

United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Rob Portman, Chairman

Claire McCaskill, Ranking Minority Member

**Protecting Unaccompanied Alien Children
from Trafficking and Other Abuses:
The Role of the Office of Refugee
Resettlement**

STAFF REPORT

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INVESTIGATIONS**

UNITED STATES SENATE



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I. EXECUTIVE SUMMARY

Each year, tens of thousands of children enter the United States, unaccompanied by their parents or relatives. If taken into U.S. custody, those children are designated “unaccompanied alien children” or “UACs.”¹ Congress has tasked the Department of Health and Human Services (HHS) with finding appropriate homes in which to place UACs temporarily, pending the resolution of immigration proceedings. The agency within HHS that performs that function is the Office of Refugee Resettlement (ORR). Through procedures described in this report, HHS attempts to place each UAC with a suitable adult sponsor—someone who can care for them and ensure their appearance at their immigration hearings. In carrying out this responsibility, federal law requires HHS to ensure that UACs are protected from human trafficking and other forms of abuse.

Over a period of four months in 2014, however, HHS allegedly placed a number of UACs in the hands of a ring of human traffickers who forced them to work on egg farms in and around Marion, Ohio, leading to a federal criminal indictment. According to the indictment, the minor victims were forced to work six or seven days a week, twelve hours per day.² The traffickers repeatedly threatened the victims and their families with physical harm, and even death, if they did not work or surrender their entire paychecks.³ The indictment alleges that the defendants “used a combination of threats, humiliation, deprivation, financial coercion, debt manipulation, and monitoring to create a climate of fear and helplessness that would compel [the victims’] compliance.”⁴

Those tragic events prompted the Subcommittee to launch an investigation of HHS’s process for screening potential UAC sponsors and other measures to protect UACs from trafficking. The Subcommittee’s initial review of the Marion case files revealed information that suggests these terrible crimes were likely preventable. Specifically, the files reveal that, from June through September 2014, HHS placed a number with alleged distant relatives or family friends—including one of the defendants in the criminal case—without taking sufficient steps to ensure that the placements would be safe. HHS failed to run background checks on the adults in the sponsors’ households as well as secondary caregivers, failed to visit any of the sponsors’ homes; and failed to realize that a group of sponsors was accumulating

¹ See 6 U.S.C. § 279(g)(2) (“The term ‘unaccompanied alien child’ means a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom – (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”)

² Superseding Indictment ¶¶ 59, 63, 69, 72, 77, 92, *United States v. Castillo-Serrano*, No. 15-cr-0024, ECF No. 28 (N.D. Ohio July 1, 2015) [hereinafter *Indictment*].

³ *Id.* ¶ 46.

⁴ *Id.* ¶ 49.

multiple unrelated children. In August 2014, HHS permitted a sponsor to block a child-welfare case worker from visiting with one of the victims, even after the case worker discovered the child was not living at the address on file with HHS.

The Subcommittee sought to determine whether the Marion placements were caused by a tragic series of missteps or more systemic deficiencies in HHS's UAC placement process. Based on that investigation, the Subcommittee concludes that HHS's policies and procedures are inadequate to protect the children in the agency's care. The Subcommittee's investigation has focused on what HHS calls Category 3 sponsors—those who have no close relation to the child, and therefore resemble foster-care providers or similar temporary custodial arrangements.

Serious deficiencies found by the Subcommittee include:

- **HHS's process for verifying the alleged relationship between a UAC and an individual other than a parent, guardian, or close family member is unreliable and vulnerable to abuse.** In general, HHS accepts the alleged relationship between a Category 3 sponsor and a UAC (*e.g.*, “neighbor from home country”) if a person claiming to be the child's family member corroborates it. In a number of cases, however, parents who consented to the placement of their children with certain sponsors were also complicit in the child's smuggling. In the Marion cases, for example, several victims' family members attested to the asserted relationship, but there was a reason: The human traffickers held the deeds to some of the families' homes as collateral for the child's journey to the United States. The sooner the child was released from HHS custody, the sooner they could begin working to repay the debt. Other cases revealed that parents have deceived HHS by claiming that a relationship existed between the sponsor and the UAC when it did not.
- **HHS is unable to detect when a sponsor or group of related sponsors is seeking custody of multiple unrelated children.** The agency could not detect that sponsors in the Marion cases were collecting multiple, unrelated children—a warning sign of a potential trafficking ring that warrants, at a minimum, additional scrutiny.
- **HHS has failed to conduct adequate background checks.** Throughout the time period examined by the Subcommittee, HHS did not conduct background checks on all relevant adults. HHS's longstanding policy was to conduct background checks only on the sponsor, and not on any other adult listed as living in the sponsor's home or on the person designated as the “backup” sponsor. And if that check turned up a criminal history, HHS policy was that *no* criminal conviction could disqualify a sponsor, no matter how serious. Effective January 25, 2016, HHS has strengthened its background check policies.

- **HHS does not adequately conduct home studies.** Home studies are universally performed in foster care placements, but the HHS agency commonly places children with sponsors without ever meeting that sponsor in person or setting eyes on the home in which the child will be placed. The agency performed home studies in less than 4.3% of cases from 2013 through 2015. No home studies were conducted in the Marion cases.
- **After a child’s release to a sponsor, HHS allows sponsors to refuse post-release services offered to the child—and even to bar contact between the child and an HHS care provider attempting to provide those services.** That policy caused HHS to miss a potential opportunity to uncover the crime perpetrated in the Marion cases when one of the victim’s sponsors refused to permit access to the child.
- **Many UACs fail to appear at immigration proceedings.** Ensuring the UAC’s appearance at immigration proceedings is a principal task of a UAC’s sponsor, and failure to appear at an immigration hearing can have significant adverse consequences for an alien child. Based on Department of Justice data, 40% of completed UAC immigration cases over an 18-month period resulted in an *in absentia* removal order based on the UAC’s failure to appear.

These deficiencies in HHS’s policies expose UACs to an unacceptable risk of trafficking and other forms of abuse at the hands of their government-approved sponsors. Beyond the Marion case files, the Subcommittee has identified and reviewed 13 other cases involving post-placement trafficking of UACs and 15 additional cases with serious trafficking indicators. The Subcommittee is unable to say, however, with any certainty how many more UACs placed by HHS have been victims of trafficking or other abuses, in part because HHS maintains no regularized means of tracking such cases.

The Subcommittee has also learned that no federal agency accepts responsibility for UACs placed with sponsors other than their parents from the time of placement until the immigration hearing. HHS told the Subcommittee that its longstanding view has been that once a child is transferred to the care of a sponsor, HHS has no further power or responsibility.

II. BACKGROUND

Each year, thousands of UACs enter the United States, unaccompanied by their parents or relatives and are taken into U.S. custody. Congress has tasked the Department of Health and Human Services’s Office of Refugee Resettlement (ORR) with finding appropriate homes in which to place UACs temporarily pending the resolution of their immigration proceedings. Through procedures described below,

HHS attempts to place each UAC with a suitable adult sponsor—someone who can care for them and ensure their appearance at their immigration hearings.

Unaccompanied alien children require special care. Their youth, lack of adult supervision, language barriers, and dangerous journey to the United States combine to make UACs a vulnerable population.⁵ In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),⁶ Congress prescribed certain minimum standards of care that HHS must follow when deciding whether to place a UAC in a particular home.⁷ The TVPRA is clear that a UAC should never be placed with a sponsor who cannot adequately care for the child.⁸ Congress also directed four separate federal agencies to establish policies and programs to protect UACs from human trafficking—the unlawful sale of children for forced labor or sex.⁹

Over a period of four months in 2014, however, HHS placed a number of UACs in the hands of a ring of human traffickers who forced them to work on egg farms in and around Marion, Ohio, leading to a July 2015 federal criminal indictment. According to the indictment, the minor victims were forced to work at egg farms in Marion and other location for six or seven days a week, twelve hours per day.¹⁰ The traffickers repeatedly threatened the victims and their families with physical harm, and even death, if they did not work or surrender their entire paychecks.¹¹ The indictment alleges that the defendants “used a combination of threats, humiliation, deprivation, financial coercion, debt manipulation, and monitoring to create a climate of fear and helplessness that would compel [the victims’] compliance.”¹²

Those tragic events prompted the Subcommittee to launch an investigation of HHS’s process for screening potential UAC sponsors and other measures to protect UACs from trafficking. The Subcommittee sought to determine whether the Marion placements were caused by a tragic series of missteps or more systemic deficiencies in HHS’s UAC placement process. The Subcommittee reviewed 65 case files of

⁵ *Unaccompanied Children Released to Sponsors by State*, OFFICE OF REFUGEE RESETTLEMENT, <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>.

⁶ Pub. L. No. 110-457, 122 Stat. 5044 (2008).

⁷ 8 U.S.C. 1232(c)(3)(A), (“[A]n unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child’s physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian’s identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child).

⁸ *Id.*

⁹ *Id.* § 1232(c)(1).

UACs placed by ORR, including 34 UACs whose files contained at least some indication of human trafficking or other neglect or abuse, and a sample set of 28 other UACs placed with sponsors who were not close relatives. Based on that investigation, the Subcommittee concludes that HHS's policies and procedures were inadequate to protect the children in the agency's care.

A. The Ongoing UAC Crisis and Human Trafficking

Since 2014, the United States has experienced a large increase of unaccompanied alien children from Central America at the southern border. The number of UACs apprehended increased from approximately 8,000 in Fiscal Year (FY) 2008 to almost 69,000 in FY2014¹³ and 39,970 in FY2015.¹⁴ That influx shows no sign of abating in FY2016: Customs and Border Protection (CBP) apprehended 10,588 UACs from October 1, 2015 through November 30, 2015, more than double the number of UACs apprehended during the same period one year ago.¹⁵ The border surge has also produced a shift in the origin of UACs. Prior to FY2014, most UACs entering the U.S. came from Mexico.¹⁶ But in each year since, the majority of UACs apprehended by the Department of Homeland Security (DHS) have come from El Salvador, Guatemala, and Honduras.

The causes of the surge of UACs are disputed, but all stakeholders, including HHS, agree that one reason UACs come to this country is that they are “brought into the United States by human trafficking rings.”¹⁷ According to the State Department's 2015 Trafficking in Persons Report, “[t]he United States is a source, transit, and destination country for men, women, transgender individuals, and children—both U.S. citizens and foreign nationals—subjected to sex trafficking and forced labor.”¹⁸ Human trafficking involves transporting or harboring human beings, often for financial gain, through the use of fraud, force, or coercion.¹⁹

Human trafficking can be confused with human smuggling, which involves the illegal transport of an alien across the border, generally with that person's

¹³ WILLIAM KANDEL & LISA SEGHELLI, CONG. RESEARCH SERV., R43599, UNACCOMPANIED MINOR CHILDREN: AN OVERVIEW (2015), <https://fas.org/sgp/crs/homsec/R43599.pdf>.

¹⁴ U.S. Border Patrol, *Family Unit and Unaccompanied Alien Children (0-17) Apprehensions FY 15 Compared to FY 14* (2015), <https://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20-%20FY14-FY15.pdf>.

¹⁵ *Id.*

¹⁶ *Southwest Border Unaccompanied Alien Children Statistics FY 2016*, U.S. CUSTOMS & BORDER PROTECTION, (2015), <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

¹⁷ *Administration for Children and Families, Fact Sheet*, U.S. DEP'T. OF HEALTH & HUM. SERV., https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf.

¹⁸ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JULY 2015, 352, www.state.gov/documents/organization/245365.pdf.

¹⁹ 18 U.S.C. § 1591(a).

consent.²⁰ According to the State Department, “[t]he vast majority of people who are assisted in illegally entering the United States are smuggled, rather than trafficked.”²¹ But the two practices are linked in many cases: “Trafficking often includes an element of smuggling, specifically, the illegal crossing of a border. In some cases the victim may believe they are being smuggled, but are really being trafficked, as they are unaware of their fate.”²²

There is evidence that criminal organizations—including Mexican cartels and other transnational gangs—are engaged in both the smuggling and trafficking of children and other victims on the border. In 2014, the Texas Department of Public Safety, in collaboration with other law enforcement and homeland security agencies, produced a State Intelligence Estimate finding that:

[m]any illegal aliens who are transported by alien smuggling operations into and through Texas are vulnerable to or become victims of trafficking or other crimes, including kidnapping, extortion, assault, sexual assault, forced prostitution and forced labor.²³

These smuggling operations include “leaders, members, and associates of the Gulf Cartel, Los Zetas, and the Juarez Cartel [that] are involved in human smuggling operations along the Texas-Mexico border.”²⁴

Because of this longstanding concern, in 2008 Congress directed HHS, along with three other agencies, to establish policies to protect UACs in the United States from human trafficking.²⁵

B. Statutory and Legal Framework for Placing Unaccompanied Alien Children with Adult Sponsors

Federal law establishes how UACs must be treated once they are apprehended in the United States. First, an immigration officer at either Customs and Border Protection or Immigration and Customs Enforcement—agencies of the Department of Homeland Security—issues the child a Notice to Appear requiring his appearance at an immigration proceeding. Eventually that Notice to Appear

²⁰ U.S. DEP’T OF STATE, HUMAN SMUGGLING AND TRAFFICKING CENTER, FACT SHEET: DISTINCTIONS BETWEEN HUMAN SMUGGLING AND HUMAN TRAFFICKING 2 (2006), <http://www.state.gov/documents/organization/90541.pdf>.

²¹ *Id.*

²² *Id.*

²³ *Assessing the Threat of Human Trafficking in Texas* 24 (2014), TEX. DEP’T OF PUB. SAFETY, https://www.txdps.state.tx.us/director_staff/media_and_communications/2014/txHumanTraffickingAssessment.pdf.

²⁴ *Id.*

²⁵ 8 U.S.C. § 1232(c)(1).

