

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT AND DIRECTING THE SECRETARY OF HEALTH AND HUMAN SERVICES AND THE SECRETARY OF HOMELAND SECURITY TO TRANSMIT, RESPECTIVELY, CERTAIN DOCUMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO UNACCOMPANIED ALIEN CHILDREN

OCTOBER 14, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

ADVERSE REPORT

together with

MINORITY VIEWS

[To accompany H. Res. 1343]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 1343) of inquiry requesting the President and directing the Secretary of Health and Human Services and the Secretary of Homeland Security to transmit, respectively, certain documents to the House of Representatives relating to unaccompanied alien children, having considered the same, report unfavorably thereon with an amendment and recommend that the resolution as amended not be agreed to.

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Strike all after the resolving clause and insert the following:

That the President is requested, and the Secretary of Health and Human Services and Secretary of the Department of Homeland Security are directed, to transmit, respectively, to the House of Representatives, not later than fourteen days after the date of the adoption of this resolution, copies of all documents, memoranda, advisory legal opinions, notes from meetings, audio recordings, records (including telephone and electronic mail records), correspondence, and other communications, or any portion of any such communications, to the extent that any such one or more items are within the possession of the President or the Secretaries, respectively, and refer to the following:

(1) The health and welfare of unaccompanied alien children, including the status of COVID–19 infections, treatment, and outcomes, in the care or custody of Customs and Border Protection and the Office of Refugee Resettlement.

(2) Any current policy, procedure, guidance, or directive regarding the placement of unaccompanied alien children in the care or custody of the Office of Refugee Resettlement with a sponsor, including any policy that has changed since January 20, 2021, in order to expedite the placement of such children with a sponsor.

(3) The number of unaccompanied alien children placed by the Office of Refugee Resettlement with sponsors that did not undergo a background check, public records check, sex offender registry check, or fingerprint check.

(4) All information, including Significant Incident Reports, regarding allegations of abuse and neglect of unaccompanied alien children in Customs and Border Protection or Office of Refugee Resettlement facilities beginning in November, 2020.

(5) The number of unaccompanied alien children who were in the care of the Office of Refugee Resettlement and were not placed with a potential sponsor pursuant to section V of the memorandum of agreement entitled “Memorandum of Agreement Among The Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters”, entered into on April 13, 2018.

(6) All Office of Refugee Resettlement current policies and procedures, guidance, and directives regarding the hiring and training of staff, contractors, or volunteers.

(7) All information regarding how the Office of Refugee Resettlement protects unaccompanied alien children from smugglers, traffickers, or others who might seek to victimize or otherwise engage a child in criminal, harmful, or exploitative activity.

Purpose and Summary

H. Res. 1343 is a resolution of inquiry that requests certain documents from the Secretary of Homeland Security and the Secretary of Health and Human Services relating to unaccompanied children.

Representative Michael Burgess (R–TX) introduced the resolution on September 13, 2022, and it currently has no cosponsors.

H. Res. 1343 requests the President and directs the Secretary of Health and Human Services and Secretary of the Department of Homeland Security to transmit, respectively, to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, copies of all documents, memoranda, advisory legal opinions, notes from meetings, audio recordings, records (including telephone and electronic mail records), correspondence, and other communications, or any portion of any such communications, to the extent that any such one or more items are within the possession of the President or the Secretaries, respectively, and refer to the following:

(1) The health and welfare of unaccompanied alien children, including the status of COVID–19 infections, treatment, and outcomes, in the care or custody of Customs and Border Protection and the Office of Refugee Resettlement (ORR).

(2) Any current policy, procedure, guidance, or directive regarding the placement of unaccompanied alien children in the

care or custody of ORR with a sponsor, including any policy that has changed since January 20, 2021, in order to expedite the placement of such children with a sponsor.

(3) The number of unaccompanied alien children placed by ORR with sponsors that did not undergo a background check, public records check, sex offender registry check, or fingerprint check.

(4) All information, including Significant Incident Reports, regarding allegations of abuse and neglect of unaccompanied alien children in Customs and Border Protection or ORR facilities beginning in November 2020.

