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To the United States House of Representatives, Committee on Appropriations  
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies

For A Hearing Titled:

“Reviewing the Administration’s Unaccompanied Children Program”

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Chairman De Lauro, Ranking Member Cole, and Members of the Subcommittee, I thank you for inviting me here today to discuss this important issue.

### The Changing Demographics of Migrants Entering Illegally

In the past eight years, the demographic makeup of the population of aliens who have been apprehended entering the United States illegally between the ports of entry, or who are deemed inadmissible at the ports of entry, along the Southwest border has changed dramatically.

Specifically, as the Department of Homeland Security (DHS) noted in an April 4, 2018 press release<sup>1</sup>, prior to FY 2011, over 90 percent of arriving aliens were single adult males, and 90 percent were Mexican nationals. In the first four months of FY 2019, by comparison, just less than 60 percent of all the aliens apprehended along the Southwest border were unaccompanied alien children (UACs) and aliens travelling in family units (that is, parents or legal guardians

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<sup>1</sup> *To Secure the Border and Make America Safe Again, We Need to Deploy the National Guard*, DEP’T OF HOMELAND SECURITY, Apr. 4, 2018, available at: <https://www.dhs.gov/news/2018/04/04/secure-border-and-make-america-safe-again-we-need-deploy-national-guard>.

travelling with children), as were just less than 48 percent of all aliens deemed inadmissible at the ports of entry along that border.<sup>2</sup>

Further, the vast majority of those UACs and family units who were apprehended were from the three so-called “Northern Triangle” countries of Central America (NTCA), *i.e.*, El Salvador, Guatemala, and Honduras. Specifically, of the 20,123 UACs who were apprehended along the Southwest Border in the first four months of FY 2019, 9,522 (47 percent) were from Guatemala, 4,833 (24 percent) were from Honduras, and 2,292 (11 percent) were from El Salvador.<sup>3</sup> Of the 99,901 family unit apprehensions along the Southwest border in that time frame, 50,593 (50 percent) were from Guatemala, 36,009 (36 percent) were from Honduras, and 9,146 (nine percent) were from El Salvador.<sup>4</sup>

By contrast, as the Congressional Research Service (CRS) has noted: “In FY2009, Mexican UAC accounted for 82 [percent] of 19,668 UAC apprehensions, while the other three [NTCA] countries accounted for 17” percent.<sup>5</sup>

The percentage of NTCA nationals who were deemed inadmissible along that border is smaller, but still significant. Of the 1,621 UACs who were deemed inadmissible in the first four months of FY 2019, 383 (23 percent) were from Guatemala, 253 (almost 16 percent) were from Honduras, and 45 (just less than three percent) were from El Salvador.<sup>6</sup> Of the 17,759 aliens traveling in family units who were deemed inadmissible, 2,829 (almost 16 percent) were from

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<sup>2</sup> *Southwest Border Migration FY 2019*, U.S. CUSTOMS AND BORDER PROTECTION, Feb. 8, 2019, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

<sup>3</sup> *U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2019*, U.S. CUSTOMS AND BORDER PROTECTION, Feb. 8, 2019, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>.

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

<sup>5</sup> William A. Kandel, *Unaccompanied Alien Children: An Overview*, at p. 7, CONGRESSIONAL RESEARCH SERVICE, Jan. 18, 2017, available at: <https://fas.org/sgp/crs/homesecc/R43599.pdf>.

<sup>6</sup> *Id.*

Guatemala, 1,995 (11 percent) were from Honduras, and 721 (four percent) were from El Salvador.<sup>7</sup>

According to the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS), in FY 2018, 54 percent of all UACs were from Guatemala, 26 percent were from Honduras, and 12 percent were from El Salvador.<sup>8</sup> Of those UACs, 37 percent were between the ages of 15 and 16, 35 percent were 17, 15 percent were younger than 13, and 12 percent were between the ages of 13 and 14.<sup>9</sup>

ORR reports that there were 49,100 UACs referred to that office in FY 2018, down from a high of 59,170 in FY 2016, but far above the seven-year low of 13,625 in FY 2012.<sup>10</sup> It should be noted that there were surges in the number of UACs apprehended along the Southwest border in both 2014 and 2016.<sup>11</sup>

#### Responsibility for the Apprehension, Custody, and Placement of UACs

Several different agencies bear responsibility for the apprehension, custody, and placement of UACs, respectively.<sup>12</sup> As CRS has explained, U.S. Customs and Border Protection (CBP) in DHS “apprehends and detains unaccompanied children arrested at the border”; U.S. Immigration and Customs Enforcement (ICE) is responsible for the transfer of custody and repatriation of UACs, apprehends UACs within the United States, and represents the government in removal proceedings; and ORR in HHS “coordinates and implements the care and placement of unaccompanied children in appropriate custody.”<sup>13</sup>

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

<sup>8</sup> *Facts and Data, General Statistics*, OFFICE OF REFUGEE RESETTLEMENT, Feb. 13, 2019, available at: <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See William A. Kandel, *Unaccompanied Alien Children: An Overview*, Summary, CONGRESSIONAL RESEARCH SERVICE, Jan. 18, 2017, available at: <https://fas.org/sgp/crs/homsec/R43599.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## The Additional Costs of Processing the Changing Migrant Flow