(NTA) will be filed with an immigration court run by the Executive Office for Immigration Review within the Department of Justice (DOJ). The Notice to Appear details the immigration charges against the UAC—typically, “entering without inspection”—and orders him to appear before an immigration judge at a later date. The NTA also explains the consequences of failing to appear at the scheduled hearing, which can be severe.²⁶

Under federal law, “the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.”²⁷ Previously that function was performed by the Immigration and Naturalization Service (INS), but the Homeland Security Act of 2002 transferred it to HHS.²⁸ As the House Report concerning that Act described them, HHS’s inherited duties include:

coordinating and implementing the law and policy for unaccompanied alien children who come into Federal custody; making placement determinations for all unaccompanied alien children in federal custody; identifying and overseeing the infrastructure and personnel of facilities that house unaccompanied alien children; annually publishing a State-by-State list of professionals or other entities qualified to provide guardian and attorney services; maintaining statistics on unaccompanied alien children; and reuniting unaccompanied alien children with a parent abroad, where appropriate.²⁹

Accordingly, after the Notice to Appear has been issued, an eligible unaccompanied alien child will be transferred to the custody of HHS’s Office of

²⁶ A UAC who does not appear at his or her immigration proceeding may be ordered removed *in absentia*. An immigration judge may order a UAC removed in absentia if DHS “establishes by clear, unequivocal, and convincing evidence” that the individual is removable and that the individual received sufficient written notice of the hearing, including a warning of the consequences for failing to appear. 8 U.S.C. § 1229a(b)(5)(A). *In absentia* orders have serious consequences in that they can serve as a bar to subsequent immigration relief for a period of 10 years if the child thereafter attempts to enter the United States. Therefore, once a final order of removal has been entered against the individual for failure to appear, that individual can be ineligible for cancellation of removal (*see* 8 U.S.C. §1229b), voluntary departure (*see* 8 U.S. C. §1229c), adjustment of status to permanent resident (*see* 8 U.S.C. §1225), or adjustment of status of nonimmigrant classification (*see* 8 U.S.C. §1258). However, these bars will only take effect if the individual ordered removed *in absentia* actually leaves the country.

²⁷ 8 U.S.C. § 1232(b)(1).

²⁸ *See* Pub. L. No. 107-296, 116 Stat. 2135 (2002); 2 U.S.C. § 279(a) (“There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization.”).

²⁹ H. Rep. No. 107-609, 106 (2002).

Refugee Resettlement. Consistent with the general practice in immigration law,³⁰ UACs normally are not held in detention pending their immigration proceedings. Instead, HHS attempts to find a suitable sponsor with whom they can live—someone who can both safely care for the child and ensure his appearance before the immigration court. Since the beginning of FY2014, HHS has placed almost 90,000 UACs with sponsors in the United States.³¹ According to HHS, it places the majority of those UACs with the child’s parent or legal guardian.³²

Congress has prescribed certain minimum standards HHS must follow when evaluating the suitability of a sponsor.³³ The TVPRA provides that HHS may not release an unaccompanied alien child “unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child’s physical and mental well-being.”³⁴ HHS must, “at a minimum,” verify the proposed “custodian’s identity and relationship to the child” and “make an independent finding” that the proposed sponsor “has not engaged in any activity that would indicate a potential risk to the child.”³⁵

The Act also requires HHS to determine whether a home study—that is, an inspection and evaluation of the physical home in which a child will be placed—is necessary.³⁶ The statute makes home studies mandatory in certain cases:

[f]or a child who is a victim of a severe form of trafficking in persons, a special needs child with a disability (as defined in section 12102 of title 42), a child who has been a victim of physical or sexual abuse under circumstances that indicate that the child’s health or welfare has been significantly harmed or threatened, or a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.³⁷

³⁰ See *Matter of Patel*, 15 I&N Dec. 666, 666 (1976) (“An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security.”)

³¹ *Unaccompanied Children Released to Sponsors by State*, OFFICE OF REFUGEE RESETTLEMENT, <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>.

³² TED KIM, ACTING CHIEF, ASYLUM DIVISION, U.S. CITIZENSHIP AND IMMIGRATION SERVS., U.S. DEP’T OF HOMELAND SECURITY, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children* (May 28, 2013).

³³ Pub. L. No. 110-457, 122 Stat. 5044 (2008).

³⁴ 8 U.S.C. § 1232(c)(3)(A).

³⁵ *Id.*

³⁶ *Id.*; 8 U.S.C. § 1232(c)(3)(B).

³⁷ *Id.*

And as a matter of its discretion, HHS has established certain additional circumstances when it will conduct a home study.³⁸

The TVPRA also requires HHS to “conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted” and authorizes follow-up services “in cases involving children with mental health or other needs who could benefit from ongoing assistance from a social welfare agency.”³⁹ HHS has expanded the availability of follow-up services to additional categories of UACs as a matter of its discretion.⁴⁰

In addition to relevant statutes, HHS also complies with the terms of a 1997 consent decree, known as the *Flores* Agreement, entered into by the former INS. The *Flores* Agreement established a “general policy favoring release” of UACs whenever “the INS determines that the detention of a minor is not required to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor’s safety or that of others.”⁴¹ Consistent with that policy, the *Flores* Agreement expanded the entities to whom INS could release children beyond parents, guardians, and close adult relatives, to include “an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor’s well-being,” “a licensed program willing to accept legal custody,” or “an adult individual or entity seeking custody . . . when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.”⁴²

In addition, under the *Flores* Agreement, all custodians are required to sign agreements pledging to provide for the alien child’s well-being, notify the local immigration court if the custodian and unaccompanied alien child move, and ensure that the unaccompanied alien child will appear for all immigration proceedings.⁴³ The *Flores* Agreement then provides that “[t]he INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement.”⁴⁴ The *Flores* Agreement also granted the government

³⁸ *ORR Policy Guide: Children Entering the United States Unaccompanied*, OFFICE OF REFUGEE RESETTLEMENT (Jan. 30, 2015), <http://www.acf.hhs.gov/programs/orr/resource/children-entering-the-united-states-unaccompanied> [hereinafter *ORR Policy Guide*].

³⁹ 8 U.S.C. § 1232(c)(3)(B).

⁴⁰ *ORR Policy Guide*, § 2.4.2.

⁴¹ Stipulated Settlement Agreement ¶ 14, *Flores v. Reno*, No. 85-cv-4544 (C.D. Cal. 1997), [hereinafter “*Flores* Agreement”], https://www.aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf.

⁴² *Id.*

⁴³ *Id.* ¶ 15.

⁴⁴ *Id.* ¶ 16.

the authority to hold any unaccompanied alien child who could not be released consistent with the agreement, in a group shelter.⁴⁵

C. The Office of Refugee Resettlement

ORR is an office within HHS's Administration for Children and Families (ACF). ORR's principal function, as its name implies, is the resettlement of refugees who come to live in the United States. But in recent years, the task of finding placements for tens of thousands of UACs annually has become an increasingly important function of the office.

ORR is headed by a Director, who reports to the Assistant Secretary for ACF. In brief, ORR has five divisions: Refugee Assistance, Refugee Health, Resettlement Services, Children's Services, and the Office of the Director. The Office of the Director includes the Budget Division, the Policy Division, and the Repatriation Division.⁴⁶

The Division of Children's Services is responsible for the UAC program, among other duties. According to ORR, the Deputy Director of Children's Services, whom the Subcommittee has interviewed, has been in immediate charge of the program since April 2015.⁴⁷ ORR divides the country into five regions for purposes of the UAC program. Each region is headed by a Federal Field Specialist Supervisor who monitors a team of eight to twelve Federal Field Specialists (FFS or Field Specialist).⁴⁸ Each Field Specialist is responsible for multiple care providers within its assigned region and "serves as the regional approval authority for unaccompanied alien children transfer and release decisions."⁴⁹ UACs are sent to specific regions based on available bed space at a facility that provides the appropriate level of care for the UAC's needs.⁵⁰

⁴⁵ *Id.* ¶ 19.

⁴⁶ *See* App. 001.

⁴⁷ Interview with Bobbie Gregg, Deputy Director of Children's Services, Office of Refugee Resettlement (Oct. 1, 2015).

⁴⁸ The five regions are assigned the following number of Field Specialists: South Texas: 9 FFS; Central Texas: 10 FFS; Northeast: 12 FFS; Southeast: 8 FFS; West: 12 FFS.

⁴⁹ *ORR Policy Guide: Children Entering the United States Unaccompanied: Guide to Terms*, OFFICE OF REFUGEE RESETTLEMENT (Jan. 30, 2015), [hereinafter *ORR Guide to Terms*], <http://www.acf.hhs.gov/programs/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms>.

⁵⁰ *ORR Policy Guide* at § 1.2 ("ORR policies for placing children and youth in its custody into care provider facilities are based on child welfare best practices in order to provide a safe environment and place the child in the least restrictive setting appropriate for the child's needs."), § 1.3.1 ("The care provider may . . . deny ORR's request for placement based on . . . [l]ack of available bed space.").

D. HHS's Child Placement Procedures

HHS's UAC program functions through grants and contracts with a number of private care providers and other third parties who perform daily tasks associated with UAC placement. Those functions include running shelters for children who have not yet been placed with sponsors, identifying and screening potential sponsors, evaluating the homes in which children will be placed, making release recommendations to HHS, and providing post-release services to children.⁵¹ HHS awarded 56 grants to over 30 care providers for the UAC Program in FY2016, including BCFS Health and Human Services, Lutheran Immigration and Refugee Services, the U.S. Conference of Catholic Bishops, the U.S. Committee for Refugees and Immigrants, and Southwest Key.⁵² These care providers make recommendations to HHS about UACs' care—recommendations that are also evaluated by General Dynamics Information Technology (GDIT), a HHS contractor who serves as a “case coordinator.”⁵³ But ultimately, an ORR Field Specialist must approve the decision to release a child or to order additional vetting or services discussed below—such as conducting a home study of the sponsor's residence or providing post-release services to a child.⁵⁴

The following describes HHS's placement procedures in greater detail.

1. Evaluate Each Child

Once DHS transfers an unaccompanied alien child to HHS custody, HHS determines at what sort of facility the UAC should be housed. Facilities are operated by private care providers, and include shelters, foster-care or group homes, secure-care facilities, and residential treatment facilities.⁵⁵ HHS initially places the UAC in the “least restrictive setting appropriate for the child's needs.”⁵⁶

Once a UAC arrives at a care facility, a case manager interviews the child and completes a “UC Assessment.”⁵⁷ The UC Assessment includes basic information about the child's journey and apprehension, family and significant relationships, medical history, and any potential legal relief for which the child may qualify. It also includes the UAC's criminal history, an evaluation of his mental health and behavior, and any indicators that the child may be a trafficking victim. The case manager also collects initial information about potential sponsors for the

⁵¹ *Id.*

⁵² Documents provided by HHS's Office of the Assistant Secretary for Legislation.

⁵³ Currently, case coordinators are provided by General Dynamics Information Technology.

⁵⁴ *ORR Policy Guide*, § 2.3.1.

⁵⁵ *ORR Guide to Terms*.

⁵⁶ *Id.* § 1.1.

⁵⁷ *ORR Operations Guide: Children Entering the United States Unaccompanied*, OFFICE OF REFUGEE RESETTLEMENT § 3.3.2. [hereinafter *ORR Operations Guide*].

UAC⁵⁸ and a legal service provider will meet with the UAC to determine whether the child may qualify for any sort of immigration relief.⁵⁹

During this initial assessment, HHS requires the care provider to take specific steps to determine whether the child has been a victim of human trafficking. HHS's guidance states that "[c]are providers MUST screen all unaccompanied children to determine if they are victims of a severe form of trafficking."⁶⁰ In order to make the required determination, the case manager, along with a clinician, asks the UAC questions about who planned or organized his journey, whether any debt was incurred by the UAC or his family as a result of the UAC's journey, and if so, what the terms of payment are. The case manager must also ask whether anyone threatened the UAC or his family over payment for the UAC's journey and whether any payment for the UAC's journey was made in return for a promise to work in the U.S.⁶¹

If the UAC's responses to questions during the UC Assessment or otherwise indicate that the child may have been a victim of human trafficking, the care provider must notify HHS's Office of Trafficking in Persons (OTIP) within 24 hours, so that OTIP can assess whether the child may be eligible for benefits. That determination can lead to placement in HHS's Unaccompanied Refugee Minors Program, which allows eligible children access to immigration relief as a refugee and leads to permanent settlement in the United States.⁶² In cases of trafficking, HHS may also issue the child an Eligibility Letter that grants the UAC access to federal and state benefits such as nutrition programs, medical services, monetary assistance, and financial aid.⁶³

2. Identify a Potential Sponsor

After screening a UAC for trafficking indicators, a care provider will begin the process of identifying potential sponsors.⁶⁴ To do this, the care provider is

⁵⁸ *ORR Operations Guide*, § 3.2.2.

⁵⁹ Legal relief from removal for UACs most commonly includes asylum, special immigrant juvenile status, U-visas for crime victims, and T-visas for trafficking victims.

⁶⁰ *ORR Policy Guide*, § 3.3.3. Under federal law, a "severe form of trafficking in persons," means "(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." 22 U.S.C. § 7102(9).

⁶¹ UC Assessment (copy on file with the Subcommittee).

⁶² *Fact Sheet: Victim Assistance*, OFFICE OF REFUGEE RESETTLEMENT, <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-victim-assistance-english>.

⁶³ *Services Available to Minors with Eligibility Letters*, OFFICE ON TRAFFICKING IN PERSONS, <http://www.acf.hhs.gov/programs/endtrafficking/services/minors-eligibility-letters>.

⁶⁴ *ORR Policy Guide* at § 2.2.1 ("The care provider . . . interviews the child as well as parents, . . . legal guardians, and/or family members to identify qualified custodians ('sponsors')."), § 2.2.2 ("The

supposed to “interview[] the child as well as parents, legal guardians, and/or family members to identify qualified custodians [*i.e.*, sponsors].”⁶⁵ According to HHS’s guidance,

ORR releases children to a sponsor in the following order of preference: parent, legal guardian, adult relative (brother, sister, aunt, uncle, grandparent or first cousin), adult individual or entity designated by the parent or legal guardian (through a signed declaration or other document that ORR determines is sufficient to establish the signatory’s parental/guardian relationship), licensed program willing to accept legal custody, or adult individual or entity seeking custody when it appears that there is no other likely alternative to long term ORR care and custody.⁶⁶

HHS created four categories to classify potential sponsors in order to help guide release decisions.

- *Category 1:* Parents, legal guardians, and stepparents that have legal or joint custody of the UAC.
- *Category 2:* Immediate relatives of the UAC, such as brothers, sisters, aunts, uncles, grandparents, and first cousins.
- *Category 3:* Distant relatives or unrelated individuals. Much of the Subcommittee’s investigation has focused on Category 3 sponsors—those that have no close relation to the child, and therefore resemble foster-care providers or similar temporary custodial arrangements.
- *Category 4:* Cases in which a UAC has no identified sponsor.⁶⁷

Once the care provider identifies a potential sponsor, it begins the sponsor-assessment process. ORR’s online Policy Guide explains that ORR considers a number of factors when evaluating potential sponsors, including the nature and extent of the sponsor’s relationship with the UAC, if a relationship exists; the sponsor’s motivation for wanting to sponsor the UAC; the UAC’s view on the release to the identified individual; and the sponsor’s plan to care for the UAC.⁶⁸

child’s care provider is responsible for implementing safe screen methods when contacting and communication with potential sponsors.”).