(5) The number of unaccompanied alien children who were in the care of ORR and were not placed with a potential sponsor pursuant to section V of the memorandum of agreement entitled “Memorandum of Agreement Among The Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters,” entered into on April 13, 2018.

(6) All ORR current policies and procedures, guidance, and directives regarding the hiring and training of staff, contractors, or volunteers.

(7) All information regarding how ORR protects unaccompanied alien children from smugglers, traffickers, or others who might seek to victimize or otherwise engage a child in criminal, harmful, or exploitative activity.

Background and Need for the Legislation

I. BACKGROUND ON RESOLUTIONS OF INQUIRY

Under the rules and precedents of the House, a resolution of inquiry is used to obtain information from the executive branch. A resolution of inquiry is directed at the President of the United States or the head of a Cabinet-level agency, requesting facts within the control of the executive branch.¹ As a “simple resolution,” designated by “H. Res.,” a resolution of inquiry does not carry the force of law. “Compliance by the executive branch with the House’s request is voluntary, resting largely on a sense of comity between co-equal branches of government and a recognition of the necessity for Congress to be well-informed as it legislates.”²

House Rules afford resolutions of inquiry a privileged parliamentary status. A Member files a resolution of inquiry like any other legislation. The resolution is then referred to the proper committee of jurisdiction and the committee may: (1) report the resolution either favorably or unfavorably; or (2) choose not to report the resolution. If the committee does not report the resolution to the House within 14 legislative days of its introduction, however, a motion to

¹ Christopher M. Davis, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947–2011*, CONG. RES. SERV. R40879 (May 15, 2012).

² *Id.* at 2.

discharge the resolution from committee can be made on the House floor.³

II. NEED FOR THE LEGISLATION

This resolution is unnecessary. The Minority has had no problem obtaining briefings or information on this issue. For example, on September 9, 2022, ORR and the Department of Homeland Security took part in a regularly scheduled bipartisan, multi-agency immigration briefing call in which they discussed their work caring for unaccompanied children. Staff for any congressional office could join and ask questions.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the Committee on the Judiciary held no hearings on H. Res. 1343.

Committee Consideration

On September 21, 2022, the Committee met in open session and ordered the resolution, H. Res. 1343, unfavorably reported with an amendment in the nature of a substitute, by a rollcall vote of 19 to 16, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following rollcall votes occurred during the Committee's consideration of H. Res. 1343:

1. A motion to unfavorably report H. Res. 1343, as amended, was agreed to by a rollcall vote of 19 to 16. The vote was as follows:

³ 3 House Rule XIII, clause 7.

Roll Call No. 7

Date: 01/21/22

COMMITTEE ON THE JUDICIARY
House of Representatives
117th Congress

Subject: Motion to report H. Res. 1343 Unfavorably to the House

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)			
Sheila Jackson Lee (TX-18)			
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)			
Karen Bass (CA-37)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)			
Veronica Escobar (TX-16)	✓		
Mondaire Jones (NY-17)	✓		
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES.
Jim Jordan (OH-04)			
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)		✓	
Tom Tiffany (WI-07)			
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)		✓	
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)		✓	
Cliff Bentz (OR-02)		✓	
Burgess Owens (UT-04)		✓	
	AYES	NOS	PRES.
TOTAL	19	16	

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

Committee Estimate of Budgetary Effects

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

New Budget Authority and Congressional Budget Office Cost Estimate

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of this resolution.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H. Res. 1343 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H. Res. 1343 requests certain documents from the Secretary of Homeland Security and the Secretary of Health and Human Services relating to unaccompanied children.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H. Res. 1343 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House rule XXI.

Section-by-Section Analysis

The following discussion describes the resolution as reported by the Committee.

H. Res. 1343 requests the President and directs the Secretary of Health and Human Services and Secretary of the Department of Homeland Security to transmit, respectively, to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, copies of all documents, memoranda, advisory legal opinions, notes from meetings, audio recordings, records (including telephone and electronic mail records), correspondence, and other communications, or any portion of any such communications, to the extent that any such one or more items are within the possession of the President or the Secretaries, respectively, and refer to the following:

(1) The health and welfare of unaccompanied alien children, including the status of COVID-19 infections, treatment, and outcomes, in the care or custody of Customs and Border Protection and ORR.

