank you.

We're also joined by Robin Dunn Marcos, director of the Office of Refugee Resettlement at the Department of Health and Human Services.

Then, we'll hear from Seema Nanda, the Solicitor of Labor at the Department of Labor, who I understand is from the great city of Chicago. Welcome.

Our final witness is Cardell Morant, the assistant director for Homeland Security Investigations, and director of the Department of Homeland Security Center for Countering Human Trafficking.

Let me lay out the mechanics. After I swear in the witnesses, each has 5 minutes. Then we'll have rounds of questioning where each Senator will have 5 minutes. Please try to stay within your allotted time.

So I'd ask the witnesses to please stand and be sworn in. If you'd raise your right hand.

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that all four witnesses have answered in the affirmative. And Mr. Salazar, you'll be the first.

STATEMENT OF JOSEPH SALAZAR, DIRECTOR FOR CENTRAL AMERICA, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. SALAZAR. Thank you, Chairman Durbin, and Ranking Member Graham for holding this important hearing.

I'm honored to join my colleagues here who are the true experts in the fight against trafficking and what happens once Central Americans make the difficult choice to leave their countries.

I'm grateful for the opportunity to talk to you more about the complex conditions that drive people to migrate from Northern Central America, as well as important progress on our efforts to address them.

Northern Central America faces serious, several challenges. Democratic backsliding in the region affects people's trusts in institutions and perception of how freely they can exercise their rights. Victims of corruption are more likely to express intentions to migrate.

High youth unemployment rates, numerous barriers such as inadequate access to education and vast economic equality spur migration—coupled with high levels of informality, low wages that do not cover basic needs, a vicious cycle of reliance on debt to meet those basic needs, and the lack of decent jobs in all three countries, all contribute to the migratory wave.

Despite decreased homicide rates, other types of crime and violence, including rampant gender-based violence, cause insecurity in the region. Many individuals and families see migration as the only choice to escape poverty, instability, narcotics, violence, and climate-related catastrophes.

In 2021, the Biden-Harris administration launched the strategy to address the root causes of irregular migration from Central America.

The Root Causes Strategy focuses on creating good jobs, promoting democratic governance, protecting human rights, improving security, and countering gender-based violence to help Central Americans build better futures at home.

The strategy addresses the factors that drive irregular migration, enforced displacement from Northern Central America, including food insecurity, chronic structural challenges, extreme poverty, citizen insecurity, poor governance, and endemic corruption.

First and foremost, we need strong governance in the region. Without it, we cannot achieve sustainable, equitable progress across all strategic areas, including economic prosperity and security.

We partner with civil society, the private sector, labor unions, regional governments, and international actors to advance U.S. policy goals.

In the last year, the State Department and the U.S. Agency for International Development supported more than 1,500 human

rights defenders and trained more than 500 independent journalists.

This support provides quick help to embattled human rights defenders and civil society organizations through emergency assistance, supporting human rights actors and media practitioners to remain resilient, mitigate risks, overcome threats, and continue their important work as safely as possible.

Through the Voices (Voces) Initiative, we bring together U.S. resources, public and private diplomacy, foreign assistance programming, and enforcement authorities to protect, defend, and promote civic space in Central America.

We are also taking actions to promote accountability for corrupt and undemocratic actors, as well as human rights abusers.

On July 19th, the U.S. Government issued our most recent public list—consistent with Section 353—of the United States-Northern Triangle Enhanced Engagement Act of individuals who knowingly engaged in acts that undermined democratic processes or institutions, engaged in significant corruption, or obstructed investigations into such acts of corruption in El Salvador, Guatemala, Honduras, and Nicaragua. This critical tool promotes accountability, and we appreciate bipartisan support for it.

On economic growth, Vice President Harris leads Central America Forward, an innovative public private partnership to create good jobs in the region. Under Central America Forward, companies have committed to invest over $4.2 billion in El Salvador, Guatemala, and Honduras.

These investments have created thousands of good jobs, connected 4 million people to the internet, brought more than 1 million people into the formal financial economy, and trained almost 500,000 people to enhance their workforce abilities, including digital and language skills.

This is key to ending irregular migration, but this is not just about investment. Our private sector engagement reinforces the rule of law, good governance, and human rights.

We certainly are not naive about the challenges we face. It will take time to address many of these long-term structural issues.

My team works ardently on these issues, and we are grateful for continued bipartisan support to ultimately help the people in the region maintain their futures in their home countries.

Thank you for the opportunity to testify before this Committee today. I look forward to working with Congress to strengthen our approach.

[The prepared statement of Mr. Salazar appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Salazar.

Ms. Marcos.

STATEMENT OF ROBIN DUNN MARCOS, DIRECTOR, OFFICE OF REFUGEE RESETTLEMENT, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

Ms. DUNN MARCOS. Chairman Durbin, Ranking Member Graham, and Members of the Committee, thank you for the opportunity to appear today on behalf of the Department of Health and Human Services, along with my esteemed colleagues.

Since assuming my position as director of Office of Refugee Resettlement in September 2022, I have led a dedicated team of professionals who are committed to ensuring the safety and well-being of every child in our care. This is not only our mandate, it is our guiding principle.

Under the Homeland Security Act and the Trafficking Victims Protection Reauthorization Act, ORR is required to provide for the care and custody of all unaccompanied children following a referral from the Department of Homeland Security, or other Federal entity, until they're released to a vetted sponsor.

The Flores Settlement Agreement also establishes minimum service standards for ORR-funded programs.

ORR funds nearly 300 programs in 27 States providing a range of child-focused services.

However, given the program's child welfare mission, we know the best place for a child is with a family, in a community, not in a congregate care setting.

Pursuant to the TVPRA, ORR conducts due diligence to identify a sponsor's ability to provide for a child's physical and mental well-being prior to placing the child in their care.

ORR works in the best interest of the child to safely expedite their release to a parent, family member, or other appropriate sponsor.

In the past two fiscal years, more than 85 percent of unaccompanied children released to sponsors were placed with a close family member.

We have thorough sponsor-screening processes in place for all sponsors. This includes verifying the sponsor's relationship to the child, speaking with the child's parents, conducting separate interviews with the child and the sponsor, verifying sponsor information and documentation, and administering background checks and address checks.

ORR also conducts home studies as required, or at ORR's discretion, to further review a sponsor's ability to care for the child's safety and well-being. All releases following home studies require post-release services.

While ORR's custodial responsibilities end when a child is discharged, our concern for that child does not.

ORR has policies in place to promote children's well-being as they transition into a new community, providing children with multiple ways to connect, following their sponsor placement, such as through the safety and well-being calls, post-release services, legal services, or the 24/7 ORR National Call Center, which connects children and sponsors with community resources and is required to report all safety concerns to ORR and other Federal, State, and or local entities.

Notably, the authority to remove a child from a home resides with State child welfare and law enforcement agencies. We recognize the critical importance of our coordination and engagement with these agencies, their varied capabilities, and the need for robust resources to help ensure their ability to review or investigate allegations.

ORR is continually assessing and implementing improvements to the UC program. We continue to partner with DOL and ongoing ef-

forts to protect children against labor exploitation, such as through new materials for children about U.S. child labor laws, educator roundtable sessions on unlawful child labor. We are actively engaged with DOL to ensure we're finding and addressing the needs of children who may face exploitation.

ORR has also established a new program accountability team responsible for assessing and addressing potential exploitation risks faced by unaccompanied children.

In addition, we are offering post-release services to all children with known vulnerabilities and to children released to unrelated sponsors.

In Fiscal Year 2022, ORR more than doubled the rate of children offered these services, than the prior year, to more than 40 percent.

We continued to expand access to post-release services this year—in Fiscal Year 2023, providing access to more than 50 percent of discharged children.

ORR is committed, with funding support from Congress, to continue to expand access to both PRS and legal services to all children.

In fact, the proposed UC Program Foundational Rule, published earlier this month, would establish a comprehensive framework for placement and care, and formalize and expand services for unaccompanied children.

However, without supplemental appropriations in Fiscal Year 2024, there could be a significant impact on ORR's ability to timely accept referrals, or, beyond what is minimally required, expand access to services that promote children's safety.

We would also welcome more resources from Congress for ORR to expand, not just access to, but the nature of services available to children post-release.

Thank you, again, for the opportunity to testify today.

Children who come into ORR care face unique challenges that require a whole-of-Government approach. ORR is committed to caring for these children, and doing all we can to safeguard their well-being. I'm happy to address questions you may have. Thank you.

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

Chair DURBIN. Thanks, Ms. Marcos.

Ms. Nanda.

STATEMENT OF HON. SEEMA NANDA, SOLICITOR OF LABOR, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC

Ms. NANDA. Good morning, Chairman Durbin, Ranking Member Graham, and Members of the Committee. Thank you for the opportunity to testify today.

The Department of Labor is responsible for enforcing the Nation's fundamental Federal worker protection laws, including child labor laws.

Eighty-five years ago, Congress passed the Fair Labor Standards Act, the FLSA, which included child labor provisions. Congress intended to protect children in our industrialized economy by ensuring that when young people work, the work is safe, age-appropriate, and does not jeopardize their health, well-being, or edu-

cation. The importance and relevance of these foundational principles remain.

In Fiscal Year 2023, the Department saw an 88 percent increase since Fiscal Year 2019 in the number of children it has found employed illegally.

As the challenge of child labor exploitation, including of migrant children, increases nationwide, the Department of Labor has taken significant actions to investigate child labor violations and hold companies accountable.

The Department's Wage and Hour Division and the Office of Solicitor are working collaboratively to leverage all available enforcement tools to protect children from exploitative labor. The Wage and Hour Division investigates every child labor complaint, tip, and referral, and it ensures compliance with child labor protections in all of its FLSA investigations.

In Fiscal Year 2023 alone, the Department found 955 companies that it investigated had employed nearly 5,800 children in violation of child labor laws, including over 500 children employed in hazardous jobs. And the Department assessed more than $8 million in civil monetary penalties against employers who unlawfully employed children.

Today, the Department has more than 800 open child labor cases nationwide. The Solicitor's Office attorneys are responsible for obtaining warrants, supporting and defending the Wage and Hour Division's civil monetary penalty assessments, filing temporary restraining orders and preliminary injunctions, crafting settlement agreements that hold employers accountable, and more.

When cases cannot be resolved at the investigative stage, the Solicitor's Office is the agency responsible for litigating those cases. In recent years, the Solicitor's Office has brought landmark cases to ensure compliance with child labor laws.

In September 2022, for example, the Department obtained a Federal court order to stop SL Alabama LLC, a manufacturer of Hyundai and Kia Auto parts, from illegally employing 13-, 14-, and 15-year-old workers.

Soon after, in November 2022, the Department secured a nationwide temporary restraining order against Packers Sanitation Services Inc. LTD (PSSI), one of the Nation's leading providers of food safety sanitation, to stop the company from illegally employing minor-aged workers.

By February 2023, the Department had assessed $1.5 million in civil monetary penalties in this case, after finding more than 100 children illegally employed in hazardous occupations, and working overnight shifts at meat processing facilities.

Just this month, the Department filed a "hot goods" action and obtained a temporary restraining order to stop the exploitation of child labor by a poultry processor in California.

The Department also recognizes the need for a whole-of-Government approach. Just 10 days after PSSI was assessed and paid $1.5 million in CMPs, the Department announced a significant new effort to combat exploitive child labor.

This included the initiation of a National Strategic Enforcement Initiative on Child Labor and the launch of an interagency task

force to combat child labor exploitation, led by the Department of Labor.

As a part of these efforts, the Department of Labor and the Department of Health and Human Services signed a Memorandum of Understanding in March 2023. It formalized an ongoing partnership and outlined procedures to work together to deepen information sharing, coordination, cross training of staff, and public education efforts.

No modern nation should build its economy on the backs of exploited children. The Department of Labor is calling on Congress to ensure that the Department has the resources needed for this work—this enforcement work, and to increase civil monetary penalties for companies that use child labor.

We must all work together to make sure that children are safe, healthy, and protected from exploitation. Thank you, and I look forward to your questions today.

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

Chair DURBIN. Thank you, Ms. Nanda.

Mr. Morant.

STATEMENT OF CARDELL MORANT, ASSISTANT DIRECTOR, HOMELAND SECURITY INVESTIGATIONS, AND DIRECTOR, DEPARTMENT OF HOMELAND SECURITY CENTER FOR COUNTERING HUMAN TRAFFICKING, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Mr. MORANT. Good morning, Chairman Durbin, Ranking Member Graham, and distinguished Members of the Committee.

Thank you for the opportunity to testify regarding the role of Homeland Security Investigations to investigate Federal crimes relating to the exploitation of unaccompanied, non-citizen children after their arrival in the United States, where HSI has determined that human trafficking has occurred.

I serve as the director of the DHS Center for Countering Human Trafficking located within HSI, building capacity across DHS, and supporting HSI criminal investigations of human trafficking worldwide.

This month marks my 30-year anniversary as a career Federal law enforcement officer. Throughout my years of experience in various roles, I've witnessed the darker aspects of human behavior.

Among the countless cases I've been involved with, the ones that are continuously bothersome are those that concern children.

This is a shared sentiment among HSI personnel and one that continually renews our commitment to identifying and assisting child victims using a victim-centered approach and bringing the perpetrators of these crimes to justice.

Human traffickers victimize a staggering 27.6 million people worldwide. And contrary to public perception, there are an estimated 77 percent of victims in forced labor and 23 percent in sex trafficking.

That means more than three quarters of human trafficking is in workplaces. HSI investigations show that traffickers operate within agriculture, manufacturing, in private homes as nannies or domes-

tic workers. Typically, in jobs with lower pay and fewer legal protections.

Over the last three fiscal years, HSI has initiated numerous investigations into human trafficking, some of which involved unaccompanied children as potential victims.

Overall, HSI doesn't view the number of cases that involved unaccompanied children as a surge or a pattern, but rather a consistent ongoing crime that we investigate with unwavering dedication.

These investigations are occurring throughout the United States, primarily in the agriculture industry.

Today, I speak about the way we work these cases. In general, HSI proactively investigates and receives reports from a variety of sources. We conduct extensive outreach within local communities and work closely with law enforcement partners. That includes the offices of the Inspector General at the Departments of Labor and Health and Human Services.

When HSI is investigating employer hiring practices, we're also looking for signs of trafficking, which we'll then investigate further for signs of labor exploitation and child labor, which we'd refer to the Department of Labor.

HSI also initiates human trafficking investigations when an agency of first contact encounters unaccompanied, non-citizen children, identifies them as trafficking victims, and subsequently refers the case to HSI.

When either the U.S. Customs and Border Protection or the U.S. Department of Health and Human Services identifies an unaccompanied child as a potential trafficking victim, they contact the nearest HSI office. If HSI has jurisdiction, we'll investigate.

HSI is committed to using every authority and resource available to make Federal criminal arrest of human traffickers and child predators, and to identify and assist the victims.

Anyone can report suspicions of human trafficking to the HSI tip line.

We're always available to our Federal interagency partners here today, other Federal, State, local, Tribal, and territorial law enforcement, and victim service providers and NGO's: reports, referrals and tips of human trafficking, child sexual exploitation, and unlawful employer hiring practices.

Thank you, and I'm happy to answer any of your questions.

[The prepared statement of Mr. Morant appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Morant.

Now we'll have a round of 5-minute questions from the Senators. And I'll start.

The first person who introduced me to the world of politics taught me something. He said, "Humility is a first casualty in politics."

So I have followed that standard when it comes to bragging as often as possible about the fact that my mother was an immigrant to this country, and I'm damn proud of it.

Her naturalization certificate sits behind my desk in the Capitol Building as a reminder of who I am, and where I come from, and my attitude about immigration.

I cannot understand anyone, regardless of political affiliation, who takes the position, "Not one more immigrant."

For God's sake, we are a Nation of immigrants, and our strength is immigration and diversity. The question is, should we have an orderly process or not? I think that's a legitimate question.

The reason, of course, is to make sure that we have a process which people can respect, that cannot be overwhelmed, and at the same time understand that there are rules that have to be followed.

When you take a look at the numbers of people who are showing up at our borders now—I have to go back to what Senator Graham said—they're mind-boggling. It is impossible to explain.

I asked my staff to put together a list of the number of encounters of unaccompanied children by the Border Patrol since 2008. It's an incredible list, but the last 3 years are the most amazing in revelations.

In the year 2020, there were 19,657 unaccompanied children who were encountered at the border—19,000; 2021, 140,000; 2022, 149,000; 2023, 131,000.

The obvious question is, what changed and changed so dramatically during that period of time?

It certainly wasn't the enactment of legislation by Congress. We've done nothing, virtually nothing, when it comes to policy changes in this country.

But there is something going on—a force, an economic force, a demographic force, whatever it may be that is pushing or pulling more and more people to our borders in numbers unprecedented.

The obvious question is, should we do something about it? And can we do something that is balanced—not the "Not one immigrant" theory and not the people who feel that the status quo is acceptable as it exists—but something in between that reflects our values and brings order to the border?

Now, I think about these numbers in practical terms. I hope we all accept the premise of this hearing.

Any child who shows up at our border deserves to be treated like a real human being, and treated like a visitor to America, and given protection and help in the areas where they're most vulnerable in their lives.

I hope we all accept that premise. If you don't, I'm sorry.

But I will tell you this. Having accepted that premise, you have to ask whether the current system, designed long before we ran into these numbers, is adequate to the task.

Where are these kids going? Where do these unaccompanied children go? What kind of families are they being sent to? How do they refer them? How do we follow up? How do we make sure that they're safe once they're there?

The sheer numbers that I've given you here make it very difficult for me to understand how we can say we're going to keep up with this flow of people and maintain quality care for these kids.

So I've given a long opening statement, which I had hoped I would be able to avoid, but couldn't.

But I'd like to start, if I could, with Mr. Salazar. You talked about the economic circumstances that create this, but those eco-

nomic circumstances have been in the world for a long time. What has changed in the last three or 4 years?

Mr. SALAZAR. Thank you, Chairman Durbin. These push factors, as you mentioned, the political stability, the poverty, the crime, violence, food scarcity, lack of medical care, climate change, all of these are against the backdrop of some even bigger numbers in the world.

There are approximately 108 million people that are being forcibly displaced globally. And of those—of that number of 108 million, roughly 20 million are in the Western Hemisphere.

I mean, this is the definition of a challenge that no one country can face alone by itself.

We have issues stemming from a long regime in Venezuela.

We have issues stemming from the beginning of a regime in Nicaragua.

We have issues in Northern Central America, also, that are driving the families, the members of society there, to make difficult choices for themselves and for their families and for their children to address—to head north.

We are attempting to tackle this diplomatically through regular engagement with these countries to try and address the issues at home. That is why Assistant Secretary Brian Nichols is actually in the region now. Yesterday, he was in Guatemala. Today, he is in El Salvador——

Chair DURBIN. I'm going to have to cut you off because I've run out of time.

Mr. SALAZAR. I'm sorry, sir.

Chair DURBIN. But I'll certainly give you time to respond on the record.

Can someone address on the panel the fact that we offer services which we've offered for many years, and now we have volumes and numbers of unaccompanied children, which are breaking the system that make it very difficult for us to keep our promise?

Would someone like to talk about the resources that are being dedicated to this—new resources to meet the challenge?

Ms. DUNN MARCOS. Thank you, Senator. As you mentioned in your opening, the importance of a trusted adult in these children's lives cannot be overstated.

Children—we do our best. We have a thorough vetting process to release children to vetted sponsors, primarily close family members.

But when and if those placements break down, having that trusted adult through post-release services or legal services, we have more children receiving those services than we've ever had. But we need to continue, and we need the support of Congress to do that.

Because of unprecedented numbers in the refugee program—which both the refugee program and the unaccompanied children is one budget—we, we do have a request for $1.9 billion to be able to properly continue to expand and make sure that all children have these services.

Chair DURBIN. Thanks, Ms. Marcos.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

Count me in the camp that we need more legal immigration. We need less illegal immigration.

Count me in the camp of making sure that children are not abused. And employers who abuse them, they should go to jail.

How do you say your name, Mr. Morant?

Mr. MORANT. Morant, Senator.

Senator GRAHAM. Okay. Well, we want to help you get the bad guys.

You can't fix a problem until you understand the nature of it.

And Mr. Salazar, is it your belief that 312 percent increase in unaccompanied minors since 2020 is all about the economics of the world, and not about Biden policy regarding illegal immigration?

Mr. SALAZAR. Sir, I think economics is just the one factor of the root causes that are driving——

Senator GRAHAM. You don't think the policies the Biden administration have implemented is a direct correlation to increase in illegal immigration at levels we've never seen before?

Mr. SALAZAR. Sir, I think that the Biden administration has led the largest expansion of legal pathways——

Senator GRAHAM. Do you think you're doing it well? Do you think the Biden administration has got the right policy when it comes to illegal immigration?

Mr. SALAZAR. With all humility, sir, I think we are doing—we've got more that needs to be done. We——

Senator GRAHAM. No, I mean, the question is, is it working? Do you believe the policies being implemented by the Biden administration are working when it comes to deterring illegal immigration and controlling our borders?

Mr. SALAZAR. Sir, I think more needs to be done, frankly.

Senator GRAHAM. Okay. Let me tell you what that more is.

Cut off the pull factors. If you're from Mexico, can we send you home as an unaccompanied minor? Or Canada?

The law of the United States says if we get an unaccompanied minor from Mexico and Canada, we can send them back to their country. Is that correct, Mr. Salazar?

Mr. SALAZAR. Sir, I am not aware of what the law says.

Senator GRAHAM. Well, you need to be aware of the law, because I think I've just exposed the problem here.

Let me tell you, the law is that if you're from Canada and Mexico, and you show up as an unaccompanied minor, we can literally send you home unless there's some evidence of trafficking.

The reason it's gone up 312 percent is if you're from a non-contiguous nation, other than Mexico or Canada, we have to keep you.

Word is out all over the world that if you get here as an unaccompanied minor, and you're not from Mexico and Canada, the United States—you'll be here forever. That's why there's 300-and-something percent increase.

I'd like to change that law. I'd like to harmonize the law—no matter where you come from as an unaccompanied minor, we can send you back to the country of origin.

Because if we don't, we're going to have more human trafficking, we're going to have more sorrowful children, and we're eventually going to get some 17-year-old in this country that kills a bunch of us.

So this is the root problem. You don't know what's going on. You can't fix it.

Let me tell you, the border policies of President Biden are a disaster. We've had the highest number of legal crossings last month in the history of the country.

It is now time to bring about change. We need to change our law to stem the tide of unaccompanied minors. It's a terrible situation. It will never change until the law changes.

Asylum claims are not economic hardship-based. The asylum system is broken.

The parole system is broken.

The incentives for unaccompanied minors need to change. We need to deter people from dropping their children off at our border because it's hazardous for them, and there's a breaking point for the American people.

So my advice, Mr. Chairman, is to let us work together to change the law to slow down the illegal flow, work together down the road to fix a broken immigration system.

But we have a war raging against our friends in Israel.

The map of Europe is being rewritten by force of arms.

Everybody in the policy world is screaming at us that the likelihood of a terrorist getting in to our country through a broken border is exceedingly high. The number of people on the Terrorist Watch List grows by the day.

So I would like to make sure unaccompanied children are not exploited when they get here. That is a noble effort.

But I would like to deter the world from dropping kids off at our border. It's not good for them. It's not good for us.

And the policy changes that are going to be required have to be done before we can expect a different outcome.

If you keep doing what we're doing and expect something different, you'll be disappointed.

I am now ready to make policy changes to stop what I consider the biggest national security threat to America: a broken border.

Chair DURBIN. Thank you, Senator Graham.

Senator Booker.

Senator BOOKER. Thank you, Mr. Chairman.

The child exploitation in our country that we've seen reported is stunning, and shameful, and truly extraordinary when you think that this is the United States of America.

An eighth grader killed on a cleaning shift at a poultry plant in Mississippi.

A 14-year-old hospitalized in Alabama after being overworked at a chicken operation.

A 17-year-old in Ohio had his leg torn off at the knee while cleaning a meat processing facility.

Another child lost his hand in a meat grinder in a Michigan operation.

A 14-year-old maimed while working an overnight shift—in our country.

This should horrify everyone. But given what we know, it shouldn't surprise us.

I'm glad we're discussing this. I'm grateful for this hearing, and there are a whole range of things we could be doing to better serve immigrant children.

But I just want to say this clearly. Employers have a responsibility to abide by Federal labor law and the moral standards of our Nation—within their companies, on plant floors, and their contracts—they should follow the rules of law, and they should follow their own conscience.

I sent letters to meat packing companies last December to take immediate steps to put an end to this, these child labor abuses at their facilities.

And since then, I want to say some companies have stepped up and are working to eliminate these exploitative contractors and abusive models of employment that outsources the overnight cleaning of their facilities. They've moved these jobs back in-house and guaranteed better wages, benefits, safety, and security of a union job.

But too many companies continue to sit on their hands, and the Department of Labor, in my opinion, has to step up and enforce the law.

These companies are getting away without consequence to some of the most shameful and immoral practices that are going on in our Nation.

And for companies that refuse to implement changes who see children and their safety as a cost-saving measure, at the very minimum, should not be the recipient of Federal tax dollars.

That's why I'm introducing today the Preventing Child Labor Exploitation Act with my colleague Josh Hawley.

Our bipartisan bill will require companies competing for contracts with Federal agencies to disclose child labor and work safety infractions by the company itself, as well as by any of their contractors in the preceding 3 years, and require the Secretary of Labor to prepare a list of companies that are ineligible for Federal contracts for that year based on serious, repeated, pervasive violations of child labor laws.

We absolutely, all of us, in a bipartisan way, have an obligation to help these children, often in poverty, who've often fled dangerous situations at home to find themselves in our country being exploited and in dangerous situations in the United States.

This is beneath the dignity of this Nation and the values we proclaim. At the minimum, we need to restore accountability for those companies.

And so, I just want to say to Ms. Nanda, I'm grateful for your testimony.

During June's hearing on this topic, I focused my questions on the consequences of our continued failure to have a Department of Labor that has the resources to do the investigations into these kind of abject, morally bankrupt practices that are going on in our country.

And so, Ms. Nanda, can you describe why child labor investigations are especially resource-intensive for the Department of Labor? And what are ways in which the DOL has assisted corporations seeking to address child labor in their supply chains?

Ms. NANDA. Thank you so much for that question, Senator Booker. So child labor investigations, as I said, have gone up 88 percent in the last year. So we're simply doing more of them. And I can't underscore enough how labor-intensive these investigations are.

Before the investigations even start, there is a lot of work that goes into understanding what the investigators are going to encounter when they get into that plant or that facility. What are the type of workers they will encounter? What are the type of employers? How are we going to show or prove that those are minor children, etc.?

So there's a lot of what we call pre-investigative work.

We have been routinely obtaining anticipatory warrants. So that involves doing a lot of work to make sure that we have cause to get a warrant and that we can properly execute it, sometimes working with marshals or law enforcement to make sure that we will be able to execute that warrant.

Often, this is taking place in the middle of the night. Our *Packers Sanitation* case involved the third shift with the very young children cleaning, very, very dangerous head split cutters and other dangerous equipment.

After we go in, we are immediately potentially getting declarations and affidavits from the investigators who were with the children so that we can potentially get a temporary restraining order. Our *Packers Sanitation* case involved going in at the same time to seven separate facilities, all in the middle of the night.

So huge resources of lawyers and investigative teams, in some cases needing to be flown into different places. This is Nebraska, Minnesota, Wisconsin, different places in the country, to have that factor where we can go in and still have that surprise factor.

And then after that, we are seeking temporary restraining orders, and PSSI, we were in—within days getting that temporary restraining order, and nationwide—so leveraging a seven-facility investigation into a 700-facility nationwide injunction.

Thereafter working to get a permanent injunction, and then assess the civil monetary penalties.

This takes an extraordinary amount of investigative time, and an extraordinary amount of legal time——

[Gavel is tapped.]

Ms. NANDA [continuing]. And legal work.

And I will just say, Senator, on your question about holding everyone in the supply chain accountable, we completely agree. We are using tools like the "hot goods" provision of the Fair Labor Standards Act, which is a very powerful tool to stop the movement of goods that are made around child labor. That is a tool that we are using.

Senator BOOKER. I'm going to turn—cut you off, just to be respectful of my colleagues. We've gone 2 minutes over.

I just want to thank Senator Hawley, especially, as well as his staff for working with us over the last months to come up with what I think is a morally urgent bill to create needed accountability to end these morally bankrupt, offensive practices that are going on systematically in our country. So thank you, Senator Hawley.

Chair DURBIN. Thanks, Senator Booker.

Senator Cornyn.

Senator CORNYN. Mr. Chairman, thank you for having this hearing. You said you'd do it and you're doing it. I appreciate it very much. This is an urgent and serious issue.

I think what we were seeing is what happens when the Biden administration is outsourcing its immigration policy to criminal cartels who are getting richer by the minute smuggling people and drugs into the United States. And, of course, the human casualties associated with that, the grieving parents losing their children to fentanyl poisoning are well documented.

Mr. Salazar, in your testimony, you talked about Central America and the so-called "Root Causes Strategy." It sounds to me like the administration is engaged in a nation-building process to try to address immigration, and doing nothing at all about the pool factors which lay out the welcome mat for people all around the world.

Let me just ask you. Did you know that in 2022, that people from 174 different countries came to our border and were released into the interior of the United States—174 countries? Did you know that?

Mr. SALAZAR. Sorry. No, sir, I did not.

Senator CORNYN. And did you know so far in 2023, people from 143 countries have come to our border and been released by the Biden administration into the interior of the United States? Did you know that number?

Mr. SALAZAR. No, sir, I did not.

Senator CORNYN. Well, I agree with Senator Graham. When you try to solve a problem, the first thing you need to do is understand what the problem is.

And what has happened as a result of the expectation, that if you make it to the border, that you're going to be able to make it into the interior of the United States and stay here for the rest of your natural life is a huge magnet.

And who wouldn't want to come to the United States where the standard of living and the prospects for your life are far better than anywhere else in the world? It's a natural—it's a natural magnet.

But the Biden administration has created the distinct impression that you can stay. And, of course, the cartels who control smuggling and control drugs continue to get rich.

So what's not to love from their perspective. But the casualties associated with this are real.

Let me just ask our witness from HHS and Office of Refugee Relocation. My figures show that 300,000 unaccompanied children have been placed with sponsors during the Biden administration. Is that—is that your understanding, roughly 300,000?

Ms. DUNN MARCOS. Thank you, Senator. That sounds—that sounds accurate. I'd have to get——

Senator CORNYN. And you've——

Ms. DUNN MARCOS [continuing]. Back to you on exact figures.

Senator CORNYN [continuing]. And you've read the—as you indicated, it's the process, and these children haven't even necessarily claimed asylum. But under the current practice, you identify a sponsor and then that child is placed with a sponsor. And I think there's a chart or priority list depending on whether there's a family relationship. But there doesn't actually have to be.

Isn't it a fact that there's no mandatory FBI criminal background check system on those sponsors? There's no requirement that—and no practice by which you do that in every case. Correct?

Ms. DUNN MARCOS. Thank you, Senator. Every sponsor goes through a sex offender registry check and a——

Senator CORNYN. I didn't ask about that. I asked about an FBI criminal background check. There's no——

Ms. DUNN MARCOS. Certain sponsors have an FBI background check.

Senator CORNYN. But not all of them.

Ms. DUNN MARCOS. That is correct.

Senator CORNYN. Yes. The New York Times, as you know, documented that in 85,000 cases, when a call was made 30 days after the child was placed with a sponsor, there was no answer. Are you familiar with that story?

Ms. DUNN MARCOS. Yes, I am.

Senator CORNYN. And the truth is that the Biden administration doesn't know what has happened to those 85,000 children, or to the larger point, to the 300,000 children who've been placed with sponsors, because the administration does not deem that as their responsibility. Is that correct?

Ms. DUNN MARCOS. Senator, as I mentioned, while our custodial authority ends——

Senator CORNYN. I asked you, is that correct?

Ms. DUNN MARCOS. Our care for the children does not. We are expanding post-release——

Senator CORNYN. Well——

Ms. DUNN MARCOS [continuing]. Services——

Senator CORNYN. I'm asking about the 300,000, and so there is no follow-up.