⁶⁵ *Id.* § 2.2.1.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* § 2.4.1 Assessment Criteria. Additional criteria include the unaccompanied child’s parent or legal guardian’s perspective on the release to the identified potential sponsor; the sponsor’s understanding of the unaccompanied child’s needs, as identified by HHS and the care provider; the

Care providers gather information about sponsors in a number of ways. *First*, HHS maintains a case management database, called the “UAC Portal,” used by HHS and its care providers to collect, maintain, and share information on UACs. For each UAC placement, HHS care providers update the Portal with the UAC’s name, alien number, medical history, and education, the UAC’s intake questionnaire, and information regarding the UAC’s potential sponsors and ultimate discharge from HHS. They may also upload relevant documents. At the beginning of any new sponsor assessment, the care provider must search the UAC Portal for the sponsor’s name and address to determine if there is any existing information about the sponsor already in HHS records and to find out if the sponsor’s address has been used before by a different person.⁶⁹

Second, the care provider must interview the potential sponsor as soon as possible. During the interview, the care provider must assess the sponsor’s strengths, resources, and special concerns.⁷⁰ HHS supplies suggested questions for the care provider to use when interviewing the sponsor,⁷¹ but also instructs them to use their best judgment to determine the phrasing of questions and whether additional questions are necessary.⁷² The care provider is required to note the results of the interview in the UAC’s case file.⁷³

During the interview, the care provider determines if the UAC and the sponsor know each other. If they do not know each other, the care provider is required to consult with the HHS-contracted Case Coordinator who must get approval from the ORR Field Specialist before the placement can move forward.⁷⁴

sponsor’s understanding of the importance of ensuring the unaccompanied child’s presence at all future hearings or proceedings, including immigration court proceedings; the linguistic and cultural background of the child or youth and the sponsor, including cultural, social, and communal norms and practices for the care of children; the sponsor’s strengths, resources, and mitigating factors in relation to any risks or special concerns of the child or sponsor, such as a criminal background, history of substance abuse, mental health issues, or domestic violence and child welfare concerns; and the unaccompanied child’s current functioning and strengths in relation to any risk factors or special concerns, such as children or youth who are victims of human trafficking, are a parent or are pregnant, have special needs, disabilities, or other medical or mental health issues, have a history of criminal, juvenile justice, or gang involvement, or a history of behavioral issues.

⁶⁹ The Portal has existed since January 2014, and although it was immediately searchable for names and addresses, it did not include any previous data or records. In January 2014, data in the Portal was limited to information about UACs that were in HHS’s care at the time. Even now, the Portal contains very limited amount of information about sponsors or potential sponsors for UACs released from HHS custody prior to January 2014. Interview with Anna Marie Bena, Director, Division of Policy, Office of Refugee Resettlement (Jan. 19, 2016).

⁷⁰ *ORR Operations Guide*, § 2.2.3.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

The care provider also should interview the UAC's parent, legal guardian, or other family members to determine the commitment of the potential sponsor to care for the UAC and to corroborate that a relationship exists between the UAC and the sponsor. The Operations Guide notes that the care provider "should also assess the type of relationship that exists between the UAC and the sponsor, especially if a Category 3 sponsor."⁷⁵

Third, the sponsor is asked to fill out a two-page form called the Family Reunification Application. This form asks the sponsor for his name, date of birth, country of origin, contact information, and relationship to the minor.⁷⁶ The sponsor is supposed to list the occupants of his household, along with each occupant's name, age, relationship to the sponsor, and relationship to the minor.⁷⁷ The sponsor is then required to explain how he plans to support the minor financially. Typically, a sponsor will list his job and income. The application also asks the sponsor to disclose whether the sponsor, or any person in the sponsor's household has ever been charged or convicted of a crime or investigated for the physical abuse, sexual abuse, neglect or abandonment of a minor. Finally, the application asks the sponsor to list the name and contact information of the individual who will supervise the UAC in the event the sponsor needs to leave the country or becomes unable to care for the UAC. The sponsor must submit the completed application to HHS within seven days of receiving it. The care provider uses the information provided in the application, along with information provided in the care provider's interview with the sponsor, to assess the sponsor's suitability to care for the UAC.⁷⁸

Fourth, along with the application, HHS requires the sponsor to provide supporting documentation, including proof of the sponsor's identity, address, and relationship with the UAC.⁷⁹ HHS previously required the sponsor to provide proof of income, but abolished that requirement in April 2014.⁸⁰

Proof of the sponsor's identity can take a number of forms. HHS requires the sponsor to submit at least one form of government-issued photo identification, such as a state-issued driver's license or identification card, identification document issued by a governmental entity in the sponsor's country of origin, or a passport, as well as a copy of the sponsor's birth certificate. Some of the case files viewed by the Subcommittee included an alias check along with the internet background check,

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ On January 25, 2016, HHS revised its Family Reunification Application to require sponsors to provide the date of birth of household members and contact and biographic information of backup sponsors in order for HHS to perform public records checks and sex offender registry checks on those individuals.

⁷⁸ *ORR Operations Guide* § 2.2.3.

⁷⁹ *ORR Policy Guide* at § 2.2.4.

⁸⁰ Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

but most did not. HHS does not require a care provider to search for whether a sponsor has ever used an alias.⁸¹

HHS requires different documents to prove the relationship between the sponsor and the UAC depending on the closeness of the alleged relationship. A parent attempting to sponsor a UAC must provide the UAC's birth certificate to verify the relationship. A legal guardian must submit a copy of the court guardianship order. "Other related sponsors" who qualify as Category 2 must submit "a trail of birth certificates, marriage certificates, and/or any other relevant documents" that can prove the relationship.⁸²

Establishing the relationship between a UAC and a Category 3 sponsor involves a case-by-case approach. According to the ORR Policy Guide,

Category 3 sponsors who may have a distant relationship with the youth but not supporting documentation of it or who have no relationship with the youth must submit an explanation of their relationship with the unaccompanied child or the child's family. Care providers should confirm the relationship with the unaccompanied child and the child's family, if possible.⁸³

Care providers typically speak to the UAC's family on the telephone to confirm the relationship between the sponsor and the UAC or the UAC's family, relying on the UAC's family to corroborate the sponsor's story. The ORR Operations Guide states that Category 3 sponsors must also provide a Letter of Designation for Care of a Minor, which the UAC's parent or legal guardian completes.⁸⁴

3. Conduct Background Checks

After identifying a potential sponsor for the UAC, the care provider reviews the potential sponsor's application and performs a background check.⁸⁵ HHS's guidance creates a complex matrix that determines the type of background check required in a given case. Essentially, the less close the relationship between the potential sponsor and the unaccompanied alien child, the more comprehensive the background check.⁸⁶ Depending on the circumstances, the process may involve a public records check for criminal history, an immigration status check, a FBI fingerprint check, and/or a child abuse and neglect check.⁸⁷

⁸¹ See *Generally ORR Policy Guide* §2.5.1.

⁸² *ORR Operations Guide* § 2.2.3.

⁸³ *ORR Policy Guide* § 2.2.4

⁸⁴ *ORR Operations Guide*, § 2.2.3.

⁸⁵ *ORR Policy Guide* § 2.5.

⁸⁶ See App. 089-090.

⁸⁷ *Id.* Effective January 25, 2016, this process may also involve a sex offender registry check.

Before January 25, 2016 (three days before this report issued) background checks were authorized to be performed *only* on the sponsor himself—not on other adults that will live with the child or on those listed as alternative caregivers, except in certain circumstances.⁸⁸ The Subcommittee asked for but received no explanation for this practice.

For placements with distant relatives or unrelated individuals, HHS is supposed to take the following steps:

- Complete a public-records search to determine whether the potential sponsor has been arrested, convicted, or has pending charges.
- Search CIS to determine the potential sponsor’s immigration status. Search an FBI database to perform a criminal history check based on the sponsor’s fingerprints.
- Search a separate FBI database to perform a criminal history check based on the sponsor’s name and description.
- Search state and local data to perform an additional criminal history check, if necessary.
- Complete a Child Abuse and Neglect Check, using data obtained from states.⁸⁹

a. Public Records Check

At a minimum, all sponsors must undergo a public records check. This check identifies an individual’s arrests and convictions.⁹⁰ A care provider may also run a state and local criminal history check on a case-by-case basis.⁹¹ If a check reveals a criminal record or safety issue, the care provider is required to evaluate a potential sponsor’s ability to provide for a child’s physical and mental well-being.⁹² Other adults living with a sponsor undergo a public records check if “a special concern is identified” or if a home study is conducted.⁹³ A care provider may also run state and local criminal history checks to assist with the release decision.⁹⁴ Depending on

⁸⁸ *ORR Operations Guide* § 2.2.4.

⁸⁹ *ORR Policy Guide* § 2.5.1 (“Depending on the circumstances, this process may involve background checks on criminal history, child abuse/neglect checks (CA/N), and immigration background checks for the sponsor and, if applicable, adult household members.”).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* Effective January 25, 2016, all non-sponsor adult household members and adult care givers identified in a sponsor care plan are required to undergo public registry checks as well as sex offender registry checks.

⁹⁴ *Id.*

the sponsor’s category and other extenuating factors, additional background checks are required as specified below.

b. Immigration Status Checks and FBI Fingerprint Checks

Under certain circumstances, sponsors or other adult household members may also be required to undergo an immigration status check and an FBI fingerprint check. Immigration status checks are conducted through DHS’s Central Index System (CIS)—a database of information on the status of noncitizens seeking immigration benefits. CIS provides information about immigration-court actions, orders of removal, and other immigration statuses.⁹⁵ HHS does not disqualify potential sponsors because of immigration status. Instead, if a potential sponsor is not legally present in the United States, HHS requires the sponsor to develop a “safety plan” or “Plan of Care” for the UAC that ensures the child will remain in the custody of a responsible adult if the sponsor is removed or leaves the country.⁹⁶ Care providers use the hotline maintained by the Department of Justice’s Executive Office for Immigration Review as a follow-up to the CIS check for the latest immigration-court information.⁹⁷

An FBI fingerprint check is used to determine if an individual has a criminal history or has been convicted of a sex crime or other offense that compromises the sponsor’s ability to care for a child.⁹⁸ If the individual’s fingerprints are unreadable, HHS may search for his name in the FBI’s criminal history record files (called the “FBI Interstate Identification Index (FBI IID)”).⁹⁹

Care providers are required to run both an immigration status check and an FBI fingerprint check on all Category 2 and 3 sponsors.¹⁰⁰ Category 1 sponsors and adult household members are exempt from these checks unless there is a documented risk to the safety of the UAC, the UAC is especially vulnerable, and/or the case is being referred for a mandatory home study.¹⁰¹

c. Child Abuse and Neglect Check

Child abuse and neglect checks are run on all Category 3 sponsors. They are run on Category 1 and 2 sponsors only when there is a special concern, the UAC is

⁹⁵ *Id.*

⁹⁶ *Id.* This report refers to that individual as a “backup sponsor.”

⁹⁷ *Id.*

⁹⁸ *ORR Policy Guide* § 2.5.1.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* Effective January 25, 2016, non-sponsor adult household members and adult care givers identified in a sponsor care plan are required to undergo an immigration status check and FBI fingerprint check where a public records check reveals possible disqualifying factors under Section 2.7.4 of the *ORR Policy Guide*.

especially vulnerable, and/or if the case is being referred for a mandatory home study.¹⁰² HHS runs child abuse and neglect checks on other adults living with a sponsor when “a special concern is identified.”¹⁰³

Because there is no national repository of information against which to run a check for information on child abuse and neglect, such reviews are run on a state-by-state basis.¹⁰⁴ A child abuse and neglect check is run for all localities in which the individual has resided for the past five years.¹⁰⁵ HHS may waive the requirement that the results of a child abuse and neglect check be obtained prior to making a release decision, if all other documentation needed to approve a safe release has been received and reviewed by the case manager.¹⁰⁶

4. Consider Conducting a Study of the Sponsor’s Home

Under some circumstances, HHS will order the care provider to conduct a home study—*i.e.*, “an in-depth investigation of the potential sponsor’s ability to ensure the child’s safety and well-being.”¹⁰⁷ Home studies are normally performed by a specialized provider and typically consist of an interview with the UAC, an interview with the potential sponsor, and an interview with any other individuals residing with the potential sponsor.¹⁰⁸ Home studies also include assessments of the potential sponsor’s neighborhood and of the potential sponsor’s home (including a determination regarding where a UAC will sleep, whether there is running water, electricity, food readily available, and any visible weapon or illegal substances in the home).¹⁰⁹

Unlike state foster-care systems, HHS does not conduct home studies for all prospective sponsors—even Category 3 sponsors. Instead, HHS authorizes home studies in circumstances where the TVPRA mandates them and in a few other discrete categories.

The TVPRA makes home studies mandatory in four situations:

- 1) The UAC is identified as a victim of a severe form of trafficking in persons (a UAC does not need an Eligibility Letter from HHS to qualify for home study);
- 2) The UAC is a special needs child with a disability as defined in section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102(1);

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*; see *ORR Guide to Terms*.

¹⁰⁸ *ORR Guide to Terms*.

¹⁰⁹ Interview with Southwest Key (Sept. 21, 2015).

- 3) The UAC has been a victim of physical or sexual abuse under circumstances that indicate that the child’s health or welfare has been significantly harmed or threatened; or
- 4) The UAC’s sponsor clearly presents a risk of abuse, maltreatment, exploitation or trafficking, to the child based on all available objective evidence.¹¹⁰

In addition, HHS policy requires home studies in two other circumstances. Under a pilot program announced by HHS on July 1, 2015, home studies are now required for all UACs 12 years of age and under who are to be placed with a Category 3 sponsor.¹¹¹ And on July 27, 2015, HHS began requiring a home study if the proposed sponsor is a non-relative who is seeking to sponsor multiple children or has previously sponsored a child and is seeking to sponsor additional children.¹¹²

If a case meets any of the criteria described above, the care provider makes a recommendation to perform a home study in the request for release of the UAC. That recommendation is then reviewed by the third-party case coordinator and the Field Specialist. The Field Specialist ultimately decides whether to conduct a home study before a final release decision can be made.¹¹³

5. Make a Release Recommendation

Once the care provider has reviewed the Family Reunification Application and supporting documentation and spoken to the necessary individuals, it makes a release recommendation to the third-party case coordinator.¹¹⁴ The case coordinator provides an independent review of the case and makes a recommendation to HHS based on information in the UAC’s case file.¹¹⁵ Case coordinators meet with care providers on a weekly basis to get status updates on active cases. In complex cases, the case coordinator may interview the UAC, but is prohibited from contacting the UAC’s family or the sponsor directly.¹¹⁶

Prior to December 1, 2015, case coordinators used a “Third Party Review” form to provide a summary of the case to the Field Specialist and to make a release recommendation. On December 1, however, HHS cut the time in which a case

¹¹⁰ 8 U.S.C. § 1232(c)(3)(B).