(2) Any current policy, procedure, guidance, or directive regarding the placement of unaccompanied alien children in the care or custody of ORR with a sponsor, including any policy that has changed since January 20, 2021, in order to expedite the placement of such children with a sponsor.

(3) The number of unaccompanied alien children placed by ORR with sponsors that did not undergo a background check, public records check, sex offender registry check, or fingerprint check.

(4) All information, including Significant Incident Reports, regarding allegations of abuse and neglect of unaccompanied alien children in Customs and Border Protection or ORR facilities beginning in November 2020.

(5) The number of unaccompanied alien children who were in the care of ORR and were not placed with a potential sponsor pursuant to section V of the memorandum of agreement entitled “Memorandum of Agreement Among The Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters,” entered into on April 13, 2018.

(6) All ORR current policies and procedures, guidance, and directives regarding the hiring and training of staff, contractors, or volunteers.

(7) All information regarding how ORR protects unaccompanied alien children from smugglers, traffickers, or others who might seek to victimize or otherwise engage a child in criminal, harmful, or exploitative activity.

Minority Views

H. Res. 1343 requests that the President, and directs the Secretary of Health and Human Services and the Secretary of Homeland Security to transmit to the House of Representatives, certain documents, communications, and records relating to unaccompanied alien children.

Democrats on the House Judiciary Committee continue to ignore the unprecedented crisis on our southwest border. Since President Biden took office, U.S. Customs and Border Protection (CBP) officials have encountered nearly 3.5 million illegal aliens along the southwest border, over 255,000 of which have been unaccompanied alien children (UAC).¹ Federal law defines a UAC as a child who has no lawful presence in the U.S., is younger than age 18, and for whom there is no parent or legal guardian in the U.S. who is available to care for the child.² Through August of Fiscal Year 2022,

¹U.S. Customs and Border Protection, Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

²6 U.S.C. §279(g)(2).

CBP has processed 140,186 UAC.³ During Fiscal Year 2021, there were 146,925 UAC processed by CBP.⁴ As of September 26, 2022, there were 9,267 UAC in the custody of the Department of the Health and Human Services (HHS).⁵

During the Trump Administration, Committee Democrats held multiple hearings attacking the Administration for the overcrowded conditions at border facilities due to an influx of UAC coming across the border and because the Office of Refugee Resettlement (ORR) with HHS did not have the capacity to house UAC and process them as required by law. Since President Biden took office, these same Democrats have been conspicuously silent about the far worse conditions and lack of care that the Biden Administration has taken with placement of the UAC coming into the country during the Biden border crisis.

On September 13, 2022, Rep. Michael Burgess (R-TX) introduced H. Res. 1343 to generate transparency and accountability about the treatment of UAC during the Biden Administration. Rep. Burgess's concerns stem from the perception that the Biden Administration is not adequately caring for UAC in its custody and, in an effort to quickly reduce the number of UAC in its care, is not following appropriate protocol for placing UAC with sponsors inside the United States.

CBP temporarily houses aliens, including UAC, apprehended between ports of entry before either releasing the aliens or transferring custody to another agency. CBP is required by law to transfer UAC to the custody of the ORR within 72 hours of apprehension.⁶ However, historically high numbers of UAC have prevented CBP from sometimes meeting the 72-hour requirement due to excessive processing time or because ORR does not have the capacity to accept the transfer of the UAC. ORR contracts with non-governmental organizations to house UAC in shelter settings ranging from group homes and foster care to other residential or secure facilities as needed. ORR pays for and provides all services for children while they are in care at a shelter, including providing food, clothing, education, and medical care.