Can I just ask as a final question? The New York Times documented that Susan Rice, the Domestic Policy Advisor for the Biden administration, and that Secretary Becerra, whose head of the Health and Human Services, both were made aware of these 85,000 attempts to contact sponsors with no avail and did nothing in response.

Do you know if, in fact, the President of the United States was informed about these facts?

Ms. DUNN MARCOS. Senator, I'd like to set the record straight that although a call was not picked up——

Senator CORNYN. Do you know——

Ms. DUNN MARCOS [continuing]. There were a number——

Senator CORNYN [continuing]. Whether the President of the United States was made aware of the report in The New York Times about 85,000 unanswered wellness checks 30 days after the child was placed with a sponsor? Did the President of the United States know that?

Ms. DUNN MARCOS. We are in regular communication. I can't speak to the specifics, but I want to reiterate the fact that a telephone was not picked up—telephone call was not picked up, does not mean that that child did not have post-release services——

Senator CORNYN. No, but you don't know——

Ms. DUNN MARCOS [continuing]. Did not have legal services——

Senator CORNYN [continuing]. Because you didn't follow up after that——

Ms. DUNN MARCOS [continuing]. Or——

Senator CORNYN [continuing]. You can't tell us whether the child's being sex trafficked, into forced labor, whether they're going to school, whether they're getting healthcare. You can't tell us whether they're being neglected or otherwise abused. You can't tell us.

And the fact of the matter is, if you cared to find out, then you could do something about it. But it's obvious to me that the Biden administration simply does not care. My time's up.

Chair DURBIN. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thanks to all of you for being here.

Ms. Dunn Marcos, I'd like to start with you, and I've got a lot of material to cover. So, if possible, I'd like to have you confine your answers to yes or no, if possible.

So let me under—summarize some of what I understand about this process, about the ORR process. Now, once you get a child, you start looking for a sponsor, or alternatively, a sponsor may come to you, then you do some kind of a precursory background check to figure out what's going on, to see if they've got any convictions in the United States.

You don't ask if the sponsor is here legally, you don't check in the sponsor's home country, if the person is not originally from the United States, to see if they are wanted there for a crime or have been convicted there of a crime.

You don't come with local law enforcement.

You seldom, if ever, do any kind of a home visit.

If they don't answer the phone after a month or so, then you consider your job done.

Given that you cannot remove a child once you've placed her with a sponsor, wouldn't you agree that vetting on the front end should be increasingly more vigorous and not less? And shouldn't a home visit and conferring with local law enforcement be the bare minimum that is done rather than the entirety of what you do?

Ms. DUNN MARCOS. Thank you for those questions, Senator. I think that we have thorough vetting processes in place. We have child welfare experts throughout the country. We believe a child is best in a family—with a family in a community, not in a congregate care setting.

Senator LEE. I don't doubt that. I don't doubt that. But that—given what you don't do, that's what I find alarming. I don't doubt that you do some things, but what you don't do is alarming.

And that's why it shouldn't be surprising to us, this New York Times article that my colleague, Senator Cornyn, referred to that—indicating that HHS has lost contact altogether with more than 85,000 children.

Eighty-five thousand children that this administration has negligently placed with all but unknown sponsors, and now, ORR has no earthly idea where these children are.

And when asked about this, you recently passed the buck entirely and said, aside from the 30- to 37-day follow-up call, you,

quote, "Do not monitor or track the whereabouts of children after they're released from your care," closed quote.

So am I understanding this correctly, that they're not lost because you are not legally responsible to know where any of them are after you place them? Yes, or no?

Ms. DUNN MARCOS. Thank you, Senator. I want to clarify that ORR is not a law enforcement agency or an investigative agency.

Senator LEE. I don't doubt that

Ms. DUNN MARCOS. We——

Senator LEE. I'm not accusing you of that. I'm saying you don't know where they are, and now you're disclaiming responsibility. And of——

Ms. DUNN MARCOS. Senator——

Senator LEE [continuing]. The 430,000 unaccompanied children—the vulnerable, unaccompanied children who have crossed over our border in the last 34 months since President Biden took office, what percentage of those children's whereabouts can you tell me with any degree of certainty?

Ms. DUNN MARCOS. Senator, respectfully, I want to state again that it is not accurate to say we have lost—that we have lost them.

Senator LEE. Okay——

Ms. DUNN MARCOS. There are a number——

Senator LEE [continuing]. What about my question? What percentage can you tell us where they are?

Ms. DUNN MARCOS. I don't have those figures directly in front of me, but what I can tell you——

Senator LEE. Can you get those to us?

Ms. DUNN MARCOS. I will take that back to the team——

Senator LEE. Okay. Let me tell you what's happening to them, because clearly, you either don't know or you're not saying. They're being trafficked for sex.

Doctors Without Borders has repeatedly told us that at a minimum, 30 percent of the young women and of the children who make this dangerous trek across our Southern Border, to it and then across it, are sexually abused on their journey.

There are other entities that have come up with much higher estimates. Some of them double that, or more.

Can you give us any idea how many of the 430,000 children who have entered our country under the Biden administration have been trafficked, either en route or after they leave your care? Any idea at all? Any rough estimate at all? Any approximation of how many of them?

Ms. DUNN MARCOS. Senator, one is one too many. I don't have those numbers in front of me, but anytime we have a flag for a child in our care, we make a referral. Within 24 hours, we are referring to appropriate authorities, HSI, our Office on Trafficking in Persons. If we really want to change this narrative, we want to provide post-release services and legal services to every child. Thank you.

Senator LEE. My time's expired. But look, the sheer volume of this coupled with the estimates—estimates that I've never heard you refute, or that we're talking about probably hundreds of thousands of them who have been trafficked for sex and who have been sexually abused.

This is wrong. It's wrong that we set up a system that encourages, and then allows, and then promotes and perpetuates this process that enriches drug cartels, and does so at the expense of child sex trafficking. And it must end. Thank you.

Chair DURBIN. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Mr. Morant, since President Biden's been President, how many non-American citizens have come into our country illegally or on the basis of a claim of asylum?

Mr. MORANT. Thank you, Senator. HSI is an investigative agency—is a——

Senator KENNEDY. Do you know the number?

Mr. MORANT. No, Senator.

Senator KENNEDY. You're a senior member of Homeland Security. Are you not?

Mr. MORANT. That's correct.

Senator KENNEDY [pointing at the witness panel]. Does anybody know the number? None of you know the number.

Try 8 million. Now, of that 8 million, how many were children, Mr. Morant?

Mr. MORANT. I don't have that number, Senator.

Senator KENNEDY. You don't know. Does anybody know? None of you know. Isn't that special?

Let's assume half. Okay? Eight million is 4 Nebraskas. Right? Four new States.

Let's assume I don't think it's as high. Half of them are children.

How many of—how many of those 8 million people are still here? Do any of you know? Okay.

How many of those 8 million are claiming asylum? You don't know?

How many of them claim asylum and don't show up for their hearing? Nobody knows?

How many of them claim asylum, don't show up for the hearing, and President Biden has deported them? You don't know?

How many of them have claimed asylum, shown up for their asylum hearing, and been denied asylum—and been deported? You don't know.

How many of them were from Mexico? You don't know.

How about 30 percent? That means 70 percent were not. Right? Surely, you know the answer to that: 30 percent minus 100 hundred percent is 70 percent. Am I right?

Okay. It—let's sup—30 percent came from Mexico. Why don't you implement a safe third country policy that says under asylum—under asylum rules, you have to seek asylum in the first safe country?

So if you come, say from Venezuela, or Nicaragua, or another Central American country, you have to seek asylum in your—in the first safe country.

Why don't you do that? And then that would eliminate 70 percent of the 8 million. That's 5.6 million. Why don't you do that, Mr. Morant?

Mr. MORANT. Is that a question, sir?

Senator KENNEDY. Yes.

Mr. MORANT. That's——

Senator KENNEDY. All I've been asking are questions.

Mr. MORANT. That's beyond the purview of HSI.

Senator KENNEDY. Oh, okay.

How about you, Mr. Salazar? You're a former advisor to the Vice President. How come we don't do a safe third country agreement?

Mr. SALAZAR. Sir, we're working with our partners in the region. Twenty-one countries signed on to the Los Angeles Declaration——

Senator KENNEDY. Have you done a safe third country agreement? You've been—what have you been at it, 2 years?

Mr. SALAZAR. What we are doing is working with them to expand legal pathways——

Senator KENNEDY. Why doesn't President Biden get up in the morning tomorrow and say, "We're changing the asylum process, and we're doing what most other countries do, safe third country policy. You have to seek asylum. We support asylum. We have to seek asylum in the first safe country."?

That would eliminate 5.6 million people. Boom. Done coming into our country illegally. Wouldn't it?

Mr. SALAZAR. Sir, I just want to point out, Washington——

Senator KENNEDY. Wouldn't it?

Mr. SALAZAR. It would, sir. But there are activities——

Senator KENNEDY. Okay.

Mr. SALAZAR [continuing]. Under way——

Senator KENNEDY. Let me ask you this because I'm going to run out of time.

President Biden—and all of you believe in open borders. Don't you? Don't you?

I mean, I ask really basic questions. There aren't—I don't mean any disrespect. I appreciate you being here, and I know you all love our country, as we all do.

But I believe in straight answers. I like straight answers and breakfast food.

And there are only two possibilities here. Either President Biden and his team believe in open borders, or the people that the President has put in charge of the immigration policy with this country are not qualified to manage a food truck.

And nobody's that incompetent. You folks believe in open borders. Don't you?

Mr. SALAZAR. Sir, I think we believe in secure borders.

Senator KENNEDY. You believe in—you don't even know how—well, I'm going to take 30 more seconds.

You don't even know how many people have come in illegally since President Biden has been President?

You're a former senior advisor to the Vice President of the United States, Mr. Salazar, and you can't even give me a number?

Mr. SALAZAR. No, sir.

Senator KENNEDY. That's like going to an oncologist and asking him, "What's cancer?" And he says, "I don't know."

[Gavel is tapped.]

Senator KENNEDY. Give me a break.

Chair DURBIN. Senator Welch.

Senator WELCH. Thank you. I thank the witnesses.

You know, just speaking to my friend, Senator Kennedy, this question of border security is one that I'm very concerned about, and I know you are, obviously.

But it's an astonishing situation where you have these children who are fleeing these incredible circumstances that motivates them to take this journey all the way up to this country and—not an easy—a lot of tragedy here. A lot of human tragedy not caused, I don't think, by anybody here.

I'm just going to ask, Ms. Marcos, can you just describe the situations for some of these kids? Where they come from, what their situation is? What's motivated them to go through the Darien Gap and walk thousands of miles, or come from El Salvador, Guatemala, and Nicaragua, where a lot of these kids are coming from? Just tell us what your experience is with describing these kids and what their circumstances are.

Ms. DUNN MARCOS. Thank you, Senator, for that question.

I myself have not worked in the region, but I spent many years of my career working in and around refugee camps, and with populations like the unaccompanied children who are fleeing a number of things—gang violence, extreme poverty, persecution.

And we know that these are desperate situations. And what our team of professionals wants to make sure that we are doing is that when they are referred to our care by DHS or another Federal entity, that they are safely taken care of, that they are in an environment that we can do full assessments.

If they have a risk of trafficking, if they have been trafficked, then we make referrals to the appropriate law enforcement agencies.

Senator WELCH. And what's the process of these—for these kids if they're going to be sent back to their country of origin?

Ms. DUNN MARCOS. Senator, respectfully, I'm not probably the best person to speak to this. But certainly, people fleeing horrific situations, sending them back is——

Senator WELCH. Okay.

Ms. DUNN MARCOS [continuing]. Putting their life at risk.

Senator WELCH. Mr. Salazar, I mean, you've been, you know, I appreciate—a lot of what Senator Kennedy was asking you, actually, is something, I think, Congress has to do, as opposed to you can unilaterally do. But can you describe what the situation is for some of these kids that show up and what has to happen?

Mr. SALAZAR. Sir, I—I actually don't know what the process is to return these, these individuals back to their home countries.

Senator WELCH. Ms. Nanda, there's an immense amount—a big increase in child labor. And kids who are coming are very vulnerable to being exploited to work. Sometimes it's even sex trafficking.

Do you have any observations or any suggestions on what to do to reduce child exploitation, both child labor and sex exploitation, as well?

Ms. NANDA. Thanks so much for that question, Senator Welch.

So first, I will mention that with regards to the Department of Labor—and we are charged with enforcing our child labor laws—we have a supplemental request for $100 million, which would be $50 million for the Wage and Hour Division, which does the investigations, $50 million for my office, the Solicitor's Office, that does

all of the legal work related to the investigation, as well as that enforcement work.

Wage/Hour has seen a 12 percent decrease in their staffing over the last several years.

Over the last 10 years, the Solicitor's Office has lost about 100 attorneys, or about 17 percent of our staff, with essentially flat funding.

So the first thing I would say is, certainly, funding would help. These investigations are incredibly resource-intensive.

In terms of human trafficking, whether it's sex trafficking or labor trafficking, all of our investigators are trained to identify human trafficking.

We also have mandatory reporting within 24 hours, we are routinely training our folks, we are making sure that we are aligned as a task force and working to get as much information out to our interagency partners on that work, as well.

Senator WELCH. Okay. Thank you. I yield back.

Chair DURBIN. Thank you, Senator Welch.

Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman, and thank you for being here.

This is really pretty remarkable testimony coming from you all, listening to what you've had to say.

Basically, we've got a broken system. You don't know how to fix it. Money's not going to solve this problem, Ms. Nanda. You don't know the numbers. You don't know the law to enforce the law.

So what comes across is that we've got a Homeland Security team here that doesn't believe in securing the Homeland because you don't care enough to go deep enough into the issue to be able to define the problem and be able to fix it.

Now, Ms. Marcos, I'm going to come to you because I've written Secretary Becerra twice about these children that they just can't find.

Now, first letter [holds up document], he got Acting Assistant Secretary Jeff Hild to send a non-response to my office.

And then I sent another letter [holds up document], and I haven't heard anything from him. I have asked that he come to the Committee and talk to us about what has happened with these 85,000 children—where they are and why efforts are not being made to find them and to be certain that they are being cared for.

But there's no response to that because there, again, you all believe in open borders. Your goal is not to secure the country and the border. Your goal is to just let everybody come on in, and to hell with this trying to find 85,000 kids.

You didn't vet those sponsors, right, you did not do an FBI background check. Imagine that. You loosen what is required of people, and then you want to come here and say, "We need more money so we can do our job." All right.

Ms.—Director Marcos, Linda Brandmiller. Do you know that name?

Ms. DUNN MARCOS. I'm aware——

Senator BLACKBURN. And keep your mic on.

Ms. DUNN MARCOS. I'm aware of that name.

Senator BLACKBURN. You're aware of that name. And Jallyn Sualog. You know that name?

Ms. DUNN MARCOS. Yes.

Senator BLACKBURN. Okay. And you know that both of these women were whistleblowers. And both of these women were fired for being a whistleblower. Are you aware of that?

Ms. DUNN MARCOS. Senator, I——

Senator BLACKBURN. Quickly, my time's running out. Fast. Go.

Ms. DUNN MARCOS. I'm not aware of the specifics of those——

Senator BLACKBURN. You're not aware of the specifics. Do you know who approved their—this retaliation against the whistleblowers? You do not know?

Ms. DUNN MARCOS. Senator, I cannot speak to the specifics of——

Senator BLACKBURN. You can't speak to the specifics. Okay.

Was the Secretary notified about the urgent situation developing in the Department and that these children were being released to potentially exploitative sponsors? Did anybody pay attention to that? Or did you care?

Was it 9 to 5, draw paycheck, go on. We don't care. We're not concerned about an open border. We're not concerned about protecting children.

What is your job? You're the Office of Refugee Resettlement, and you're not going to follow up on where these children are? And, who has custody of these children? Why did you accept the responsibility to be in charge if you're not going to do your job and protect these children?

You don't have an answer to that? You don't know why you accepted the responsibility?

Ms. DUNN MARCOS. I'm very——

Senator BLACKBURN. This is why——

Ms. DUNN MARCOS [continuing]. I would be happy to——

Senator BLACKBURN [continuing]. We need the Secretary to come.

Ms. DUNN MARCOS [continuing]. Speak about this, but you're not giving me an opportunity.

Senator BLACKBURN. Oh, no. I gave you the—tell me——

Ms. DUNN MARCOS. Okay.

Senator BLACKBURN [continuing]. Why'd you take the job?

Ms. DUNN MARCOS. I took the job because I'm a humanitarian. I've spent my life——

Senator BLACKBURN. You're——

Ms. DUNN MARCOS [continuing]. In this work.

Senator BLACKBURN [continuing]. A humanitarian——

Ms. DUNN MARCOS. We have——

Senator BLACKBURN [continuing]. But you can't find 85,000 children, and don't give a ripping flip about where they are or what is going on in their precious lives.

Ms. DUNN MARCOS. Respectfully——

Senator BLACKBURN. Is that what you're telling me?

Ms. DUNN MARCOS [continuing]. That is a mischaracterization of everything that we do. I have tried to explain, but I am not given the opportunity.

Senator BLACKBURN. Take the time, 25 seconds.

Ms. DUNN MARCOS. Thank you.

Senator BLACKBURN. You go.

Ms. DUNN MARCOS. Appreciate that. When a child is released from our care, there are a number of ways that they can continue to receive services. We attempt the safety and well-being call for every child who's been released.

There is no obligation for a child or a sponsor to answer the call, and there's reasons why they may not want to answer a call from the Government.

Additionally——

Senator BLACKBURN. Oh, for heaven's sake——

Ms. DUNN MARCOS [continuing]. Please, please may I——

Senator BLACKBURN [continuing]. They're being paid to take these children——

Ms. DUNN MARCOS. They're not——

Senator BLACKBURN [continuing]. And there's no reason——

Ms. DUNN MARCOS [continuing]. They're not——

Senator BLACKBURN [continuing]. For them to answer——

Ms. DUNN MARCOS [continuing]. They're not being paid——

Senator BLACKBURN [continuing]. The phone?

Ms. DUNN MARCOS [continuing]. They're not being paid to take these children——

Senator BLACKBURN. Yes, they are.

Ms. DUNN MARCOS. And, may I finish, please?

Senator BLACKBURN. Yes, they are. Go ahead.

Ms. DUNN MARCOS. They also—post-release services, over 50 percent of our children, we—we are working hard to get post-release services for all children. We are over 50 percent right now. That is another way to have a trusted adult in the child's—these children's lives.

Legal services is another way, and we are expanding. We are providing more legal——

Senator BLACKBURN. Okay——

Ms. DUNN MARCOS [continuing]. Services than we ever——

Senator BLACKBURN [continuing]. My time has expired——

Ms. DUNN MARCOS. We are——

Senator BLACKBURN [continuing]. And your answers are incomplete. I've got two more questions I will submit for the record. Mr. Morant, I have one for you.

Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Blackburn.

At this point, I want to make sure that Ms. Marcos or someone else on the panel has an opportunity to answer, in complete sentences, questions about the 85,000 that were mentioned in The New York Times piece. Would someone like to take that on for 60 seconds?

Ms. DUNN MARCOS. Thank you, Senator, for the opportunity to provide full thoughts on that.

There are a number of ways that we engage with children once they have been released from our care. One way is the safety and well-being call that is made 30 days—30 to 37 days after they've been released. There is no obligation for a child or sponsor to answer this call, and there are a number of reasons why they might not want to answer a call from Government.

We also have a number of other touch points, some of them lighter than others. We have the ORR National Call Center. That is a call center that is operated 24 hours a day, 7 days a week, that takes calls from children, from sponsors, from anyone in the community that has a concern or a question about an unaccompanied child. So that—that call center is available.

And then, as I mentioned, we are providing more legal and post-release services in the history of the program. We are very dedicated to continuing to expand that with the support of Congress. And we do feel that it will make a difference by making sure that every one of these children has that trusted adult outside of the sponsor-family relationship. Thank you.

Chair DURBIN. Thank you.

Next Senator up is history in the making, her first appearance before the Senate Judiciary Committee succeeding Senator Diane Feinstein.

As I said at the outset, this was an issue, the fate of these children, near and dear to the heart of the late Senator, and I know you come to this meeting today with the same feelings. So we welcome you, Senator Butler. Please proceed.

Senator BUTLER. Thank you so much, Chair Durbin.

As noted, as a Senator from a border State, a former labor organizer, and a mom to a 9-year-old, not only am I eager to continue the leadership of Senator Feinstein on this issue, I find it imperative that we have this conversation.

I want to appreciate the Chair for bringing us all together to do that important work.

Contrary to what we may have heard, the struggle to protect migrant children is not new. But we see it under both Democratic- and Republican-controlled administrations.

My hope today is that we can agree on the fact that no matter what party is in power, our job is to do our part to protect these migrant children.

This means listening to experts, giving agencies the resources they need, and holding companies accountable for violating our labor laws.

I look forward to working with my colleagues to find bipartisan solutions, and I appreciate all of you for your testimony, as I have read all of your prepared remarks and look forward to a discussion.

I would love to turn my attention, Ms. Marcos, to the topic that you were just speaking on, post-release services.

As you know, legal representation is vital for children attempting to navigate our complicated immigration system.

We've heard reports of children as young as 2—2 years old being asked to represent themselves in our immigration courts because they are not provided with counsel by the Government.

Some of my colleagues may not believe that governments should provide counsel to all immigrant children, even those who are barely old enough to speak. Can you talk about the impact that it makes on migrant children to have the types of legal services and [video malfunction occurs] supports available in our immigration system?

Ms. DUNN MARCOS. Thank you, Senator. As you mentioned, there are children of all ages in our care.

[Video access resumes.]

Ms. DUNN MARCOS. We know that it's extremely important to help children successfully navigate the system, that they have legal representation. We also know that children are more likely to show up for their court hearing if they have legal representation.

Many—most of the children screened while in ORR care actually would have a pathway, and we could move things if we had more, more legal service providers. And we are working and we are expanding.

Every child in our care gets a "Know Your Rights" presentation, and they also get a legal screening while they are in our care.

Once they're discharged, there is a referral. What we don't have yet is sufficient funding and resources to make sure that every child maintains legal representation once they're discharged from our care.

Senator BUTLER. Thank you for that.

Let me quickly turn to Mr. Morant. Mr. Morant, I understand that H.R. 2, House Republican border bill, H.R. 2, would decimate an important form of immigration relief known as Special Immigrant Juvenile Status.

Can you speak to the importance of having pathways like T-visas and Special Immigrant Visa status, Juvenile Status to child trafficking survivors, and what we're likely to see if legislation like that were actually able to succeed?

Mr. MORANT. Thank you for that question. The Department takes a victim-centered approach, and we'd like to provide every tool possible to aid victims in their path to recovery.

Your specific question pertains to another agency within the Department, so I would need to take that back.

Senator BUTLER. Thank you. Last question. I talked about the impact of this topic on my own State of California, with California consistently being one of the top three States receiving unaccompanied minors.

In 2020, Governor Newsom created the first State-funded project aimed at providing post-release services to migrant children, called Opportunities for Youth. The services provided through this project include case management, navigation, mentorship, wellness programs to support children, as well as services to their caregivers.

Ms. Marcos, can you talk about what kind of services ORR offers to the 43 percent of children who receive post-release support from the Federal Government? And, do programs like the one in California actually help to support the Federal Government's efforts?

Ms. DUNN MARCOS. Thank you, Senator, for that question and the opportunity to talk further about what it means to have a trusted adult in a child's life and comprehensive services, as these children are adjusting to a new community.

Just the other day, I was speaking to someone who provides post-release services, and they talked about how that service has enabled to prevent family breakdowns or to prevent the child from leaving.

And so to have those comprehensive case management services, similar to what we do with new arrivals through the refugee program, really makes a difference in these children being allowed to

be children, and attend school, and flourish in their new community.

And absolutely, what California is doing is very much appreciated. Thank you.

Senator BUTLER. Thank you, Mr. Chair. I yield time.

Chair DURBIN. Thank you, Senator Butler.

Senator Grassley's next.

Senator GRASSLEY. Yes. Thank you, Mr. Chairman. Thank you to the witnesses.

Under Biden's leadership, family unit housing centers were shut down, illegal immigrants were electronically tracked instead of being detained, children became tools for criminals to avoid detention.

Congress has demanded answers, and we've been met with silence, delay, or worse yet, a flat-out refusal to take responsibility.

[Poster is displayed.]

Senator GRASSLEY. And I want you to know that I have the same sort of outrage you heard from Kennedy and Blackburn.

Now, this isn't just a situation that affects the Federal Government and a few States at the border. This—the failures that I've talked about at the Federal level have created problems for us even in Iowa, at the State and local level. Worse yet, Federal Government has failed these kids.

So in August, I wrote to Iowa's law enforcement people, primarily the 99 county sheriffs.

They told me that the cartels didn't just traffic humans and drugs at the border. The cartels have a presence in communities across the United States, and are particularly active along the major highways in Iowa.

We have the Sinaloa and the CJNG cartels now in the counties of Greene, Story, Marshall, and Polk County—right at the heart where the I–35 meets I–80. Those two are highways that cut across the United States.

This problem is not unique to Iowa. These cartels are active in many States across the country.

So to Director Morant, what steps has Homeland Security Investigations taken to combat cartels in the interior of our Nation, and what tools would be helpful in rooting them out? Can you provide a detailed plan to Congress by the end of the year to accomplish this?

Mr. MORANT. Thank you for that question.

As to the first part of that, HSI deploys a very robust strategy to disrupt and dismantle all transnational criminal organizations.

We also use a force multiplier of vetted units overseas to try and push the border out before these crimes enter our borders.

So we have a very, very active criminal strategy that deals with criminal activity, not only within the United States, but outside of the United States.

Senator GRASSLEY. Can you provide—you're going to have a comprehensive plan by the end of November?

Mr. MORANT. I would have to take that back, sir.

Senator GRASSLEY. Okay. Well, also to you, The New York Times reported back in February that over at least 2—the last 2 years,

HHS could not reach more than 85,000 children it placed with sponsors.

So do you—how many of the 85,000 missing children has Homeland Security Investigations and its law enforcement partners been able to track down?

Mr. MORANT. HSI responds to every instance of human trafficking that we're made aware of as soon as we're made aware of it.

Senator GRASSLEY. But you don't have a number for us, the number that you've actually been able to track down?

Mr. MORANT. For specific numbers, I'd have to take that back.

Senator GRASSLEY. Well, can you get us an answer in writing?

Mr. MORANT. I'll take that back, sir.

Senator GRASSLEY. You mean you can't even tell me if you can get an answer in writing—the number of people that's been affected, and——

Mr. MORANT. The response will be in writing, Senator.

Senator GRASSLEY. Last Friday, I received an HHS response to a letter that I sent, back in December. The response mentions that the Office of Refugee Resettlement recognized the importance of notifying local authorities when abuse and neglect of unaccompanied children is suspected or uncovered.

Director Dunn Marcos, how many times did ORR and its third parties notify State and local authorities with concerns about possible child abuse or neglect?

Ms. DUNN MARCOS. Thank you, Senator, for that question. There are numerous ways and at different time periods that a referral may be made to local law enforcement, HSI, or the Office on Trafficking in Persons.

That can happen while they are in our care. It can happen after they've been released from our care. It can be reported by the child themselves, by the sponsor, by the post-release service provider.

So there's a number of different times that these reports can be made. For specific numbers, I would want to be precise. So I will take that back.

Senator GRASSLEY. Okay. I—you said you were a humanitarian and all the people on the group, witnesses, would probably say the same thing.

And I'm not going to argue with whether you're a humanitarian or not, but I hope you realize that not enforcing the law at the border puts us in a position of a life-or-death situation.

You have people on the Terrorist Watch List that can't get on an airplane to come into this country, but they come across the river and get into this country.

Eight hundred to 900 people die in the desert—get lost in the desert and die.

We have criminals coming here and creating murders.

We have rape on women coming through Mexico.

We have human trafficking.

You have the fentanyl killing 112,000 people.

You're dealing with a life-or-death situation by not the enforcing of the law. And the Constitution says that the laws should be faithfully executed and they aren't being. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Grassley.

Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman.

Ms. Marcos, can I just start with you? You testified a moment ago to Senator Butler that every child gets a "Know Your Rights" presentation. Is that correct?

Ms. DUNN MARCOS. That is correct.

Senator HAWLEY. Is that before or after you release them to labor traffickers?

Ms. DUNN MARCOS. Senator, every child that comes into our care gets a "Know Your Rights" presentation as well as——

Senator HAWLEY [holds up documents]. Have you read these New York Times reports—these stories—the series of stories The New York Times has done on the children who are in your care? Have you read them?

Ms. DUNN MARCOS. Yes, I have.

Senator HAWLEY. Have you read that children are scrubbing dishes, they are operating heavy machinery, they are delivering meals, they are harvesting coffee, they are working construction, they are working as housekeepers, they are working overnight shifts at plants where they are not paid, they are not going to school, they are not cared for, they are not given meals?

Almost all of it illegally. Are you aware of that? That's a yes or no.

Ms. DUNN MARCOS. Yes.

Senator HAWLEY. Do the "Know Your Rights" presentation help them in those situations?

Ms. DUNN MARCOS. Senator, ORR——

Senator HAWLEY. That's a yes or no, I think.

Ms. DUNN MARCOS. I——

Senator HAWLEY. Do you really think that you're helping these children by releasing them to labor traffickers, and yes, sex traffickers—85,000 children whom you have no contact with?

And your answer is, we gave them a presentation before we turn them over to these people who are exploiting them on a scale not seen in this country for a hundred years. A century. A century. It's a disgrace in the United States of America.

Let me ask you this. You did an audit, I noticed, where you gave yourself a clean bill of health. So just—just tell me this. Do you require sponsors to document their relationship with the child?

Ms. DUNN MARCOS. Senator, we have a thorough vetting process——

Senator HAWLEY. Do you require sponsors to document their relationship with the child?

Ms. DUNN MARCOS. Yes. We go through——

Senator HAWLEY. No, you do not.

Ms. DUNN MARCOS [continuing]. A process.

Senator HAWLEY. You do not.

Have you read the Senate's Permanent Subcommittee on Investigations' reports on your office? There was one in 2016. There was one in 2018. There was one in 2020. There was one in 2022—spanning administrations.

What they found is you do not require sponsors to document their relationship with the child. You release them anyway.

What about background checks? Do you require background checks on all adults in the household?

Ms. DUNN MARCOS. In cases where the child is being released to their parents, we do not require background checks. But Senator, I would really like——

Senator HAWLEY. Do you require background checks on all adults in the household in any case?

Ms. DUNN MARCOS. Yes. In some cases, we do.

Senator HAWLEY. At what percentage of the cases do you do background checks on the adults in the household?

Ms. DUNN MARCOS. I—I don't have that number——

Senator HAWLEY. No——

Ms. DUNN MARCOS [continuing]. In front of me.

Senator HAWLEY. Do you do home visits in all cases? You can actually see where these children are being released, who you—whose care you're putting them in?

Ms. DUNN MARCOS. We do not do home visits in all cases. Senator, I'd really like the opportunity to talk about what we are doing——

Senator HAWLEY. Yes, I know what you're doing, and it's incredibly and totally inadequate. And we can read about it in The New York Times [holds up documents].

Let me—since you say you've read it, let's talk a little bit about that New York Times report, if we could.

[Poster is displayed.]

Senator HAWLEY. Here's a quote from the April 17th installment: 'Again and again, veteran Government staffers and outside contractors told HHS, including reports that reached the Secretary, that children appeared to be at risk."

Did you warn the Secretary that children were at risk?

Ms. DUNN MARCOS. Senator, I'm in regular contact with the Secretary, and——

Senator HAWLEY. Did you warn him that children were at risk?

Ms. DUNN MARCOS. The safety and well-being of children is our top priority.

Senator HAWLEY. Did you warn him that children were at risk?

Ms. DUNN MARCOS. I'm not going to get into the conversations I've had with the——

Senator HAWLEY. You're here and you're under oath. And this is an oversight hearing, and we need to know what you're doing, because you're manifestly not doing your job.

Did you warn him——

Ms. DUNN MARCOS. There are——

Senator HAWLEY [continuing]. That children were at risk? Do you believe that the children are at risk? Let's start with that.

Ms. DUNN MARCOS. Yes.