¹¹¹ App. 238.

¹¹² *See id.* (“HHS also requires a mandatory home study before releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or previously sponsored a child and is seeking to sponsor additional children.”).

¹¹³ *ORR Policy Guide* §2.7.

¹¹⁴ General Dynamics Information Technology is the current contractor for the provision of case coordination services.

¹¹⁵ *ORR Operations Guide* § 2.3.4.

¹¹⁶ Interview with General Dynamics Information Technology (Jan.15, 2015).

coordinator must conduct its review from three days to one day. This new guidance also instructs case coordinators to summarize their release recommendation in one paragraph for entry into the UAC Portal instead of using the longer, more detailed form.¹¹⁷

After the case coordinator's recommendation is received, the Field Specialist, using assessment criteria specified in HHS's guidance, has 24 hours to act on the caregiver's recommendation.¹¹⁸ If the care provider recommends release, the Field Specialist has several options: approve the release; approve the release provided the sponsor agrees to post-release services; remand so that the care provider may consider additional evidence; deny the release; or order a home study.¹¹⁹

6. Release of the UAC from HHS Custody

Once release is approved by the Field Specialist, the sponsor is required to sign a document agreeing to notify the immigration court of any changes to the unaccompanied alien child's address within five days;¹²⁰ to provide for the physical and mental well-being of the child¹²¹, to ensure that the unaccompanied alien child reports for removal proceedings;¹²² and to notify the National Center for Missing and Exploited Children if the child disappears, is kidnapped, or runs away.¹²³

Sponsors also agree to attend legal orientation programs that impress upon them the importance of ensuring the UAC's appearance at all immigration hearings and court proceedings. The TVPRA requires that HHS and DOJ "cooperate" to "ensure that custodians receive legal orientation programs."¹²⁴ Despite this mandate, ORR's Operations Guide states only that the care provider must "explain[] the benefits" of "voluntarily" attending a legal orientation program for custodians of UACs, which is administered by DOJ's Executive Office for

¹¹⁷ *Id.*

¹¹⁸ *ORR Policy Guide* §§ 2.7.1-2.7.5 (outlining criteria for a Federal Field Specialist's decision).

¹¹⁹ *See id.* § 2.7 ("The ORR/FFS will make one of the following release decisions: Approve release to sponsor; Approve release with post-release services; Conduct a home study before a final release decision can be made; Deny release; Remand.").

¹²⁰ *See id.* § 2.8.1 ("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.... [and] if applicable, file a Change of Venue motion on the child's behalf.").

¹²¹ *See id.* (sponsor must agree to "[p]rovide 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").

¹²² *See id.* (sponsor must "[e]nsure the unaccompanied child's presence at all future proceedings before the DHS/Immigration and Customs Enforcement (ICE) and the DOJ/EOIR.").

¹²³ *See id.* (sponsor must "[n]otify the National Center for Missing and Exploited Children").

¹²⁴ 8 U.S.C. § 1232(c)(4). Furthermore, "at a minimum, such presentations shall address the custodian's responsibility to attempt to ensure the child's appearance at all immigration proceedings and to protect the child from mistreatment, exploitation, and trafficking." *Id.*

Immigration Review.¹²⁵ The care provider can schedule an appointment for a sponsor to attend a legal orientation program in person or an information packet can be mailed to the sponsor.

Once the sponsor signs the agreement and HHS has approved the transfer of the UAC to the sponsor, the care provider informs DHS so that it can comment on the release.¹²⁶ The care provider then transfers the child to the custody of the sponsor.¹²⁷ Prior to August 2015, the care provider closed the child's file within 24 hours of physical discharge of the child from HHS custody.¹²⁸ Under new rules, care providers keep the child's file open for an additional 30 days so that they can conduct a follow-up phone call with the child and the sponsor.¹²⁹

After HHS releases a UAC to a sponsor, the UAC and sponsor have two ways to contact HHS in the event they need some sort of assistance—a “Help Line” and a sexual abuse hotline, both operated by contractors. The Help Line was originally called the Parent Hotline and was used primarily by parents trying to locate their children. However, in May 2015, HHS expanded its purpose to accept calls from UACs or their sponsors seeking assistance with post-release concerns and renamed it the Help Line.¹³⁰ HHS provides UACs with the number to the Help Line prior to releasing them from HHS custody.¹³¹ The sexual abuse hotline was established in the summer of 2015, pursuant to the Violence Against Women Act of 2013,¹³² and is used primarily by children calling to report abuse that may fall under the Prison Rape Elimination Act of 2003.¹³³

7. HHS's Policies Concerning Post-Release Services to the Child and the Sponsor's Right to Refuse Them

In certain cases, UACs are eligible to receive post-release services from HHS through its care providers. These services usually consist of home visits and the identification of community resources such as educational support, legal assistance,

¹²⁵ *ORR Operations Guide* § 2.1.3.

¹²⁶ *Id.* § 2.8.2 (“The care provider notifies the DHS prior to the physical release to allow DHS an opportunity to comment on the imminent release as well as time to prepare any DHS paperwork for the ICE Chief Counsel’s office.”).

¹²⁷ *Id.*

¹²⁸ *ORR Policy Guide* § 2.8.

¹²⁹ *See id.* (“Although the custodial relationship ends, the care provider keeps the case file open for 30 days after the release date so that the provider can conduct the Safety and Well Being Follow Up Call and can document the results of the call in the case file.”); *see also id.* § 2.8.4 (outlining the Safety and Well Being Follow Up Call).

¹³⁰ Documents on file with the Subcommittee.

¹³¹ App. 240.

¹³² Pub. L. No. 113-4, 127 Stat. 54 (2013).

¹³³ Pub. L. No. 108-79, 117 Stat. 972 (2003).

and mental health services.¹³⁴ A care provider that is in close proximity to the sponsor’s home provides post-release services. For children who received home studies prior to release, post-release services last for the duration of their removal proceedings or until they reach age 18, whichever comes first.¹³⁵ For non-home study cases, post-release services are provided for six months but may be extended.¹³⁶

As with home studies, HHS is statutorily required to offer post-release services in certain cases, and as a matter of its discretion has extended them to a few other categories of UACs. The TVPRA provides that the Secretary of HHS “shall conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted and is authorized to conduct follow-up services in cases involving children with mental health or other needs who could benefit from ongoing assistance from a social welfare agency.”¹³⁷

In addition, on July 1, 2015, HHS extended post-release services to all UACs released to a non-relative sponsor.¹³⁸ It also instituted a new pilot program that extends post-release services to UACs who have already suffered a placement disruption or those who are at-risk of a “placement disruption.”¹³⁹ A placement disruption is the term used by HHS to describe a situation where the sponsor-UAC relationship has broken down and typically involves the UAC leaving the home to stay somewhere else or even becoming homeless.¹⁴⁰ Under this pilot program, if a UAC calls the Help Line to report problems with their placement within 180 days, HHS can refer the UAC for post-release services even though it was not originally recommended prior to release.¹⁴¹

According to HHS, however, a sponsor is free to refuse post-release services—and, indeed, to refuse to allow HHS or its care providers to have any contact with the child after release. The sponsor must consent before services are provided and can withdraw consent whenever the sponsor chooses.¹⁴²

¹³⁴ *ORR Policy Guide* § 2.7.2; Interview with David Fink, Federal Field Specialist Supervisor (Oct. 8, 2015).

¹³⁵ *ORR Policy Guide* § 2.7.2.

¹³⁶ *Id.*

¹³⁷ 8 U.S.C. § 1232(c)(3)(B).

¹³⁸ Document on file with Subcommittee.

¹³⁹ *About UCS Program: Health and Safety*, OFFICE OF REFUGEE RESETTLEMENT, <http://www.acf.hhs.gov/programs/orr/about/ucs/health-and-safety>.

¹⁴⁰ App. 255.

¹⁴¹ App. 240.

¹⁴² *ORR Policy Guide* § 2.7.2.

E. HHS Places Children with Human Traffickers in Marion, Ohio

On July 1, 2015, a federal grand jury indicted four defendants for allegedly recruiting and smuggling Guatemalan nationals into the United States for the purpose of forced labor as agricultural workers at an egg farm in Marion, Ohio. The victims in the case include several minors who were placed with sponsors through HHS's Unaccompanied Children Program. According to the indictment, beginning in 2011, the defendants and unnamed conspirators brought Guatemalan nationals to the United States to work in forced labor. Around March 2014, the defendants started recruiting minors, as they believed they would "be easier to bring successfully into the country, easier to control, and harder workers."¹⁴³ The indictment further alleges that the traffickers obtained deeds to real property from the victims' families to secure the victims' smuggling debt and would retain the deeds to the properties if any part of the debt went unpaid.¹⁴⁴

The traffickers lured the victims to travel to the United States on the promise that they would be able to attend school once they arrived.¹⁴⁵ Several of the minor victims were detained by immigration officials and transferred to HHS custody. In each instance, either a defendant or one of the defendants' associates falsely represented to HHS that they were a family friend of the victim so that the victims could be released to the defendants.¹⁴⁶ They did so via interviews with HHS care providers and the submission of falsified Family Reunification Applications, which HHS requires sponsors to complete prior to releasing an unaccompanied alien child to the sponsor.¹⁴⁷ When contacted by ORR care providers, the parents of the UACs corroborated the sponsors' stories.¹⁴⁸

Once HHS released the minor victims to the defendants, they were forced to work at egg farms in Marion and other locations for six or seven days a week, twelve hours per day.¹⁴⁹ The work was physically demanding and, according to the indictment, included tasks such as de-beaking chickens and cleaning chicken coops.¹⁵⁰ The minor victims were forced to live in "substandard" trailers owned by the traffickers.¹⁵¹ The traffickers withheld the victims' paychecks and gave them very little money for food and necessities.¹⁵² The traffickers would threaten the victims and their family members with physical harm, and even death, if they did

¹⁴³ *Indictment* ¶ 34.

¹⁴⁴ *Id.* ¶ 35.

¹⁴⁵ *Id.* ¶ 37.

¹⁴⁶ *Id.* ¶ 38.

¹⁴⁷ *Id.*

¹⁴⁸ Internal Subcommittee Documents.

¹⁴⁹ *Indictment* ¶¶ 59, 63, 69, 72, 77, 92.

¹⁵⁰ *Id.* ¶ 8.

¹⁵¹ *Id.* ¶¶ 39, 40.

¹⁵² *Id.* ¶¶ 42, 43.

not work or surrender their entire paychecks.¹⁵³ The minor victims were not given an accounting of their debt and often had their debt increased beyond what was initially agreed upon.¹⁵⁴ One of the traffickers assaulted a victim for refusing to turn over his paycheck.¹⁵⁵ The traffickers punished another minor victim when he complained about working at the egg farm by moving him to a different trailer “that was unsanitary and unsafe, with no bed, no heat, no hot water, no working toilets, and vermin.”¹⁵⁶ The traffickers then called the minor victim’s father and threatened to shoot the father in the head if the minor victim did not work.¹⁵⁷ The traffickers used physical violence against the minor victims to keep them in line and to ensure they continued to do as they were told.¹⁵⁸ The indictment alleges that the defendants “used a combination of threats, humiliation, deprivation, financial coercion, debt manipulation, and monitoring to create a climate of fear and helplessness that would compel [the victims’] compliance.”¹⁵⁹

Court records show that immigration officials received information in October 2011 that individuals were being smuggled into the United States to work at egg farms in Ohio.¹⁶⁰ According to reports, the U.S. Attorney for the Northern District of Ohio said that, although the indictment names 10 victims in this case, the evidence will show there were more.¹⁶¹ In October 2014, investigators were told by an unidentified victim of the traffickers that approximately 20 other Guatemalan minors were being forced to work at eggs farms to pay off their smuggling debt.¹⁶²

This report is based on the Subcommittee’s independent investigation. Our report describes a number of examples of UACs placed by ORR in the Marion area who became victims of trafficking, but it does not describe every such UAC. The report should not be read to imply that the particular UACs described in the report are the UACs named in the indictment, that they are the only UACs placed in the Marion area, or that they are the only Marion UACs who became victims of trafficking. In light of the pending criminal prosecution, the Subcommittee did not seek that information from Department of Justice.

¹⁵³ *Id.* ¶ 46.

¹⁵⁴ *Id.* ¶¶ 44, 45.

¹⁵⁵ *Id.* ¶ 47.

¹⁵⁶ *Id.* ¶ 65.

¹⁵⁷ *Id.* ¶ 66.

¹⁵⁸ *Id.* ¶ 46, 47.

¹⁵⁹ *Id.* ¶ 49.

¹⁶⁰ Kleinmann Aff., No. 4-MJ-5102, EFC No. 1, ¶ 11, (Dec. 19. 2014).

¹⁶¹ Holly Zachariah, *Workers Trafficked for Ohio Egg Farms had Little Contact, Lived in Poverty*, COLUMBUS DISPATCH, July 12, 2015,

<http://www.dispatch.com/content/stories/local/2015/07/12/workers-trafficked-for-ohio-egg-farms-had-little-contact-lived-in-poverty.html>.

¹⁶² Kleinmann Aff. ¶ 11, (Dec. 19. 2014).

III. FINDINGS AND ANALYSIS

The Subcommittee's investigation of HHS's Unaccompanied Alien Children Program has focused on the placement of children with Category 3 sponsors—distant relatives or non-relatives—because such placements require the most care. The Subcommittee's investigation revealed that HHS has failed to take adequate steps to ensure that UACs are placed with safe and appropriate sponsors.