Over the last dozen years, there have been multiple periods in which the number of UAC apprehended along the southwest border spiked exponentially.⁷ To relieve the overcrowding in CBP facilities and traditional ORR shelters during those times, ORR builds influx care facilities and emergency intake sites to process and house UAC. According to the Congressional Research Service (CRS), these "facilities can be set up relatively quickly compared to conventional ORR-supervised state-licensed shelters that require between six and nine months to open."⁸ These influx care facilities "are not subject to state licensing requirements, are typically operated by private companies, and reportedly cost ORR about \$775 daily per child compared to about \$290 daily for conventional shelters."⁹

³*Id.*

⁴*Id.*

⁵ Information Provided by U.S. Dep't of Homeland Security, (Sept. 27, 2022).

⁶ 8 U.S.C. § 1232(b)(3).

⁷ William A. Kandel, *Unaccompanied Alien Children: An Overview*, Cong. Research Service (Sept. 1, 2021) Pg. 3.

⁸*Id.* at 31.

⁹*Id.*

Once ORR obtains custody of UAC, the law requires that UAC must promptly be “placed in the least restrictive setting that is in the best interest of the child.”¹⁰ For the vast majority of UAC, that requirement means that ORR seeks an individual in the U.S. to sponsor the child. If a sponsor cannot be found, the UAC “are placed in a long-term care setting, such as community based foster care or extended care group home.”¹¹

Over the years, temporary ORR facilities have drawn criticism. According to CRS, “child advocacy groups have expressed additional concerns about temporary facilities’ large sizes, lack of state licensing standards and oversight, remote locations, and reported understaffing.”¹² In addition, the Department of Health and Human Services Office of Inspector General has found that ORR facilities did not take adequate steps to prevent UAC from getting and spreading COVID-19. Specifically, the Inspector General “found that these facilities lacked: (1) procedures for COVID-19 testing of children, employees, and volunteers; (2) measures to protect against the spread of COVID-19; and (3) procedures to report required testing and results to ORR and State and local health entities.”¹³

The Biden Administration’s treatment of UAC has raised concerns. For instance, ORR’s “expedited release policy” for UAC placement with sponsors does not require fingerprint checks on all sponsors, and it only requires a background check on members of the sponsor’s household “as appropriate.”¹⁴ Such a policy could result in UAC placement in households that are not safe for the children.

On September 21, 2022, the Committee considered H. Res. 1343 at a business meeting. Chairman Nadler entered several documents into the record that he indicated “largely address five of the seven requests contained within the resolution.”¹⁵ While those documents contained information relevant to five of the seven document requests made in H. Res. 1343, they were in no way exhaustive of the documents, communications, and other information sought in the resolution. Democrats showed no interest in conducting oversight of the Biden Administration’s treatment of UAC, contrary to their feigned outrage during the Trump Administration. Democrats voted to report H. Res. 1343 unfavorably to the House.

If the Biden Administration had the best interests, safety, and welfare of UAC at heart, it would be transparent and provide the requested materials to the Committee. It would also enforce U.S. immigration law to deter aliens, including UAC, from making the journey to the U.S. border. Instead, the Biden Administration is intent on covering up its policies and processes that put UAC in danger and incentivize illegal immigration. We strongly disagree with

¹⁰ 8 U.S.C. § 1232(c)(2).

¹¹ William A. Kandel, *Unaccompanied Alien Children: An Overview*, Cong. Research Service (Sept. 1, 2021) Pg. 12.

¹² *Id.* at 32.

¹³ Dept. of Health and Human Services Inspector General, *Office of Refugee Resettlement’s Influx Care Facility and Emergency Intake Sites Did Not Adequately Safeguard Unaccompanied Children From COVID-19*, (June 2022) (A-06-21-07002).

¹⁴ Letter from Jennifer Cannistra, Acting Assistant Secretary for Children and Families, U.S. Dept of Health and Human Services, to Rep. Andy Biggs, (Feb. 24, 2022).

¹⁵ H. Comm. On Judiciary, *Markup of H. Res. 1343, Of Inquiry Requesting the President and Directing the Secretary of Health and Human Resources and the Secretary of Homeland Security to Transmit, Respectively, Certain Documents to the House of Representatives Relating to Unaccompanied Alien Children*, 117th Cong. (Sept. 21, 2022).

the Committee's action and believe H. Res. 1343 would help to advance our oversight of federal immigration law.

JIM JORDAN,
Ranking Member.