Senator HAWLEY. Okay. Did you warn the Secretary?

Ms. DUNN MARCOS. Senator, I'm not going to get into the specifics of my conversation, but I would like the opportunity——

Senator HAWLEY. Why wouldn't you——

Ms. DUNN MARCOS [continuing]. To talk about——

Senator HAWLEY [continuing]. Warn the Secretary that children were at risk?

Ms. DUNN MARCOS. I would like the opportunity to talk about what we are doing——

Senator HAWLEY. Let's look at what the Secretary said to you.

[Poster is displayed.]

Senator HAWLEY. At least five HHS staff members said they were pushed out after raising concerns about child safety. Mr. Becerra, that's the Secretary, told the ORR Director, that's you, right, that, "If she could not increase the number of discharges, he would find someone who could."

And then he went on to say——

[Poster is displayed.]

Senator HAWLEY. That, "If Henry Ford had run his plants like this, he would never have become famous and rich. This is not the way you do an assembly line."

Get the kids out, run them through, get them out to those sponsors—those traffickers.

Why didn't you resign when he said this? Do you think that this is morally acceptable?

Ms. DUNN MARCOS. Senator, I joined ORR in September of 2022. I believe that was reported prior to my arrival, but I cannot speak——

Senator HAWLEY. But this is from the article this year.

Ms. DUNN MARCOS. I can't speak to what the Secretary——

Senator HAWLEY. Do you think that this is acceptable——

Ms. DUNN MARCOS [continuing]. May have said.

Senator HAWLEY [continuing]. To run the—to run ORR like an assembly line and to release these children——

Ms. DUNN MARCOS. I can assure——

Senator HAWLEY [continuing]. To traffickers?

Ms. DUNN MARCOS. [continuing]. You, we do not run ORR like an assembly line. The safety and well-being of children is our top concern. And by statute——

Senator HAWLEY. Plainly not. Plainly, it is not your top concern because you have managed to lose 85,000 of them. And The Times knows where they are, or two thirds of them. And they're with labor traffickers. It's unbelievable.

Let me just ask you this. How many kids right now, of the 430,000 approximately unaccompanied children across the border under this administration—it's an astounding number. How many are you in regular contact with right now?

Ms. DUNN MARCOS. Senator, we have a number of different providers across the country——

Senator HAWLEY. But what's the number?

Ms. DUNN MARCOS [continuing]. Who provide different——

Senator HAWLEY. What's the number? How many are you in—you said child welfare is your top concern. What's the number?

Ms. DUNN MARCOS. I don't have the specific number.

Senator HAWLEY. How can you not know?

Ms. DUNN MARCOS. Because——

Senator HAWLEY. Why would you come to this hearing and not know?

Ms. DUNN MARCOS. Respectfully, if you would like us to provide comprehensive case management to children after they're released from our care, so we can report it——

Senator HAWLEY. Respectfully, I would like you to do your job and not release children to human traffickers.

Respectfully, that's what I would like—I'd like you not facilitate the largest child trafficking ring in American history.

Thank you, Mr. Chairman.

Chair DURBIN. Senator Ossoff.

Senator OSSOFF. Thank you, Mr. Chairman. Thank you, to our panelists, for joining us.

Director Marcos, as you are aware, unaccompanied minors often end up in foster care, for some time.

I'm currently leading an investigation in partnership with Senator Blackburn into allegations of abuse and neglect of children in Georgia's foster care system, and more broadly, into the human rights of children in foster care nationwide.

What oversight does ORR conduct of foster care agencies and relevant State agencies to ensure that unaccompanied children are not subjected to abuse and neglect in foster care?

Ms. DUNN MARCOS. Thank you for that question, Senator.

ORR, in most—in all States except Florida and Texas, work with licensed facilities, and through our Federal field specialists, through our post-release, through legal services, through child advocates, children who do not have a family member do receive additional services because they are more vulnerable and stay in, in care longer.

Senator OSSOFF. And what steps can you take to strengthen the protection of unaccompanied children who wind up in foster care, who, according to accounts we've heard in Georgia, are at particular risk for abuse and neglect in foster care systems?

Ms. DUNN MARCOS. Thank you for that question. I think I have to go back to the expansion of post-release services and legal services. Both of those services, extended for, for all children, will enable that there is a trusted adult that can make sure the best interest of the child remains front and center throughout that child's—that child's life.

Senator OSSOFF. Well, as you know, Ms. Marcos, these are among the most vulnerable human beings in the world—unaccompanied minors—lacking guardians, often lacking language faculty in English.

And I urge you to strengthen, accelerate, and expand your efforts to ensure that unaccompanied minors in foster care in Georgia, and across the country, are better protected, and fully protected from abuse and neglect using all of the authorities at your disposal.

Can you please provide the Committee of an update on your efforts to ensure that unaccompanied children in immigration adjudication proceedings have access to legal counsel?

Ms. DUNN MARCOS. Thank you, Senator. We have more children receiving legal services today than the history of the program. We don't feel it's enough. We are actively expanding our services. I believe 20 new providers were just added. We're—we're hoping to double that by the spring.

We know how important it is to have a legal provider help the child navigate through our immigration system. We also know that legal provision will—having a legal service provider will increase the likelihood that children attend their hearings.

So we are very much with the support of Congress expanding both legal services and our post-release services, both of which will make a difference.

Senator OSSOFF. It's difficult to imagine, Ms. Marcos, the confusion, and fear, and pain of a child having to navigate complex, sterile, sometimes hostile legal proceedings that impact their future in dramatic ways with no parent, no guardian, no lawyer.

Will you please provide to the Committee specific information and metrics so that we can understand what progress is being made to meet ORR's targets for the provision of legal counsel to children in immigration proceedings?

Ms. DUNN MARCOS. Thank you, Senator. I will absolutely take that back, and also ask for continued support from Congress to expand these——

Senator OSSOFF. And you will provide those numbers to the Committee?

Ms. DUNN MARCOS. I'll take that back to the team.

Senator OSSOFF. Will you provide those numbers to the Committee? It's just a yes or no question.

Ms. DUNN MARCOS. May I ask for the specific numbers you're requesting——

Senator OSSOFF. Yes.

Ms. DUNN MARCOS [continuing]. The number.

Senator OSSOFF. I would like for you to provide to the Committee numbers that demonstrate the progress that ORR has made to provide more unaccompanied minors in immigration proceedings with legal counsel.

Ms. DUNN MARCOS. Yes, I can——

Senator OSSOFF. Yes. Thank you.

Ms. DUNN MARCOS [continuing]. Do that.

Senator OSSOFF. As you know, unaccompanied children are particularly vulnerable to labor exploitation, and we've seen reports of unaccompanied children as young as 12 and 13 pressured into working grueling hours at dangerous facilities, slaughterhouses.

What do you see as Congress' role, and what more can this body do, to protect these children from labor exploitation? Yes, Ms. Marcos. Thank you.

Ms. DUNN MARCOS. Thank you, Senator. I think as we've said before, this is a whole-of-society approach. We need everyone working on this. It's not one, one quick fix, or it would've been done.

In terms of ORR, what we can do is the continued work with our colleagues at Department of Labor, the expansion of post-release, the expansion of legal services—which does require funding. And that's where Congress can help.

Senator OSSOFF. Well, what I'd like you to do is to provide technical advice to the Committee, please, on how we can amend relevant statutes in order to empower ORR to protect these children. Will you do that, please?

Ms. DUNN MARCOS. Yes, sir.

Senator OSSOFF. Thank you, Ms. Marcos.

Chair DURBIN. I might say to my friend from Georgia that I commend to him a bill which I've introduced entitled, Protecting Unaccompanied Children Act, providing legal representation for all un-

accompanied children, among five or six other provisions. I'd hope you'll take a look at it.

Senator OSSOFF. Thank you, Mr. Chairman.

Chair DURBIN. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chair. Thank you, all, for being here.

And Director Marcos, over the course of the Biden administration, is the estimate right, or approximately 430,000 unaccompanied minors who have been placed? Is that roughly accurate?

Ms. DUNN MARCOS. Roughly accurate.

Senator TILLIS. Yes. Can you give me an idea of what standard operating procedure is? So after you've chosen—or after you've made the decision to place this child, what is standard operating procedure say over the course of the year following in terms of contact? I'm trying to get some sense of exactly what role you play after placement.

Ms. DUNN MARCOS. Thank you, Senator. And this is where we are going beyond what is required of us right now——

Senator TILLIS. Yes.

Ms. DUNN MARCOS [continuing]. But we know that it's not enough. Everyone on our team wants to, to do——

Senator TILLIS. Yes. Oh, I understand. I'm not being—I really want to go back, and there was a comment made that I think is very, very important. I think you can apply the same logic to asylum proceedings when we find out about 80 percent are adjudicated as not having a valid basis for granting asylum.

I think that it would seem logical, given the numbers that we're talking about over time, that probably about 80 percent of the unaccompanied children—someone made the comment they're escaping very dangerous settings. And many of them are, but many of them are trying to get to a country of opportunity.

We should take that as a compliment. But in reality, it's a bit of an insult in terms of how they get here. The parents or family members are paying money to cartels, cartels are making almost $1 billion a year in human trafficking, people are getting hurt, traumatized en route here, others are dying.

So I think one thing we need to do—one reason you can't really do what you want to do is, you simply have too many. And that is not your problem to fix.

That's a problem of the administration to fix. Because when the Biden administration came in, we saw nearly a fourfold increase in border crossings.

The area that I'm most concerned with is in the got-aways. One of the concerns that I have with these 430,000 unaccompanied minors who've been placed, is they're going in communities where, since President Biden's taken office, one and a half million got-aways aways are going to.

You know, why would anybody choose to try and evade apprehension at the border based on the way the United States is dealing with people who come across the border illegally today?

Why would anybody do that unless they had nefarious reasons or some background that they didn't want to have be made known when they're apprehended and they're being vetted by Customs or Border Patrol?

These are dangerous people going in these communities. I talk with sheriffs all the time.

I agree with Senator Grassley, that these got-aways, not all of them—some of them may just be dumb and not recognizing how easy it is just to present yourself at a Border—to a Border Patrol agency.

But many of them have to be here for maligned purposes. Many of them go to the communities that they identify with and exploit these unaccompanied children and the community as a whole.

So going back, what in your ideal—let's say that your problem—could you do that comprehensive case management if the volume you were dealing with was 20 percent of what you're dealing with today?

Let's say current funding, current resources, stay steady, you have only one in five as many to deal with in a given day. What would that look like in terms of true, responsible, engaged case management for an unaccompanied minor that's been placed?

Ms. DUNN MARCOS. Senator, I would have to, I would have to——

Senator TILLIS. Well, I think——

Ms. DUNN MARCOS [continuing]. Do some figuring, but yes, of course, it would——

Senator TILLIS. It would probably improve the situation.

Ms. DUNN MARCOS. Yes.

Senator TILLIS. And so I guess the point here, I'm not going to flog you all for executing policies that have been decided by the White House.

I'm holding President Biden responsible for many of the situations we have for child exploitation, because he's simply let the system get overwhelmed.

Now, for people to say that Congress needs to pass new laws, explain to me how we haven't repealed any laws.

But in the year following Trump transitioning—and I had disagreement with Trump. I believe that we have to immigrate more people and have more paths to—more pathways to citizenship, more guest worker program, more opportunities for people who really want the economic advantages of the United States to have an opportunity to do it.

But this President has made it virtually impossible for us to talk about improving and funding the processes that you're going through, because he simply multiplied the problem by almost a factor of four or five.

If, again, you can extend the assumption that if 80 percent of the people are ultimately adjudicated to not have a viable asylum claim, then probably 80 percent of these unaccompanied children are not here because they're escaping oppression or fear of the country that they came from, but because they want an economic opportunity.

But that has forced—what that is doing is making it more difficult or virtually impossible for you to provide the kind of care for those young people who truly need the support of the United States and need safe placement in the community and continuous tracking while they're minors.

So, I—Mr. Chair, I hope that we get back to a reasonable discussion about immigration reform and about paths to citizenships.

But until this administration wakes up to the problems that they've created by rescinding policies that were working in the prior administration, all we're going to do is have these shouting matches. And the ones who lose are the children who are being exploited. Thank you.

Senator WHITEHOUSE [presiding]. Thank you, Senator Tillis. And I do look forward to working with you on that project here in the Judiciary Committee.

And I think between the Chairman's—Senator Durbin and the Ranking Member, Senator Graham, both have very strong, and long lasting, and sincere commitments to trying to do bipartisan immigration reform demonstrated by their actions.

So I think we have a real prospect, and I hope that we're able to take advantage of it. And I thank you for your comments.

Senator TILLIS. Thank you for that, Senator Whitehouse.

And Director Marcos, I also wanted to mention, I am going to—I was going to ask you a series of questions about the influx facility in Greensboro. I think it's in cold status now. I want to talk about that and understand when it could potentially be activated. So those will be submitted for the record.

Thank you, Mr. Chair.

Senator WHITEHOUSE. You're most welcome.

Let me just ask Ms. Marcos and Ms. Nanda, I understand that HHS and DOL have been working together to find ways to address labor exploitation of unaccompanied children. Can you describe those efforts, how is it going, where are you so far, and what can Congress do to facilitate your work?

Ms. NANDA. I'm happy to start. Thanks so much, Senator Whitehouse.

So the task force that is being led by the Department of Labor has active engagement with a number of other Federal agencies. That includes my colleagues from State, my colleagues from DHS, of course, HHS, but also the Department of Education, the Department of Commerce, USDA, the Department of Justice.

And we've taken many steps that, I'd say overall, are focused on cross training of the staff, doing outreach together, making sure that we're getting materials out, and actually reaching vulnerable workers where they are, and also education, all aimed at improving the health and well-being of children and children that may be extremely vulnerable.

In terms of some specific work that we've done with HHS, in particular, we entered into a Memorandum of Understanding in March of this year that is really aimed at improving and deepening our long-standing relationship that we've had with HHS.

This means that we are coordinating on information, potentially about child labor investigations.

We are assisting in identification—or, we have HHS assisting us in the identification of supportive services for victims or children that we may encounter in our investigation.

It means that we may be sharing trends in child labor that we are both respectively seeing that will help both of us in our work respectively.

So a lot of relevant information is being shared, relationships are being deepened, and we continue to deepen our work, both with HHS and other members of the task force.

Senator WHITEHOUSE. Ms. Marcos, anything to add?

Ms. DUNN MARCOS. Thank you, Senator. As she mentioned, much stronger coordination, both at the leadership level, but also in the different team level with both the identification, but also post-services after an investigation concludes.

I think just, kind of, one other thing—two other things that we have done is we have also stood up an accountability team, and also the national call center makes calls back to any child who's calling with, with concerns, just to make sure that they had follow-up in receiving services.

Senator WHITEHOUSE. What's an accountability center?

Ms. DUNN MARCOS. It's an accountability team, and it's really looking at ways that we can continue to strengthen our sponsor vetting. And if there—we know that there are about——

Senator WHITEHOUSE. Like, internal and sponsor accountability?

Ms. DUNN MARCOS. Yes.

Senator WHITEHOUSE. Got it. Okay.

Ms. DUNN MARCOS. That's correct.

Senator WHITEHOUSE. Terrific.

Well, thank you all, very much. Appreciate the witnesses being here.

The record of the hearing will remain open for a week. If anyone wishes to add any materials to the record of the hearing, or if there are questions for the record for any of our witnesses—I heard Senator Tillis ask a question for the record, and I hope, request, and urge that you respond promptly to his and any other requests for the record so that we can build a good, strong record in the hearing.

If you don't respond, it makes us have to chase you, and that's—we have better things to do. So please be diligent in responding.

And with that, I'll adjourn the hearing. Thank you, all.

[Whereupon, at 12:03 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

Submitted by Chair Durbin:

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), statement 178
Young Center for Immigrant Children's Rights, statement 187

Testimony of

Robin Dunn Marcos
Director
Office of Refugee Resettlement
Administration for Children and Families
U.S. Department of Health and Human Services

Before the

Committee on the Judiciary
United States Senate

October 25, 2023

Introduction

Chairman Durbin, Ranking Member Graham, and distinguished Members of the Committee, thank you for the opportunity to appear before you today on behalf of the U.S. Department of Health and Human Services (HHS or Department) along with my esteemed colleagues. I am the Director of the Office of Refugee Resettlement (ORR) within the Administration for Children and Families (ACF), which includes the Unaccompanied Children (UC) Program that is responsible for the care and placement of unaccompanied children in HHS custody. Since assuming my position as ORR Director in September 2022, I have led a dedicated team of career federal staff, contractors, and grantees who are committed to ensuring the safety and well-being of every child in our care. I have met some of the children we serve and many of the dedicated professionals who serve them, and I have witnessed the commitment and devotion of our staff. Providing for the safety and well-being of children in our care is not only our mandate, it is also our guiding principle. This goal is reflected in our policies, our people, and our efforts to strengthen the program every day.

In my testimony today, I will describe the work we are doing to implement ORR's UC Program, the policies that ORR has in place to promote the safety and well-being of unaccompanied children in our care, and the steps we are taking—consistent with our authorities and mission—to support and promote their well-being following their release from ORR.

Responsibility for Unaccompanied Children

Under the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) (8 U.S.C. 1232(b)(1)), ORR is required to assume custody of and provide care for all unaccompanied children from the time

they are transferred to ORR from the Department of Homeland Security (DHS) or other federal entity until they are released to a vetted sponsor, typically a parent or other family member. Further, the 1997 *Flores* Settlement Agreement establishes minimum standards for specific services for unaccompanied children under ORR-funded programs.[1]

To fulfill ORR's statutory and court-ordered obligations, ORR funds nearly 300 programs in 27 states for different levels of care such as shelter programs, transitional foster care, long-term foster care, group homes, staff secure facilities, and residential treatment centers as well as two operational and active Influx Care Facilities (ICF) in Pecos, Texas and Dimmit County, Texas. Additionally, ORR maintains a preparedness posture by ensuring the Office can quickly scale-up capacity if needed to provide safe facilities appropriate for the care for children. In fact, ORR now has the ability to award new Indefinite Delivery, Indefinite Quantity task orders for scalable ICF capacity and services in a timely manner. At all of its facilities, ORR provides child-focused services, including education, health care and counseling services, case management services, recreation, access to legal services, access to religious services, and access to child advocates where applicable. These services are delivered according to child welfare best practices in a manner that is appropriate to the age, culture, preferred language, and needs of each child.

In every aspect of our mission, we recognize the importance of our work in caring for children, many of whom come to our care during extremely difficult periods in their life. The work is not easy, and ORR staff performs this critical work with the utmost care and dedication.

[1] Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997, as amended Dec. 7, 2001).

Current State of the Unaccompanied Children Program

As of September 30, 2023, ORR had 11,064 children in ORR care and had received 118,798 referrals from federal entities in Fiscal Year (FY) 2023. ORR continues working with DHS to minimize the time an unaccompanied child spends in a border processing facility or port of entry, neither of which are equipped for extended stays for children. Through flexible capacity, improved case management processes, and coordination with inter-agency partners, ORR can efficiently and consistently accept DHS referrals. The average amount of time an unaccompanied child spends in DHS border facilities is now well under the 72-hour maximum time within which children must be transferred from DHS to HHS care under the TVPRA, absent exceptional circumstances.

In FY 2023, ORR placed more than 113,602 children with vetted sponsors. The average length of time a child spent in ORR care over this period was less than one month. Given ORR's UC Program's child welfare mission, we know that the best place for a child is with a family in a community, not in a congregate care setting. In FY 2022 and FY 2023, the vast majority of children—more than 85 percent—were placed with a parent, legal guardian, or other close family member.

Sponsor Vetting Process

In fulfilling its sponsor placement responsibilities, ORR employs thorough sponsor screening and vetting processes for each category of sponsor that are based on child-welfare principles. To that end, ORR has implemented and funded seven-day-a-week case management—specifically for family unification services, which ensures comprehensive staff support so that every child's case is worked on even after normal business hours and on

weekends. Additionally, ORR has implemented significant updates to the UC Portal (the UC Program technology system) to increase usability and search functionality to build in safeguards, streamline processes, and make it easier to identify potential child welfare concerns during sponsor suitability assessments.

ORR identifies potential sponsors for unaccompanied children in different categories of cases: parents or legal guardians as Category 1; brothers, sisters, grandparents, or other immediate relatives as Category 2; distant relatives or unrelated individuals as Category 3; and unaccompanied children with a sponsor yet to be identified as Category 4. ORR's sponsor suitability assessment process includes verifying the sponsor's relationship to the child; speaking with the child's parents when possible; conducting separate interviews with the child and sponsor; collecting supporting documentation to verify the sponsor's information; and administering background and address verification checks—which include public records and sex offender registry checks, as well as FBI fingerprint checks in certain cases.

Prior to release of a child and placement with a vetted sponsor, ORR also carries out home studies in certain circumstances, as required by the TVPRA and ORR policy. Home studies further investigate a potential sponsor's ability to ensure the child's safety and well-being, which include home visits, sponsor interviews, background checks of additional adult household members, and, if necessary, interviews with other household members.

Home studies are required under circumstances specified by the TVPRA, including when a child has previously been a victim of trafficking or has a disability; and, per ORR policy, in instances when a potential sponsor is a non-relative and the child is 12-years-old or younger or the sponsor has previously sponsored or sought to sponsor a child or is seeking to

sponsor multiple children.

Additionally, to provide additional safeguards, home studies may also be conducted at ORR's discretion if the ORR Federal Field Specialist, Case Manager, or Case Coordinator determine that additional information is needed regarding the sponsor's ability to care for the health, safety, and well-being of the child. All releases following home studies require post-release services.

Services Following Unaccompanied Children's Release to Sponsors

ORR recognizes that many children released from our care may benefit from ongoing assistance by a social services agency. Further, even though sponsors are thoroughly vetted, we recognize that some children may still find themselves in unsafe situations or otherwise in need of support after they are released from our care. ORR has policies in place, beyond when our custodial responsibilities legally end, to promote children's well-being after they have been released from our custody and transition into a new community.

These policies include Safety and Well-being calls to children and sponsors after ORR releases a child from its care. Per ORR policies, ORR care providers are required to make a minimum of three attempts for every case to reach and speak with the child and the sponsor. Children and sponsors are not required to participate in Safety and Well-being calls and may choose not to answer a call for a variety of reasons, including fear or distrust of government, hesitation to answer an unknown number, or simply missing the call. Nevertheless, ORR made contact with either the child, the sponsor, or both in more than 81 percent of households since FY 2022.

When a care provider identifies a child who may benefit from additional resources through a Safety and Well-being call, the child is referred to ORR's National Call Center (ORRNCC), which is staffed 24 hours a day, seven-days-a-week. This helpline connects children and sponsors with resources within their local community to help address their individual needs. Children receive information about the ORRNCC while in ORR's care, and upon release they and their sponsor are provided a card with the ORRNCC information, which also includes additional resources.

Children, family members, sponsors, legal service providers, child advocates, and other members of the community can request assistance or report concerns to the ORRNCC. The ORRNCC is required to document any safety concerns and report such concerns to ORR, as well as to appropriate local law enforcement agencies and state and local child protective services as appropriate, in accordance with mandatory reporting laws, state licensing requirements, federal laws and regulations, and ORR policies and procedures. Additionally, ORR requires the ORRNCC to provide children who call the helpline and express safety concerns with information regarding the authorities to which their safety concerns will be reported. The ORRNCC connects children directly with the appropriate authorities, when possible, and places a follow-up call to the child to confirm if any further actions are needed.

ORR also provides post-release services (PRS) to unaccompanied children who receive TVPRA-mandated home studies, which includes all children who are victims of trafficking and to children who, in the determination of a care provider, would benefit from ongoing assistance. PRS includes referrals and connection to community resources as well as intensive case management services in cases where additional support is necessary to address a child's specific needs or challenges. These referral and case management services are offered by a

network of ORR-funded grant recipients across the United States. PRS can include help with school enrollment, support in finding and accessing health and mental health care, connections with local organizations, and other supports to ensure children's well-being.

Further, if at any point during an interaction with an unaccompanied child, either while in ORR's care or post-release such as through a Safety and Well-being call, ORR care provider staff identifies or suspects any safety concerns, they are required to issue a Notification of Concern to ORR and notify appropriate investigative agencies, including local law enforcement and child protective services. This includes 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 trafficking, exploitation, or other abuse. ORR then conducts further review and determines what actions should be taken, which may include additional reporting and engagement with local law enforcement, state child welfare authorities, and/or referral to PRS.

While ORR does not have authority to remove a child from a home—that authority resides with state child welfare and law enforcement agencies—ORR recognizes the critical importance of its notification and coordination processes to ensure that local authorities can respond appropriately to any allegations of abuse or neglect. For this reason, we have engaged multiple child welfare agencies on the needs of unaccompanied children. However, state child welfare agencies vary in capabilities and these local and state entities also need robust resources to help ensure their ability to review or investigate such allegations.

If ORR care provider staff, such as a case manager or clinician, suspect that a child is a victim of trafficking or is at risk of trafficking at any point during their interaction with an unaccompanied child, they must make a referral to HHS's ACF Office on Trafficking in

Persons (OTIP) and to DHS's Homeland Security Investigations Division and DHS's Center for Countering Human Trafficking for further investigation. OTIP provides further assessment assistance to ensure that victims can access appropriate care and services. Such care is then coordinated with ORR to provide direct referrals for grant-funded comprehensive case management services, medical services, food assistance, cash assistance, and health insurance tailored to the child's individual needs. HHS engages in constant efforts to improve care and information-sharing efforts for better human trafficking prevention. For example, in February 2023, ORR entered 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. Additionally, ORR works regularly with OTIP to further coordinate their efforts to align care and services for victims.

Continuing Progress and the Path Forward

ORR is continually assessing, identifying, and implementing improvements to the UC Program to ensure the highest level of care and support for children.

While unlawful child labor is not limited to migrant children, ORR recognizes that unaccompanied children released from ORR custody are often particularly vulnerable. Thus, consistent with our statutory authorities, ORR is working closely in partnership with the Department of Labor (DOL) to advance federal efforts to protect children against labor exploitation. Our joint efforts to address child labor exploitation have been ongoing and, as of March 23, 2023, have also been formalized in an MOA between DOL's Wage and Hour Division and HHS's ACF, which oversees ORR. The MOA expands the agencies'

collaboration, including information-sharing to aid investigations and to help identify communities in which and employers for whom children may be at risk of child labor exploitation; coordination to ensure that child labor victims or potential victims have access to critical services; and cross-training of staff. Thus, we are actively engaged with DOL to ensure we are finding and addressing the needs of children who may face exploitation.

The MOA has also resulted in joint public education efforts. In April 2023, ACF and DOL developed and distributed new materials and trainings to provide information to children about child labor laws in the United States so that they understand the laws on labor rights and restrictions to working in the United States, which may differ from many labor laws in their country of origin. The cross-training efforts of DOL and ACF staff have been successful and robustly attended, with approximately 800 ACF staff, including more than 600 ORR staff, trained by DOL and 250 DOL managers trained by ACF. In an effort to further educate and engage impacted communities, ACF led two roundtable sessions with educators on the issue of unlawful child labor in collaboration with the U.S. Department of Education and DOL in August 2023.

Additionally, ORR launched an audit of individuals who have sponsored multiple unrelated unaccompanied children, to ensure all necessary safeguards were followed. On June 2, 2023, ORR released the results of its audit, which found that ORR adhered to its program policies and procedures designed to meet or exceed statutory requirements in the placement of unaccompanied children with a vetted sponsor. The audit also identified areas for continued improvement. ORR announced additional efforts to protect the safety and well-being of unaccompanied children, including a new Program Accountability team in ORR that is

responsible for assessing and addressing potential exploitation risks faced by unaccompanied children.

Further, ORR and the Administration is committed to expanding PRS tailored to the unique needs of each child. In FY 2022, ORR more than doubled the rate of children offered PRS, providing access to more than 40 percent of children compared to just over 20 percent in FY 2021. This past fiscal year, we continued to expand PRS access, offering more than 50 percent of discharged children access to these services. We are offering services to all children with known vulnerabilities and to children released to unrelated sponsors. With continued funding from Congress, we can continue to advance toward our goal of providing all children access to PRS.

In fact, earlier this month, ORR published the proposed UC Program Foundational Rule, which would establish a comprehensive framework for placement and care, and would formalize and expand services for unaccompanied children, including legal services, Child Advocate access, language access, and post-release services—all critical tools to help prevent and respond to child labor exploitation. As always, this is contingent on robust funding to fulfill the goal of expanding these services.

Conclusion

We appreciate Congress' prior support of ORR programs, including the contingency funding in the FY 2023 omnibus. However, ORR still faces a significant overall budgetary shortfall in FY 2024 and has requested supplemental appropriations. Without this funding, there could be a significant impact on ORR's ability to timely accept referrals and it could lead to a curtailing of timely or expanded post-release services and legal services, beyond what is

minimally required. These services play a critical role in ORR's ability to promote the safety and well-being of children—including combating the risk of child labor exploitation—but are only possible with continued investment and support from Congress to build on ORR's efforts to further strengthen and improve the UC Program. We would also welcome more resources from Congress in order for ORR to expand not just access to, but the nature of services to all children following release.

Thank you for the opportunity to provide an update on ORR's UC Program. We are committed to caring for and protecting children in HHS custody and continue to do all we can to promote their well-being following their release. Children who come into ORR care face unique challenges that require a whole of government approach—including our partners in Congress, fellow federal agencies as well as state and local agencies, and national and community partners. At ORR, we are proud to do our part in this critical work.

Questions for the Record Submitted to
Director Dunn Marcos, Department of Health and Human Services,
Administration for Children and Families, Office of Refugee Resettlement
October 25, 2023

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Senator Tillis

Question 1:
How did ORR physically and logistically transition the two facilities in Texas (Fort Bliss and Target Lodge Pecos North) from an EIS to an ICF? Did the two facilities offer the full range of services offered in ORR's network of care? Did they meet or exceed Texas' licensing standards, once transitioned to an ICF?

Response: As of July 26, 2023, the Pecos Influx Care Facility (ICF) and the Fort Bliss ICF met *Flores* Settlement Agreement Exhibit 1 minimum standards and the required staffing ratios. Both sites transitioned from Emergency Intake Sites (EISs) to ICFs on June 4, 2022, and May 30, 2022, respectively, in recognition of the service standards available on the sites. Additionally, ORR Field Guidance 13 was revised on October 24, 2022, and specifically outlined that within six months of opening, EIS facilities are expected to meet Office of Refugee Resettlement (ORR) requirements pursuant to *Flores* Settlement Agreement Exhibit 1 standards, as well as staffing ratios outlined in the Consolidated Appropriations Act, 2022, division H, title II, section 231(1)(B), Public Law No. 117-103. All ORR policies on services, standards, and care in ICF facilities can be found in section 7 of the Unaccompanied Children (UC) Program Policy Guide.

Question 2:
What is the process for transitioning a facility from cold to warm status? What are the factors that are considered for taking a facility from warm status to operational status? Are there specific metrics, numbers, or capacity needs that must be met that will trigger a transition a facility from warm to operational status?

- Specifically, what factors or metrics are being used under the current contracts at Fort Bliss and the Pecos Children's Center? Will these factors or metrics remain the same for future ICF operational decisions?
- Because there are multiple ICF's, what are the determining factors in deciding which facility to make operational and in what order?

Question 5:
Why were two ORR ICFs (Pecos and Fort Bliss) taken out of operational status and placed into warm status in March and June of 2023, respectively?

Question 7:
If two facilities in Texas were transitioned from operational to warm, what factors is ORR using to transition the Greensboro Influx Care Facility from cold to warm? How is ORR using the same factors to justify two contradictory actions?

Response to questions 2, 5, and 7: Placing a facility into warm status depends on a variety of factors, including analysis of available ORR bed capacity with U.S. Department of Homeland Security (DHS) arrival projections. Similarly, transitioning a facility from warm status to open status also depends on alignment in projections and operations to justify a need for additional bed capacity. Warm status means an ICF site is not housing any unaccompanied children, but the contractor must be fully prepared to activate or reactivate the operations to accept unaccompanied children within specified time frames. A facility in warm status preserves government funding while maintaining additional bed capacity to be prepared for an influx of referrals from DHS's U.S. Customs and Border Protection. The facility will only initially move from warm status to open status after a contractual scale-up period and advanced notification to the Senate and House Committees on Appropriations.