HHS places children with individuals about whom it knows relatively little and without verifying the limited information provided by sponsors about their alleged relationship with the child. Although it is important to determine whether a sponsor is attempting to accumulate multiple children at once—a warning sign for human trafficking—HHS's internal database is not capable of reliably determining whether a sponsor, or someone else at his or her address, has previously attempted to sponsor other UACs. HHS commonly places children with alleged distant relatives or family friends without setting eyes on the sponsor or his environment, and even permits the sponsor to bar post-release contact with the child. And until three days ago, HHS policy did not require adequate background checks for other adults living with a would-be sponsor or on the person designated to care for the child in the sponsor's absence.

The Subcommittee has also identified a need to improve federal oversight of UACs. At present, it appears that no federal agency claims responsibility for UACs after they have been placed with sponsors. Finally, the Subcommittee has found that the UAC program is not governed by regularized, transparent procedures.

A. Systemic Deficiencies in HHS's UAC Placement Process

HHS does not adequately vet sponsors to ensure that they are willing and able to provide proper care and support to any child—much less children as vulnerable as UACs. Nor does HHS ensure that UACs receive needed services after placement. In fact, HHS claims it is not responsible for a UAC at all once it releases such a child from federal custody to a sponsor. Rather, HHS believes that after release of a UAC's care is in the purview of local authorities. By the time local authorities become involved, however, it can be too late.

The Subcommittee reviewed a number of case files in which those defects in HHS's screening procedures may well have contributed to trafficking or other forms of abuse of UACs, including in the Marion cases.

In a briefing with the Subcommittee, the initial view expressed by ORR's Deputy Director of Children's Services, the person in operational charge of the UAC program, was that she was unaware of any failure to follow ORR/HHS procedure in the Marion cases. She was also unaware of any alternative practices that would

have led to different outcomes in those cases, but reported that ORR was continuing to reassess its policies.¹⁶³

1. HHS’s Process for Verifying a Category 3 Sponsor’s Identity and Relationship with a UAC Is Unreliable and Subject to Abuse

The TVPRA requires HHS, prior to placing a child with a sponsor, to “verif[y] ... the custodian’s identity and relationship to the child, if any.”¹⁶⁴ In FY2015, HHS placed approximately ten percent of UACs, or 2,605 children, with Category 3 sponsors—meaning alleged family friends or distant relatives.¹⁶⁵ The Subcommittee’s review indicates that the process employed by HHS to verify the minor’s relationship to these sponsors is unreliable.

Under HHS’s procedures, documentation of a Category 3 relationship is not required. A Category 3 sponsor need only explain his relationship to the UAC on the Family Reunification Application, and the UAC and the UAC’s family must then corroborate the sponsor’s story to the care provider—a conversation that typically happens over the phone. In fact, when an alleged Category 1 or 2 sponsor (meaning a parent or close relative) cannot provide documentation supporting the existence of a relationship between themselves and the UAC, HHS may change the sponsor’s designation to Category 3, thereby eliminating the requirement for providing such supporting documentation.¹⁶⁶

The Subcommittee found that HHS accepts the alleged relationship between a Category 3 sponsor and a UAC (*e.g.*, “we were neighbors in our home country”) if a person claiming to be the child’s family member corroborates it. In a number of cases, however, parents who consented to the placement of their child with a certain sponsor were also complicit in the child’s smuggling. Other cases revealed that parents have deceived HHS by claiming that a relationship existed between the sponsor and the UAC when it actually did not.

The Subcommittee reviewed a number of ORR files in which the Category 3 sponsor’s explanation of his or her relationship with the UAC does not appear to have been corroborated or verified. Several examples illustrate the problem:

- In a 2014 Marion case, the UAC and the sponsor claimed that they were cousins—which would have made the sponsor a Category 2 placement. But the sponsor was unable to provide proof of his

¹⁶³ Interview with Bobbie Gregg, Deputy Director of Children’s Servs., Office of Refugee Resettlement (Oct. 1, 2015).

¹⁶⁴ 8 U.S.C. § 1232(c)(3)(A).

¹⁶⁵ App. 217.

¹⁶⁶ Internal Subcommittee Documents.

relationship to the UAC, so the case manager changed the sponsor's designation to Category 3. Despite the requirement that a Category 3 sponsor explain the nature of his relationship with the minor, the case file contained no such explanation. The case manager spoke on the phone with the UAC's mother in the UAC's home country in an attempt to identify a sponsor for the UAC but the case file does not reflect any discussion of how the mother knew the sponsor. The case manager described the sponsor as an "unverifiable cousin/family friend" and proceeded with the placement with no further recorded attempts to verify the relationship. In reality, however, the sponsor was involved in a labor trafficking ring.¹⁶⁷

- In an unrelated 2014 case, a UAC from Guatemala told HHS that he intended to live with his uncle in Virginia. Without providing any details, however, the file notes that the uncle was not willing to sponsor the UAC, so a family friend stepped forward. The family friend was allegedly the minor's ex-brother-in-law, but the file does not reflect any further explanation or verification of the relationship. The case file also does not reflect any attempt to contact the UAC's family in the country of origin. After HHS placed the UAC with the sponsor, the UAC contacted HHS to report that he no longer lived with his sponsor because his sponsor forced him to work to pay a debt he incurred on his journey from Guatemala. The UAC revealed that his mother had paid a labor broker \$6,500 to get him to the U.S. The Category 3 sponsor with whom HHS placed the child turned out to be not the victim's former brother-in-law, but rather the labor broker's son—who forced the UAC to work almost 12 hours a day in conditions that made him ill. The sponsor later sent the UAC to live with the sponsor's brother and take a new job, for which he increased the UAC's debt to \$10,900. The UAC then worked in a restaurant and lived, along with 14 other restaurant employees, in a home belonging to the restaurant owner. He was later kicked out of the home and moved in with a church member. After this ordeal, the UAC eventually received an Eligibility Letter from the Office of Trafficking in Persons (OTIP).¹⁶⁸
- In another 2014 case, a UAC from Guatemala admitted to HHS that his parents pawned the title to their house to pay for his trip to the U.S. The case file states that the UAC's sponsor was a neighbor of the UAC's family back home. While the file notes that the care provider had only a "brief conversation" with the sponsor, the sponsor agreed to

¹⁶⁷ UAC1.

¹⁶⁸ UAC2.

make a special trip to another state to have his fingerprints taken. The sponsor sent the care provider a letter “explaining the relationship that exist[ed] between” him and the UAC’s family, but HHS and the care provider took no further steps to verify the relationship. Approximately seven months after the UAC’s release from HHS custody, the UAC contacted HHS to report that the UAC’s sponsor had taken him out of school and was forcing him to work illegally. It was also revealed that the sponsor had been paid by the UAC’s parents to make the trip to get his fingerprints taken and had charged the UAC thousands of dollars for falsified papers so that the UAC could work. OTIP eventually issued the UAC an Eligibility Letter.¹⁶⁹

- In a sample case from 2014, a UAC from Honduras told HHS that he intended to live with his brother in Texas, but the brother could not act as a sponsor because he had no proof of identification. HHS considered a second individual as the UAC’s sponsor, who was allegedly the UAC’s paternal cousin who lived with the UAC’s brother in a home owned by their mutual employer. That placement was not approved because the second sponsor never fully completed the Family Reunification Application. HHS eventually placed the UAC with an alleged family friend in Florida. The UAC and the sponsor had never met, but the sponsor told the care provider that she had “a good relationship with the minor’s family.” No further explanation or verification of their relationship was included in the case file.¹⁷⁰

These files do not contain sufficient evidence of a genuine relationship between the UAC and the Category 3 sponsor. Nevertheless, HHS approved the placements.

Documents reviewed by the Subcommittee confirm that the failure to adequately verify a sponsor’s alleged relationship with a UAC has led to unsafe placements. One UAC in the Marion cases, for example, told HHS after he was rescued from the trafficking ring that his sponsor (a supposed family friend) was really just “an individual used to get [the UAC] released from ORR care.”¹⁷¹ Another approved sponsor turned out to be a stranger, who parted ways with the UAC just after picking him up from the airport.¹⁷²

In cases where the Category 3 sponsor’s relationship with the UAC cannot be verified, HHS commonly relies on the UAC’s family to provide a Letter of Designation for Care of a Minor or a signed Power of Attorney that gives the sponsor permission to take custody of the UAC. In each of the cases described

¹⁶⁹ UAC3.

¹⁷⁰ UAC4.

¹⁷¹ UAC5.

¹⁷² UAC6.

above, for example, in which details about the relationship between the sponsor and the UAC or the UAC's family were scant, HHS relied on such a power of attorney. But such instruments can be misleading. In the Marion cases, for example, the victim's parent provided HHS with the requested Letter of Designation or Power of Attorney—but there was a reason: The human traffickers held the deeds to their homes as collateral for their children's journey to the United States. The sooner their children were released from HHS custody, the sooner they could begin working to repay their debts.

2. HHS Is Unable to Safeguard Children from Sponsors Attempting to Accumulate Multiple Children

An important part of vetting a potential sponsor is determining whether he or she, or someone else at his or her address, has previously attempted to sponsor other UACs—which may indicate that the sponsor is engaged in human smuggling or worse, human trafficking. Such cases warrant, at a minimum, additional scrutiny. HHS's July 2015 policy change now requires a mandatory home study before releasing any UAC to a non-relative or distant relative sponsor who is seeking to sponsor multiple children, or has previously sponsored a UAC and is seeking to sponsor more.¹⁷³

Prior to July 2015, care providers were required to determine whether a sponsor had previously sponsored other UACs by searching for the sponsor's name and address in the UAC Portal. The Portal is a valuable tool, but it has limitations. HHS data analysts told the Subcommittee that the Portal is "constantly changing," acknowledging that it has shortcomings that HHS is "working to fix."¹⁷⁴ For example, when entering a name or address, the user must be very specific; an entry for a street name including "Pl." is not the same thing as "Place." A minor misspelling (or different spelling) of a name could mean that a search will come back with no results.¹⁷⁵ What is more, the Portal contains very few entries created before January 7, 2014, when it was established. HHS relies on the sponsor to disclose whether he has sponsored or attempted to sponsor a UAC prior to that date.¹⁷⁶

More troubling, care providers currently search the Portal for only *the sponsor's* name and address—not other household occupants or backup sponsors appearing on the Family Reunification Application. That basic safeguard would have alerted ORR to the fact that certain sponsors in the Marion cases were

¹⁷³ App. 238.

¹⁷⁴ Interview with Olympia Belay and Virak Kchao, ORR Data Analysts (Oct. 26, 2015).

¹⁷⁵ *Id.*

¹⁷⁶ If the sponsor indicates that he applied for sponsorship prior to January 2014, the care provider is to ask the Office of Security and Strategic Information (OSSI) at HHS to conduct a search of their records for the sponsor's information.

accumulating multiple children—a sign that should have triggered greater scrutiny. Two of the sponsors in the Marion case sponsored two children each at their common address; one of them tried for a third but was turned down by HHS. One sponsor was also listed, under an alias, as a backup sponsor for two other children—this time using a second address. That address, however, was listed as the primary home of the sponsors of *five* other children. And one of those sponsors claimed that the first sponsor lived with him at the second address—at least on one of the two successful applications he filled out. On the other, he claimed to live at a different address.

3. HHS Failed to Require Background Checks on Non-Sponsor Adult Household Members or on Backup Sponsors

Until January 25, 2016, HHS did not require other individuals living in sponsors' homes or individuals listed as backup sponsors to undergo background checks. Instead, the sponsorship application simply asked the sponsor to disclose whether any person in the sponsor's household has ever been charged with or convicted of a crime or investigated for the physical abuse, sexual abuse, neglect or abandonment of a minor. According to the Subcommittee's investigation, however, household occupants rarely underwent background checks to verify a sponsor's claim, which were previously required only if a "special concern is identified" or "there is a documented risk to the safety of the unaccompanied child, the child is especially vulnerable, and/or the case is being referred for a mandatory home study."¹⁷⁷

That policy was unreliable and vulnerable to abuse. HHS has a statutory responsibility to ensure that a sponsor "is capable of providing for the child's physical and mental well-being,"¹⁷⁸ or to determine whether the sponsor "presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence."¹⁷⁹ Remarkably, HHS's pre-January 2016 policy, if adopted by a State government receiving federal funds for its child welfare system, would violate the provisions of the Child Abuse Prevention and Treatment Act. That law is administered by HHS and requires criminal background checks for "other adult relatives and non-relatives residing in" a foster- or adoptive parent's household.¹⁸⁰ Reflecting that basic rule in the child-welfare field, care providers told Subcommittee staff that fingerprint checks and background checks should be conducted for all household occupants and individuals listed as a backup sponsor.¹⁸¹

¹⁷⁷ *ORR Policy Guide* § 2.5.1.

¹⁷⁸ 8 U.S.C. § 1232(c)(3)(A).

¹⁷⁹ *Id.* (c)(3)(B).

¹⁸⁰ 42 U.S.C. § 5106a(b)(2)(xxii).

¹⁸¹ Interview with Care Provider A (Oct. 23, 2015).

Even more concerning, however, was the Subcommittee's discovery that prior to the January 25 policy change, individuals listed as a UAC's *backup sponsor* were not required to undergo a background check of any kind. A backup sponsor is the individual named by the sponsor who will supervise the UAC in the event the potential sponsor needs to leave the country or becomes unable to care for the UAC.¹⁸² Thus, the backup sponsor is the individual designated to take custody of the UAC if the sponsor is arrested, becomes ill, passes away, or is deported. Yet until three days ago, backup sponsors were not required to undergo a public records check, an immigration check, a FBI fingerprint check, or a child abuse and neglect check.¹⁸³

Our investigation turned up several cases in which HHS placed UACs in homes without knowing anything about the other adults who also lived there or the UAC's backup sponsor:

- In 2014, a UAC from Guatemala stated during the assessment process that he came to the U.S. to live with a maternal uncle. Then, however, the *partner* of the UAC's uncle, rather than the uncle himself, applied to be the UAC's sponsor. HHS classified the placement as a Category 3 since the UAC and sponsor were not related but did not perform the required FBI background check. The partner told HHS that the UAC's uncle would share in household duties and care of the UAC, and would serve as *backup* sponsor. Nevertheless, no type of background check was run on the UAC's uncle, and HHS approved the placement. In May 2015, the UAC contacted HHS to report that the sponsor had falsely accused him of watching child pornography, and that the sponsor told the UAC that he owed her \$10,000 to keep her from telling the police about it. The UAC's sponsor and boyfriend (presumably the boy's uncle) forced the UAC to work for four months without pay and took away the UAC's identification documents while threatening that he would be arrested for child pornography if he stopped working. In November 2014, the UAC ran away to live with another alleged uncle. OTIP issued an Eligibility Letter to the UAC in June 2015.¹⁸⁴
- In a 2015 case involving a UAC from El Salvador, the UAC's sponsor, also his parent, reported to HHS that he lived with three unrelated adult males (ages 28, 38, and 50) in a three-bedroom home. The sponsor listed his sister as the backup sponsor on the application. The

¹⁸² *Id.*

¹⁸³ *ORR/DCS Family Reunification Application*, OFFICE OF REFUGEE RESETTLEMENT, Aug. 9, 2012, <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services>.

¹⁸⁴ UAC7.

sponsor had an immigration arrest with a related immigration hearing date of April 2016, so it was clearly possible that the sponsor could be deported and the UAC would be left in the care of the sponsor's sister or one of his roommates. Nevertheless, a full background check was conducted only on the sponsor; no check was run on the sponsor's three adult roommates or the UAC's backup sponsor. In September 2015, the UAC contacted HHS to report that the sponsor had obtained false documentation for the UAC and forced the UAC to work as a dishwasher and later as a movie theater janitor for little or no pay. After HHS alerted the post-release services care provider, it was determined that the sponsor "took deliberate steps" to hide the trafficking of his son, including staging his apartment when the post-release services care provider visited to look as though the UAC lived in a nice bedroom when he was really being kept in the basement and given little food. Subsequently, OTIP issued an Eligibility Letter to the UAC.¹⁸⁵

- In a 2014 sample case involving a UAC from Guatemala, the UAC's sponsor was an alleged uncle who lived in one apartment with his wife, his two-month old baby, and four additional family friends (ages 28, 35, 35, and 39). Birth certificates could not link the UAC and the sponsor as related, so the sponsor was later reclassified as a Category 3 sponsor. A full background check was run only on the sponsor.¹⁸⁶

On January 25, 2016, HHS implemented a new background check policy. The new policy requires all individuals undergoing a public records check (currently all three sponsor categories) to also undergo a sex offender registry check. Additionally, all adult household members and backup sponsors will be required to undergo a public records check and a sex offender registry check.¹⁸⁷

4. HHS Does Not Adequately Use Home Studies

In interviews with care providers and experts in the field, the Subcommittee has heard repeatedly that home studies are an invaluable tool for assessing the suitability of a foster-care placement for any child.¹⁸⁸ As one care provider explained it, the notion of placing a child with a non-relative without "putting eyes on" the living environment is unheard-of in the child-welfare field.¹⁸⁹ Otherwise, the entire sponsor-assessment process can take place over the phone, without a care

¹⁸⁵ UAC8.

¹⁸⁶ UAC9.

¹⁸⁷ *ORR Policy Guide* § 2.5.1.

¹⁸⁸ Interview with Care Provider B (Oct. 16, 2015); Interview with Care Provider C (Oct. 30, 2015).

¹⁸⁹ Interview with Care Provider C (Oct.30, 2015).

provider or anyone from HHS ever meeting a sponsor in person or being able to detect problems in the child's living environment.

ORR recommends home studies on a very limited basis. In FY2014, the year in which most of the Marion placements were made, HHS placed 53,518 UACs with sponsors yet performed only 1,401 home studies—or 2.5% of cases.¹⁹⁰ Over the past three years, HHS has performed home studies in between 2.5 and 7% of UAC placements.¹⁹¹ None of the sponsors in the Marion cases was the subject of a home study.

The TVPRA makes home studies mandatory when (1) the UAC is identified as a victim of a severe form of trafficking; (2) the UAC is a special-needs child; (3) the UAC has been a victim of serious physical or sexual abuse; or (4) the UAC's sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking.¹⁹²

As a matter of its policy discretion, HHS requires home studies in additional types of cases. Under a pilot program announced by HHS on July 1, 2015, HHS requires home studies for all UACs 12 years of age or younger who are to be placed with a Category 3 sponsor.¹⁹³ And on July 27, 2015, after the Marion, Ohio case came to light, HHS began requiring a home study if the proposed sponsor is a non-relative who is seeking to sponsor multiple children or has previously sponsored a child and is seeking to sponsor additional children.¹⁹⁴

As discussed below, the new home study policies may not be sufficient to adequately assess placements with non-relative sponsors.

a. New Rules on Home Studies May Not Adequately Address Labor Trafficking

HHS recognized in May 2015 that its July 1 pilot program would leave out an important group of older UACs who are at heightened risk of labor trafficking. As discussed above, the pilot program extends home studies to Category 3 sponsors only where the UAC is 12 years old or younger—in other words, it excludes children who are likely old enough to work off a debt. In a May 28, 2015 email, Mark Greenberg, the HHS Acting Assistant Secretary for ACF, wrote the following to ORR senior leadership:

¹⁹⁰ App. 223.

¹⁹¹ See *id.*

¹⁹² 8 U.S.C. § 1232(c)(3)(B).

¹⁹³ App. 238.

¹⁹⁴ See *id.* (“ORR also requires a mandatory home study before releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or previously sponsored a child and is seeking to sponsor additional children.”).

I assume the reason for under 13 is that it is a smaller number for a pilot and that we'll have the greatest concern about young children less able to communicate out about their need for help. Right? But, this is probably less likely to pick up the debt labor group. Do you think it would just go too far to extend to all children going to non-relatives?¹⁹⁵

Less than an hour later, the ORR Deputy Director responded: "You are correct about why we chose the younger children and the risk associated with the older children not being included."¹⁹⁶ The Deputy Director later circulated an explanatory document about the pilot noting that HHS is aware of the "risk of exploitation of unaccompanied children by unrelated adults, including the risk that the sponsor may be expecting the child to work to pay existing debt or to cover the child's expenses while living with the sponsor."¹⁹⁷ Nevertheless, HHS decided to implement the pilot program without expanding it to children over the age of 12—what Mr. Greenberg called the "debt labor group."¹⁹⁸

a. HHS's Home Study Policy Does Not Conform to Analogous Federal Requirements or the Universal Practice of State Child Welfare Systems

Home studies are standard practice in child-welfare cases. The Model Family Foster Home Licensing Standards require every single foster care applicant to undergo a home study that includes at least one scheduled on-site visit and at least one scheduled in-home interview of each household member to assess the safety of the home.¹⁹⁹ Every state requires some form of home study prior to approving the placement of a child in a prospective foster home.²⁰⁰ And every State is a party to the Interstate Compact on the Placement of Children, which requires a home study before a child can be placed in a home outside his or her home state.²⁰¹

When asked why its home study policy does not comport with foster-care standards, an ORR senior official explained the Office's view that the UAC placement process is more like a parent's decision to place a child with a family

¹⁹⁵ App. 212.

¹⁹⁶ App. 211.

¹⁹⁷ App. 251.

¹⁹⁸ App. 212.

¹⁹⁹ Those standards were developed by developed by the American Bar Association Center on Children and the Law, the Annie E. Casey Foundation, Generations United, and the National Association for Regulatory Administration. *Model Family Foster Home Licensing Standards*, NARA 3, <http://www.grandfamilies.org/Portals/0/Model%20Licensing%20Standards%20FINAL.pdf>.

²⁰⁰ *Home Study Requirements for Prospective Foster Parents*, CHILDREN'S BUREAU, Mar. 2014, <https://www.childwelfare.gov/pubPDFs/homestudyreqs.pdf>.

²⁰¹ *Interjurisdictional Placement of Children in the Child Welfare System: Final Report*, CHILDREN'S BUREAU 1 – 3, Sept. 2006, <http://www.aphsa.org/content/dam/AAICPC/PDF%20DOC/Home%20page/IJReport.pdf>.

friend than like foster care.²⁰² The Subcommittee’s investigation, however, found that assumption unreliable—particularly because HHS does not require extensive verification of the nature of a Category 3 sponsor’s relationship with the child. We can identify very little difference between placement of a child in foster care by a state and placement with a Category 3 sponsor with whom the child does not have a verified close family relationship.

In an interview with the Subcommittee, ORR’s Policy Director justified HHS’s failure to extend home studies to all Category 3 sponsors by stating that HHS is bound by the *Flores v. Reno* settlement agreement, which requires HHS to “promptly attempt to reunite the minor with his or her family” or place the child with a sponsor who is “capable and willing to care for the minor’s well-being.”²⁰³ That explanation begs the question: The issue is whether a home study is required to assure the sponsor *meets* that standard of care. The Deputy Director of ORR echoed that sentiment, explaining that the downside to performing a home study for a Category 3 sponsor is that it takes 30 days.²⁰⁴ Another ORR staffer told the Subcommittee that “home studies are invasive.”²⁰⁵ Home studies, do, however, require manpower and resources and can delay release of a UAC from a shelter.

By contrast, professional care providers told the Subcommittee that home studies are essential.²⁰⁶ Without one, most of the time the entire sponsor assessment process takes place electronically or telephonically without any face-to-face contact with the sponsor. Without a home study, HHS may only become aware of problems in the home when it is too late. Some problems with a placement, moreover, are difficult to detect without visiting the sponsor’s home. Some of the case files the Subcommittee reviewed showed that sponsors and UACs provided intentionally misleading information to the care provider in order to ensure the placement moved forward. In those cases, HHS discovered there was a problem only because the UAC reported it after HHS had already placed the UAC with a sponsor.

²⁰² Interview with Bobbie Gregg, Deputy Director of Children’s Servs., Office of Refugee Resettlement (Oct. 1, 2015).

²⁰³ *Flores Agreement* §¶ 14.

²⁰⁴ Interview with Bobbie Gregg, Deputy Director of Children’s Servs., Office of Refugee Resettlement (Oct. 1, 2015).

²⁰⁵ Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

²⁰⁶ Interview with Care Provider B (Oct. 16, 2015); Interview with Care Provider C (Oct. 30, 2015).

b. Care Providers No Longer Have Discretion to Recommend a Home Study Unless the UAC Qualifies under the TVPRA

HHS unwisely bars its own care providers from conducting elective home studies based on case-specific concerns. Prior to 2013, HHS allowed care providers discretion to request home studies in circumstances that were not covered by the TVPRA. But HHS has since eliminated that ability.²⁰⁷ Now, if a UAC does not qualify for a home study under the TVPRA, the July 1 pilot program, or the July 27 policy, then HHS forbids home studies to be conducted for a UAC's potential sponsor. Nearly all the care providers with whom the Subcommittee spoke affirmed that the ability to exercise discretion when recommending a home study under the old policy was valuable as some UAC cases do not fit neatly within the TVPRA's mandate. General Dynamics Information Technology, HHS's third-party case reviewer, also admitted that some cases fall into "a gray area,"²⁰⁸ suggesting that discretion around the edges to order home studies in close cases, at least, could be important.

In other federal programs, by contrast, the use of home studies is not so narrowly circumscribed. According to a July 2015 Report by the Lutheran Immigration and Refugee Service (LIRS), "[t]he federal government routinely requires home studies for separated refugee children reunifying with relatives in the United States under the U.S. Department of State's refugee resettlement program," and suggested that "the same principle should be applied in family placements involving [the] population of unaccompanied children."²⁰⁹ Nevertheless, LIRS stated that "despite their common usage and requirement in other types of placement decisions involving children, HHS requests home studies on a very limited basis."²¹⁰

c. HHS Cut Home Studies from 30 Days to 10 Days

On December 1, 2015, HHS cut the timeframe in which care providers must complete home studies from 30 to 10 business days of their acceptance of a UAC's case.²¹¹ This change in policy makes it more likely that care providers will feel rushed to complete the task and will be less likely to make necessary visits to a

²⁰⁷ Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

²⁰⁸ Interview with General Dynamics Information Technology (Jan. 15, 2015).

²⁰⁹ *At the Crossroads for Unaccompanied Migrant Children: Policy, Practice, & Protection*, LUTHERAN IMMIGR. & REFUGEE SERVS. 16 (July 2015), http://lirs.org/wp-content/uploads/2015/07/LIRS_RoundtableReport_WEB.pdf.

²¹⁰ *Id.*

²¹¹ Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015); *ORR Operations Guide* at § 2.

home or to utilize unannounced visits where appropriate. A home study provider told the Subcommittee that they “would be lucky to catch [a trafficking indicator] in a home study” under the new abbreviated process.

In some instances, an effective home study simply takes more than 10 days. In one case reviewed by the Subcommittee, for example, three visits over the course of approximately 40 days were necessary to complete a home study that turned up an important red flag.²¹² Despite an uneventful first visit, two subsequent unannounced visits revealed that five additional adults were residing in a potential Category 1 sponsor’s home that the potential sponsor had not previously disclosed to HHS.²¹³ If this home study had been conducted within the confines of HHS’s new home study policy, this discrepancy likely would have gone unnoticed.

d. HHS Has Failed to Conduct Home Studies in Cases Qualifying under the TVPRA

HHS has not only limited discretionary home studies, it also has inconsistently conducted statutorily mandated home studies. In reviewing case files, the Subcommittee found several examples of cases that appear to qualify for home studies under the TVPRA but where no home study was ordered.

- In a 2015 case involving a UAC from El Salvador, the UAC as well as his mother revealed that his potential Category 1 sponsor had a history of physically abusing the UAC, including hitting the UAC with an electrical cord. The HHS care provider also learned that the potential sponsor had a history of drinking heavily. The potential sponsor, meanwhile, reported a “great relationship” with the UAC. Despite the fact that the UAC was plainly a victim of physical abuse, making a home study mandatory under the TVPRA, HHS released the UAC to the sponsor without a home study. Five months after placement, the UAC contacted HHS to report that the sponsor had abused the UAC and had obtained false documentation for the UAC and forced him to work simultaneously as a dishwasher and as a movie theater janitor, threatening the UAC with deportation if he stopped working. OTIP ultimately issued the UAC an Eligibility Letter.²¹⁴
- In a 2013 case, a UAC from Honduras revealed during the HHS intake process that when she was seven years old, she was raped by her half-brother and was abused by her parents who hit her with a belt and wooden rod and chained her to a bed for a week. Her grandmother also beat her with a power cord throughout her childhood. The UAC also disclosed that when she was 15, she became pregnant by a boyfriend and

²¹² UAC10, UAC11.