ORR considers many factors when deciding to move ICFs into warm or open statuses. Some of these factors include the facility's proximity to the border, cost to the federal government, the need for bed capacity, an increase in COVID-19 positive cases or other symptomatic unaccompanied children, or if any specific DHS locations in the country may be at risk of housing children longer than the 72-hour required maximum time prior to U.S. Department of Health and Human Services (HHS) referral, transfer, and placement. In some instances, ICFs that are located closer to DHS facilities may be optimal for receiving children based on the referral patterns ORR observes.

Question 3:
Are you experiencing a period of influx? How do you define a period of influx?

Response: Per the UC Program Policy Guide, an "influx" is defined as a period in which the number of unaccompanied children exceeds the standard capabilities of responsible federal departments and agencies to process and transport them in a timely manner or to shelter them with existing resources. On October 25, 2023, ORR was not in a period of influx.

Question 4:
What were the staffing numbers and bed capacities at the Pecos ICF and Fort Bliss ICF prior to transition from operational to warm status? When operational, what is the average cost to the taxpayer at each facility? Please break the cost down to the average cost per day to taxpayers on room, board, medical, and case management per UC.

Response: HHS is committed to ensuring ORR has the funds it needs to meet its congressional mandate to care for the children in ORR custody according to its required responsibilities and child welfare best practices. The cost per bed per day at an ICF varies based upon its bed capacity and number of children being served, as well as services offered, which include required services under the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and the *Flores* Settlement Agreement. While ORR activated temporary bed capacity through 14 EISs with sole source contracts in 2021 to accommodate the historic influx of unaccompanied children, ORR now uses multiple-award Indefinite Delivery, Indefinite Quantity (IDIQ) contracts to provide ICF services, which has significantly reduced the cost.

Question 6:
Can you please provide an update on the status of operations at the Fort Bliss ICF? If ORR has made a determination to demobilize the Fort Bliss ICF, can you please provide a rationale and what factors went in to making that decision?

Response: The contract for the ORR ICF at Fort Bliss ended on September 18, 2023. The ORR ICF at Fort Bliss was closed due to greater processing efficiencies, case management improvements, and programmatic improvements that allowed ORR to better utilize the bed capacity in its care provider facilities.

Question 8:
750 Staff have been hired at the Greensboro ICF as of July 19, 2023. Are there plans to increase staffing once transitioned to warm status? Are there plans to increase staffing once transitioned to operational? What staffing authority does HHS have during warm status compared to operational?

Response: Per the Greensboro ICF facilities management contract and the direct care contract, the contractor is required to provide sufficient staffing for the facility in accordance with ORR minimum ratios as outlined in UC Program Policy Guide Section 7.7. The facility will hire up to 1,500 trained staff to work across 2 to 3 shifts when it is in operation.

Question 9:
What are the major cost drivers for the UC program?

Response: ORR has a legal obligation to care for all unaccompanied children in Federal custody referred to ORR by DHS or other Federal entities and is committed to working with Congress to ensure the Office has the funds it needs to meet its congressional mandate in accordance with its responsibilities and child welfare best practices. Per the terms of the *Flores* Settlement Agreement, ORR and care providers are required to provide children with minimum services. Funding care provider facilities that house children and provide these services is the main cost driver for the UC Program.

Additionally, ORR is committed to caring for and protecting children in ORR custody and continuing to work within the bounds of the Office's authorities to safeguard their well-being following their release from ORR. Thus, ORR has enlisted Congress' support in increasing the availability of essential post-release services (PRS) for more unaccompanied children, which are an additional cost driver,.

It is important to note that ORR is legally mandated pursuant TVPRA (8 U.S.C. 1232) and section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) to serve every child in Federal custody referred to the program, regardless of operating capacity. However, the funding that the UC Program receives is discretionary. Historically, the UC Program receives funding from Congress that is available to obligate over a three-year period, allowing unused funds in one year to be carried over and obligated in the next two years. This structure is challenging as budgeting needs for the UC Program must be dynamic to meet unknown and varied numbers of unaccompanied children who will need services. ORR appreciates the support from Congress on the fiscal year (FY) 2023 appropriations process, including with the establishment of a contingency fund. The President's FY 2024 budget requests $5.5 billion in base funding for the UC Program—the same as the FY 2023 enacted level, which excludes emergency-designated funding. In addition, we request an emergency contingency fund that modifies the one enacted in 2023 to be more responsive to the on-the-ground conditions, providing additional funding when referrals exceed a certain threshold. Continued investment and support from Congress are critical to build on ORR's efforts.

Question 10:
When will the Greensboro ICF transition into warm status? What range of dates have been discussed, and when does HHS plan to make a final decision by?

Question 11:
Once in warm status, when will the Greensboro ICF transition out of warm status? Will the facility transition to cold status or operational? What range of dates have been discussed, and when does HHS plan to make a final decision by?

Response to question 10 and 11: The Greensboro ICF is not in operation, and there have never been, nor are there currently, children at the site. As of October 25, 2023, there is no scheduled activation date. While ORR's priority is to place children into standard care provider facilities, access to ICF capacity remains necessary to ensure that ORR can promptly accept referrals when ORR's standard network facilities reach capacity. As such, ORR continues to work with community officials and local stakeholders to prepare to operationalize the Greensboro ICF should the need arise to do so in the future.

Question 12:
What corrective actions, if any, have you required contractors to take at the Greensboro ICF? Who has incurred the costs?

Response: The Greensboro ICF is not in operation and, has had no children on site. No corrective actions have been necessary.

Question 13:
What measures within the contract have you put in place to minimize contractor fraud and promote contractor accountability?

Response: To further accountability and comply with legal, regulatory, and contractual requirements, HHS's contracting office appoints a certified Contracting Officer's Representative to work with the Contracting Officer to oversee required deliverables and contract requirements.

Question 14:
What sort of feedback has the community inbox generated? Based on the solicited feedback received, how would you describe the initial impacts of the Greensboro ICF within the community? What additional impacts do you expect?

Response: HHS understands the importance of community partnerships and local engagement for the future success of Greensboro ICF operations. ORR is committed to these partnerships and transparent communications. Through the community inbox, ORR has been able to share general information on the UC Program, respond to requests from community members, and educate community members on ORR's mission and work. As part of these efforts, last summer, ORR began meeting with community stakeholders in Greensboro, both in-person and virtually. These meetings included local elected officials, county and city administrators, local religious organizations, local advocacy groups, and the neighborhood property board. ORR remains engaged with local stakeholders in ongoing bi-monthly meetings.

Question 15:
What will the discharge of UCs look like? What are your transportation requirements for UCs who cannot be picked up by their sponsors? Historically, what percentage of UCs cannot be picked up by their sponsors?

Response: ORR-funded care provider facility staff supervise and escort unaccompanied children until they are placed in the care of another ORR-funded care provider facility or a vetted sponsor. Per Section 2.8.2 of the UC Program Policy Guide, under extenuating circumstances (e.g., a sponsor cannot travel due to a medical condition), ORR may approve an unaccompanied child to be escorted to a sponsor. Similarly, if a sponsor pick-up would result in delay of a timely release of the unaccompanied child, ORR may approve an escort to facilitate the placement of the child with their vetted sponsor. Care providers must follow the procedures at Section 2.8.2 when escorting children to their vetted sponsor. All release and transfer decisions are made in the best interest of the child.

Question 16:
What are the designated airports and immigration courts you plan to use for UCs at the Greensboro ICF? Please provide the location and distance from each designated location to the Greensboro ICF.

Response: If the Greensboro ICF becomes operational, ORR will utilize the Piedmont Triad International Airport, which is approximately six miles from the Greensboro ICF. The Raleigh-Durham International Airport and Charlotte Douglas International Airport may also be utilized, and are located 75 miles and 100 miles, respectively, from the Greensboro ICF.

Immigration court proceedings commence when a charging document is filed with an immigration court. This can occur before or after a child is approved for release from ORR custody to the care of a sponsor. Immigration court proceedings may be transferred to an immigration court in the geographical area where the sponsor is located via a motion for change of venue. .

Question 17:
What is the expected cost to taxpayers for transportation approximately 1,500 miles from the border to the Greensboro ICF? Have you considered the cost of transportation compared to using existing facilities closer to the border?

Response: The UC Program provides for the care, and placement of unaccompanied children who are referred to ORR by another federal agency or department. The referring agency transfers custody to ORR as legally required by the Homeland Security Act of 2002 and the TVPRA. Prioritizing initial placements near the border does not mean children will not require transportation or other logistical support for unifying with sponsors located across the United States.

Question 18:
Will you use off-site outings to meet or supplement their minimum service requirements at the Greensboro ICF? If yes, what off-site outings will ORR create?

Response: Under the terms of the *Flores* Settlement Agreement, ICFs must provide daily outdoor and structured leisure time activities. Off-site outings may be used to meet these minimum service requirements (identified in UC Program Policy Guide Section 7.5.1) or to supplement them. Off-site outings may include visits to off-site parks, community recreation centers, or other suitable locations to fulfill the activity and leisure time requirement. Children are supervised at all times, including any time they are off-site.

Question 19:
Will you create vocational training opportunities at the Greensboro ICF? If so, will it be on-site or off-site, and what training opportunities will be created?

Response: In accordance with UC Program Policy Guide Section 3.3.6, ORR care providers are encouraged to create vocational training opportunities that will provide children with practical job skills and assist in the preparation for adulthood. Care providers may use community partnerships to create these training opportunities. There are currently no plans for off-site vocational programs for children placed at the Greensboro ICF and note that it is not operational.

Question 20:
Where will UCs receive healthcare services for routine medical and dental procedures and emergency health services? For family planning procedures?

Response: Per Section 3.4.1 of the UC Program Policy Guide, care providers create collaborative partnerships with medical professionals and organizations to ensure children have access to medical care. To ensure quality care, ORR requires licensed medical practitioners (physicians, physician assistants, nurse practitioners), acting within their scope of practice, to provide or supervise all medical evaluation and management. Any hospital providing services to unaccompanied children must be accredited by the Joint Commission or other nationally recognized accrediting body. Though rare, children who have health conditions that cannot be treated on site are taken to local hospitals, escorted by care provider staff.

Question 21:
It is our understanding that ICFs will require emergency services to be onsite, including 24/7 fire and EMS capabilities. Will these onsite emergency services be provided at the Greensboro ICF? Who with local jurisdiction will have responsibility for responding to emergency incidents at the Greensboro ICF?

Response: If in operation, emergency response processes at the Greensboro ICF will adhere to all required federal laws and regulations, state licensing requirements, and UC Program Policy Guide Section 5.8 for the immediate reporting of emergency incidents, as appropriate, to 9-1-1, local law enforcement, Child Protective Services, the HHS Office of the Inspector General, and the state licensing agency, in accordance with mandatory reporting laws. Additionally, all contractors for ICF properties are required to have an emergency action and evacuation plan in coordination with the Contracting Officer's Representative and the ICF personnel to protect staff and children on-site from emergencies. Contractors must develop a drill schedule and ensure copies of these plans are accessible to all staff on-site in English and Spanish.

ORR has been working collaboratively with state and county officials to determine respective areas of responsibility and coordinated emergency response and protocols in accordance with UC Program Policy Guide, Section 7.11, which requires agreements with federal, state, and/or local security providers or law enforcement to protect life and property and investigate crimes within the confines of ICFs.

Question 22:
How will ORR encourage visitation between UCs and sponsors, while ensuring the safety and privacy of other UCs, staff, and visitors at the Greensboro ICF?

Response: All visits are supervised by staff in a way that respects the child's privacy, protects the child from potential harm, and ensures the child remains safely within ORR care. Prior to any visit, all visitors must be informed of visiting hours and the circumstances that could result in the termination of the visit. Visitors must provide their name, address, and relationship to the child and be approved for visits. Family, sponsors, and other approved visitors may only visit with the child for whom they are approved to visit and not with other children in the facility. Per UC Program Policy Guide Section 3.3.10, which applies to the Greensboro ICF, children may communicate with a visitor in private while maintaining a line of sight with staff.

Question 23:
Please list locations in which the agency has, since April of 2021:

- Entered any contracts for an additional ICF;
- Substantially engaged or drafted a contract for an additional ICF; or
- Toured for consideration as an additional ICF?

Question 26:
It is our understanding that an active procurement is underway by your department through a Department of Interior contracting office to maintain access to as many as 10,000 ICF beds. How does Greensboro ICF fit into this acquisition?

Response to question 23 and 26: To ensure ORR is prepared for an influx similar in magnitude to FY 2021 and FY 2022, ORR must have the ability to quickly mobilize sufficient number of Influx Care Facility (ICF) beds to meet the needs of the children we are committed to and statutorily obligated to serve. Between April 2021 and October 25, 2023, HHS operated 12 Emergency Intake Sites (EIS) and four ICFs. As of October 25, 2023, no EIS sites and two ICF sites were operational. This includes two competitive task orders issued in fall 2023 for the Dimmit County ICF and the Pecos ICF—located in Carrizo Springs, Texas, and Pecos, Texas respectively—under the ICF Indefinite Delivery, Indefinite Quantity (IDIQ) award issued earlier in summer 2023 by the Department of the Interior (DOI).

The Greensboro ICF is not in operation, and children have never been at the site. As of October 25, 2023, there is no scheduled activation date. While ORR's priority is to place children into standard care provider facilities, access to ICF capacity remains necessary to ensure that ORR can promptly accept referrals when ORR's standard network facilities reach capacity. ORR continues to monitor referrals and capacity for future decisions on facility needs and continues to work with community officials and local stakeholders through the required operational steps for the Greensboro facility.

Question 24:
What is the activation history of the ICF in Carrizo Springs and any subsequent contract award to sites in Dimmit County, TX? What is the current status of the Carrizo Springs housing facility? What is the proposed status of the facility?

Response: The Dimmit County ICF became operational on October 13, 2023. While the Dimmit County ICF is geographically located at the same location as the former Dimmit EIS, which operated from March 20, 2021, to July 19, 2021, the facility's footprint has been expanded and changed substantially. In addition, operationally, this is an ICF, not an EIS. The Dimmit County ICF uses a different awarded contractor than the contractor used for the Carrizo Springs ICF, which closed at the end of May 2022, and was located at a different location. The Dimmit County ICF is subject to applicable ORR policies and regulatory guidance, including ICF standards outlined in ORR's UC Program Policy Guide.

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Question 25:
If locations listed above are closer to the border, why have they not been prioritized over the Greensboro ICF?

Response: ORR policies for placing unaccompanied children in its custody into care provider programs are based on legal requirements and child welfare best practices to place the child in a safe and least restrictive setting appropriate for the child's needs. The ORR Intakes Team documents and reviews a child's biographical and apprehension information prior to designating an initial placement to ensure factors such as age, gender, and any identified care needs are met. Prioritizing an initial placement near the border does not always fit a child's legal and welfare requirements and does not guarantee transportation cost savings when the child is ready to transfer to their sponsor.

Senator Cruz

Question 1:
Has the Biden administration succeeded in safeguarding unaccompanied minors that have been bought to America?

Question 2:
You indicated during testimony—both in April before the House of Representatives—and before the Senate last week that you did not "lose" children because your responsibility ends after the children are placed with sponsors. You did indicate that well-being calls occur between thirty and thirty-seven days after placement, but who is responsible for these children after you place them with strangers?

Question 3:
How is it that you tout HHS making well-being calls as evidence you care about these children but nevertheless deny responsibility over these kids?

Question 4:
How many well-being calls are performed before contact is deemed "lost?"

Question 5:
What happens after contact is deemed lost? Does a site visit occur?

- If so, how many such site visits occurred in fiscal year 2023?
- If not, why is this not policy?

Response to questions 1-5: The Office of Refugee Resettlement (ORR) has sponsor screening and vetting processes in place for each category of sponsor and, pursuant to the TVPRA, ORR assesses whether a sponsor is capable of providing for the child's physical and mental well-being. The TVPRA requires, among other things, that sponsor suitability assessments include verification of the sponsor's identity and relationship to the child and that the sponsor has not engaged in any activity that would indicate a potential risk to the child. All sponsors must complete a robust screening process that includes background checks, interviews, review of supporting documentation, and home visits as applicable. ORR takes its responsibility to care for and protect children in its custody seriously and works diligently to make sure every placement decision is made in the best interest of the child. ORR's process for the safe and timely release of a child from federal custody includes several steps such as: speaking with the child, the child's parents, if available, and sponsors; a sponsor application, address checks, background checks, and home studies as applicable. Additional details on this process are available in ORR's UC Program Policy Guide Section 2: Safe and Timely Release from ORR Care.

Additionally, all sponsors are required to comply with each provision of the Sponsor Care Agreement. Among the provisions, the potential sponsor agrees to provide for the physical and mental well-being of the child, ensure the child's presence at all future immigration proceedings, notify local law enforcement or local child protective services if the child has been or is at risk of being subjected to abuse, abandonment, neglect, or maltreatment, and to notify the National

Center for Missing and Exploited Children (NCMEC) if the child disappears, has been kidnapped, or runs away.

ORR's custodial responsibilities end when a child is discharged from ORR care. Nevertheless, ORR has policies in place to promote unaccompanied children's well-being after they have been released, such as every child receiving a Safety and Well-being Call after being discharged.

Per ORR policy, ORR care providers are required to make at least three Safety and Well-being calls to speak with the child and sponsor individually to determine if the child is still residing with the sponsor, enrolled or attending school, aware of any upcoming court dates, and otherwise safe, as well as to assess if either the child or the sponsor would benefit from additional support or services. Under ORR policies and procedures, if the ORR care provider identifies or suspects any safety concerns, they are required to issue a Notification of Concern to ORR and appropriate investigative agencies, including local law enforcement and child protective services. Children and sponsors are not required to answer these calls. It is important to note that many sponsors and children may choose not to answer a call from an unknown phone number or because they may be fearful of government entities, or they may simply miss the call. Further, ORR has referred some children for post-release services (PRS) and legal services, and some children have called ORR's National Call Center (ORRNCC). ORR has expanded PRS to an historic level and is committed to expanding access to PRS to all children by the end of fiscal year (FY) 2024. Importantly, providing and expanding access to post-release services is only possible with continued congressional funding.

If a Safety and Well-being call indicates that the child may be in immediate danger of serious harm, may be unsafe, or there is suspected neglect or abandonment, the ORR case manager is required to contact emergency authorities; submit a report to local child protective agencies and/or law enforcement; flag the sponsor in the UC Portal (ORR's digital records system); and notify the federal field specialist (FFS) immediately. The FFS then elevates the incident to the FFS supervisor who then reviews the allegation and ensures that the incident was reported to the appropriate entities with authority to investigate and/or remove the child from the home. It is important to note that ORR does not have authority to remove a child from a home following release of the child to a vetted sponsor—that authority resides with state child welfare and law enforcement agencies.

Question 6:
Despite placing 363,124 alien children with sponsors between 2018 and 2022, your agency only conducted 24,693 site visits—approximately seven percent of all placements. Why are so few site visits performed?

Question 7:
Your agency placed approximately 101,871 aliens with sponsors during fiscal year 2023—14,787 in Texas. How many site visits were performed in connection with these 101,871 aliens?

Response to questions 6 and 7: Under the TVPRA, Congress determined that ORR must conduct home studies for only certain unaccompanied children, prior to release. These include: children who have been a victim of severe forms of human trafficking; children with a disability; children who have been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened; or children whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.

ORR policy (UC Program Policy Guide Section 2.4.2) also requires a home study before releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or who has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children. ORR also requires a home study for children who are 12 years of age and younger before releasing to a non-relative sponsor. ORR's policies allow for home studies in additional circumstances, such as when additional information is needed to determine that the sponsor is able to care for the health, safety, and well-being of the child.

Question 8:
How many children were Category 3 placements last fiscal year?

Response: In FY 2023, 13 percent of children placed with sponsors were placed with Category 3 sponsors.

Question 9:
During your testimony before the House of Representatives you indicated that sponsor vetting was adequate. The subsequent study considered 344 placements out of a total of 263,698, so do you stand by your earlier claim that vetting is adequate given your study sampled 0.0013% of all placements?

Response: ORR employs thorough sponsor screening and vetting processes for each category of sponsors based on child-welfare principles. In February 2023, HHS announced a multi-pronged, interagency effort in collaboration with the U.S. Department of Labor to combat child labor exploitation along with additional actions which included an audit of the vetting process for potential sponsors who have previously sponsored an unaccompanied child. On June 2, 2023, HHS released the results of its audit which aimed to ensure all necessary safeguards are in place without unnecessarily keeping children in government-funded, congregate care settings.

This audit was conducted by a multidisciplinary team in ORR, including child welfare experts, policy advisors, program analysts, and program management, focused on compliance with statutory requirements and ORR policies and procedures. The audit was conducted over a four-week period in March 2023 and focused on case reviews of children released in 2021 and 2022 to non-relative sponsors who sponsored three or more children, which was a universe of 344 children. To examine children's outcomes post-release, the audit also included a review of all ORRNCC logged calls that reported a caretaker change. These criteria ensured the audit effort and resources focused on cases of heightened potential concern. ORR will continue this work with an outside entity to conduct future in-depth reviews of random sample for all sponsor categories.

An additional HHS effort to protect the safety and well-being of unaccompanied children is a new Program Accountability team in ORR that will be responsible for assessing and addressing potential exploitation risks faced by unaccompanied children. This new team will play a key role in working with an external entity to conduct an in-depth review of vetting and placement processes across all sponsor categories.

Question 10:
How many sponsors who received children during fiscal year 2023 were previously convicted criminals?

Response:
ORR will deny release to a potential sponsor if they are not willing or able to provide for the child's physical or mental well-being; the physical environment of the home presents risks to the child's safety and well-being; or release of the child would present a risk to the child, the sponsor, household, or the community. Furthermore, ORR may deny releases to a Category 1 potential sponsor, and will deny release to a Category 2A, 2B, or Category 3 potential sponsor based on the additional conditions outlined in ORR UC Program Policy Guide Section 2.7.4 (e.g., sponsor has been convicted of a crime related to trafficking in persons).

Question 11:
How many sponsors underwent background checks during fiscal year 2023 before receiving alien children?

Response: All sponsors undergo background checks prior to ORR placing a child in the sponsor's care. Per ORR policy, a public records check and sex offender registry check are also required for sponsors in all categories.

ORR requires FBI fingerprinting for certain immediate relatives who were not previously the child's primary care giver and for non-relative sponsors. ORR may also require FBI fingerprinting for any sponsor, non-sponsor adult household members, and adult caregivers identified in a sponsor care plan.

Question 12:
As a self-described humanitarian, why didn't you resign after hearing HHS Secretary Becerra likened your operation to a Ford assembly line?

Question 13:
Why didn't you resign after HHS Secretary Becerra threatened to find someone to process alien children faster than you?

Response to questions 12 and 13: Providing care for unaccompanied children in ORR custody is the priority in all decisions made by ORR, HHS, and the Administration. While in ORR care, every child receives classroom education, health care, recreation, mental health services, access to legal services, access to Child Advocates where applicable, and case management, all tailored to the needs of the specific child. Care providers also develop an individual service plan for the care of each child. More information on how ORR provides services for each individual child in its care can be found in UC Program Policy Guide Section 3.3. Given ORR's child welfare mission, ORR knows that the best place for a child is with a family in a community setting, not in a congregate care setting. When there is a safe, vetted sponsor available, ORR does not keep children in congregate care unnecessarily.

Question 14:
You are duty bound by statute—by 8 U.S.C. § 1232(c)(2)(A) to "promptly place unaccompanied children in the least restrictive setting is in the best interest of the child." Is choosing speed before safety in the best interest of these unaccompanied alien children?

Response: The safety and well-being of every child is at the forefront of every decision made by ORR. Child welfare best practices are clear that the best place for a child is in a community setting with family and not in large congregate care settings. Once ORR identifies a safe, vetted sponsor, who has successfully completed a robust screening process, ORR has a legal responsibility to place the child with a sponsor as quickly as possible. In addition to the intensive sponsor vetting requirements and the assessment process in place, ORR continues to implement procedures and practices that further streamline and strengthen sponsor vetting, while prioritizing child safety.

Senator Graham

Question 1:
The 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act gave HHS the responsibility for the "care and custody of all unaccompanied alien children."

- How many unaccompanied alien children (UAC) have been placed with immediate family members annually beginning in FY 2019?
- In what circumstances does ORR require a DNA test to confirm familial relations between an unaccompanied child and a potential sponsor?
- When being placed with family members, what steps are taken to verify the familial relationship? In how many of the placements are these verification steps taken?
- How many FBI criminal history checks have been conducted on UAC sponsors annually beginning in FY 2019?
- In how many cases have FBI criminal history checks been conducted for all adults living in the residence a UAC is placed in annually beginning in FY 2019?

Response: Over the past five fiscal years (FYs), from FY 2019 through FY 2023, the Office of Refugee Resettlement (ORR) released more than 160,000 unaccompanied children to Category 1 sponsors; more than 200,000 unaccompanied children to Category 2 sponsors; and approximately 50,000 unaccompanied children to Category 3 sponsors.

To verify the identity of a sponsor, all potential sponsors must submit original versions or legible copies of government-issued identification documents. For verification of the relationship claimed with the unaccompanied child, the potential sponsor must also provide at least one form of evidence such as a birth certificate, marriage certificate, death certificate, court records, guardianship records, hospital records, school records, or a written affirmation of relationship from a Consulate.

Voluntary DNA testing can also be used for sponsors and unaccompanied children to establish biological relationships when proof of relationship otherwise does not exist. In this instance, the ORR case manager notifies the ORR federal field specialist (FFS) and the Case Coordinator to recommend a DNA test be conducted. Once approved by the FFS and results are returned, the case manager uses the results when assessing the viability of the potential sponsor.

All sponsors undergo background checks prior to ORR placing a child in the sponsor's care. Per ORR policy, a public records check and sex offender registry check are required for sponsors in all categories. As of October 25, 2023, ORR also requires FBI fingerprinting for certain immediate relatives who were not previously the child's primary care giver and for non-relative sponsors. ORR may also require FBI fingerprinting for sponsors, non-sponsor adult household members, and adult caregivers identified in a sponsor care plan in certain cases.

Question 2:
Of the UAC currently in HHS custody, how many are placed in group homes run by the federal government?

Response: From FY 2019 through FY 2023, approximately 17,500 unaccompanied children were identified as Category 4; that is, as having no presently viable sponsor. Children identified as Category 4 may be placed in a long-term care setting, such as community-based foster care or extended care group homes, that are ORR-funded through grants to non-profit organizations licensed by a state to provide foster or group home care to youth.

Question 3:
Please provide a list of the current location of all ORR-funded facilities in the United States that house UAC. For each facility, please provide the city, state, facility name, grantee name, the length of time that entity has been a grantee, facility type, bed capacity, population served at the facility, and if the facility is licensed by the state.

Response: ORR funds facilities across the United States. The whole of ORR's mission and work weighs a variety of geographic factors.

Question 4:
What information and education does ORR provide to UAC sponsors, including any information on rights, responsibilities, services, and referrals?

Response: Per the terms of UC Program Policy Guide 2.8.1, once the sponsor assessment is complete and a sponsor has been approved, the sponsor enters into an agreement with the federal government in which he or she agrees to comply with the following provisions:

- Provide for the physical and mental well-being of the child, including but not limited to, food, shelter, clothing, education, medical care and other services as needed.
- For those who are not the child's parent or legal guardian, make best efforts to establish legal guardianship with the local court within a reasonable time.
- Attend a legal orientation program provided under the Department of Justice (DOJ)/Executive Office for Immigration Review's (EOIR) Legal Orientation Program for Custodians (Sponsors), if available where he or she resides.
- Depending on where the unaccompanied child's immigration case is pending, notify the local Immigration Court or the Board of Immigration Appeals within 5 days of any change of address or phone number of the child (Form EOIR-33). (If applicable, file a Change of Venue motion on the child's behalf. A "change of venue" is a legal term for moving an immigration proceeding to a new location.)
- Notify the U.S. Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services within 10 days of any change of address by filing an Alien's Change of Address Card (AR-11) or electronically at www.uscis.gov/ar-11.
- Ensure the unaccompanied child's presence at all future proceedings before the DHS/U.S. Immigration and Customs Enforcement (ICE) and the DOJ/EOIR.
- Ensure the unaccompanied child reports to ICE for removal from the United States if an immigration judge issues a removal order or voluntary departure order.
- Notify local law enforcement or state or local Child Protective Services if the child has been or is at risk of being subjected to abuse, abandonment, neglect or maltreatment or if the sponsor learns that the child has been threatened, has been sexually or physically abused or assaulted, or has disappeared. (Notice should be given as soon as it is practicable or no later than 24 hours after the event or after becoming aware of the risk or threat.)
- Notify the National Center for Missing and Exploited Children (NCMEC) at 1-800-843-5678 if the unaccompanied child disappears, has been kidnapped, or runs away. (Notice should be given as soon as it becomes practicable or no later than 24 hours after learning of the child's disappearance.)
- Notify ICE at 1-866-347-2423 if the unaccompanied child is contacted in any way by an individual(s) believed to represent an alien smuggling syndicate, organized crime, or a human trafficking organization. (Notice should be provided as soon as possible or no later than 24 hours after becoming aware of the information.)
- In case of an emergency, such as serious illness, destruction of home, etc., temporarily transfer physical custody of the child to another person who will comply with the terms of the Sponsor Care Agreement.
- In the event that a sponsor who is not the child's parent or legal guardian is no longer able and willing to care for the unaccompanied child and is unable to temporarily transfer physical custody, notify ORR using the ORR National Call Center, at 1-800-203-7001.

The agreement includes notice that the release of the unaccompanied child to the sponsor's care does not grant the child any legal immigration status and that the child must be present for immigration court proceedings.

The care provider also provides the sponsor with a Sponsor Handbook that outlines the responsibilities in caring for the unaccompanied child's needs for education,= and health; obtaining legal guardianship; finding support to address traumatic stress; and keeping children safe from child abuse and neglect and from trafficking and exploitation. The handbook reiterates the importance of continuing with immigration proceedings and includes links to website and forms. The handbook discusses laws related to employment, such as the federal law prohibiting minors under the age of 18 from working in hazardous occupations. Additionally, the care provider explains the U.S. child abuse and neglect standards and child protective services to the sponsor, human trafficking indicators and resources, and basic safety procedures such as how to use the 9-1-1 number in emergency situations.

Question 5:
How many UAC have been identified as victims of trafficking annually beginning in FY 2019?

- Who does HHS contact for a criminal investigation in this instance?
- What kind of services are trafficking victims provided with?
- If trafficking victims are placed with sponsors, what kind of resources are given to the sponsors to ensure the victim receives appropriate services?

Response: In FY 2023, the U.S. Department of Health and Human Services' (HHS) Office on Trafficking in Persons (OTIP) received more than 3,600 referrals of trafficking concerns for foreign national minors, including, but not limited to, unaccompanied children, who may be eligible for benefits and services to the same extent as refugees under the Trafficking Victims Protection Act of 2008 (TVPRA). In FY 2023, OTIP issued Eligibility Letters to more than 2,000 children who have experienced human trafficking to connect them to critical services. While all federal, state, or local officials are required to refer cases of potential trafficking of foreign national minors to OTIP within 24 hours, most referrals come from ORR—though notably, the majority of cases ORR refers to OTIP relate to victimization the child experienced prior to entering ORR care.

If ORR care provider staff, such as a case manager or clinician, suspect that a child is a victim of trafficking or is at risk of trafficking at any point during their interaction with an unaccompanied child, they must make a referral to HHS OTIP, Homeland Security Investigations (HSI), and the HSI-led DHS Center for Countering Human Trafficking for further investigation. OTIP provides further assessment assistance to ensure that victims can access appropriate care and services. Such care is then coordinated with ORR to provide direct referrals for grant-funded comprehensive case management services, medical services, food assistance, cash assistance, and health insurance tailored to the child's individual needs. While ORR does not retain legal custody post-release, ORR reviews the matter to determine what, if any, additional action should be taken consistent with its legal authorities.

In February 2023, ORR entered into a data sharing Memorandum of Agreement (MOA) with OTIP and 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. Additionally, ORR works regularly with OTIP to further coordinate their efforts to align care and services for victims.

ORR also provides post release services (PRS) to certain unaccompanied children who have been released from ORR's custody to promote their safety and well-being. Per UC Program Policy Guide Section 6.2.2, PRS providers work with sponsors to address challenges in parenting an unaccompanied child. This may include guidance about maintaining a safe home; supervision of the unaccompanied child; protecting the unaccompanied child from threats by smugglers, traffickers, and gangs; and information about child abuse, neglect, separation, grief and loss, and how these issues affect children. PRS providers start services within two days of the child's release from ORR custody and ORR can continue providing PRS during the pendency of the child's immigration proceedings (until the child turns 18 years of age or the child's immigration case concludes because the child was either granted voluntary departure, received an order of removal, or obtained immigration status, relief, or protection from removal). ORR is working to

increase its capacity to provide PRS to all children by 2025, including heightened services, as needed, for TVPRA-mandated PRS recipients. ORR is also working to increase funding and capacity for direct legal representation for unaccompanied children, with the goal of ensuring that all children in ORR care, as well as discharged children, can access legal representation by the end of 2027. In FY 2022, ORR more than doubled the rate of children offered PRS, serving more than 40 percent of children compared to just over 20 percent in FY 2021. Of the children unified with a sponsor in FY 2023, 59 percent were offered PRS.

Question 6:
The New York Times quoted HHS Secretary Xavier Becerra as pressuring staff to treat the UAC process as an "assembly line."

- What vetting requirements for sponsors has ORR stopped imposing since January 2021?
- If any changes have been made to the sponsor vetting requirements since January 2021, please explain why such changes were made.

Response: ORR continually reviews its policies, processes, and procedures to ensure they guarantee the safety and well-being of the children in ORR care and their timely release to vetted sponsors. ORR requires critical safeguards when vetting a sponsor, such as interviews with sponsors, sponsor assessments, completed family reunification applications with supporting documents, and background checks. Child welfare best practices indicate the best place for a child is with a family in a community setting. ORR works to expedite the release of certain unaccompanied children to a parent or legal guardian without sacrificing proper vetting and the safety of the child. Field Guidance 10 and 11 streamlined some vetting procedures for parents, legal guardians, and close family sponsors, without sacrificing child safety. Throughout ORR's process there are risk-assessments to identify red flags or derogatory information before release determinations. ORR believes that this approach right-sizes the vetting process to be timelier while maintaining safety standards for children.

Question 7:

How many pregnant UAC have come into HHS care annually beginning in FY 2019?

- What type of resources and care are provided to pregnant UAC?

Response: ORR has a legal obligation to care for all youth referred to its custody. ORR works with its partners across the government to ensure that youth are safe and provided appropriate health care. ORR policy requires, to the greatest extent possible, placement of youth in an appropriate location to support any health care needs, including placing pregnant youth in ORR programs that are state licensed to care for that population. Pregnant youth in ORR custody receive non-directive pregnancy counseling, prenatal, and OBGYN services. Youth in ORR care and custody receive comprehensive information and have access to family planning services and other reproductive health care. ORR has strict confidentiality policies related to protecting the privacy of unaccompanied children in its care.

Question 8:
HHS has obligated more than $484 million for post-release services this fiscal year for UAC, and you stated in your testimony on October 25, 2023, that HHS needs additional funding for the UAC process. What services are these funds supporting for UAC and their sponsors?

Response: PRS promotes the safety and well-being of certain unaccompanied children who have been released from ORR's custody to a sponsor in the United States. These services include timely referrals and connection to community resources, as well as intensive services, in cases where support is needed to address a child's specific needs or challenges. These referral and case management services are voluntary for children and sponsors and are offered by a network of ORR-funded non-profit providers across the United States.

PRS providers assist children in accessing services in areas that affect their lives and do so in a manner that is sensitive to the individual needs of the child. Providers coordinate services in the following areas: placement stability and safety; ensuring attendance at immigration court proceedings and compliance with DHS requirements; legal services; education services; medical services; individual mental health services; substance abuse; gang prevention; and any other services deemed appropriate for the specific child and sponsor. Expanded PRS, which will be effective on January 1, 2024, will consist of three levels of services. "Level 1 Services" will consist of Safety and Well-Being calls, which will become in-person or virtual check-ins conducted at seven, 14-, and 30-days following release from care. "Level 2 Services" will expand from 90 days to six months of supportive services including ongoing assessments, safety plans, and referrals to community-based programs. Finally, "Level 3 Services," or "intensive PRS," will include ORR intervention with case managers conducting initial in-home assessments within seven days of referral followed by weekly in-person contact for the first 45 to 60 days—focused on family stabilization including crisis intervention as needed—to transition to monthly or continue as necessary depending on the needs of the child.

In FY 2022, ORR more than doubled the rate of children offered PRS, serving more than 40 percent of children compared to just over 20 percent in FY 2021. Of the children unified with a sponsor in FY 2023, 59 percent were offered PRS.

Question 9:
What is ORR's plan to increase home visits to ensure the safety and well-being of children placed with sponsors?

Response: Under the TVPRA, ORR must conduct home studies for certain unaccompanied children prior to release, including those who have been a victim of severe forms of human trafficking; have a disability (as defined in section 12102 of title 42, United States Code); have been victims of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened; or whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.

While not required in statute, ORR policy (UC Program Policy Guide Section 2.4.2) also requires a home study before releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or who has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children. ORR also requires a home study for children who are 12 years old and younger before releasing the child to a non-relative sponsor. ORR's policies also allow for home studies in additional circumstances, such as when additional information is needed to determine that the sponsor is able to care for the health, safety, and well-being of the child.

ORR continually reviews its policies, processes, and procedures to ensure they guarantee the safety and well-being of the children in its care and their timely release to vetted sponsors. Future changes, if any, will build upon input from care providers, sponsors, child advocates, the Office of Inspector General, Congress, and other stakeholders on ways to strengthen and streamline the vetting process.

Question 10:
How many times annually beginning in FY 2019 has ORR notified state and local authorities with concerns about possible child abuse or neglect after doing follow up communications?

Response: If at any point during an interaction with an unaccompanied child, either while in ORR's care or post-release such as through a Safety and Well-being call or via the ORRNCC, ORR care provider staff identifies or suspects any safety concerns, they are required to issue a Notification of Concern to ORR and notify appropriate investigative agencies, including local law enforcement and child protective services. This includes 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 trafficking, exploitation, or other abuse. ORR then conducts a review and determines what additional actions should be taken, which may include additional reporting and engagement with local law enforcement, state child welfare authorities, and/or referral to PRS. Further actions from local law enforcement and child welfare authorities fall under the state's jurisdiction.

Question 11:
Are UAC encouraged or able to contact their parents in their home countries?

Response: Yes. Per ORR UC Program Policy Guide Section 3, within 24 hours of an unaccompanied child's admission into an ORR care provider facility, a trained staff member interviews the child using the Initial Intakes Assessment to identify any of the child's immediate needs or issues. The Initial Intakes Assessment guides the interviewer through a series of questions to obtain information about family members, any immediate medical or mental health concerns, current medications, and any concerns about personal safety that the child may have at that time. The staff member then assists the child in contacting their parents or legal guardians, family members, or other relatives if contact is considered safe, following ORR and the care provider's internal safety procedures. Per Section 2.2.2 of the ORR UC Program Policy Guide, ORR coordinates with the unaccompanied child's parents, legal guardians, or closest relatives prior to contacting non-relative adult potential sponsors. For more information about ORR's policies on visitation and contact with family, please see UC Program Policy Guide Section 3.3.10.

Question 12:
What accountability measures are in place at ORR to ensure that children's testimonies are being accurately and carefully vetted before they are placed with sponsors?

Response: ORR takes its responsibility to care for and protect children in its custody seriously and works diligently to make sure every placement decision is made in the best interest of the child. Per ORR UC Program Policy Guide Section 3, within 24 hours of an unaccompanied child's admission into an ORR care provider facility, a trained staff member interviews the child using the Initial Intakes Assessment to identify any of the child's immediate needs or issues. The Initial Intakes Assessment guides the interviewer through a series of questions to obtain information about family members, any immediate medical or mental health concerns, current medications, and any concerns about personal safety that the child may have at that time. The staff member then assists the child in contacting their parents or legal guardians, family members, or other relatives if contact is considered safe. For more information about ORR's policies on visitation and contact with family, please see UC Program Policy Guide Section 3.3.10. ORR's process for the safe and timely release of a child from federal custody includes: speaking separately with the child, sponsor, and the child's parents, if available; a sponsor application, address checks, supporting documentation; background checks including FBI fingerprint checks in some instances; and required or discretionary home studies. Additional details on this process are available in ORR's UC Program Policy Guide Section 2: Safe and Timely Release from ORR Care.

Question 13:
What steps has ORR taken to contact or follow up with the 85,000 children that ORR previously indicated they had lost contact with?

Response: The New York Times reported that over a two year period HHS was unable to reach 85,000 children through its standard Safety and Well-being call process. However, Safety and Well-being calls are just one way that ORR communicates with unaccompanied children after they are discharged from ORR care. Although ORR's custodial authority ends when a child is released from its care, per ORR policy, ORR care providers are required to make at least three Safety and Well-being calls to speak with the child and sponsor individually to determine if the child is still residing with the sponsor, enrolled or attending school, aware of any upcoming court dates, and otherwise safe, as well as to assess if either the child or the sponsor would benefit from additional support or services. Despite the voluntary nature of the child's and the sponsor's participation in Safety and Well-being calls, since FY 2022, ORR care providers made contact with either the child, the sponsor, or both in more than 81 percent of households. In addition to Safety and Well-being calls, children are also contacted and/or monitored through the provision of PRS and legal services, and children are also provided with information on calling the ORRNCC, which is available to provide assistance to children discharged from ORR care on a 24 hour/7 day a week basis.

Senator Grassley

Question 1:
You previously told House Oversight "Office of Refugee Resettlement (ORR) didn't lose anyone" in reference to Unaccompanied Alien Children (UAC), but that "ORR doesn't monitor or track the whereabouts of children after they're released from [your office's] care." Since your office does not monitor or track these children, can you honestly say they are safe and not subjected to further abuse or human trafficking?

Response: The Office of Refugee Resettlement's (ORR) custodial responsibilities end when a child is discharged from our care. Nevertheless, we have policies in place to promote unaccompanied children's well-being after they have been released. Per ORR policy, ORR care providers are required to make at least three Safety and Well-being calls to speak with the child and sponsor individually to determine if the child is still residing with the sponsor, enrolled or attending school, aware of any upcoming court dates, and otherwise safe, as well as to assess if either the child or the sponsor would benefit from additional support or services. If the ORR care provider identifies or suspects any safety concerns, under ORR policies and procedures, they are required to issue a Notification of Concern to ORR and appropriate investigative agencies, including local law enforcement and child protective services. In addition to Safety and Well-being calls, children are also contacted and/or monitored through the provision of PRS and legal services, and children are also provided with information on calling the ORR National Call Center (ORRNC), which is available to provide assistance to children discharged from ORR care on a 24 hour/7 day a week basis.

Question 2:
How many times did ORR and its third parties notify state or local authorities with concerns about possible child abuse or neglect in the last three years?

Response: If at any point during an interaction with an unaccompanied child, either while in ORR's care or post-release such as through a Safety and Well-being call or via the ORRNCC, ORR care provider staff identifies or suspects any safety concerns, they are required to issue a Notification of Concern to ORR and notify appropriate investigative agencies, including local law enforcement and child protective services. This includes 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 trafficking, exploitation, or other abuse. ORR then conducts a review and determines what actions should be taken, which may include additional reporting and engagement with local law enforcement, state child welfare authorities, and/or referral to PRS.

Question 3:
In the spring, the U.S. Department of Health and Human Services conducted a self-audit of the UAC program, which disclosed no issues with its handling of the UAC program as part of its findings. That audit relied on an extremely small sample, looking at just 344 individual UACs out of more than 260,000 processed in 2021 and 2022—a mere tenth-of-one percent. Considering how few individual UAC cases this self-audit looked at, how can anyone trust or take it seriously?

Response: HHS employs thorough sponsor screening and vetting processes for each category of sponsors based on child-welfare principles.

In February 2023, HHS announced a multi-pronged, interagency effort in collaboration with the U.S. Department of Labor to combat child labor exploitation along with additional actions which included an audit of the vetting process for potential sponsors who have previously sponsored more than three unaccompanied children. On June 2, 2023, HHS released the results of its audit, which aimed to ensure all necessary safeguards are in place without unnecessarily keeping children in government-funded, congregate care settings.

This audit was conducted by a multidisciplinary team in ORR, including child welfare experts, policy advisors, program analysts, and program management, focused on compliance with statutory requirements and ORR policies and procedures. The audit was conducted over a four-week period in March 2023 and focused on case reviews of children released in 2021 and 2022 to non-relative sponsors who sponsored three or more children, which was a universe of 344 children. To examine children's outcomes post-release, the audit also included a review of all ORRNCC logged calls that reported a caretaker change. These criteria ensured the audit effort and resources focused on cases of heightened potential of concern. ORR will continue this work with an outside entity to conduct future in-depth reviews of random samples.

An additional HHS effort to protect the safety and well-being of unaccompanied children is a new Program Accountability team in ORR that will be responsible for assessing and addressing potential exploitation risks faced by unaccompanied children. This new team will play a key role in working with an external entity to conduct an in-depth review of vetting and placement processes across all sponsor categories.

Senator Hawley

Question 1:
In calendar year 2023, what percentage of ORR Safety and Well-Being calls reached a child?

Response: The Office of Refugee Resettlement (ORR) made contact with either the child, the sponsor, or both in more than 81 percent of households since fiscal year (FY) 2022.

Question 2:
In cases where a Safety and Well-Being call does not reach a child, does ORR make a follow-up call?

Response: Per ORR policy, ORR care providers are required to make at least three Safety and Well-being calls to speak with the child and sponsor individually to determine if the child is still residing with the sponsor, enrolled or attending school, aware of any upcoming court dates, and otherwise safe, as well as to assess if either the child or the sponsor would benefit from additional support or services.

Question 3:
How many children placed by ORR are illegally employed in violation of child labor laws?

Response: Child labor violations are unacceptable, and ORR and the Administration take these violations very seriously. Under ORR's Unaccompanied Children (UC) Program Policy Guide, any grant recipient or contractor who works with or encounters unaccompanied children after their release from ORR care is required to report any concern about the child's safety and well-being to ORR and to the appropriate investigative agencies.

For example, suspected trafficking concerns are reported to the Administration for Children and Families' (ACF) Office on Trafficking in Persons (OTIP), to Homeland Security Investigations (HSI), and the HSI-led DHS Center for Countering Human Trafficking for further investigation. OTIP provides further assessment assistance to ensure that victims can access appropriate care and services.

In February 2023, ORR finalized a data-sharing Memorandum of Agreement (MOA) with OTIP and the National Center for Missing and Exploited Children (NCMEC), a non-profit organization established by Congress. The MOU facilitates information sharing to protect unaccompanied children who are victims of exploitation or trafficking or at risk of being such victims. Over the last three months, ORR has implemented a requirement for the ORRNCC to provide children who call the helpline and express safety concerns, with information regarding the authorities to which their safety concerns will be reported. It will connect children directly with the appropriate authority when possible, and place a follow-up call to the child to confirm if any further actions are needed.

Moreover, as part of the Department's commitment to combat child labor exploitation, HHS is working closely in partnership with the Department of Labor (DOL) in federal efforts to protect children against labor exploitation. These joint efforts to conduct due diligence to prevent and respond to child labor issues have been ongoing, and, as of March 23, 2023, have been formalized in an MOA between DOL's Wage and Hour Division and the HHS ACF, which oversees ORR. The MOA expands the collaborative work to help identify communities and employers where children may be at risk of child labor exploitation; aid investigations with information that could help identify circumstances where children are unlawfully employed; and facilitate coordination to ensure that child labor trafficking victims or potential victims have access to critical services. In April 2023, HHS and DOL developed and distributed new materials and trainings to provide information to children and sponsors about child labor laws in the United States so that children and vetted sponsors understand the laws on labor rights and restrictions to working in the United States.

Question 4:
Has ORR ever investigated a report of a child who has been illegally employed in violation of child labor laws? If so, please identify these by the agency's tracking number.

Response:

ORR does not have law enforcement investigative authority, but if ORR care providers identify or suspect any cause for concern or safety issue, they are required under ORR policy to issue a Notification of Concern to ORR and appropriate investigative agencies, including local law enforcement and child protective services who are authorized to take action.
When ORR receives a report of suspected labor exploitation or trafficking, the Office takes actions, which can include:

- Immediately halting discharges to specific neighborhoods (utilizing street information) or individual sponsors until additional safety measures are put in place;
- Mandating home studies and/or supervisory reviews prior to case approval;
- Conducting welfare phone calls and/or in-person visits, and
- Flagging for the state's child welfare agency, local law enforcement, OTIP, and other relevant entities for certain locations and a geographically appropriate radius around those locations.

While many labor violations do not involve trafficking, all trafficking reports are provided to DHS and OTIP. ORR and OTIP work closely with DOL, which can take action and flag particular trends or cases involving unlawful child labor. In addition, ORR requires care providers to notify stakeholders and OTIP of all suspected trafficking or exploitation concerns within 24 hours.

Further, the ORRNCC notifies local law enforcement and child protective services —the entities with the authority to determine whether to remove the child from their current home. ORR also recently engaged OTIP and NCMEC to enter into an MOA where all parties share information on a weekly basis. The MOA also enables data-sharing between HHS and NCMEC and will help bridge data-sharing challenges.

Question 5:
Has ORR changed its policies regarding identity verification and background checks to address the concerns identified in The Senate Committee on Homeland Security and Governmental Affairs December 2022 report on the inadequacy of those policies?

Response: ORR is legally required to provide for the care of all unaccompanied children referred to ORR by another Federal department or agency until the children are appropriately and safely released to a vetted sponsor. ORR continually reviews its policies, processes, and procedures to ensure they guarantee the safety and well-being of the children in ORR care and their timely release to vetted sponsors. As a general matter, when assessing the need for policy changes, ORR considers input from care providers, sponsors, child advocates, the HHS Office of Inspector General, Congress, and other stakeholders.

Senator Hirono

Question 1:
In your testimony, you mention that ORR faces a significant budgetary shortfall in FY 2024. Part of President Biden's Fiscal Year 2024 emergency supplemental funding request asks for additional resources to support unaccompanied children and other ORR-eligible populations.

- If Congress doesn't provide funding, how would that affect ORR's ability to provide services to children, including services that protect against labor exploitation?
- This was included in the President's "Border Supplemental Request." Why is this funding an important part of the border management strategy?

Response: The Office of Refugee Resettlement (ORR) continues to closely monitor the financial needs of the Unaccompanied Children (UC) Program and is in regular contact with Congress on its budgetary needs. Continued investment and support from Congress is critical to build on ORR's efforts to further strengthen and improve the program. ORR appreciates Congress' prior support of ORR programs, including the contingency funding in the fiscal year (FY) 2023 appropriation. However, in addition to the UC Program, ORR also runs the Refugee Program, which is driven by the rate of refugee arrivals and other populations that Congress has deemed eligible for support. ORR still faces a significant overall budgetary shortfall in FY 2024 and has requested $1.9 billion in emergency funding to ensure it can support the current and anticipated populations eligible for support. As the UC Program is in the same appropriation account, funding for unaccompanied children may have to be reprogrammed if ORR does not have sufficient resources to meet its resettlement requirements.

Notably, the UC Program must accept transfers of all unaccompanied children from other federal departments and agencies. Significant funding cuts that reduce ORR's ability to timely accept referrals could lead to U.S. Department of Homeland Security (DHS)-facility overcrowding and delays in placing children in licensed facilities better suited to long-term care. In addition, as ORR is required to provide for both statutorily and court-mandated care and services for children in its custody, funding cuts impact ORR's ability to provide these services in a timely manner which poses potential harm to children in ORR's care and yields significant legal risks and financial liabilities for the federal government. Funding cuts would also dramatically limit ORR's ability to expand legal services and offer any expanded access to post-release services to children.

Question 2:
During the September debate on federal government funding, multiple proposals were circulated that conditioned continued government operations on changes to our country's immigration system.

- One of the pieces of legislation, H.R. 2, would have expressly prevented ORR from providing legal counsel to unaccompanied children who can't afford it. Attorneys are one of the best defenses against children being exploited for labor, and they help streamline proceedings which is critical considering the current immigration court case backlog. How do you believe denying ORR the ability to provide unaccompanied children lawyers would affect exploited children?
- Another piece of legislation, the Keep America Open Act, would have required officials to expel all noncitizens "without further hearing or review." The legislation provided limited opportunities to request asylum, and there were no exceptions for unaccompanied children. Immediate expulsion of unaccompanied children means that these children would likely be expelled before ORR's experts are able to screen them for trafficking. How would a lack of ORR screening for trafficking affect unaccompanied children?

Response:
Under the TVPRA of 2008, the U.S. Department of Health and Human Services (HHS) is required to ensure legal representation for unaccompanied children to the greatest extent practicable, consistent with the requirements of 8 U.S.C. Section 1232(c)(5). In that section, Congress stated that lawyers representing children in legal matters also help protect children from mistreatment, exploitation, and trafficking. These Congressional goals will not reach children in need if legal representation is limited or eliminated. ORR agrees with Congress's assertion in the TVPRA and understands that direct representation both improves a child's understanding of the legal options available to them, and results in more efficient immigration proceedings. As such, to the extent its budget allows, HHS continues to expand unaccompanied children's access to legal services, including with a focus on capacity building for direct legal representation.

While all federal, state, or local officials are required to refer cases of potential trafficking of foreign national minors to HHS' Office on Trafficking in Persons (OTIP) within 24 hours, most referrals come from ORR. ORR screens for human trafficking of every unaccompanied child (e.g., during intake, risk assessments, UC assessments, sponsor assessments, and Significant Incident Reports). The screenings inform safety planning to protect children from further exploitation, including preventing return to human traffickers. Without ORR screening and safety planning, volumes of child trafficking victims will not be identified and protected.

Senator Klobuchar

Question 1:
Your testimony describes the work that the Office of Refugee Resettlement is doing to implement the agency's Unaccompanied Child Program and to promote the safety and well-being of unaccompanied children, including the steps you are taking to support and promote these children's wellbeing once they are released from care.

- What are the biggest barriers to effective coordination between the federal government and state and tribal law enforcement, as it relates to supporting unaccompanied minors that have been released from care or to preventing smuggling and trafficking?

Response: The U.S. Department of Health and Human Services (HHS) coordinates with federal, state, and tribal law enforcement on concerns for human trafficking, including through the President's Interagency Task Force to Monitor and Combat Trafficking in Persons federal Inspectors General offices, state departments of labor, and other enforcement authorities. HHS points of coordination include Office of Refugee Resettlement (ORR) post-release services, HHS' Office of Trafficking in Persons child protection specialists, grant-funded child and youth serving programs, and the child welfare system.

Challenges that pose barriers to effective coordination include lack of training on human trafficking screenings and resources available, lack of institutionalized referral protocols, needs for deconfliction and jurisdictional clarification, and fear of immigration officials and law enforcement among trafficked individuals. In addition, state and local child welfare agencies do not always have adequate resources to respond to the cases referred to them. ORR recognizes the critical importance of its coordination and engagement with these agencies, their varied capabilities, and need for robust resources to help ensure their ability to review or investigate allegations.

Senator Lee

Question 1:
Over the past 34 months since President Biden took office and declare the border open, over 430,000 unaccompanied minors have entered our country. How many of these children have passed through ORR custody? What happens to those who do not come into your care?

Response: Pursuant to the Homeland Security Act of 2002, an unaccompanied child is a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody. From fiscal year (FY) 2021 through FY 2023, 370,573 unaccompanied children were referred to the custody of the Office of Refugee Resettlement (ORR) from the U.S. Department of Homeland Security (DHS) or other federal entities.

Question 2:
Of those children who have passed through ORR custody, how many of them have been placed with a parent or known guardian?

Question 3:
Of those children who have passed through ORR custody, how many of them have been placed with an immediate relative?

Question 4:
Of those children who have passed through ORR custody, how many of them have been placed with a relative that is not a member of his or her immediate family?

Question 5:
How many of these children have been placed with complete strangers?

Response to questions 2-5: ORR has comprehensive sponsor screening and vetting processes in place for each category of sponsor and, pursuant to the TVPRA, ORR assesses whether a sponsor is capable of providing for the child's physical and mental well-being. The TVPRA requires that sponsor suitability assessments include verification of the sponsor's identity, relationship to the child, and that the sponsor has not engaged in any activity that would indicate a potential risk to the child. All sponsors must complete a robust screening process that includes background checks, interviews, review of supporting documentation, and home visits as applicable. Children are not placed with strangers as sponsors must provide proof of a pre-existing relationship. ORR takes its responsibility to care for and protect children in its custody seriously and works diligently to make sure every placement decision is made in the best interest of the child.

In fiscal year (FY) 2022 and FY 2023, the vast majority of children—more than 86 percent of those placed with a sponsor—were placed with a parent, legal guardian, or other close family member. In cases where a child is discharged to a non-relative, either the child, their parent, or their family members have a relationship with that sponsor. These cases require a higher level of scrutiny and may include home studies.

Question 6:
In the hearing you mentioned that is not standard practice to vet sponsors with an FBI background check. What percentage of the sponsors with whom you have placed children have actually undergone an FBI background check?

Question 7:
Does ORR place children with sponsors who refuse to submit to a background check?

Response to questions 6 and 7: All sponsors undergo background checks prior to ORR placing a child in the sponsor's care. Per ORR policy, a public records check and sex offender registry check are required for sponsors in all categories. ORR also requires FBI fingerprinting for certain immediate relatives who were not previously the child's primary care giver and non-relative sponsors. ORR may also require FBI fingerprinting for parents, legal guardians, immediate relatives who previously cared for the child, and non-sponsor adult household members and adult caregivers identified in a sponsor care plan. State Child Abuse and Neglect (CA/N) checks are also required for all sponsors in cases that require a home study, and cases where a special concern is identified. If a CA/N check is required of the sponsor, non-sponsor adult household members and adult caregivers identified in a sponsor care plan are also subject to a CA/N check.

ORR may deny release when an adult household member refuses to cooperate with a background check. ORR determines the best interests of a child and does not release any child to a sponsor until ORR has determined that it is safe to do so.

Question 8:
In what percentage of child placements has ORR conferred with local law enforcement about the proposed sponsor before placing the child?

Question 9:
In what percentage of child placements made by ORR in the last 34 months did you inform local law enforcement of the child's placement? What about other local service providers?

Response to questions 8 and 9: All sponsors must complete a robust screening process that includes background checks, interviews, review of supporting documentation, and home visits as applicable. All sponsors are required to comply with each provision of the Sponsor Care Agreement. Among the provisions, the potential sponsor agrees to notify local law enforcement or local child protective services if the child has been or is at risk of being subjected to abuse, abandonment, neglect, or maltreatment, and to notify the National Center for Missing and Exploited Children if the child disappears, has been kidnapped, or runs away.

In addition, if an ORR care provider identifies or suspects any safety concerns at any point during their interaction with an unaccompanied child or former unaccompanied child, they are required to issue a Notification of Concern to ORR and notify appropriate investigative agencies, including local law enforcement and child protective services.

Question 10:
Is it standard practice for ORR to conduct a home visit before placing a child? In what percentage of child placements in the last 34 months has a home visit been performed prior to placing the child? In what percentage of cases was a home visit conducted in fiscal year 2023 prior to placing a child?

Response: Under the TVPRA, ORR must conduct home studies prior to release for certain unaccompanied children
While not required in statute, ORR policy (UC Program Policy Guide Section 2.4.2) also requires a home study before releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or who has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children. ORR also requires a home study for children who are 12 years of age and younger before releasing to a non-relative sponsor. ORR's policies allow for home studies in additional circumstances, such as when additional information is needed to determine that the sponsor can care for the health, safety, and well-being of the child.

Question 11:
When vetting potential sponsors, do you ascertain whether or not the sponsor has legal status in the United States? Why or why not?

Question 12:
If a potential sponsor is not an American citizen, does ORR routinely check with law enforcement in the sponsor's native country to ascertain whether or not he/she has any criminal convictions? Does ORR check to see if the potential sponsor has been implicated in any form of human trafficking?

Question 13:
What specific vetting procedures does ORR employ to ensure no child is placed with a known criminal gang member?

Response to questions 11-13: ORR sponsor suitability assessments include verification of the sponsor's identity, relationship to the child, and that the sponsor has not engaged in any activity that would indicate a potential risk to the child, including criminal activity and human trafficking.

ORR recognizes that best practices in domestic child welfare include policies to keep children out of congregate care settings and favor family placement or, when that is not possible, kinship care (a broad term that encompasses placement with friends of family, godparents, etc.). This best practice works to minimize trauma, preserve cultural identity, increase stability, and improve behavioral health outcomes for children. All sponsors are required to undergo a background check. If a background check reveals criminal history or a safety risk, the care provider and ORR evaluate this information and any additional information to holistically assess whether the sponsor is able to care for the child and ensure their safety and well-being. ORR may deny release when an adult household member refuses to cooperate with a background check. ORR determines the best interests of a child and does not release any child to a sponsor until ORR has determined that it is safe to do so.

Question 14:
In response to questions about the nearly 85,000 children who ORR place with sponsors in the last 34 months, but who received no subsequent follow-up contact with ORR, you repeatedly referred to "post-release services." What percentage of the unaccompanied children who have passed through ORR in fiscal year 2021 received poste-release services? What about fiscal year 2022? What about fiscal year 2023?

Response: ORR has expanded access to PRS to an historic level and is committed to expanding access to PRS to all children by the end of FY 2024. In FY 2022, ORR more than doubled the rate of children provided access to PRS, providing PRS access to more than 40 percent of children compared to just over 20 percent in FY 2021. ORR continued to expand access to PRS in FY 2023, providing access to 59 percent of discharged children. Providing and expanding access to PRS is only possible with continued congressional funding.

Question 15:
In your testimony, you repeatedly maintained that your custodial duties ended once the child was placed with a sponsor, and that this is the reason that you hadn't "lost" any children. In the hearing I asked you about the whereabouts of the children you have placed with sponsors in the last 34 months. How many of those children's current whereabouts are known to you with relative certainty today?

Response: ORR is legally required to provide for the care of all unaccompanied children referred to ORR by other federal entities until the children are appropriately and safely released to a vetted sponsor. ORR nonetheless has policies in place to promote unaccompanied children's well-being after they have been released, such as every child receiving a Safety and Well-being call after being discharged. Per ORR policy, ORR care providers are required to make at least three Safety and Well-being calls to speak with the child and sponsor individually to determine if the child is still residing with the sponsor, enrolled or attending school, aware of any upcoming court dates, and otherwise safe, as well as to assess if either the child or the sponsor would benefit from additional support or services. If the ORR care provider identifies or suspects any safety concerns, under ORR policies and procedures, they are required to issue a Notification of Concern to ORR and appropriate investigative agencies, including local law enforcement and child protective services. Although children and sponsors are informed that these calls will be made and are encouraged to answer, they are not required to answer. Despite the voluntary nature of the child's and the sponsor's participation in Safety and Well-being calls, since FY 2022, ORR care providers made contact with either the child, the sponsor, or both in more than 81 percent of households. Further, there are children who have not answered a phone call, but for whom ORR has provided PRS, legal services, or who have called ORR's National Call Center (ORRNCC).

Question 16:
How many of the children placed by ORR during the last 34 months have been subject to illegal labor practices?

Question 18:
In the hearing, I also asked you what percentage of those children placed by ORR in the last 34 months have been subsequently trafficked—either for sex or for labor—since leaving your custody. Please provide an answer.

Response to questions 16 and 18: Child labor violations are unacceptable and ORR and the Administration take these violations very seriously. Under ORR's UC Program Policy Guide, any ORR grant recipient or contractor who works with or encounters unaccompanied children after their release from ORR care is required to report any concern about the child's safety and well-being to ORR and to the appropriate investigative agencies. Suspected trafficking concerns are reported to the Administration for Children and Families' (ACF) Office on Trafficking in Persons (OTIP), DHS Homeland Security Investigations Division (HSI), and the HSI-led DHS Center for Countering Human Trafficking for further investigation. OTIP provides assistance to ensure that victims can access appropriate care and services.