²¹³ *Id.*

²¹⁴ UAC8.

moved in with him, but moved out when he became verbally and physically abusive. Furthermore, the UAC's case file stated that the UAC screened positive for exhibiting symptoms of depression as well as of Post-Traumatic Stress Disorder. The UAC was obviously a victim of sexual and physical abuse under the TVPRA. Nevertheless, HHS released the UAC to a Category 2 sponsor with only post-release services and no home study. Nine months after placement, the UAC ran away from the sponsor's home. Although the sponsor did not provide a clear picture of what precipitated the UAC's departure from the home, the UAC stated that she did not want to return to the sponsor's home or have open communication with him due to them not getting along. After the UAC ran away, she moved in with her adult boyfriend who was later arrested; it appears from the file that the charge may have been related to kidnapping and sex trafficking. The UAC denied being kidnapped but was moved into a shelter for trafficking victims and later a residential program when she turned 18.²¹⁵

- In another 2015 case, a UAC from Guatemala reported during the assessment process that she was sexually abused by her maternal grandfather on several occasions at age eight. The UAC also reported that her grandfather verbally abused her, calling her a prostitute and threatening to kill her father if she told anyone of the sexual abuse. Additionally, the UAC explained that she needed emotional help one year prior to arrival in the U.S., after she had a miscarriage when she was five months pregnant—one caused by an abortive injection that her grandmother deceitfully asked a doctor to give her. Despite being quite clearly a victim of sexual abuse under the TVPRA's mandatory provisions, HHS approved the UAC's release to her Category 2 sponsor without a home study or post-release services. Two months after her release, the UAC contacted HHS to report that her sponsor made her find employment as a restaurant cashier. During this time, the UAC stated that she was required to make payments to the sponsor to pay off the loan that the sponsor gave the UAC for her travel to US. The UAC also reported that she made payments to her sponsor for rent and utilities. In sum, the UAC estimated that she was paying the sponsor \$1,600 per month. The sponsor threatened to call police if the UAC did not work and make payments to the sponsor.²¹⁶

These cases suggest that HHS does not consistently perform home studies even in the narrow set of cases in which they are statutorily required.

²¹⁵ *Id.*

²¹⁶ UAC12.

5. HHS Weaknesses in Post-Release Services

a. HHS's Practice of Allowing Sponsors to Refuse Post-Release Services Puts UACs at Risk

HHS allows sponsors to *refuse* post-release services offered to a UAC.²¹⁷ As we saw in a case file the Subcommittee reviewed, if an HHS care provider asks to speak to or provide assistance to a UAC placed with a sponsor, even a Category 3 sponsor, and that sponsor refuses to allow it, the care provider is instructed to close the case and take no further action.²¹⁸

The Subcommittee found that this policy played a role in the Marion cases. ORR approved post-release services for one of the Marion UACs, in part because of the child's reported mental health problems. About one month after the UAC's release, the post-release case worker visited the alleged home of the sponsor. The person who opened the door, however, told the case worker that nobody by the sponsor's name or the UAC's name lived at that address. When, after many attempts, the case worker was finally able to reach the sponsor by phone, the sponsor then refused any further post-release services. The sponsor told the case worker that the UAC was visiting a nearby relative and, despite being expected back, had not yet returned. The sponsor also told the case worker that the UAC might go live with that relative. The case worker asked the sponsor to let ORR know if the UAC moved so that the care provider could update his file with a new address. The case worker detailed her conversation with the sponsor in the UAC's file and then closed the case, noting that the closure was pursuant to "ORR policy which states that Post Release Services are voluntary and sponsor refused services."²¹⁹

Ultimately, that child found himself 50 miles from the sponsor's home on the egg farm in Marion. The sponsor was indicted in a federal criminal case for involvement in labor trafficking. While it is impossible to know with certainty whether mandatory post-release services would have prevented the harm that befell the UAC, it is clear that an important opportunity to detect signs of trafficking through interviewing the child and sponsor was missed. The Subcommittee discussed this case with a senior ORR official who told us that, under the circumstances, the case worker followed ORR procedure correctly.²²⁰

Another victim of the Marion case, who was returned to ORR custody after being rescued, admitted that he thought he was coming to the U.S. to work and go

²¹⁷ *ORR Policy Guide*, § 2.7.2.

²¹⁸ UAC12

²¹⁹ UAC12.

²²⁰ Interview with Bobbie Gregg, Deputy Director of Children's Servs., Office of Refugee Resettlement (Oct. 1, 2015).

to school. Instead of being enrolled in school, however, he was forced to work at the egg farm near Marion. When he suggested he might not continue working at the farm, a coyote threatened to kill him and hurt his family.²²¹ A post-release home visit could have readily revealed that the child was not enrolled in school. But under current HHS policy, there is nothing a care giver can do to gain access to a child in similar coercive circumstances over the objection of the abusive sponsor.

HHS's policy of permitting sponsors to refuse post-release services is in considerable tension with the governing statute. Federal law explicitly provides that "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services."²²² All agree that UACs remain UACs under this definition even after placement with sponsors. The statute also makes post-release services mandatory in particular cases²²³—yet HHS allows the sponsor a veto over those services. Moreover, accepting post-release services is often a condition of a sponsorship agreement; and the *Flores* Agreement with former INS (which HHS treats as binding) explicitly provides that INS could "terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement."²²⁴

HHS's view, however, is that once a child is placed with a sponsor, its authority and "responsibilit[y]" for the "care and custody" of the child ends.²²⁵ HHS told the Subcommittee that this interpretation is longstanding, but it is not reflected in any regulation promulgated by the Department—nor in any other document HHS could produce to the Subcommittee. In response to the Subcommittee's request for documents supporting this interpretation, HHS explained its view that the overall structure of the statute implied that once a child is released into the care of a custodian, it could no longer exercise any responsibility for the child's care.²²⁶ HHS also explained that, although it was aware of the *Flores* Agreement provision acknowledging INS's authority to terminate placements for

²²¹ UAC6.

²²² 8 U.S.C. § 1232(b)(1).

²²³ 8 U.S.C. § 1232(c)(3)(B).

²²⁴ App. 198.

²²⁵ App. 149.

²²⁶ To summarize the Department's position, it believes its obligation to be "responsibl[e]" for the "care and custody" of UACs created by § 1232(b)(1) cannot extend beyond the point that it has legal "custody" of a child, and that other provisions of § 1232 make clear that a sponsor with whom a UAC is placed is his "custodian." ORR also observes that the statute distinguishes between the "release" of a child and services to be offered post-release, or to children who "have been in the custody of the Secretary" but are no longer. It also points to the *Flores* Agreement, which similarly distinguishes between "detention" of a UAC by INS (now ORR) and his "release" from "custody." Finally, ORR argues that had Congress wished to make it ultimately responsible for UACs' care after release, it would have authorized public assistance for those UACs. [App. 149].

violation of a sponsorship agreement, HHS had never invoked that provision and was unsure whether it or DHS would be the proper agency to do so. As explained below, in fact, in 2008 the HHS Inspector General advised the Department to enter into an agreement deciding which agency would be responsible for ensuring the safety of children after placement, but it has never done so. Instead, the Department's apparent view is that *neither* federal agency is responsible.

b. ORR Does Not Offer Post-Release Services with Sufficient Frequency

According to HHS, post-release services are only offered in ten percent of cases each year.²²⁷ Many care providers feel that is not enough.²²⁸ Care providers that spoke with the Subcommittee emphasized that unless a UAC receives a home study, post-release services provide the only opportunity for in-person contact with the sponsor.²²⁹ Care providers explained that the placement process is incredibly difficult and stressful for both the UAC and the sponsor—especially if they have never met before.²³⁰ That makes it all the more important for a child-welfare specialist to have some contact with the UAC after placement. A July 2015 report from Lutheran Immigration and Refugee Service, a key HHS care provider, explains:

One of the most critical reforms needed for the protection of children who are released into the community is the expansion of post-release services. At a minimum, there should be check-ins with every child to ensure that the child is safe.²³¹

Particularly in UAC cases without home studies in advance of release, post-release services may be a child's best chance to gain the aid of care providers who can investigate whether their living environment is safe. It may also be the only way a care provider will learn of problems that could potentially lead to what HHS calls a placement disruption. A senior policy advisor at HHS told the Subcommittee that HHS considers whatever happens to a UAC after placement, including a placement disruption, to be in the purview of a state agency such as Child Protective Services.²³²

²²⁷ Interview with Jallyn Sualog, ORR Division of Children's Services Director (Jan. 21, 2016).

²²⁸ Interview with Provider D (Oct. 13, 2015); Interview with Care Provider A (Oct. 23, 2015); Interview with Care Provider E (Nov. 9, 2015); Interview with Care Provider C (Oct. 30, 2015).

²²⁹ Interview with Care Provider C (Oct. 30, 2015).

²³⁰ *Id.*

²³¹ *At the Crossroads for Unaccompanied Migrant Children: Policy, Practice, & Protection*, LUTHERAN IMMIGR. & REFUGEE SERV. 26 (July 2015), http://lirs.org/wp-content/uploads/2015/07/LIRS_RoundtableReport_WEB.pdf.

²³² Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

An example illustrates the dangers of not having post-placement contact with a UAC. In one case reviewed by the Subcommittee, HHS placed a UAC with an unverifiable distant cousin who paid for the UAC's journey to the U.S. The UAC had experienced considerable hardship before placement. In her home country, two men sexually assaulted her when she was 14 and she became pregnant as a result. And on her journey to the United States, she was kidnaped but eventually escaped. Because of that history, HHS recommended she receive post-release services, which included a number of home visits. All seemed well during the first home visit. But less than a month later, the UAC requested a second home visit, during which she confessed that her sponsor had lied about their sleeping arrangements during the first home visit. She went on to divulge the true story surrounding her relationship with her sponsor: They were not related at all, but the UAC's mother encouraged them to claim they were. Her sponsor offered to bring her to the U.S. if she would be his wife upon arrival. After placement, the sponsor and the UAC had sexual intercourse. The UAC reported being uncomfortable with the sleeping arrangements and no longer wanted to be in the sponsor's home. She was taken into custody by Child Protective Services, and OTIP issued her an Eligibility Letter.²³³

HHS recently implemented a number of changes meant to improve the safety of UACs after release. On May 15, 2015, HHS expanded the use of an existing ORR hotline to accept calls from UACs or their sponsors with post-placement concerns.²³⁴ Prior to releasing the UAC to the sponsor, HHS provides the UAC and the sponsor with a telephone number to the Help Line for them to call in the event a problem arises in the home.²³⁵ The Help Line is a good resource but no substitute for a trained caregiver's post-release, face-to-face contact with the sponsor and UAC.

In August 2015, HHS also began requiring what it calls "Safety and Well Being Follow Up Calls."²³⁶ HHS care providers are now required to conduct a follow up phone call with the UAC or the sponsor 30 days after a UAC's release date. According to HHS, the purpose of the call "is to determine whether the child is still residing with the sponsor, is enrolled in or attending school, is aware of upcoming court dates, and is safe."²³⁷ If the HHS care provider thinks the UAC or sponsor is in need of services or support, the care provider must "refer the sponsor or the child to the ORR National Call Center and provide the sponsor or the child the Call Center contact information."²³⁸ If a care provider does not make contact with the UAC or the sponsor, the care provider is to make further attempts, at different times of day; if that fails, the care provider notifies HHS.

²³³ UAC13.

²³⁴ App. 240.

²³⁵ *Id.*

²³⁶ *ORR Policy Guide* at § 2.8.4.

²³⁷ *Id.*

²³⁸ *Id.*

That process appears to have limited utility. When asked what happens *after* a care provider fails to make contact with a UAC, HHS told the Subcommittee that HHS will note the lack of contact in the UAC's record but "there is no means to follow up beyond that."²³⁹ As a care provider told the Subcommittee, after the 30-day follow up call, care providers have no way to obtain information about the UAC or the placement without post-release contact, and would never know if the placement is in danger of failing unless the UAC or sponsor makes contact with HHS via the Help Line.²⁴⁰

The Subcommittee spoke with six major care providers that provide post-release services for HHS; all of them supported expanding post-release services.²⁴¹ All believed that post-release services should be offered to all Category 3 cases, and that care providers should at least have the discretion to recommend it in a broader range of circumstances besides cases involving a home study or special risks. When asked by the Subcommittee whether HHS has considered extending post-release services to all UACs, a senior ORR policy advisor told the Subcommittee that it has not been considered or discussed.²⁴²

6. HHS Policy Allowed Non-Relatives with Criminal Histories to Sponsor Children

Prior to January 25, 2016, HHS instructed care providers that no criminal offense was a *per se* bar to sponsorship.²⁴³ By contrast, the Model Family Foster Home Licensing Standards (which reflects requirements found in the Adam Walsh Act of 2006) prescribe certain crimes that automatically disqualify an applicant from serving as a foster parent.²⁴⁴ Such crimes include felony convictions for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.²⁴⁵ Under the Model Standards, a prospective foster parent cannot serve if he has been convicted within

²³⁹ Interview with Jallyn Sualog, Director, Division of Children's Services, Office of Refugee Resettlement (Jan. 19, 2016).

²⁴⁰ Interview with Care Provider F (Sept. 21, 2015).

²⁴¹ Interview with Care Provider A (Oct. 23, 2015); Interview with Care Provider B (Oct. 16, 2015); Interview with Care Provider C (Oct. 30, 2015); Interview with Care Provider D (Oct. 13, 2015); Interview with Care Provider E (Nov. 9, 2015); Interview with Care Provider F (Sept. 21, 2015).

²⁴² Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

²⁴³ Interview with Bobbie Gregg, Deputy Director of Children's Servs., Office of Refugee Resettlement (Oct. 1, 2015).

²⁴⁴ *Model Family Foster Home Licensing Standards*, NARA 3, <http://www.grandfamilies.org/Portals/0/Model%20Licensing%20Standards%20FINAL.pdf>.

²⁴⁵ *Id.* at 32.

the past five years of a felony for physical assault, battery, or a drug-related offense.²⁴⁶

The Subcommittee requested basic data concerning sponsors with criminal records. But HHS was unable to tell the Subcommittee how many UACs were released to sponsors having a criminal record; the Office explained that “[w]hile information bearing on a sponsor’s criminal history is contained in a child’s case file, ORR’s computer systems currently do not have the capability to generate reports that aggregate this data.”²⁴⁷

On January 25, 2016, HHS implemented new policies that automatically disqualify potential Category 2 or Category 3 sponsors if the sponsor or a member of his or her household have been convicted of a serious crime, including any felony involving child abuse or neglect, any felony against children, and any violent felony.²⁴⁸ In addition, HHS will now deny sponsorship applications if the sponsor, or a member of his household, has had a substantiated adverse child welfare finding based on severe chronic abuse or neglect and other serious problems.²⁴⁹

7. HHS Does Not Ensure a Sponsor Has Adequate Income to Support a UAC

Before placing a child with a sponsor, HHS must “make[] a determination that the proposed custodian is capable of providing for the child’s physical and mental well-being.”²⁵⁰ Part of that obligation is to ensure that a sponsor has adequate financial means to provide for the basic needs of a new dependent.