In February 2023, ORR finalized a data-sharing Memorandum of Agreement (MOA) with OTIP and the National Center for Missing and Exploited Children (NCMEC), a non-profit organization established by Congress. The MOU facilitates information sharing to protect unaccompanied children who are victims of exploitation or trafficking or at risk of being such victims. Over the last three months, ORR implemented a requirement for the ORRNCC to provide children who call the helpline and express safety concerns with information regarding the authorities to which their safety concerns will be reported. The ORRNCC connects children directly with the appropriate authority when possible, and makes a follow-up call to the child to confirm if any further actions are needed.

Moreover, as part of the Department's commitment to combat child labor exploitation, the U.S. Department of Health and Human Services (HHS) is working closely in partnership with the U.S. Department of Labor (DOL) in federal efforts to protect children against labor exploitation. These joint efforts to conduct due diligence to prevent and respond to child labor issues have been ongoing, and, as of March 23, 2023, have also been formalized in an MOA between DOL's Wage and Hour Division and the Department's ACF, which oversees ORR. The MOA expands the collaborative work to help identify communities and employers where children may be at risk of child labor exploitation; aid investigations with information that could help identify circumstances where children are unlawfully employed; and further facilitate coordination to ensure that child labor trafficking victims or potential victims have access to critical services. In April 2023, HHS and DOL developed and distributed new materials and trainings to provide information to children and sponsors about child labor laws in the United States so that children and vetted sponsors understand the laws on labor rights and restrictions to working in the United States.

In FY 2023, OTIP issued Eligibility Letters to approximately 2,000 unaccompanied children who had experienced human trafficking, referring and connecting them to critical services. The

majority of these referrals related to victimization that happened prior to the child entering ORR care.

Question 17:
Are you aware of the whistleblower reports detailing how sponsors asking for children to host, have indicated they need workers for their business or that the children will have to "pay off their costs?" Since that whistleblower's report, what changes has ORR made to ensure no child is trafficked for labor after being placed with a sponsor?

Response: ORR has zero tolerance for abuse or mistreatment of children. If an ORR care provider identifies or suspects any safety concerns at any point during their interaction with an unaccompanied child or former unaccompanied child, they are required to issue a Notification of Concern to ORR and notify appropriate investigative agencies, including local law enforcement and child protective services. Under ORR's UC Program Policy Guide, any ORR care provider, grant recipient, or contractor who works with or encounters unaccompanied children after their release from ORR care is required to report any concern about the child's safety and well-being to ORR and to the appropriate investigative agencies. This includes any suspicion that the child is at risk of human exploitation, trafficking, or other abuse.

Should an ORR care provider or case manager suspect that a child is a victim of trafficking or is at risk of trafficking at any point during this process, they must also make a referral to OTIP, in addition to Homeland Security Investigations (HSI), and the HSI-led DHS Center for Countering Human Trafficking for further investigation.

The TVPRA requires, among other things, that sponsor suitability assessments include verification of the sponsor's identity, relationship to the child, and that the sponsor has not engaged in any activity that would indicate a potential risk to the child. All sponsors must complete a robust screening process that includes background checks, interviews, review of supporting documentation, and home visits prior to release as applicable.

ORR's sponsor assessment and release decision process requires coordination among care provider staff, nongovernmental third-party reviewers (Case Coordinators), ORR staff, other Federal agencies, stakeholders, and Child Advocates, where applicable. Case Managers communicate with potential sponsors, gather necessary information and documentation, talk to any relevant stakeholders, and assess sponsors to formulate a recommendation to the Case Coordinator. Case Coordinators concurrently review all assessment information on an unaccompanied child and sponsor to also make a recommendation. Once Case Managers and Case Coordinators agree on a particular recommendation for release, the ORR Federal Field Specialist makes a final release decision.

All sponsors are required to comply with each provision of the Sponsor Care Agreement. Among the provisions, the potential sponsor agrees to notify local law enforcement or local child protective services if the child has been or is at risk of being subjected to abuse, abandonment, neglect, or maltreatment, and to notify NCMEC if the child disappears, has been kidnapped, or runs away.

On June 2, 2023, HHS released the results of its audit of the vetting process for potential sponsors who have previously sponsored an unaccompanied child, to ensure all necessary

safeguards are in place. This audit was conducted by a multidisciplinary team in ORR, was conducted over a four-week period in March 2023, and focused on case reviews of children released in 2021 and 2022 to non-relative sponsors who sponsored three or more children. ORR utilized these criteria to focus on cases of heightened potential concern. The audit also included a review of all ORRNCC logged calls that reported a caretaker change. ORR will continue this work with an outside entity to conduct review random samples of all children.

ORR is committed to ensuring full compliance with federal whistleblower laws. In coordination with the HHS Office of Inspector General (OIG), ORR has provided whistleblower trainings for all staff, award recipients, and contractors. ACF has also updated its public website and terms and conditions for grants awards to include specific information on whistleblower protections. These trainings and resources are in addition to the longstanding HHS mandatory supervisory trainings and to ACF's staff-wide annual whistleblower trainings.

Question 19:
Given you disclaim any authority or responsibility to follow-up with these children or to care for them after you place them, I would imagine you would want to be very sure a home is safe before placing a child. And yet, it seems that ORR's practices are getting increasingly more lax, and not more demanding. Did HHS weaken its vetting requirements for background checks and related adults in 2021?

Response: No. ORR requires critical safeguards when vetting a sponsor, such as interviews with sponsors, sponsor assessments, completed family reunification applications with supporting documents, and background checks. ORR works to expedite the release of certain unaccompanied children to a parent or legal guardian without sacrificing proper vetting and the safety of the child. To that end, ORR implemented and funded seven-day-a-week case management, which seeks to ensure comprehensive staff support and that every child's case is worked on even after normal business hours. ORR also implemented significant updates to the UC Portal (the UC Program technology system) to increase usability and search functionality to build in safeguards, streamline processes, and make it easier to identify child welfare "red flags" during sponsor suitability assessments. Throughout ORR's process there are risk-assessments so that any red flags or derogatory information can be brought to light in terms of release determinations. ORR believes that this approach right-sizes the vetting process to be timelier while maintaining safety standards for children.

If an ORR care provider identifies or suspects any safety concerns at any point during their interaction with an unaccompanied child or former unaccompanied child, they are required to issue a Notification of Concern to ORR and notify appropriate investigative agencies, including local law enforcement and child protective services.

ORR has expanded access to PRS to an historic level and we are committed to expanding access to PRS to all children by the end of FY 2024. In FY 2022, ORR more than doubled the rate of children provided access to PRS, providing PRS access to more than 40 percent of children compared to just over 20 percent in FY 2021. ORR continued to expand access to PRS in FY 2023, providing access to 59 percent of discharged children. Providing and expanding access to PRS is only possible with continued congressional funding.

Question 20:
Do you believe the vetting and placement policies of ORR are serving these children well?

Response: ORR is committed to caring for and protecting children in ORR custody and continuing to work within the bounds of its authorities to safeguard their well-being. Once ORR identifies a safe, vetted sponsor, who has undergone a robust screening process, it has a responsibility to place the child as quickly as possible. Intensive sponsor vetting requirements are in place and ORR continues to implement procedures and practices to strengthen sponsor vetting and ensure child safety.

Question 21:
In the hearing, you repeatedly stood by ORR practices, saying, "we have thorough vetting processes in place." Given how many children are lost, trafficked for sex, or trafficked for labor after leaving your care, do you stand by your statements?

Question 22:
If you cannot stand by your statements, how would you suggest improving the vetting and placement process?

Question 23:
When the parents who sent their children on the dangerous journey to your care, incentivized by the promise of open borders and self-proclaimed "compassionate" policies, discover that you have handed over their children to be trafficked, used for dangerous child labor, abused, and even killed—when these parents realize all of this—will we be looking at a class-action lawsuit against ORR for the mistreatment and neglect of hundreds of thousands of vulnerable children?

Response to questions 21-23: All sponsors must complete a robust screening process that includes background checks, interviews, review of supporting documentation, and home visits as applicable. ORR takes its responsibility to care for and protect children in its custody seriously and works diligently to make sure every placement decision is made in the best interest of the child. Details on this process are available in ORR's UC Program Policy Guide Section 2: Safe and Timely Release from ORR Case.

All sponsors are required to comply with each provision of the Sponsor Care Agreement. Among the provisions, the potential sponsor agrees to provide for the physical and mental well-being of the child and notify local law enforcement or local child protective services if the child has been or is at risk of being subjected to abuse, abandonment, neglect, or maltreatment, and to notify the NCMEC if the child disappears, has been kidnapped, or runs away.

In FY 2022 and FY 2023, the vast majority of children—more than 86 percent of those placed with a sponsor—were placed with a parent, legal guardian, or other close family member. This includes 36 percent placed with a parent or legal guardian and 50 percent placed with a close family member such as siblings or grandparents. The remaining 14 percent of children placed with sponsors were placed with more distant relatives or unrelated adults. In cases where a child is discharged to a non-relative, either the child, their parent, or family members have a relationship with that sponsor. These cases require a higher level of scrutiny and may include home studies prior to release.

If ORR care provider staff, such as a case manager or clinician, suspect that a child is a victim of trafficking or is at risk of trafficking at any point during their interaction with an unaccompanied child, they must make a referral to HHS OTIP, Homeland Security Investigations (HSI), and the HSI-led DHS Center for Countering Human Trafficking for further investigation. While ORR does not retain legal custody post-release, ORR reviews the matter to determine what, if any, additional action should be taken consistent with its legal authorities.

In February 2023, ORR entered into a data sharing MOA with OTIP and 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. ORR works regularly with OTIP to coordinate their efforts and align care and services for victims.

ORR provides post release services (PRS) to certain unaccompanied children who have been released from ORR's custody to promote their safety and well-being. Per UC Program Policy Guide Section 6.2.2, PRS providers work with sponsors to address challenges in parenting an unaccompanied child, including protecting the unaccompanied child from threats by smugglers and traffickers. ORR is working to increase its capacity to provide PRS to all children by 2025, including heightened services, as needed, for TVPRA-mandated PRS recipients. ORR is also working to increase funding and capacity for direct legal representation for unaccompanied children, with the goal of ensuring that all children in ORR care, as well as discharged children can access legal representation by the end of 2027. Providing and expanding these efforts to protect children rely upon congressional funding.

Homeland Security Investigations

STATEMENT OF

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HOMELAND SECURITY INVESTIGATIONS

CENTER FOR COUNTERING HUMAN TRAFFICKING
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING TITLED

"Ensuring the Safety and Well-Being of Unaccompanied Children, Part II"

BEFORE THE

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

Wednesday, October 25, 2023
G50 Dirksen Senate Office Building
10:00 a.m.

Chairman Durbin, Ranking Member Graham, and distinguished members of the Committee, thank you for the opportunity to testify regarding the role of U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) in investigating federal crimes relating to the trafficking and exploitation of unaccompanied children. I am honored to be here today with my esteemed colleagues on this panel.

Introduction

This month marks my 30-year anniversary as a career federal law enforcement official. I have served as a Special Agent investigating a wide variety of crimes, a supervisor of teams of agents, and later as the Special Agent in Charge of an HSI field office. In my current role, I serve as the Director of the Department of Homeland Security (DHS) Center for Countering Human Trafficking (CCHT), which is located within HSI.

The CCHT's mission is to advance counter human trafficking law enforcement operations, protect victims, and enhance prevention efforts by aligning DHS's capabilities and expertise. Essentially, we are building capacity across DHS and supporting HSI criminal investigations of human trafficking worldwide, whether sex trafficking or labor trafficking, including forced labor in the supply chain. We do this through training and providing multi-disciplinary operational and strategic guidance from subject matter experts throughout DHS. We greatly appreciate that Congress codified the CCHT just last year, recognizing the promise and the need driving the creation of a cross-cutting coordination center.

The CCHT celebrated its third anniversary five days ago on October 20th. In this brief time, we have supported more than 400 significant and large-scale criminal human trafficking investigations with technical assistance, enhanced intelligence, and funding. The CCHT is equipped and positioned to support investigations that are sophisticated, complex, or novel, including traffickers who use opioids to control victims, exploit temporary worker visas or unaccompanied children, or conduct their illicit activities using social media.

The scope of my testimony today is related to criminal human trafficking investigations once an agency of first contact for unaccompanied children notifies HSI. The two primary agencies of first contact that provide referrals are U.S. Customs and Border Protection (CBP) and the U.S. Department of Health and Human Services (HHS). While HSI executes a robust and comprehensive response to human smuggling, my remarks are focused on today's hearing topic, the exploitation of unaccompanied children after their arrival in the United States.

Please note that I use the term "victim" throughout as a defined law enforcement term given the scope of my testimony. However, I personally recognize—as does HSI—that victims transition to become survivors and persons with lived experience. We see it every day.

HSI's Counter Human Trafficking Mission

Human trafficking impacts national security, public safety, public health, and the U.S. economy, with human traffickers inflicting lasting and devastating physical, psychological, and financial harm on victims. HSI conducts approximately 1,000 human trafficking investigations annually;

identifies and assists hundreds of victims; and performs extensive outreach and trainings about human trafficking to law enforcement, nongovernmental organizations (NGOs), and the public. HSI informs noncitizen victims about the resources and immigration options available to them, such as Continued Presence, T visas and U visas.

With approximately 6,800 HSI special agents assigned to 237 U.S. cities and 93 offices in 56 countries, HSI has one of the largest international footprints in U.S. law enforcement. We have dedicated human trafficking investigative groups in each primary office across the United States. These agents participate in human trafficking task forces nationwide consisting of federal, state, and local law enforcement, as well as victim service providers, so that there is a cohesive approach to human trafficking within local areas of responsibility. The CCHT works to ensure all aspects of human trafficking investigations are fully pursued through the close coordination of all HSI Divisions.

HSI also employs specialized victim assistance personnel to assist with all victim-based HSI investigations, including human trafficking, child sexual exploitation, human rights violations, financial crimes, and identity and benefit fraud. These personnel–including forensic interviewers and victim assistance specialists–support victims using age and developmentally appropriate interviews and comprehensive referrals to social services.

The mission of HSI's human trafficking investigations is two-fold. First, to proactively identify, disrupt, and dismantle domestic and transnational human trafficking organizations and minimize the risk they pose to national security and public safety. Second, to employ a victim-centered approach, whereby equal value is placed on the identification and stabilization of victims and the investigation and prosecution of traffickers. Over the past five years, HSI assisted more than 3,000 victims and arrested more than 8,000 subjects in connection with investigations involving human trafficking. These actions have led to more than 2,500 convictions for local, state, and federal violations. These are the most difficult, time-consuming, and heart-breaking cases that our personnel pursue, and I am grateful every day for their dedication and unwavering faith in justice.

Human Trafficking Versus Human Smuggling: Distinct Crimes

The terms 'human trafficking' and 'human smuggling' are often used interchangeably; however, they are distinct crimes. Human trafficking is the crime of compelling another person into labor or commercial sex through force, fraud, or coercion, or inducing a minor under the age of 18 into commercial sex. It is an exploitation-based crime against a person that does not need to involve travel or border crossings but can. Global estimates indicate that human traffickers victimize a staggering 27.6 million people worldwide, with an estimated 77 percent in forced labor and 23 percent in sex trafficking. Children represent 27 percent of forced labor and 8 percent of sex trafficking worldwide, though victims can be any age, race, gender, nationality, or immigration status..[1] HSI investigations show that traffickers operate within agriculture, landscaping, construction, hospitality, manufacturing, in private homes with nannies and domestic workers, restaurants, elder care, massage parlors – essentially, in jobs with low pay and few legal

[1] International Labour Organization, Walk Free, and International Organization for Migration, *Global Estimates of Modern Day Slavery: Forced Labour and Forced Marriage*, Geneva 2022.

protections, in the underground economy, and in the service industry.

By contrast, human smugglers engage in the crime of bringing people into the United States, or unlawfully transporting and harboring people already in the United States, in deliberate evasion of immigration law. Human smuggling is inherently travel-based and requires a border crossing. It may involve elements of violence such as hostage taking, kidnapping, extortion, physical assault, and sexual assault, however these aggravating factors and additional crimes do not constitute human trafficking, absent exploitation of another person for labor, services, or commercial sex.

Human smuggling can leave smuggled migrants at risk of human trafficking, either by persons associated with their smugglers, or by others they may later encounter. Human trafficking occurs when prohibited means of force, fraud, or coercion are used to compel labor, services, or commercial sex, or when a minor is exploited for commercial sex. HSI special agents, through experience, have learned that it is highly unlikely that an individual knows during their smuggling that they are destined for either forced labor or sex trafficking once they reach their destination in the United States.

HSI conducts extensive local community outreach to places where victims may turn to for help – organizations that advocate for worker rights, assist crime victims, or are faith-based to name a few. HSI relies on referrals from partnering federal, state, and local agencies which can include criminal law enforcement as well as civil law enforcement such as labor inspectors, health and safety inspectors, and fair housing and workplace investigators. Only once HSI starts a trafficking investigation, do we learn about the deception, debts, threats, and other coercive means used to exploit the victims for forced labor or sex trafficking, and whether an individual may also have been smuggled. Only then can we seek justice against the traffickers, who may or may not be associated with the smugglers who unlawfully and perhaps dangerously brought the individual into the country.

Human Trafficking Versus Child Sexual Abuse Material

HSI personnel around the world work tirelessly to protect children from exploitation by predators who are involved in the production, distribution, or possession of child sexual abuse material or who travel internationally to engage in illicit sexual conduct with minors. HSI employs the latest technology to collect evidence and track the activities of individuals and organized groups who sexually exploit children using the dark web, chat rooms, peer-to-peer networks, and other internet-based platforms.

These crimes may transition to human trafficking if a commercial sex act is introduced or filmed and distributed. From HSI's perspective, we are primarily identifying unaccompanied child victims in forced labor, not in child sexual abuse material.

Human Trafficking Versus Labor Exploitation

HSI has authorities to investigate forced labor. Therefore, when appropriate, HSI makes referrals to the U.S. Department of Labor (DOL) for violations of labor laws that do not rise to the level

of human trafficking under federal criminal statutes. HSI routinely works with DOL, most often through human trafficking task forces comprised of federal, state, and local law enforcement and victim service providers. Within these task forces, law enforcement entities can jointly work cases and refer cases to one another.

Referrals to HSI for Criminal Investigation Involving Potential Unaccompanied Child Victims

HSI is not an agency of first contact for unaccompanied children. HSI may receive referrals regarding unaccompanied child victims as we do for any other human trafficking case. These referrals may come from CBP and HHS, but generally come from human trafficking task forces, trusted NGOs, community-based partners locally, the National Human Trafficking Hotline, or anyone who has called the HSI hotline in response to the DHS Blue Campaign's national public awareness.

One of those first contact agencies is CBP, which refers all instances where human trafficking is suspected to HSI. In Fiscal Year (FY) 2022, HSI initiated 24 human trafficking investigations originating from CBP information. This referral process is generally conducted at the local level whereby the CBP sector, port of entry, or field office coordinates with the HSI field office. CBP does not contact the CCHT. It is more common that CBP transfers the child to HHS custody, then HHS identifies potential human trafficking through its extensive screening, and then notifies a local HSI office.

HHS is another first contact agency. HSI and HHS coordinate in two ways regarding unaccompanied noncitizen children who may be human trafficking victims. First, if HHS suspects potential criminal activity involving an unaccompanied noncitizen child, they contact the nearest HSI office. Provided HSI has jurisdiction, we will investigate.

Second, per the Trafficking Victims Protection Reauthorization Act of 2008, HHS is required to consult the U.S. Department of Justice (DOJ), DHS, and NGOs before they provide an unaccompanied child identified as a trafficking victim with federal benefits entitled as "interim relief." The HHS Office on Trafficking in Persons and the CCHT have an established process for these consultations. If there is a nexus to the United States and the child is willing to be interviewed, the CCHT forwards the summary information to a local HSI office for investigation. However, most consultations are related to claims of trafficking in the child's country of origin, not in the United States, and therefore HSI has no jurisdiction to investigate. In the last year, HSI provided hundreds of consultations and did not find federal criminal jurisdiction warranting a referral for investigations in any of the consultations.

HSI remains available to anyone and any agency that wants to report human trafficking.

HSI Criminal Investigations & Initiatives

From its criminal investigations, HSI sees that traffickers use the same tactics against unaccompanied children as they do for any other victim. They make false promises of school and good jobs to earn money to send home to family. They force them into long hours of work for

little or no pay. They make victims work in conditions that are often poor, dangerous, or inhumane. They threaten victims with arrest, deportation, physical harm, and/or harm to family in their home country. They create or build upon debt so that their work becomes never-ending. This is why the CCHT and HSI invest so much into seeking justice for the victims we encounter. In FY 2022, HSI assisted 765 human trafficking victims: 459 adults and 306 children.

Over the last three fiscal years, HSI has opened more than 3,000 investigations into human trafficking and related federal, state, or local violations. Statistically, there are fewer labor trafficking than sex trafficking investigations because labor trafficking can be especially difficult to detect, investigate, and prosecute. This is for several reasons, including isolation of the victims, limited sources of corroborating evidence, and challenges in earning the trust of victims to elicit their statements. As a result, HSI fully supports the National Action Plan to Combat Human Trafficking that calls for an increased focus on forced labor and, over the next year, the CCHT is establishing an entire unit of 15 personnel dedicated to supporting forced labor investigations.

The CCHT is also part of an interagency Forced Labor Initiative with the goal to increase federal prosecutions of criminal forced labor violations. Under this initiative, the CCHT coordinates with DOJ's Human Trafficking Prosecution Unit, the Federal Bureau of Investigation, the Executive Office for United States Attorneys, the Department of State's Bureau of Diplomatic Security, and DOL's Office of Inspector General, Occupational Safety and Health Administration, and Wage and Hour Division. Members meet monthly to identify significant investigations to support through specialized expertise and strategic guidance. The initiative has a substantial focus on forced child labor and, for example, has been analyzing reports, complaints, and other indicators of potential trafficking of unaccompanied children to initiate and advance federal investigations. The initiative has yielded U.S. Attorney's Offices' support for specific HSI investigations, for which we are grateful.

Victim-Centered Approach

HSI is first and foremost about the people it is here to protect and serve, therefore, identifying and assisting victims is paramount. The CCHT includes the words "Victims First" in its logo as a reminder of why we do this work.

At HSI, a victim-centered investigation and prosecution means focusing the investigation and prosecution around the victim while minimizing any undue stress, harm, and trauma to the victim. Using this approach prioritizes victims' rights, safety, and interests. It is key to successful trafficking investigations.

Being victim-centered is a responsibility of all personnel in accordance with federal law, including the Victims' Rights and Restitution Act, 34 U.S.C. § 20141, and the Crime Victims' Rights Act, 18 U.S.C. § 3771. Special agents conducting trafficking investigations receive specific training on victims' needs and trauma so that they can best work with them. HSI forensic interview specialists conduct fact finding interviews that are designed to elicit accurate and complete information in an investigation and are developmentally appropriate for children. HSI

Victim Assistance Program Specialists make sure that victims receive referrals for any services they may need in the aftermath of the crime. Such referrals are based on the unique needs of the victim and can be comprehensive to include case management, shelter, clothing, food, medical and mental health care, legal assistance, immigration assistance, employment placement, and education. We offer age-appropriate services to children and referrals for community-based services to parents and guardians. HSI immediately refers unaccompanied children to HHS to take custody and to provide assistance through its programs.

Challenges

Our Victim Assistance Program serves to provide the necessary and legally mandated victim services that help to ensure victims are put on a path to recovery. Currently we do not have enough victim assistance specialists for every office participating in a human trafficking or child exploitation task force, where there is a consistent demand for services. This puts an undue burden on our special agents who must take on that role while also conducting their criminal investigations.

Just as victim assistance is so very important, HSI personnel hear victim accounts and seek evidence about the worst of humanity, and they carry that with them the rest of their lives. They need professional and peer support to maintain their mental health. HSI needs a permanent peer and clinician support program that addresses the secondary trauma HSI personnel experience from working human trafficking cases.

Additionally, I bring your attention to an Office of Management and Budget-approved DHS legislative proposal transmitted to this Congress regarding statutory improvements for Continued Presence (CP). The proposal would bring much needed clarifications and reduce barriers to ultimately ensure that the currently underutilized CP is fully available, accessible, and used. These improvements would likely increase the number of noncitizen victims who receive CP and greatly aid them in their recovery. Simultaneously, it would strengthen human trafficking investigations at the federal, state, and local level because more noncitizen victims would achieve greater stability that would allow them to better cooperate with law enforcement.

Conclusion

HSI is committed to using every authority and resource available to make federal criminal arrests of human traffickers and to identify and assist the victims. We remain available for reports, referrals and tips of human trafficking from our federal interagency partners here today; other federal, state, local, tribal, and territorial law enforcement; and victim service providers and NGOs. We will continue to focus on increasing forced labor investigations, including forced child labor investigations, through strong existing partnerships.

Thank you again for the opportunity to appear before you today and for your continued support of HSI and its law enforcement mission. I look forward to your questions.

Senator Lindsey O. Graham
Questions for the Record
"Ensuring the Safety and Well-Being of Unaccompanied Children, Part II"
October 25, 2023

Questions for Cardell Morant, Director, Center for Combatting Human Trafficking, Homeland Security Investigations

1. What is the procedure followed by HSI when, during an initial encounter at the border, an unaccompanied alien child is identified as being trafficked?
   a. How does HSI coordinate with CBP and HHS to place UAC into care while still conducting a criminal investigation?

Response: U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) is generally not an agency of first contact at the border; first contact is typically by U.S. Customs and Border Protection (CBP). HSI does respond and initiate an investigation if it receives information through the processing of unaccompanied children (UAC) by CBP and it is determined there is evidence of human trafficking or another crime within the HSI purview. When encountering a potential human trafficking victim, HSI will immediately remove a UAC from any dangerous situation. HSI special agents are responsible for notifying the HSI Victim Assistance Program Specialist and Forensic Interview Specialist when a UAC has been identified as a victim in an HSI investigation for the coordination of victim assistance and, when appropriate, conduct a forensic interview. In the rare situations where HSI is the agency of first contact, HSI will facilitate notification to the U.S. Department of Health and Human Services (HHS) no later than 24 hours after HSI discovers that a UAC may be a victim of trafficking. If the UAC was already released by HHS to a sponsor, HSI notifies child protective services.

2. Are HSI, DOL, and HHS collaborating on civil and criminal investigations into the mistreatment of UAC?

Response: Yes. First, HSI participates on nearly 100 task forces comprised of federal, state, local, tribal, and territorial law enforcement along with victim service providers. Task forces can make case referrals to the appropriate civil or criminal agencies. For example, task force members, including HSI, can make a referral to the U.S. Department of Labor (DOL) Wage and Hour Division in the event they encounter workers that are not being paid or are being employed in violation of federal child labor laws. In turn, DOL can also refer matters to HSI when it identifies indicators of human trafficking in its investigations. HSI also collaborates on criminal matters with the DOL Office of Inspector General (OIG) and HHS OIG when appropriate. Second, the U.S. Department of Homeland Security's (DHS) Center for Countering Human Trafficking (CCHT) is part of a federal interagency forced-labor initiative whose goal is to increase federal prosecutions. Under this initiative, the CCHT coordinates with the U.S. Department of Justice (DOJ) Human Trafficking Prosecution Unit, the Federal Bureau of Investigation (FBI), the Executive Office for United States Attorneys, DOL OIG, the DOL Wage and Hour Division, and HSI's Labor Exploitation Unit. Lastly, HSI participates in an interagency task force on child labor exploitation led by DOL. The focus of the task force is on child labor exploitation; however, HSI participation ensures that human trafficking is considered and appropriate coordination can occur should trafficking be identified.

3. How does HSI utilize T visas and U visas in its counter human trafficking mission?

Response: U.S. Citizenship and Immigration Services (USCIS) has authority over the issuance of both T nonimmigrant status (T visas) and U nonimmigrant status (U visas). Law enforcement and other government certifying agencies, including HSI, have discretion over whether to sign supplemental law enforcement forms: a Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons for a T visa applicant, or a Form I-918, Supplement B, U Nonimmigrant Status Certification for a U visa petitioner. HSI considers signing these forms as part of a victim-centered approach when the victim applying for a T visa or U visa has assisted in an HSI investigation.

a. How many T and U visas did HSI submit for UAC trafficking victims annually beginning in FY 2019?
b. How many UAC trafficking victims are referred to HSI from DOL and HHS annually?

Response: HSI does not submit T or U visa applications/petitions, or issue T or U visas. USCIS has sole jurisdiction to approve applications for T-1 nonimmigrant status and petitions for U nonimmigrant status and such applications/petitions are submitted to USCIS by the victim directly. HSI does not track the number of Forms I-914, Supplement B, or Forms I-918, Supplement B, it signs for victims, nor does it track the number of investigations by referral source.

4. How many UAC trafficking victims were transferred back to ORR custody after being encountered by HSI during an investigation?

Response: If an HSI special agent identifies a UAC as a trafficking victim, HSI notifies the Enforcement Removal Operations Field Office Juvenile Coordinator (FOJC). While coordination with the FOJC occurs, the HSI special agent contacts an HSI Victim Assistance Program Specialist to address the immediate needs of the child. The FOJC makes the referral to HHS for the unaccompanied child to be placed with the Office of Refugee Resettlement (ORR) in accordance with the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) and the Homeland Security Act of 2002 (HSA).

a. How many of those UAC were encountered again by HSI as being involved in further trafficking?

Response: HSI has no recorded instances of a UAC being trafficked, returned to ORR custody, and then re-trafficked.

5. Has HSI identified any UAC where follow up communications with HHS had lapsed in any of its human trafficking investigations?

Response: HSI is not aware of any such instance.

6. Beginning in FY 2019, how many times has HSI annually encountered a situation in which a UC was trafficked either by their HHS vetted sponsor or by an adult resident of the sponsor's home during the course of trafficking investigations?

Response: HSI does not track the requested data.

Questions for the Record from Senator Charles Grassley
U.S. Senate Committee on the Judiciary
"Ensuring the Safety and Well-Being of Unaccompanied Children, Part II"
October 25, 2023

Questions for Director Cardell Morant:

(1) The *New York Times* reported in February 2023, over the last two years, U.S. Department of Health and Human Services could not reach more than 85,000 children it placed with sponsors. How many of these 85,000 missing children has Homeland Security Investigations and its law enforcement partners been able to track down?

(2) Do I have your and your office's commitment that Homeland Security Investigations will investigate information and leads it receives regarding these missing children and will work to find these missing children?

Response: HSI respectfully defers to HHS to dispute the information reported by the New York Times. HSI will continue to work with our federal law enforcement partners in the Forced Labor Initiative, which places a heavy emphasis on forced child labor, to increase proactive investigations and prosecutions and to assist victims. Under this initiative, HSI coordinates with the DOJ Human Trafficking Prosecution Unit, the FBI, the Executive Office for United States Attorneys, the DOL OIG and Wage and Hour Division, and the HSI Labor Exploitation Unit.

(1) In 2014, President Obama requested Congress close the loophole that treats children from contiguous countries differently from those from non-contiguous countries. Closing this loophole would allow unaccompanied children from all countries to be quickly returned home without having to find sponsors in the United States. It would also help stem the tide of migrant children from non-contiguous countries. Does the Biden administration and the Department of Homeland Security agree with President Obama that this loophole needs to be closed? If not, why not?

Response: The Department expresses no view on this legislative proposal. The Department regularly provides technical assistance to Congress on any legislative proposals that that would support the safe, orderly, and humane management of our borders.

SENATOR TED CRUZ

U.S. Senate Committee on the Judiciary

Questions for the Record for Cadell Morant, Acting Director for the Homeland Security Investigations Center for Countering Human Trafficking

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Has the Biden administration succeeded in safeguarding unaccompanied alien children that have been bought to America?

Response: The Biden Administration continues to manage our borders in a safe, secure, and humane way, leveraging expanded lawful pathways with enforcement consequences to keep migrants, including UACs, out of the hands of human traffickers. DHS works with its partners across the entire U.S. Government in close collaboration with HHS to safeguard UACs from human trafficking. The HSI-led CCHT is DHS's unified, cross-department coordination center for countering sex trafficking and forced labor, including the importation of goods produced with forced labor.