HHS, however, does not require that a sponsor’s income meet any set threshold. A senior ORR official told the Subcommittee that HHS considers the totality of the circumstances when determining whether a sponsor is capable of caring for a child, rather than disqualifying a sponsor based on their income level.²⁵¹ HHS’s sponsor application includes a “Financial Information” section that asks the sponsor to explain how they plan to provide for the child financially. The sponsor typically will provide the name of their employer or a description of their job and the amount they earn each week. In addition to the sponsor’s income, HHS

²⁴⁶ *Id.*

²⁴⁷ App. 224.

²⁴⁸ *ORR Policy Guide* at §2.7.4. Other disqualifying convictions include any misdemeanor sex crime, drug offenses that compromise the sponsor’s ability to ensure the safety and well-being of the child, and human smuggling or trafficking.

²⁴⁹ *Id.*

²⁵⁰ 8 U.S.C. § 1232(c)(3)(A).

²⁵¹ Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

will also consider the income of a sponsor's spouse, significant other, or family member.²⁵²

On April 3, 2014, HHS revised its policies to no longer require proof of a sponsor's income.²⁵³ This policy is reasonable in the case of Category 1 sponsors, but raises concerns when the sponsors are non-relatives. When the Subcommittee asked a senior policy official at HHS about the reasons behind the policy change, the official stated that HHS found that requiring proof of income was burdensome to the sponsors.²⁵⁴ The official also stated that the relevant statute does not require HHS to seek proof of income from sponsors.²⁵⁵ ORR does, however, have more onerous requirements such as obtaining a copy of a child's birth certificate from a Central American country.²⁵⁶

In addition, in several cases reviewed by the Subcommittee, HHS has authorized placement of children with non-relative sponsors that have minimal financial means. A sponsor's low income could potentially raise trafficking concerns. According to an HHS care provider interviewed by the Subcommittee, if a sponsor does not have sufficient income to support herself, it could indicate that the sponsor will expect the minor to work instead of, or in addition to, going to school.²⁵⁷ The risk of trafficking increases further if the UAC or her family owes a debt for her journey to the U.S.—and further increases if the debt is owed to the UAC's sponsor.

In an interview with the Subcommittee, an ORR Field Specialist Supervisor explained that low sponsor income is not necessarily a trafficking indicator.²⁵⁸ He noted that if a sponsor has a low income then it may be necessary for the care provider to ask the sponsor if they have an alternative means of financial support, such as assistance from a family member or relative.²⁵⁹ The supervisor agreed, however, that a case involving a Category 3 sponsor with low income where the UAC has debt from his journey would be “a huge red flag for [HHS].”²⁶⁰

In the Marion case, one sponsor stated that she earned \$200 each week working from home,²⁶¹ which amounts to \$10,400 a year—well below the federal poverty line. Neither HHS nor the care provider record any attempt to determine

²⁵² Interview with David Fink, Federal Field Specialist Supervisor (Oct. 8, 2015).

²⁵³ Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *ORR Policy Guide* § 2.2.4.

²⁵⁷ Interview with Care Provider B (Oct. 16, 2015).

²⁵⁸ Interview with David Fink, Federal Field Specialist Supervisor (Oct. 8, 2015).

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ UAC14.

whether this reported income was supplemented by any other sources, such as government assistance.²⁶²

8. HHS Approves Placements with Sponsors Who May Not Remain in the Country

HHS does not disqualify sponsors based on immigration status; it is willing to place UACs with individuals who are in the country illegally or on temporary visas that will soon expire.²⁶³ That policy is understandable when the sponsor is the child's parent or close relative, and granting the application results in family reunification. But for non-relatives, it may create additional risks for the child. For example, sponsor may leave the United States while the UAC's immigration proceedings are still pending—either because the sponsor's temporary visa expires or because an undocumented sponsor is removed or voluntarily departs, which would cause further disruption for the child. For example, HHS approved the straight release of a UAC to a Category 3 sponsor who was in the U.S. on a B-1/B-2 tourist/business visa, which has an initial duration of stay for only six months. A B-1/B-2 visa holder can be granted an extension for another six months for a total duration of no more than one year in the U.S. on any trip.²⁶⁴

9. Sponsors Often Inflict Legal Harm on UACs by Not Ensuring Their Appearance At Immigration Proceedings

Sponsors often fail to ensure the UAC's appearance at immigration proceedings—one of a sponsor's principal tasks. Prior to release of the UAC from HHS custody, the sponsor is required to sign a form agreeing to attend a legal orientation program and to “ensure the minor's presence at all future proceedings before DHS/Immigration and Customs Enforcement (ICE) and DOJ/EOIR.”²⁶⁵ The importance of that obligation is reflected in the TVPRA, which provides that HHS and the Department of Justice “shall cooperate . . . to ensure that custodians receive legal orientation programs” and that “at a minimum, such presentations shall address the custodian's responsibility to attempt to ensure the child's appearance at all immigration proceedings and to protect the child from mistreatment, exploitation, and trafficking.”²⁶⁶

Failure to appear at an immigration hearing can have significant adverse consequences for an alien child. Such a child may be ordered removed *in absentia*,

²⁶² *Id.*

²⁶³ Interview with Bobbie Gregg, Deputy Director of Children's Servs., Office of Refugee Resettlement (Oct. 1, 2015).

²⁶⁴ U.S. Citizenship and Immigration Services, B-1 Temporary Business Visitor, <https://www.uscis.gov/working-united-states/temporary-visitors-business/b-1-temporary-business-visitor>.

²⁶⁵ App. 147.

²⁶⁶ See 8 U.S.C. § 1232(c)(4).

which can serve as a bar to subsequent immigration relief for a period of 10 years if the child leaves and then attempts to re-enter the United States—making the child ineligible for cancellation of removal,²⁶⁷ voluntary departure,²⁶⁸ adjustment of status to permanent resident,²⁶⁹ or adjustment of status of nonimmigrant classification.²⁷⁰

Data from the Department of Justice suggest that a considerable number of UACs do not appear for their immigration hearings. According to information from the Executive Office for Immigration Review, from July 18, 2014 through December 15, 2015, immigration courts held 40,612 master calendar hearings and completed 20,272 cases marked “UC” (for “unaccompanied child”) in EOIR’s database. Of those cases, 9,496 resulted in removal orders. Of those removal orders, 8,328 were decided *in absentia*. In other words, *in absentia* removal orders accounted for 41.1% of all completed cases, and 87.7% of all removal orders entered against UACs. It is impossible to determine from these data the rate at which UACs fail to appear; not every such failure results in a *in absentia* order (because even if the alien does not show up, the government must still prove that he is removable and received sufficient notice), but every *in absentia* order was caused by a failure to appear.²⁷¹

By contrast, the data suggest that UACs that *do* appear for their hearings stand a better chance of obtaining some kind of relief. Of the 11,944 case completions in UC cases that did not result in removal *in absentia*, only 1,168 (or 9.8%) resulted in removal orders. As for the rest, 4,165 (34.9%) were “terminated”—usually meaning, according to EOIR’s discussions with Subcommittee staff, that the child received some immigration relief from USCIS.²⁷²

In short, then, failing to ensure a UAC’s appearance at an immigration hearing appears not only very common, but also prejudicial to the child’s otherwise substantial chances of obtaining immigration relief.

²⁶⁷ See 8 U.S.C. § 1229(b).

²⁶⁸ See 8 U.S.C. § 1229(c).

²⁶⁹ See 8 U.S.C. § 1225.

²⁷⁰ See 8 U.S.C. § 1258.

²⁷¹ Interview with Staff of Executive Office for Immigration Review.

²⁷² These terminations exclude terminations under DHS’s prosecutorial discretion initiative. An additional 5,640 (47.2% of completed cases other than *in absentia* removals) have been administratively closed, which indicates the UAC is currently pursuing immigration relief from DHS.

B. Need to Improve Oversight and Regularize Procedures

1. No Federal Agency Is Currently Responsible for UACs Placed with Sponsors Other than Parents

In March 2008, the HHS Office of Inspector General (OIG) released a report assessing HHS's placement, care, and release of unaccompanied alien children.²⁷³ The Inspector General found that “[w]hen responsibilities were divided between HHS and DHS, no formal memorandum of understanding (MOU) was established to clarify each Department’s specific roles.”²⁷⁴ Because there is no specific agreement, the report continued, “it is not clear which Department is responsible for ensuring the safety of children once they are released to sponsors and which Department is responsible for ensuring sponsors’ continued compliance with sponsor agreements.”²⁷⁵

The OIG report recommended that HHS establish a MOU with DHS to delineate the roles and responsibilities of each Department.²⁷⁶ The OIG recommended that, “at a minimum,” the MOU should address “[e]ach entity’s specific responsibilities for gathering and exchanging information when a child comes into Federal custody and is placed into a HHS ORR facility” and “[e]ach entity’s specific responsibilities for gathering and exchanging information about children who have been reunified with a sponsor to ensure that children are safe and that sponsors are adhering to agreements.”²⁷⁷

In November 2015, Subcommittee staff met with representatives of the Inspector General and learned that HHS has never established a MOU with DHS.²⁷⁸ According to OIG, HHS informed the Inspector General that it had a draft MOU approved in May 2013, but when the OIG followed up with HHS in November 2013, HHS responded that the MOU was still in draft form.²⁷⁹ In October 2015, the OIG followed up with HHS a second time and HHS again stated that the MOU was in draft form.²⁸⁰ At the time of the Subcommittee’s meeting with the OIG, the OIG had not seen a copy of the draft MOU.²⁸¹

²⁷³ *Division of Unaccompanied Children’s Services: Efforts to Serve Children*, DEP’T OF HEALTH & HUMAN SERV.: OFFICE OF INSPECTOR GEN., OEI-07-06-00290 (Mar. 2008), <http://oig.hhs.gov/oei/reports/oei-07-06-00290.pdf>.

²⁷⁴ *Id.* at ii.

²⁷⁵ *Id.* at ii.

²⁷⁶ *Id.* at iii.

²⁷⁷ *Id.*

²⁷⁸ Meeting with Office of Inspector General, U.S. Department of Health and Human Services (Nov. 23, 2015).

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

HHS claims that it has no responsibility for the care and safety of UACs after they are placed with the sponsors it selects.²⁸² As explained above, that interpretation is in tension with the text of 8 U.S.C. § 1232, which makes the “care and custody” of all UACs the responsibility of HHS, without limitation. That interpretation is also inconsistent with the still-in-effect *Flores* Agreement, which authorized HHS’s predecessor agency to terminate placements with sponsors. Nevertheless, HHS believes it has no authority or responsibility to ensure the safety of children after placement.²⁸³

2. Lack of Transparency

Finally, the Subcommittee has found that the UAC program is not governed by regularized, transparent procedures. As noted above, ORR has never codified its policies in regulations or subjected them to the public scrutiny and accountability that comes from notice and comment rulemaking.

Instead, ORR’s policies are kept and revised in an ad hoc manner. ORR maintains a “Policy Guide” on its website that provides general guidance on five subjects: “Placement in ORR Care Provider Facilities,” “Safe and Timely Release from ORR Care,” “Services,” “Preventing, Detecting, and Responding to Sexual Abuse and Harassment,” and “Program Management.”²⁸⁴ The guidance has existed in draft form since 2006, but was not made available on the Internet until January 30, 2015. According to ORR’s Policy Director, the document long remained in draft form because it was “never cleared” by ORR leadership.²⁸⁵ Now, however, according to the Policy Director, the online Policy Guide is official policy of ORR and is not a draft.²⁸⁶

The Policy Guide is constantly being revised. An ORR policy adviser interviewed by the Subcommittee described it as a “living document” that is updated or revised sometimes as often as once a week.²⁸⁷ On what are called “Policy Mondays,” ORR sends email updates to care providers to notify them of changes to the Policy Guide, but there is no electronic record of the changes or the previous versions of the Guide. For example, Subcommittee staff printed the Policy Guide on September 9, 2015; approximately one week later, the guide had

²⁸² Interview with AnnaMarie Bena, Director, Division of Policy, Office of Refugee Resettlement (Jan. 19, 2016).

²⁸³ Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

²⁸⁴ See generally *ORR Policy Guide*.

²⁸⁵ Interview with AnnaMarie Bena, Director, Division of Policy, Office of Refugee Resettlement (Jan. 19, 2016).

²⁸⁶ *Id.*

²⁸⁷ Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

undergone substantive changes, without indications of what had changed (much less why).

An internal ORR document reflects the challenges that comes with not having a finalized set of rules to follow. An October 2015 draft memo addressed to HHS leadership entitled, “After Action Report: The Unaccompanied Children Program and the May–July 2014 Surge,” explains:

While a UC policy guide had been in draft form for some years, the lack of a final set of policy resources hampered the program both internally (staff were sometimes at a loss in identifying guidance to follow) and externally (it was difficult to provide outside stakeholders with clear, timely answers to policy-oriented questions).²⁸⁸

In addition to the Policy Guide, the Division of Children’s Services is currently drafting an Operations Guide that deals with procedural aspects of the UAC Program. That document is not publicly available. Rather, ORR has provided portions of it to care providers, and revises and adds to it through nonpublic updates.

Under its current practice, ORR can make major changes to its placement procedures without notice to the public, care providers, or other interested parties. In the fall of 2015, ORR included in the Unified Agenda a notice of its intention to promulgate a rule related to the implementation of the TVPRA.²⁸⁹ The abstract notes that the rule would implement changes “affecting age determination, placement determinations, suitability assessments, and home studies.”²⁹⁰ It would also codify sections of the *Flores v. Reno* settlement agreement. Further details about the proposed rule are not yet available.

Setting governmental policy on the fly—without basic public notice or even a clear record of revisions to that policy—is inconsistent with the accountability and transparency that should be expected of every administrative agency. The Subcommittee finds that HHS has failed to adopt and maintain a regularized, transparent body of policies and procedures concerning the placement of UACs.

²⁸⁸ App. 243.

²⁸⁹ See <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201110&RIN=0970-AC42>

²⁹⁰ *Implementation of the Unaccompanied Alien Children (UAC) Provisions of the Trafficking Victims Reauthorization Act of 2008*, OFFICE OF INFO. & REGULATORY AFFAIRS, (proposed March 2015) available at <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=0970-AC42>.