Typically, CBP is the first agency to encounter UACs at the border. DHS and HHS are involved in identifying UACs that are potential victims of human trafficking. In accordance with the TVPRA of 2008 and CBP policy, all UACs encountered by CBP are screened for indicators of human trafficking via CBP Form 93. This is an in-depth process that requires CBP Border Patrol Agents to visually screen all UACs and interview those capable of answering questions. Border Patrol Agents then make a determination, based on the visual indicators and interviews, regarding whether any UACs are potential victims of human trafficking. When Border Patrol Agents identify a UAC as a potential victim of human trafficking, the case is referred to HSI, the principal investigative arm of DHS.

Pursuant to the HSA and TVPRA of 2008,[1] DHS is responsible for transferring UACs into the care and custody of HHS ORR within 72 hours of UAC determination.[2] The UAC sponsor vetting process is conducted by ORR, and per the HSA, ORR is responsible for releasing UACs to a sponsoring adult. DHS defers to ORR and the HHS Office on Trafficking in Persons to provide additional information in response to your question.

As the investigative arm for DHS, HSI is responsible for investigating allegations of human trafficking. HSI Special Agents may be called upon during CBP processing, HHS sponsor placement proceedings, or after UAC relocation depending on the circumstances of when the suspected trafficking activity first occurs, is identified, and reported. In addition, HSI actively recruits local, state, and other federal agencies to participate in the HSI Task Force Officer (TFO) Program. HSI has a vast number of TFOs all throughout the country that aid in the identification and investigation of human trafficking activity.

In Fiscal Year 2023, HSI efforts to counter human trafficking resulted in the initiation of nearly 1,300 investigations and more than 2,600 arrests, 1,000 indictments, and 500 convictions. Once UACs are released to sponsors, HSI investigates a case if there is an allegation of human trafficking with a U.S. nexus and actively participates in task forces and interagency initiatives to ensure the safeguarding of UACs present in the United States.

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[1] The HSA of 2002 transferred the authority to care for UACs who are in federal custody by reason of their immigration status to ORR. Consistent with the HSA, the TVPRA further specified responsibility for HHS with respect to the care and custody of UACs.

[2] In certain situations where the TVPRA permits a UAC from a contiguous country to voluntarily return to their country of origin, U.S. Border Patrol coordinates their return with a consular officer from that country.

2. In 2021, Teresa Ulloa Ziaurriz, the Director of the Latin American branch of the Coalition Against Trafficking International estimated that "sixty percent of Latin American children who set to cross the border alone or with smugglers have been caught by the cartels and are being abused in child pornography or for drug trafficking." Do you have any reason to challenge Ms. Ziaurriz's conclusion?

Response: The HSI Human Smuggling Unit cannot verify estimates for the percentage of migrants who are exploited by cartels. Smuggled migrants are often subjected to dangerous and exploitative conditions, such as being crowded into unventilated trucks/trailers, boats, or stash houses for long periods without food, water, or access to sanitation facilities. Smuggled migrants are also at risk of violence, extortion, and other forms of abuse by smugglers or criminal groups. HSI works to identify, disrupt, and dismantle the transnational criminal organizations that take advantage of vulnerable migrants, especially children.

3. During your tenure as Acting Director, how many investigations has HSI conducted in connection with forced alien child labor?

   a. For involuntary servitude under 18 U.S.C. § 1584?

Response: Over the last three fiscal years HSI opened over 3,700 human trafficking investigations; however, the HSI system of record does not track forced noncitizen child labor as a standalone metric. The primary statutes under which HSI investigates forced child labor is 18 U.S.C. § 1589, Forced Labor, and 18 U.S.C. § 1584, Involuntary Servitude, which was heavily in use prior to the creation of the forced labor statute under the Trafficking Victims Protection Act.

4. It is obvious that the administration's response to child labor exploitation is to go after the businesses who employ these children. However, why is it that we do not hear about any prosecutions against the criminals or gangs who are forcing these children into forced labor?

Response: HSI employs every available administrative, civil, and criminal enforcement authority to hold human traffickers accountable. Beyond human trafficking, HSI also conducts federal criminal investigations into drug trafficking, gang activity, and child sexual exploitation, among other federal crimes. In labor trafficking cases, agents investigate whether victims were made to work through force, fraud, or coercion for the purpose of subjecting them to involuntary servitude, peonage, debt bondage, or slavery, and often rely heavily on victim statements to fully identify those responsible. For example, a recent investigation involving a commercial laundry facility that engaged in labor trafficking, to include child forced labor, led to the conviction of four defendants and identification of nine victims, including two minors.[3] Another recent investigation into a transnational criminal organization and agricultural business committing labor trafficking and visa fraud led to the seizure of more than $8 million in assets, 20 indicted defendants, and the identification of 230 human trafficking victims.[4]

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[3] https://www.ice.gov/news/releases/hsi-norfolk-investigation-results-indictments-4-connection-labor-trafficking-forcedlf

[4] https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment

5. How many requests has HSI received from HHS to look into potential instances of trafficking (of all kinds—sexual, labor, or otherwise) involving children it placed with sponsors?

Response: Data is not collected by the HSI case management system to provide a response to the question on HHS referrals to HSI.

6. During your tenure, how many investigations did your agents present for federal prosecution involving unaccompanied alien children?

   a. How many were successfully prosecuted?

Response: Over the last three fiscal years, HSI opened over 3,700 human trafficking investigations resulting in over 8,600 arrests and nearly 1,500 convictions. HSI's system of record does not track the number of cases involving UACs that were presented for federal prosecution.

Senator Hirono Questions for the Record for the October 25, 2023 Hearing in the Senate Judiciary Committee Hearing Entitled "Ensuring the Safety and Well-Being of Unaccompanied Children, Part II."

QUESTIONS FOR DIRECTOR MORANT

Difficulty in Holding Traffickers Accountable

You state in your testimony that labor trafficking cases are especially difficult to detect, investigate, and prosecute. As a result, while 77% of human trafficking victims globally are victims of labor trafficking, HSI investigates fewer labor trafficking cases than sex trafficking.

QUESTIONS:

1. Please expand on the challenges you face in prosecuting labor trafficking cases and whether these challenges are unique to HSI investigations, unique to investigations brought by the federal government, unique to investigations brought in the United States and its territories, or are universal.

Response: The annual U.S. Department of State Trafficking in Persons Report[5] includes country narratives detailing, among other things, the challenges law enforcement face with investigating and prosecuting labor trafficking. These challenges are not unique to HSI: may impact any investigation into labor trafficking, whether that is brought by a federal government law enforcement agency or other authority, and whether such investigation is brought inside or outside the U.S. The State Department report observes that:

- Labor trafficking is more difficult to detect because it is generally "hidden in plain sight" and can occur within legitimate workplaces with no signs of illegality. When one sees a laborer, one cannot see debt bondage, the individual's low to nonexistent paycheck, or the threats they have endured. These are just a few of the invisible indicators of forced labor.
- The criminal justice system is far more experienced in dealing with sex trafficking than labor violations and exploitation, so it takes new and novel community partnerships to address labor trafficking.

2. What programs or procedures have you implemented to address the disparity between labor trafficking investigations and sex trafficking investigations?

Response: Because of the known challenges with labor trafficking, HSI and its federal interagency partners across the U.S. Government are proactively implementing several strategies to increase the number of successful forced labor investigations and prosecutions. The topic is addressed in both The National Action Plan to Combat Human Trafficking (December 2021);[6] the DHS Strategy to Combat Human Trafficking, the Importation of Goods

[5] https://www.state.gov/reports/2023-trafficking-in-persons-report/
[6] https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf

Produced with Forced Labor, and Child Sexual Exploitation (January 2020),[7] and the DHS Quadrennial Homeland Security Review (June 2023).[8]

Secretary Mayorkas announced forced labor training as a priority and, as a result, the DHS CCHT has been working diligently to produce a comprehensive series of training modules that aid investigators in identifying appropriate partnerships, what data to use to target local efforts, investigatory techniques and common evidence gathering, and how to use a victim-centered approach. The CCHT stood up a Forced Labor Unit this year and have experienced staff dedicated to supporting forced labor investigations with a separate unit that supports sex trafficking investigations. The Forced Labor Unit works collaboratively with the training section to produce quality instruction to HSI special agents. The CCHT is part of a federal interagency Forced Labor Initiative whose goal is to increase federal prosecutions. Under this initiative, the CCHT coordinates with DOJ's Human Trafficking Prosecution Unit, the FBI, the Executive Office for United States Attorneys, the DOL OIG, the DOL Wage and Hour Division, and the HSI Labor Exploitation Unit. HSI and HHS also participate in a DOL-led labor exploitation task force. The focus of the task force, as the name indicates, is on labor exploitation; however, HSI participation ensures that human trafficking is considered, and appropriate coordination can occur should any type of trafficking be identified.

What additional authorities or funding would most help HSI hold labor traffickers accountable?

Response: On February 9, 2023**,** DHS transmitted to Senate and House leadership an Office of Management and Budget cleared legislative proposal to Congress to amend the Continued Presence (CP) statute at 22 U.S.C. § 7105(c)(3). CP is a law enforcement tool used in a victim-centered investigation that enables certain individuals to remain in the country for a period of up to two years, with extensions available, to assist a human trafficking related investigation or federal civil action; however, it is underutilized by law enforcement nationwide. Some key updates to the statute would clarify who may apply and broaden the scope of outreach and awareness responsibilities among federal agencies. When noncitizen victims have CP, they are relieved of the fear of removal and have a source of economic support. This, in turn, makes them more comfortable and able to assist law enforcement with an investigation, and would therefore assist all law enforcement who are investigating any form of trafficking, including labor trafficking.

Additionally, listed below are the immediate funding needs:

- CCHT Authorized Funding: The Countering Human Trafficking Act of 2021, Pub. L. No. 117-322 (Dec. 27, 2022) authorized $14 million to carry out the Act to remain available until expended. This money has yet to be appropriated to the CCHT and is critical to be able to carry out the provisions of the Act.
    - CCHT Facility Expansion: $5 million of this funding would be used to build out a space sufficient for the coordination of efforts to counter human trafficking and forced labor, including tenant improvement efforts, furniture, and necessary technology upgrades. Fiscal Year (FY) 2022 and FY 2023 appropriations provided funding to significantly increase CCHT staff, but no funding was allocated to increase facility space. The current CCHT facility has exceeded capacity and does

[7] https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf
[8] https://www.dhs.gov/publication/2023-quadrennial-homeland-security-review-qhsr

not factor in FY 2022 and FY 2023 enhancement positions, the pending increase in DHS liaison personnel, or CCHT mission requirements to host partner and stakeholder engagements. The current space is sufficient only to house the HSI personnel, contractors, and a limited number of DHS partners that were initially assigned to the CCHT in 2020, along with their related files, supplies, and equipment. Since the founding of the CCHT, the number of permanent employees assigned to the CCHT has increased from 23 to 80, representing an increase of nearly 250 percent. Notably, this only includes permanent personnel and does not include the CCHT's DHS Component detailees/liaisons or contract support personnel which is also projected to increase under the current enhancement plan. The total seating requirement and planning factor for a fully staffed and resourced CCHT is 100. No previous funding has been appropriated to perform the necessary facility expansion needed to accommodate the substantial increase in personnel.

  - Other Initiatives Required by the Act: The CCHT would also use this funding to enhance its training efforts by conducting a DHS-wide analysis to identify gaps in human trafficking-related training and propose ways to address those gaps; updating the learning management system-based trainings offered across DHS that train employees to recognize and report human trafficking; and to execute a monthly virtual speaker/presentation series, an annual DHS Seminar during Human Trafficking Prevention Month, and in-person HSI Advanced Investigations Training. Moreover, in collaboration with the DHS Science and Technology Directorate, the CCHT aims to modify systems throughout DHS to accelerate lead development, advance the identification of human trafficking characteristics and trends, apply analytics to automate manual processes, and provide artificial intelligence to enhance data availability, reliability, comparability, and verifiability. The funding would support this modernization initiative and provide contract support and technology experts to conduct DHS-wide needs assessments and automate systems and processes.

- DHS Blue Campaign: The DHS Blue Campaign (BC), a national public awareness campaign to educate the public on indicators of human trafficking, was transferred to the CCHT pursuant to the Countering Human Trafficking Act of 2021, which was signed into law on December 28, 2022. Historically, Congress directed DHS to sustain the BC at no less than its total FY 2021 levels of $5.6 million, to include Component contributions of no less than $3.0 million. Over the years, DHS Component contribution amounts have varied. The BC received approximately $5.0 million in contributions on average from FY 2019 through FY 2021 and over $11.0 million in contributions in FY 2022. With the transfer of BC to the CCHT, HSI does not have the authority to collect DHS Component contributions, leaving a significant annual budget deficit for the program of at least $3.1 million as only $2.5 million will come to the CCHT annually for the program.
- Uyghur Forced Labor Prevention Act Support: The Uyghur Forced Labor Prevention Act (UFLPA), Pub. L. No. 117-78 (December 23, 2021) presumes all goods mined, produced, or manufactured wholly, or in part, in the Xinjiang Autonomous Region (XUAR) to be produced by forced labor. Due to the UFLPA, CBP anticipates a substantial increase of inspections of over 11.5 million shipments at points of entry (POEs) and subsequent transactions. HSI is the primary investigative agency responsible for responding to and investigating crimes occurring at POEs. $5.6 million in additional funding would enable HSI to establish a dedicated UFLPA investigative team focused on crimes of forced labor

emanating from the XUAR, to include the hiring of 10 additional special agents to be assigned to the CCHT, eight HSI special agents to be assigned to HSI Global Trade Investigations, and two HSI special agents to be assigned overseas.

3. What are some of the challenges HSI faces with immigrant communities that may be fearful of DHS or ICE?

Response: HSI special agents recognize the fear that any human trafficking victim, citizen or noncitizen, may face when reaching out to law enforcement. Traffickers often manipulate victims and instill fears of law enforcement or immigration enforcement. That is one of the reasons HSI continues to implement a victim-centered approach.

How has HSI tried to mitigate or address those challenges to ensure that victims of trafficking receive justice regardless of immigration status?

Response: As listed below, HSI does several different things to help overcome or at least mitigate fears:

- HSI conducts extensive local community outreach to places where victims may turn to for help—such as organizations that advocate for workers' rights, assist crime victims and/or children, or are faith-based. Through strong partnerships with non-governmental organizations (NGOs), HSI builds trusted relationships that make victims feel more comfortable working with us.
- Using a victim-centered, trauma-informed, and culturally sensitive approach, and treating victims with dignity and respect, HSI Victim Assistance Program (VAP) personnel provide services and rights to victims and conduct forensic interviews of victims and witnesses in support of HSI criminal investigations. Fundamental to the VAP mission is assisting victims and restoring their well-being, both of which contribute to a victim's ability to become an effective witness and participate in the criminal justice process. HSI's obligations extend to U.S. citizens and noncitizens who are identified as crime victims in HSI investigations.
- HSI requests CP as appropriate on behalf of victims assisting HSI investigations. With this law enforcement tool, a victim is protected from removal for two years with extensions available. They can also lawfully work and receive social services. It is a great example of using a victim-centered approach.

HSI also signs T visa law enforcement declarations (Form I-914, Supplement B) and U visa law enforcement certifications (Form I-918, Supplement B), as appropriate, if the individual is indeed a victim of a severe form of trafficking in persons or trafficking and other related crimes more generally and has assisted in an HSI investigation. The information on these supplemental forms provides USCIS with additional helpful information regarding the steps that law enforcement has taken and to what extent the victim provided assistance. The victim is then responsible for sending the supplemental law enforcement form to USCIS along with their T visa or U visa application, and USCIS determines their eligibility for T or U nonimmigrant status. When HSI reliably uses CP and signs T visa law enforcement declarations and U visa law enforcement certifications, HSI Special Agents become trusted partners to the NGOs working with noncitizen trafficking victims. NGOs can then pass along their assurances to victims that HSI will use a victim-centered approach to support them.

STATEMENT OF
SEEMA NANDA
SOLICITOR OF LABOR
OFFICE OF THE SOLICITOR
U.S. DEPARTMENT OF LABOR

BEFORE THE

COMMITTEE ON THE JUDICIARY
U.S. SENATE

October 25, 2023

Introduction

Chairman Durbin, Ranking Member Graham, and members of the Committee, thank you for the opportunity to testify today.

As you know, the Department of Labor is responsible for enforcing the nation's fundamental federal worker protection laws, including child labor laws. Many people believe exploitative child labor is a thing of the past, a hundred-year-old problem. But we know, unfortunately, that it is still very much a problem today.

Eighty-five years ago, Congress passed the Fair Labor Standards Act (FLSA), which included child labor provisions. Congress enacted these essential provisions to protect children in our industrialized economy and promote positive work experiences for young people by ensuring that when young people work, the work is safe, is age-appropriate, and does not jeopardize their health, well-being, or education.

While our economy has changed, the importance and relevance of these foundational principles remains.

As the challenge of child labor exploitation – including of migrant children – increases nationwide, the Department of Labor has taken significant actions to investigate child labor violations and hold companies accountable. The Department's Wage and Hour Division and the Office of the Solicitor are working collaboratively every day to leverage all available enforcement tools to protect children from exploitative labor and to hold employers accountable.

Importantly, the Department enforces all provisions of the FLSA without regard to immigration status; the law protects all young people from labor exploitation equally. While there remains much to do in the effort to root out child labor in this country, the Biden-Harris Administration and the Department of Labor are fully committed to using every lever at our disposal to stop the exploitation of young people in workplaces across the country. The Department, for example, is employing the "hot goods" provision of the FLSA, where appropriate, to stop the movement of goods made with child labor, seeking injunctions when necessary to immediately stop exploitative practices, taking prompt legal action when we discover that an employer is retaliating against employees for asserting their rights or cooperating with the Department, and identifying ways to ensure compliance up and down supply chains. We are equally committed to working with our federal partners, through the Department-led Interagency Task Force to Combat Child Labor Exploitation and beyond, to apply a whole-of-government approach to enhance federal efforts to protect children from exploitation and harm.

The Department of Labor's Enforcement of Child Labor Laws

The FLSA prohibits the employment of children under the age of 18 in non-agricultural occupations deemed hazardous by the Secretary of Labor, and it restricts the type of work and hours of work that children under the age of 16 may perform in both agricultural and non-agricultural occupations. In FY 2023, the Department of Labor saw an 88 percent increase since FY 2019 in the number of children it has found employed illegally by businesses across the United States. The Department has worked to meet the challenge with robust enforcement actions.

The Wage and Hour Division of the Department investigates every child labor complaint, tip, and referral, and it ensures compliance with child labor protections in all of its FLSA investigations, including cases in which the complaint cites only wage violations. In Fiscal Year 2023 alone, the Department found 955 companies that it investigated had employed nearly 5,800 children in violation of labor laws. We also found 502 children employed in hazardous jobs last year, and the Department assessed more than $8 million in civil money penalties against employers who employed children in violation of the law. Today, the Department has more than 800 open child labor cases nationwide while it continues to field complaints and initiate investigations to protect children across the country.

The Office of the Solicitor (SOL) works hand-in-hand with the Wage and Hour Division to enforce federal child labor laws, and SOL is using every resource at our disposal to root out exploitative child labor in our country. SOL attorneys are responsible for obtaining warrants; supporting and defending the Wage and Hour Division's civil money penalty assessments; furthering the Wage and Hour Division's enforcement of the FLSA's "hot goods" provision by seeking a court order when necessary to stop the shipment of goods produced in violation of child labor laws in commerce; filing motions for temporary restraining orders or preliminary injunctions; and more. SOL also plays a lead role in crafting settlement terms that hold employers accountable and aim to improve compliance with child labor laws by companies up and down supply chains. When cases cannot be resolved at the investigation stage, SOL is the sole agency responsible for litigating these cases. In recent years, SOL has brought landmark cases to seek the immediate cessation of illegal child labor and require employers to institute enhanced policies and procedures to ensure compliance with child labor laws up and down supply chains.

In September 2022, the Department obtained a federal court order to stop SL Alabama LLC, an Alexander City, Alabama manufacturer of Hyundai and Kia auto parts, from illegally employing 13-, 14- and 15-year-old workers, and to prevent the company from shipping or delivering any goods produced in violation of federal child labor laws. The U.S. District Court for the Middle District of Alabama permanently enjoined SL Alabama LLC from violating the FLSA's child labor provisions and from shipping any goods produced within 30 days of a child labor violation.

Soon after, in November 2022, the Department filed an action in federal court seeking a nationwide temporary restraining order and injunction against Packers Sanitation Services Inc. LTD (PSSI)—one of the nation's leading providers of food safety sanitation—to stop the company from illegally employing dozens of minor-aged workers while the Department continued its investigation of the company's labor practices. By February 2023, the Department announced that PSSI was assessed $1.5 million in civil money penalties in this case, one of the largest child labor exploitation cases in our history, after finding more than 100 children—from 13 to 17 years of age—illegally employed in hazardous occupations and working overnight shifts at 13 meat processing facilities across eight states.

More recently, on July 6, 2023, a federal court in Minnesota entered a consent judgment that requires Monogram Food Solutions LLC, a national food manufacturing company that manufactures meat snacks, appetizers, sandwiches, and more, to comply with the federal child labor laws at all of its production facilities and warehouses nationwide, and to take significant steps to comply with these laws in the future. The Department found that the company employed at least two 16- and 17-year-old children to operate meat processing equipment in violation of federal child labor hazardous orders. Earlier this month, the Department also sought and obtained a temporary restraining order to stop the exploitation of child labor, illegal shipment of "hot goods," retaliation, overtime violations, and other violations of the FLSA against a poultry processor in California, after the employer refused to voluntarily stop shipping the "hot goods."

The Department of Labor's Education, Outreach, and Compliance Assistance

In addition to its enforcement actions, the Department provides education, outreach, and compliance assistance to ensure that children, families, communities, and employers fully understand federal child labor laws.

We strive to provide accessible, accurate materials to young people, parents, teachers, and community leaders to ensure that they understand their rights and responsibilities. The Wage and Hour Division's program called YouthRules! is shared throughout the country to highlight the ways in which children can be lawfully employed. Through the YouthRules! initiative, the Department and its partners promote positive and safe work experiences that help prepare young workers in the 21st century workforce through resources, videos, presentations, and community engagement. Since 2021, the Wage and Hour Division has conducted over 4,000 outreach and education events for employers and other stakeholders on child labor.

To assist employers in complying with child labor laws, the Department has worked directly with employers to help them ensure compliance in working conditions for young workers, including by developing a list of best practices and trainings for employers to help keep young workers safe. However, with the increased reliance on staffing agencies and subcontracting, businesses often claim that they are unaware of, or unable to control child labor violations at their worksites. Too frequently, this may mean child labor violations up and down the supply chain.

As the Department works to promote compliance assistance, it simultaneously acknowledges the importance of companies recognizing their moral and legal responsibility for combating the use of exploitative child labor by their subcontractors and vendors, and throughout their supply chains.

The Department of Labor's Interagency Collaboration

The Department of Labor also recognizes the need for a whole-of-government approach in combating unlawful child labor. Just ten days after the Department announced that PSSI was assessed and paid $1.5 million in civil money penalties in that historic case, the Department announced significant new efforts to combat exploitative child labor, in concert with new announcements from the Department of Health and Human Services (HHS). This included the initiation of a National Strategic Enforcement Initiative on Child Labor and the launch of an Interagency Task Force to Combat Child Labor Exploitation (the Task Force). These initiatives have led to important progress in our efforts to protect children and effectively enforce federal child labor laws. The Department of Labor is leading the Task Force, which furthers collaboration and improves information-sharing among federal agencies. The Task Force participants include the Departments of Agriculture, Commerce, Education, Health and Human Services, Homeland Security, Justice, and State, all of which are taking concrete steps to improve cross-training, outreach, education, and health outcomes of children who could be subject to illegal child labor.

As a part of these efforts, the Department of Labor and HHS signed a Memorandum of Agreement in March 2023, which formalized an ongoing partnership between the agencies and outlined procedures the agencies will follow as they work together to deepen information-sharing, coordination, cross-training of staff, and public education efforts. Leadership of the Wage and Hour Division and the HHS Administration for Children and Families (ACF) meet regularly to communicate and further refine their processes and partnership. This collaboration has also strengthened relationships between staff in the field.

Regarding information-sharing, the departments have established a formalized process for sharing aggregate data to further assist the Wage and Hour Division in identifying child labor trends and assist ACF in providing supportive services on an on-going basis. Further, if Department of Labor investigators identify indicators of human trafficking, they notify HHS

(through ACF's Office on Trafficking in Persons (OTIP), which is responsible for determining eligibility for benefits) within 24 hours. Regarding cross-training, the departments have successfully collaborated on cross-training initiatives for over 250 Wage and Hour Division managers and approximately 800 ACF staff, including more than 600 Office of Refugee Resettlement staff, related to the eradication of illegal child labor in a four-month period. Building on the success of these trainings, the departments are broadening their scope to provide trainings for other programs and HHS's national network, including homeless and runaway youth programs.

Since the launch of these enhanced efforts, the Department of Labor and the Task Force have also engaged with agencies across federal, state, and local governments, resulting in new collaborative initiatives to prevent and address illegal child labor, including cross-training to ensure that every agency has the necessary skills to identify and report possible incidences of child labor exploitation; updating and creating new materials to ensure partners, employers, and the general public are armed with the information needed to prevent child labor violations; and pursuing innovative partnerships and avenues to engage every facet of the federal government.

In addition, the Task Force has led to the development of several cross-agency initiatives, including:

- The Department of Labor partnering with the Department of Justice's Office of Victims of Crime to ensure that their grantee service providers for victims of crime have greater awareness about exploitative child labor, information on how to report suspected child labor violations, and resources to share with their clients and communities.
- The Department of Agriculture (USDA) issuing a letter to poultry processors representing approximately 70 percent of meat and poultry production by volume, requesting that all actors in the food supply chain take important precautionary steps to prevent or eliminate illegal child labor. These steps include determining whether illegal child labor is being used anywhere in their supply chain, incorporating stronger standards in supplier and vendor contracts, and adopting supplier standards that will better guard against the use of illegal child labor. In the months since, USDA has engaged in productive conversations with industry leaders about how they are working to ensure that their supply chains are free of illegal child labor. USDA is continuing to explore

enforcement mechanisms and considering aspects of regulatory infrastructure that support USDA's ability to strengthen compliance and provide the necessary attention and oversight.

- Leveraging the Department of Homeland Security's resources and relationships to amplify the Department of Labor's efforts to educate key stakeholders on federal labor law and efforts to combat child labor exploitation.
- The Department of Labor briefing, in coordination with the Department of State, ambassadors and embassy leadership from Colombia, El Salvador, Guatemala, Honduras, and Mexico on efforts to combat exploitative child labor in the United States, including of migrant children.
- Sharing resources with embassies and consulates to educate migrant communities about child labor laws under the FLSA.
- The Department of Labor providing training and resources to the Department of Justice's Legal Orientation Program for Custodians of Unaccompanied Children to educate custodians of unaccompanied children on federal child labor laws and protections.

I am proud to be here today, joined by my colleagues from across the Biden-Harris Administration who are working with us to stop exploitative child labor.

Congressional Action Is Needed

While the Department and the Biden-Harris Administration are fully committed to using every tool and resource available to protect every child in this country from exploitation in the workplace, we cannot do this work alone. Stopping child labor exploitation will require action from all of us, including Congress. Simply put, no modern nation should build its economy on the backs of exploited children.

First, the Department of Labor is calling on Congress to grant the funding request in the President's 2023 supplemental funding request to Congress for $50 million each for the Wage and Hour Division and the Office of the Solicitor to investigate child labor cases and bring critical enforcement actions. Between 2010 and 2019, the Wage and Hour Division lost 15 percent of its full-time employees funded by its annual appropriation because it was nearly flat-funded during this period. And the Office of the Solicitor has essentially been flat-funded in its

annual appropriation when compared to FY 2010, resulting in the loss of more than 100 staff from the peak, a 17 percent decline, as costs have increased. With modest funding increases over the last few years, American Rescue Plan funding for COVID-related investigations, and a strong focus on hiring during the Biden-Harris Administration, the Department has begun to increase its staffing levels. But it still has not received adequate resources to allow the Department to meaningfully rebuild its staff and enforcement capacity. It is time for Congress to demonstrate its commitment to ending the scourge of unlawful child labor in this country by providing the requisite resources to support these efforts.

Second, the Department also calls on Congress to, at a minimum, increase civil money penalties for companies that use child labor. The maximum civil money penalty under current law for a child labor violation that does not cause a child's serious injury or death is $15,138. That is not high enough to be an effective deterrent. Overall, the Department is calling on Congress to increase civil money penalties, strengthen protections from retaliation for people who report child labor law violations, and ensure that the Department has adequate resources to investigate and hold accountable businesses flouting child labor laws.

Conclusion

The Department of Labor and the Biden-Harris Administration are leaving no stone unturned to root out exploitative child labor. We must all work together to make sure that children are safe, healthy, and protected from exploitation. Thank you, and I look forward to your questions.

RESPONSES OF SEEMA NANDA TO QUESTIONS
SUBMITTED BY SENATOR GRAHAM AND SENATOR HIRONO

Senator Hirono Questions

Role of Unions in Preventing Child Exploitation

Some people who see child labor violations do not report them because they fear that their employers will retaliate. This chilling effect is worse for immigrant workers, who are less likely to report violations because of language barriers, unfamiliarity with the law and potential immigration consequences.

QUESTIONS:

1. Many companies with child labor violations aren't unionized. What role do you believe unions play in ensuring that child labor violations are reported and children are protected?

Response: *Unions, through collective bargaining agreements (CBAs), promote transparency and fairness in employment terms and conditions and include mutually agreed-upon processes to resolve workplace issues. Workers represented by unions often feel more secure in voicing concerns about potential violations of worker protections, including unlawful child labor. This may lead to faster resolution of concerns and may improve employer compliance with the law and with the terms of the CBA. Data from several studies that considered specific industries found that union worksites were less likely to have health and safety violations than nonunion worksites. Union representation and Labor-Management Partnerships can lead to improved health, safety, wages, and working conditions for workers and improved employer compliance with labor laws, including child labor laws.*

2. Would legislation like S. 567, the PRO Act, help combat child labor? Would community benefits agreements that include protections for workers' rights combat child labor?

Response: *The Protecting the Right to Organize (PRO) Act (S. 567), if enacted, would enhance the power of workers to organize and collectively bargain for better wages, benefits and working conditions. Because the use of CBAs may support the ability of workers to raise workplace concerns, facilitate the resolution of concerns and improve employer compliance with labor laws, legislation that facilitates or expands the use of CBAs could help prevent unlawful child labor and improve employer compliance with labor laws, including child labor laws.*

Similarly, community benefits agreements – contracts between community organizations and businesses for the purpose of negotiating a business's commitments to the community – may support the ability of workers to raise workplace concerns, facilitate the resolution of concerns and improve employer compliance with labor laws, including child labor laws. A community benefits agreement may, for example, require a company to disclose hiring practices to the local community, provide training on child labor laws to subcontractors, or invest in the education of workers on laws that apply to them by contracting with local, culturally competent organizations to provide worker education.

Subcontractors to Avoid Accountability

Child labor violations often occur in facilities owned by large corporations that subcontract their work to smaller staffing companies.

QUESTIONS:

1. How is the Department of Labor addressing this multi-chain organizational structure in its investigations of child labor violations?

Response: *The Department often sees companies that have complex arrangements with staffing companies that directly employ certain workers and other types of subcontractors. The Department is committed to holding all employers accountable for employing children in violation of the law. In its enforcement efforts, the Department considers how best to use investigations and litigation to improve child labor practices throughout an employer's business and up and down supply chains. Employers, for example, have entered into consent agreements requiring training on child labor obligations for their own employees as well as suppliers.*

2. Has the department's enforcement ability been hindered by these structures?

Response: *Child labor investigations can be highly resource-intensive, in part because of the complex corporate structures we encounter. Our child labor investigations often require the Department to act quickly, especially where minors may be in physical danger. Thus, the Department must often quickly gather evidence and work to understand not just the nature of child labor violations but also the complex corporate structures involved in each case in order to hold all appropriate entities and individuals accountable. And, more broadly, in child labor investigations, the Wage and Hour Division (WHD) and the Office of the Solicitor of Labor work together to use a wide range of tools and strategies to protect minors and hold companies accountable. Our work in the Solicitor's Office involves, for example, developing and obtaining warrants and subpoenas, supporting and defending WHD's civil money penalty assessments, supporting WHD's enforcement of the Fair Labor Standards Act's "hot goods" provision to stop the shipment of goods produced in violation of child labor laws in commerce, seeking temporary and permanent injunctions, negotiating meaningful agreements to stop future child labor violations, and more. The Department's child labor enforcement efforts often require quick action, along with a significant investment of time and strategic use of limited resources. At each stage of the Department's enforcement, companies' complex structures add a layer of complexity and challenges.*

3. What authorities or funding would best enhance the department's ability to hold large corporations accountable for these egregious violations?

Response: *Additional funding to WHD and the Office of the Solicitor would greatly enhance the Department's ability to hold large employers accountable. The Department of Labor is calling on Congress to grant the President's supplemental funding request of $100 million, $50 million each for WHD and the Office of the Solicitor, to investigate child labor cases and bring critical*

enforcement actions. Between 2010 and 2019, WHD lost 15 percent of its full-time employees funded by its annual appropriation because it was nearly flat-funded during this period. And the Office of the Solicitor has essentially been flat-funded in its annual appropriation since fiscal year (FY) 2010, resulting in the loss of more than 100 staff from the peak, a 17 percent decline, as costs have increased. With modest funding increases over the last few years, American Rescue Plan funding for COVID-related investigations, and a strong focus on hiring during the Biden-Harris Administration, the Department had begun to increase its staffing levels. But it still has not received sufficient resources to allow the Department to fully rebuild its staff and enforcement capacity. And this supplemental funding has now expired, resulting in a critical funding need.

The maximum civil money penalty under current law for a child labor violation that does not cause a child's serious injury or death is $15,138 per violation. That is not high enough to be a deterrent for major profitable companies. The Department is calling on Congress to increase civil monetary penalties, strengthen protections from retaliation for people who report child labor law violations, and ensure that the Department has adequate resources to investigate and hold accountable businesses flouting child labor laws.

Combatting unlawful child labor and ensuring that work for minors is safe and age-appropriate, and does not jeopardize their health, well-being, or education requires a whole-of-government approach, along with a commitment from businesses and the communities in which they operate.

The Department appreciates Congressional interest in addressing unlawful child labor and supporting the Department's enforcement efforts. The Department stands ready to assist Congress in considering the important proposals under consideration.

Inadequacy of Current Penalties

This hearing on child labor violations highlighted challenges in holding employers accountable in a way that incentivizes corporate behavioral change. In particular, the civil penalty for a child labor violation of $15,138 offers little incentive for any company that is profiting off this exploitation. While the Department of Labor has increased its assessment of penalties by 87% in the last fiscal year, enforcement under current authorities is clearly insufficient.

QUESTIONS:

1. In addition to increasing the maximum penalty for these violations, how else could the DOL better hold these companies accountable?

Response: *The Department is calling on Congress to increase civil monetary penalties, strengthen protections from retaliation for people who report child labor law violations and increase funding for the Department to investigate and bring enforcement actions against corporations violating child labor laws. The Department believes that stronger penalties will hold employers accountable for those violations and deter future violations. Further, the Department has called on Congress to increase funding for the Department's labor enforcement agencies to allow the Department to expand its important work enforcing federal child labor*

laws. Specifically, the Department is calling on Congress to grant the President's supplemental funding request of $100 million, $50 million each for the Wage and Hour Division and the Office of the Solicitor of Labor, to investigate child labor cases and bring critical enforcement actions. Between 2010 and 2019, the Wage and Hour Division lost 15 percent of its full-time employees funded by its annual appropriation because it was nearly flat-funded during this period. And the Office of the Solicitor has essentially been flat-funded in its annual appropriation since FY 2010, resulting in the loss of more than 100 staff from the peak, a 17 percent decline, as costs have increased. With modest funding increases over the last few years, American Rescue Plan funding for COVID-related investigations and a strong focus on hiring during the Biden-Harris Administration, the Department had begun to increase its staffing levels. But it still has not received sufficient resources to allow the Department to fully rebuild its staff and enforcement capacity. And this supplemental funding has now expired, resulting in a critical funding need.

The Department is aware that there are many legislative proposals seeking to address unlawful child labor and is happy to provide technical assistance on Congressional legislation. The Department recognizes the important role of Congress in strengthening laws to prevent and address unlawful child labor to improve the health, welfare and educational attainment of children nationwide.

2. How is the department structuring its enforcement so that employees are not suffering the effects?

Response: *The Department's Wage and Hour Division's (WHD) mission is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce. WHD administers and enforces some of the most fundamental federal labor protection laws, including federal minimum wage, overtime pay, recordkeeping and child labor requirements of the Fair Labor Standards Act.*

WHD provides numerous resources to workers, advocates, and employers to provide greater clarity about the investigation process. This includes ensuring that workers understand that WHD services are free and confidential and that both workers and employers understand that workers are protected against retaliation for filing a complaint with WHD or participating in a WHD investigation. WHD, working with the Office of the Solicitor of Labor (SOL), considers all remedies and sanctions available to protect workers and ensure employer compliance, including injunctive relief, compensatory damages and make-whole relief, such as lost wages and all economic losses that resulted from the retaliatory conduct, and punitive damages where appropriate.

In the case of child labor violations, the Department works in partnership with other federal, state and local worker protection agencies, as well as with worker advocates, community-based organizations and service providers to ensure that when employers are held accountable for employing children in violation of the law, the children and other workers are also provided with resources to ensure that they are protected from retaliation and to receive the supports they need.

3. Fines assessed and paid by the employers that are not tied specifically to back wages revert to Treasury. A child found working in a dangerous workplace doesn't see any amount from the penalty. Would dedicating this money to either the child or to the Department of Labor for use in further investigations better comprehensively address this problem?

Response: *Civil monetary penalties for child labor violations revert to the Treasury and are not retained by the Department, unlike the civil money penalties for minimum wage or overtime violations under the FLSA. Aligning those policies so as to dedicate child labor penalties to the Department could provide vital additional resources to the Department to expand its enforcement of federal child labor laws. In addition, workers who experience other types of violations under the FLSA are able to seek redress in the courts, but victims of child labor violations rely on the Department for enforcement of federal child labor protections because there is no private right of action for FLSA child labor violations. The Department stands ready to provide technical assistance to Congress regarding this and other potential legislative proposals.*

Sen. Graham:

1. Is it the policy of DOL to notify federal law enforcement, state law enforcement, HHS, and/or social services when UAC or minors are identified in DOL civil investigations?

Response: *Protecting vulnerable workers, including immigrant workers, is a key part of the Department's mission and its work to address illegal child labor. Under the law, workers are entitled to the protections of the Fair Labor Standards Act's child labor provisions regardless of their immigration status or country of origin.*

As part of the Department's National Strategic Enforcement Initiative on Child Labor, the Department's Wage and Hour Division (WHD) uses worker-focused strategies to initiate investigations where child labor violations are most likely to occur. The Department's WHD and the Office of the Solicitor use all available enforcement tools, including penalties, court injunctions, use of the "hot goods" provision of the Fair Labor Standards Act to stop the movement of goods made with child labor, and criminal referrals where warranted.

The Department's WHD investigators are trained to remain alert to any indicators of possible human trafficking, exploitation, or coercion. This includes specialized training and guidance for WHD staff on the trafficking of children. When human trafficking indicators are detected, the Department makes a referral to appropriate federal, state, and/or local law enforcement agencies or taskforces, including the Department of Justice's Human Trafficking Prosecution Unit, and to the Department of Health and Human Services (HHS)Administration for Children and Families (ACF) Office on Trafficking in Persons (OTIP).

On March 23, 2023, the Department's WHD and the HHS ACF entered into a Memorandum of Agreement to advance ongoing efforts to address child labor exploitation. The agreement formalized the partnership between the agencies and outlined procedures to be followed by both

agencies in working together to address the need for deeper information sharing.[1]*, coordination, training, and education.*

The Department's WHD has a longstanding and established process to engage with community-based organizations, consulates, and federal partners that can assist in our efforts to address illegal child labor, including providing services to young people who are victims of exploitative child labor. The Department makes every effort to bring these resources together for children and families who are the victims of being unlawfully employed by these employers.

2. In April 2023, Department of Agriculture Secretary Tom Vilsack stated, "In the last fiscal year, the [DOL] found 835 companies it investigated had employed more than 3,800 children."
    a. How many of those 3,800 children were UAC?
    b. How many were in immigration proceedings?
    c. How many of those investigations were criminal/civil/joint criminal and civil?
    d. What were the criminal and civil penalties imposed?
    e. Into what account are civil fines imposed by DOL for child labor violations directed and do child victims of these kinds of violations have access to these funds?

Response: *Protecting vulnerable workers is a key part of the Department's mission and its work to address illegal child labor. Under the law, workers are entitled to the protections of the Fair Labor Standards Act's child labor provisions regardless of their immigration status or country of origin. The Department does not collect data regarding worker immigration status.*

As a matter of practice, the WHD and the Office of the Solicitor make criminal referrals where warranted. Further, the Department's WHD investigators are trained to detect signs of possible human trafficking, exploitation, or coercion. This includes specialized training and guidance for WHD staff on the trafficking of children. When human trafficking indicators are detected, the Department makes a referral to appropriate federal, state, and/or local law enforcement agencies or taskforces, including the Department of Justice's Human Trafficking Prosecution Unit and to HHS's OTIP.

On March 23, 2023, the Department's WHD and the HHS ACF entered into a Memorandum of Agreement to advance ongoing efforts to address child labor exploitation. The agreement formalized the partnership between the agencies and outlined procedures to be followed by both agencies in working together to address the need for deeper information sharing, coordination, training, and education. Throughout a four-month period in Fiscal Year 2023, the Department and HHS successfully collaborated on cross-training initiatives for over 780 Office of Refugee Resettlement staff and over 250 WHD managers related to the eradication of illegal child labor,

[1] In accordance with section 107(b)(1)(H) of the Trafficking Victims Protection Act (TVPA) of 2000, when the Wage and Hour Division (WHD) has information about children who may have or have experienced human trafficking, WHD will refer the matter to the department of Health and Human Services (HHS) Administration for Children and Families (ACF) Office on Trafficking in Persons (OTIP) for assessment within 24 hours of identifying the minor in order for OTIP to connect children to appropriate benefits and services in a timely manner. Source: https://www.dol.gov/sites/dolgov/files/WHD/MOU/MOU-hhs-whd.pdf.

including referral mechanisms to connect children who may have experienced labor trafficking to eligible services in a timely manner.

WHD works with criminal law enforcement agencies in human trafficking cases by either making referrals, receiving referrals for investigation under WHD laws or assisting with the computation of restitution for victims. Questions pertaining to criminal investigations and penalties should be referred to the Departments of Justice and Homeland Security.

In Fiscal Year 2022, WHD assessed a total $4,386,205 in civil monetary penalties for child labor violations. Under the Fair Labor Standards Act, 29 U.S.C. 216(e)(5), civil penalties imposed by the Department for child labor violations must be deposited in the general fund of the U.S. Treasury and child victims do not have access to these funds.

3. During your testimony on October 25, 2023, you stated DOL created an interagency task force to enhance communication between agencies with UAC.
    a. What agencies are members of this interagency task force?
    b. How are you and your task force members providing information regarding trafficked children to law enforcement, including but not limited to Homeland Security Investigations?

Response: *The Department of Labor-led Interagency Task Force to Combat Child Labor Exploitation participants include the Departments of Agriculture, Commerce, Education, Health and Human Services, Homeland Security, Justice, and State, all of which are taking concrete steps to improve cross-training, outreach, education, and health outcomes of children that could be subject to child labor. The Department is committed to working closely with every member of the interagency taskforce and will do everything within its power to use interagency resources to enforce the law and protect affected children and their families.*

The Department's WHD investigators are trained to remain alert to any signs of possible human trafficking, exploitation, or coercion. This includes specialized training and guidance for WHD staff on the trafficking of children. Throughout a four-month period in fiscal year 2023, the Department and HHS successfully collaborated on cross-training initiatives for over 780 Office of Refugee Resettlement staff and over 250 WHD managers related to the eradication of illegal child labor, including referral mechanisms to connect children who may have experienced labor trafficking to eligible services in a timely manner.

When human trafficking indicators are detected, the Department makes a referral to appropriate federal, state and/or local law enforcement agencies or taskforces, including the Department of Justice's Human Trafficking Prosecution Unit and to HHS's OTIP. WHD works with criminal law enforcement agencies in human trafficking cases by either making referrals, receiving referrals for investigation under WHD laws or assisting with the computation of restitution for victims.

The Department of Homeland Security's U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) has authority to investigate forced labor. The Department routinely works with HSI, most often through human trafficking task forces comprised of federal, state,

and local law enforcement and victim service providers. Within these task forces, law enforcement entities discuss case collaboration and share information where appropriate.

Statement for the Record before the
United States Senate Committee on the Judiciary
Hearing Title: Ensuring the Safety and Well-Being of Unaccompanied Children, Part II
Joseph Salazar, Office Director, Office of Central American Affairs
Bureau of Western Hemisphere Affairs
Wednesday, October 25, 2023

Thank you, Chairman Durbin and Ranking Member Graham, for holding this important hearing. I am honored to be joined by my colleagues here who are the true experts in the fight against trafficking and what happens once Central Americans make the difficult choice to leave their countries. I'm grateful for the opportunity to talk to you more about the complex conditions that drive them to migrate from northern Central America, as well as important progress on our efforts to address them.

Northern Central America faces several serious challenges. Democratic backsliding in the region affects peoples' trust in institutions and perception of how freely they can exercise their rights. Victims of corruption are more likely to express intentions to migrate. High youth unemployment rates, numerous barriers inadequate access to education, and vast economic inequality spur migration. Coupled with high levels of informality, low wages that do not cover basic needs, and a vicious cycle of reliance on debt to meet those basic needs, the lack of decent jobs in all three countries contributes to the migratory wave. Despite decreased homicide rates, other types of crime and violence – including rampant gender-based violence – cause insecurity. Many individuals and families see migration as their only alternative to escape poverty, instability, narcotics violence, and climate-related catastrophes.

In 2021, the Biden-Harris Administration launched the Strategy to Address the Root Causes of Irregular Migration from Central America. The Root Causes Strategy focuses on creating good jobs, promoting democratic governance, protecting human rights, improving security, and countering gender-based violence to help Central Americans build better futures at home. The strategy addresses the factors that drive irregular migration and forced displacement from northern Central America, including food insecurity, chronic structural challenges, extreme poverty, citizen insecurity, poor governance, and endemic corruption.

First and foremost, we need strong governance in the region. Without it, we cannot achieve sustainable, equitable progress across all strategic areas, including economic prosperity and security.

We partner with civil society, the private sector, labor unions, regional governments, and international actors to advance U.S. policy goals.

In the last year, the State Department and U.S. Agency for International Development (USAID) supported more than 1,500 human rights defenders and trained more than 300 independent journalists. This support provides quick help to embattled human rights defenders and civil society organizations through emergency assistance, supporting human rights actors and media practitioners to remain resilient, mitigate risks, overcome threats, and continue their important

work as safely as possible.

Through the Voices Initiative, we bring together U.S. resources – public and private diplomacy, foreign assistance programming, and enforcement authorities – to protect, defend, and promote civic space in Central America. The initiative focuses on promoting digital democracy and countering digital authoritarianism, promoting freedom of expression, strengthening independent media, countering criminalization, and providing protections for those who are targeted.

We are also taking actions to promote accountability for corrupt and undemocratic actors, as well as human rights abusers. On July 19, the U.S. government issued our most recent public list, consistent with Section 353 of the United States–Northern Triangle Enhanced Engagement Act, of individuals who knowingly engaged in acts that undermine democratic processes or institutions, engaged in significant corruption, or obstructed investigations into such acts of corruption in El Salvador, Guatemala, Honduras, or Nicaragua. This critical tool promotes accountability, and we appreciate bipartisan support for it.

In Fiscal Year 2022, the State Department trained over nine thousand civil police officers in the region. Our vetted units supported over four thousand arrests in the region.

On economic growth, Vice President Harris leads "Central America Forward," an innovative public-private partnership to create good jobs in the region. Under Central America Forward, companies have committed to invest over $4.2 billion in El Salvador, Guatemala, and Honduras. These investments have created thousands of good jobs, connected four million people to the internet, brought more than one million people into the formal financial economy, and trained almost 500,000 people to enhance workforce abilities, including digital and language skills. This is key to ending irregular migration. But this is not just about investment. Our private sector engagement reinforces the rule of law, good governance, and human rights. USAID supported more than 465,000 students through primary and secondary education programs in fiscal year 2022, far exceeding annual targets. Over 300,000 students received USDA nutrition assistance.

We certainly are not naïve about the challenges we face. It will take time to address many of these long-term, structural issues. My team works on these issues day in and day out, and we are grateful for continued, bipartisan support to ultimately help the people in the region maintain their futures in their home countries. Thank you for the opportunity to testify before this committee today. I look forward to working with Congress to strengthen our approach.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Lindsey O. Graham(No.1, 2, 3 to No.3)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 1:

What efforts is Department of State making with countries to prevent UAC from making the treacherous journey to the U.S.?

Answer 1:

We work to address the root causes of irregular migration and prioritize messaging through public diplomacy efforts at our embassies in the region, utilizing radio, television, print interviews, market public address systems, and social media. We specifically target messaging campaigns toward families in high out-migration countries, focused on increasing awareness of the threats that irregularly migrating families may face and delivering testimonials of families who used lawful, safe, and orderly pathways.

Question 2:

2. It has been reported that UAC are sometimes placed with unrelated adults, thus forming a fake family unit, prior to illegally crossing into the U.S. in what has been called a "rent-a-kid" scheme. What efforts is the State Department making with home countries to identify these children and to stop their exploitation?

Answer 2:

The Office to Monitor and Combat Trafficking in Persons provides more than $80 million in funding throughout the Western Hemisphere, including a robust portfolio of grants to reduce the vulnerability of unaccompanied children. For example, we support a civil society organization to strengthen protection and prevention services for migrants, trafficking survivors, and at-risk youth in Guatemala, Honduras, and Mexico. Through this grant, specialized comprehensive care services, including reintegration, were provided to 566 children and adolescent victims of trafficking since the project's start in 2021.

Question 3:

3. What measures is the State Department employing to communicate effectively with HSI and ORR when children want to contact their parents?

Answer 3:

The Department of State is rarely involved in outreach from HSI and ORR for unaccompanied children in their custody. We refer you to the Department of Homeland Security and the Department of Health and Human Services for more information regarding communication between unaccompanied migrant children and their parents while in U.S. custody.

Questions for the Record Submitted to
WHA Office Director Joe Salazar by
Senator Amy Klobuchar (No. 1 to No. 1)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 1:
Can you tell me more about trainings that the State Department has offered to law enforcement, journalists, and civil society organizations and why this is important to addressing the unaccompanied minor crisis in the U.S.?

Answer 1:

The Office to Monitor and Combat Trafficking in Persons supports a civil society organization to improve capacity to identify victims of trafficking and enhanced protocols, processes, and strategies to protect migrants and likely migrants. Through this support, in August, 379 frontline actors in Guatemala, Honduras, and Mexico have been trained on the detection and identification, referral, and protection of victims of trafficking and those vulnerable to trafficking, including migrants. Seventy-nine staff from migrant centers in Omoa, San Pedro Sula, Belén, and Cortés, have been trained to provide services to returned migrants in Honduras. The Bureau of Population, Refugees, and Migration, through its implementing partner the International Organization for Migration, funded training for journalists on evidenced-based and ethical coverage of migrant issues.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Charles Grassley (No.1 to No.1)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 1:

In 2014, President Obama requested Congress close the loophole that treats children from contiguous countries differently from children from non-contiguous countries. Closing this loophole would allow unaccompanied children from all countries to be quickly returned home without having to find sponsors in the United States. It would also help stem the tide of migrant children from non-contiguous countries. Does the Biden administration and the Department of State agree with President Obama that this loophole needs to be closed? If not, why not?

Answer 1:

I refer you to DHS and its components for information regarding the processing of unaccompanied children encountered at the U.S. southwest border.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 1:

Mr. Salazar, when asked in the hearing about your efforts to negotiate Safe Third Country agreements with countries other than Mexico and Canada, you responded, "We are working to expand legal pathways."

1A. What efforts are being made by the State Department to negotiate Safe Third Country Agreements?

Answer 1:

We are committed to promoting safe, orderly, humane, and regular migration across the Western Hemisphere and providing lawful pathways as an alternative to irregular migration. Currently, the United States only has one Safe Third Country Agreement, signed with Canada in 2004. We do not have plans to establish additional Safe Third Country Agreements at this time.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 2:

1B. With which countries is the State Department engaging in negotiations to establish Safe Third Country Agreements?

Answer 2:

We do not have plans to establish additional Safe Third Country Agreements at this time.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 3:

1C. Will continued efforts by the State Department to expand legal pathways stop the unprecedented flow of irregular immigration across our borders? Or will it simply serve as a gating mechanism for getting people across the border?

Answer 3:

Hundreds of thousands of persons in the Western Hemisphere use lawful pathways to come to the United States instead of undertaking the dangerous irregular journey. We also support host governments and communities so migrants can find safety and opportunity where they are. Individuals who attempt to unlawfully enter the United States may be subject to removal as well as a bar on re-entry and potential criminal prosecution for repeated attempts to unlawfully enter.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 4:

1D. What specific efforts are being made by the State Department to further expand legal pathways?

Answer 4:

The Safe Mobility initiative complements the wide range of existing services available for refugees and migrants in Safe Mobility Office (SMO) host countries. SMOs facilitate expedited refugee processing via the U.S. Refugee Assistance Program and provide information and/or referrals to humanitarian parole, family reunification, and labor pathways to the United States. One of the most innovative concepts of the Safe Mobility initiative is while not everyone will qualify for resettlement, there are other lawful pathways made available to many individuals that may cater to their skills and needs. Eligible individuals may enter the United States through lawful labor pathways such as seasonal or temporary employment pathways. I refer you to DHS and its components for information regarding labor and other lawful pathways under DHS authorities.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 5:

In the hearing you appeared completely unaware of how many people have entered this country illegally or under the guise of a questionable parole program, or under the questionable CB1 app since the start of the Biden Administration.

2A. Is it important for someone in your position to understand what is happening at our borders?

Answer 5:

In my role as Office Director in the Department of State's Office of Central American Affairs, I engage with Central American countries to promote safe and orderly migration, as well as to address the root causes of irregular migration. The United States' close cooperation with countries in Central America has delivered concrete measures to reduce the flow of migrants to the U.S. southwest border that transit or originate from Central America. For example, thanks to our efforts, our partners have increased their efforts to safely and expeditiously receive back their citizens, developed public messaging that warns of the perils and consequences of

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

irregular migration, and promoted lawful pathways for migrants in their own countries.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 6:

2B. How many people have come into our country since the start of the Biden Administration through a parole program?

Answer 6:

I refer you to the Department of Homeland Security (DHS) for the most up-to-date statistics on parole processes.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 7:

2C. How many people have come into our country by means of the CB1 App since its introduction?

Answer 7:

I refer you to the Department of Homeland Security (DHS) for the most up-to-date statistics regarding the CBP One app.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 8:

2D. Are all of these alternative routes to entry encouraging more or less movement into our country which has already received more than 8 million irregular immigrants in the last three years?

Answer 8:

Our efforts mobilized partner governments, international organizations, and civil society groups to take collaborative action and implement effective policies to address the complex challenges of irregular migration. We must continue to address the root causes of irregular migration, advance our efforts to strengthen protections for migrants, and promote safe, orderly, and humane migration management throughout the hemisphere.

Questions for the Record Submitted to
WHA/CEN Office Director Joe Salazar by
Senator Mike Lee (No.1 to No.9)
U.S. Senate Committee on the Judiciary
October 25, 2023

Question 9:

In the hearing, you seemed unwilling to acknowledge any "pull-factors" resulting from the Biden Administration's border policies. Instead, you focused on the "push-factors" which existed prior to the 2021 mass immigration into our country. In your opinion, have any pull-factors been created by the Biden Administration's policies? If you believe so, please identify those policies and the resulting pull-factors.

Answer9:

We observe similar "pull factors" to the United States across administrations: individuals often migrate to the United States seeking safety, economic prosperity, and family reunification. The Biden Administration is committed to supporting host governments and communities so migrants can feel safe and have economic opportunity where they are. The Administration humanely manages our border through deterrence, diplomacy, and enforcement while also expanding lawful pathways to the United States as an alternative to irregular migration.

AFL-CIO

STATEMENT FOR THE RECORD

Senate Judiciary Committee Hearing
Preventing Child Labor and Ensuring the Safety and Well-Being of Unaccompanied Children
Part II
Wednesday, October 25, 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 (118th: S.2488, H.R.4889) 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 (118th: H.R. 4046) 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

[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/

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:

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

[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

and livelihoods of millions of Guatemalans, especially in rural areas.[5] The resulting damage 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

[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

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

[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

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 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

[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

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.

YOUNG CENTER FOR IMMIGRANT CHILDREN'S RIGHTS

www.theyoungcenter.org
Chicago, IL | Harlingen, TX | Houston, TX | Los Angeles, CA
New York, NY | Phoenix, AZ | San Antonio, TX | Washington, DC

Young Center for Immigrant Children's Rights Statement for the Senate Judiciary Committee pertaining to its hearing, "Ensuring the Safety and Well-Being of Unaccompanied Children, Part II" on Oct. 25, 2023

Migrant child labor exploitation and trafficking in the U.S. is not new. A long history of broken immigration policy has delivered immigrant children to harm. Although the 1938 Fair Labor Standards Act "banned" child labor nationwide, the law included a broad exemption for work in agriculture, where mostly Mexican and African American children toiled. Throughout the twentieth century, and indeed after the establishment of the child labor ban, migrant youth labored in both legally sanctioned and work deemed illegal by the law across various workplaces, especially agriculture, food processing, manufacturing, and domestic work. The intergenerational impacts of war and foreign intervention, particularly in Central America, as well as punitive border enforcement since the 1970s, are the foremost culprits in the creation of this problem and its root causes.

The Young Center for Immigrant Children's Rights is a champion for the best interests of children who arrive in the United States on their own, from all corners of the world. For nearly 20 years, we have served as independent Child Advocate—trusted allies—for unaccompanied immigrant children seeking safety in the U.S. Here are our recommendations for reform, adapted from a forthcoming report on migrant child labor exploitation and trafficking by Dr. Ivón Padilla-Rodríguez, Assistant Professor in the Department of History at the University of Illinois Chicago.

Recommendation: Restore access to asylum and allow families to seek protection together. Early immigration deterrence strategies and the closing off of legal paths to entry are ultimately what created the conditions necessary to make migrant teens vulnerable to exploitation and trafficking. Deterrence policies have incentivized a lucrative black market in which organized crime and smuggling networks thrive. Today, as fewer families are able to seek protection together, children must increasingly "choose" to migrate alone, putting them at much greater risk for exploitation. Congress must reject policies which limit the ability of individuals and families to access their right to apply for asylum.

Recommendation: Invest in additional research and better record-keeping on child labor exploitation and trafficking, disaggregated by type of trafficking, age, and legal status. Accurate statistics on human trafficking are extremely difficult to calculate. Available data suggests that noncitizens are disproportionately represented among labor trafficking cases. To cite just one body of evidence, the eligibility letters issued to foreign national children by the Department of Health and Human Services (HHS) in fiscal year 2021 reveal that most of those letters (68%) were issued for labor trafficking victims. In 2021, labor trafficking tips submitted to the National Human Trafficking Hotline revealed that the overwhelming majority of victims (83%) with a known relationship to their trafficker identified employers as the persons responsible for exploiting their labor.

Distinguishing labor trafficking from exploitation is challenging. Child labor exploitation turns into trafficking when the work is extracted through the use of fraud, force or coercion. According to the Office on Trafficking in Persons and Polaris Project, while government agencies and some research on human smuggling distinguish smuggling from trafficking by noting that human smuggling does not involve coercion because prospective migrants "consent" to the service, there are countless cases of human smuggling that have involved fraud, force, or coercion and have risen to the level of trafficking. The reality of debt-driven or debt-financed migration challenges the notion that migration is either forced or voluntary. Congress must support better data collection on labor trafficking and exploitation and consider revising policies which limit access to trafficking visas for migrant children who were smuggled to the border.

Recommendation: Offer faster, more efficient access to work permits for those old enough to work safely in regulated industries under U.S. labor law. Congress should remove or reduce the waiting period for Employment Authorization Documents to ensure people seeking protection can obtain safe and legal work to provide for themselves. EADs allow youth old enough to work to seek out safe, appropriate employment and not

fall victim to labor exploitation. Right now, many children do not have access to attorneys who can file this paperwork for them, and even if they do, they are subject to the 150-day waiting period, which can stretch to much longer due to backlogs at USCIS. Congress and the Department of Labor must also ensure that workforce development opportunities are accessible to migrant youth, including in parts of the country where repeated child labor exploitation has occurred.

Recommendation: Congress and DOL must work together to stop child labor and hold violators accountable. Journalists, academic and human rights researchers have documented migrant child labor in a variety of work sites across the country including food processing, packing, manufacturing, construction, roofing, domestic service, restaurants, and retail work. Child labor exploitation also occurs in legally sanctioned work, particularly in the agricultural industry, which has long benefitted from legal exemptions and loopholes as well as lax enforcement. While the FLSA authorizes the Secretary of Labor to conduct workplace investigations and sanction companies which violate child labor laws, in fiscal year 2022, there were only **810 inspectors** in the Department of Labor's Wage and Hour Division to oversee 165 million workers across the U.S. To address these problems, DOL must update regulations regarding child labor, which have not been meaningfully revised since the 1970s. The Fair Labor Standards Act grants DOL broad authority to set and police limits regarding the employment of minors, including in occupations deemed to be hazardous. Further, Congress must support the work of Wage and Hour through adequate appropriations, and must **increase employer penalties** to stop child labor. It must also **raise federal standards for the agricultural sector**. Congress and DOL must ensure companies—not children and their families—face consequences for violating the law.

Recommendation: Congress must support the Office of Refugee Resettlement's efforts to keep families together and reject policies which rely on the surveillance of immigrant families. Children are safest with their families. ORR has worked to ensure that unaccompanied children can be quickly reunited with their families through robust sponsor vetting protocols, which when well-implemented, are **effective**. For children who arrive at the border with a non-parent relative, such as an adult sibling or grandparent, ORR is working to verify family relationships within a matter of days and designate eligible adult relatives as the child's Category 2 sponsor, avoiding prolonged family separation and saving government resources. These initiatives have helped to keep children with their family members and out of congregate care. Congress must support policies which keep families together, avoiding traumatic separations that can make immigrant children vulnerable to exploitation.

Recommendation: Expand children's access to legal representation, child advocates, and post release services. Unaccompanied immigrant children must have robust legal representation at government expense from the moment of apprehension, in U.S. Customs and Border Protection custody, and throughout their immigration proceedings. Child advocates should be available for all children who need them, ensuring that immigrant youth have a trusted adult to turn to for help. Post release services should be offered to all unaccompanied children, but should be voluntary, allowing providers to build trust with families. Providers must be trained to meet the needs of this population, and funding could be provided to employ peer support methods to help families benefit from these services.

Recommendation: Facilitate prompt access to refugee benefits and other public benefits for unaccompanied children and their families. Youth who see few avenues for safety or economic mobility in their countries of origin make a "choice" to engage in labor migration because there are few, if any, alternatives for them to secure physical safety or economic survival in their home communities. They come to the U.S. to work because they need to work. Older teens who earn wages in dangerous industries send money home and pay down migration debt. Because the sponsors who receive them in the U.S. are also often undocumented, precariously employed, exploited, and vulnerable themselves, these families are trapped in cycles of poverty and exploitation. ORR provides funding to state governments, resettlement agencies, and nonprofits to provide benefits and services to refugee families which could be extended to unaccompanied immigrant children. States can also extend support to these families which would help reduce the financial pressures migrant youth face.

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