The processing of aliens apprehended by the Border Patrol is a costly and complex endeavor. As then-Acting Border Patrol Chief Ronald Vitiello told Congress in May 2016, aliens apprehended by Border Patrol must go through immigration inspection.<sup>14</sup> This means they are interviewed for identification purposes, photographed and fingerprinted, and their information is entered into DHS's case tracking and processing system.<sup>15</sup> Finally, Border Patrol checks their biographic and biometric records against various databases for previous immigration encounters, criminal and terrorist history, and lookouts.<sup>16</sup> Should derogatory information be discovered, Border Patrol agents review those records to determine if an enforcement action should be pursued.<sup>17</sup> Where there is a want or criminal warrant, the appropriate federal, state, tribal, or local agency is contacted.<sup>18</sup>

Needless to say, this is not quick work in the best of circumstances. The processing of aliens traveling in family units and UACs (particularly those who are "other than Mexican" nationals or "OTMs"), however, is much more complex and time consuming for the Border Patrol than the processing of single adult male Mexican nationals.<sup>19</sup> If a child in a family unit is sick or requires hospitalization, processing of the entire family unit is stopped pending medical care.<sup>20</sup> OTMs also require additional processing because of the added paperwork associated with their cases: determining their route of travel to the United States, taking biometrics from each

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<sup>14</sup> *Declining Deportations and Increasing Criminal Alien Releases – The Lawless Immigration Policies of the Obama Administration: Hearing Before the H. Comm. on the Judiciary, Subcomm. Immigration and the National Interest*, 115<sup>th</sup> Cong. (2016) (statement of Ronald Vitiello, U.S. Border Patrol Acting Chief).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Andrew Arthur, *Border Patrol's Expensive New Mission*, CENTER FOR IMMIGRATION STUDIES, Feb. 10, 2019, available at: <https://cis.org/Arthur/Border-Patrols-Expensive-New-Mission>.

<sup>20</sup> *Id.*

(except minors under the age of 14), processing those who will be placed into removal proceedings, and planning for the return of those who will not be.<sup>21</sup> As a result, the so-called “time in processing” (TIP) for aliens apprehended in the Yuma Sector (for example) has increased from eight hours in 2005 (when the majority of aliens who were apprehended were Mexican nationals who could be quickly returned) to 78 hours today, when most are OTM family groups and UACs.

The changing demographics of the aliens who are entering illegally, and the increase in the TIP for those migrants, has caused logistical issues for the Border Patrol. The processing facilities that are used by the Border Patrol were not built to handle large numbers of families and UACs. Nonetheless, I have been told, Border Patrol has attempted to keep family units together while they are being processed by the agency, but this is not always possible. In no circumstances, however, can UACs be kept with unrelated adults.

Further, as the Government Accountability Office (GAO) has noted, “DHS has historically separated a small number of children from accompanying adults at the border and transferred them to ORR custody for various reasons.”<sup>22</sup> Such reasons include an inability to confirm a parental relationship, “reason to believe the adult was participating in human trafficking or otherwise a threat to the safety of the child,” or where “the child crossed the border with other family members such as grandparents without proof of legal guardianship.”<sup>23</sup> As GAO explained: “ORR has traditionally treated these children the same as other UAC.”<sup>24</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *Unaccompanied Children, Agency Efforts to Reunify Children Separated from Parents at the Border (GAO-19-163)*, GOVERNMENT ACCOUNTABILITY OFFICE, Oct. 2018, at 7, available at: <https://www.gao.gov/assets/700/694918.pdf>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

The need for additional manpower and infrastructure is not the only added cost imposed by the changing demographics of the flow of aliens entering the United States along the Southwest border illegally.<sup>25</sup> In FY 2018, the Yuma Sector (again, for example), which has jurisdiction over 126 miles of the border, spent \$350,000 for humanitarian support, including more than \$150,000 in meals, \$15,000 for baby formula and diapers, and \$27,000 for blankets.<sup>26</sup> Already in FY 2019, the sector has spent \$400,000 to cover humanitarian costs, including more than \$240,000 in meals, \$45,000 in baby formula and diapers, and \$33,000 in blankets.<sup>27</sup>

The costs do not end there. In FY 2018, the sector incurred more than \$700,000 in medical care costs for 1,700 aliens who were apprehended and had to be transported to the hospital, including a 17-year-old girl who broke three vertebrae when her smuggler told her to jump from the top of a 30-foot fence, and her 14-year-old sister, who followed after her and fractured her ankle.<sup>28</sup> Other aliens show up ill, particularly children, some of whom are suffering from maladies not generally seen in modern American society, including mumps, measles, and tuberculosis, as well as others with influenza, scabies, and other skin diseases.<sup>29</sup>

#### The Perils Faced by Smuggled Foreign Nationals in Transit to the United States

Not all of the additional costs associated with the changing demographic flow of aliens entering the United States along the Southwest border illegally are directly borne by the United States government, nor are they all economic. Some are social costs that affect the rule of law both in this country and abroad, as well as the migrants themselves. Aliens, and in particular

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<sup>25</sup> See Andrew Arthur, *Border Patrol's Expensive New Mission*, CENTER FOR IMMIGRATION STUDIES, Feb. 10, 2019, available at: <https://cis.org/Arthur/Border-Patrols-Expensive-New-Mission>.

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

<sup>27</sup> *Id.*

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

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

aliens from the NTCA countries, face significant dangers during their transit from their home countries to the United States.

First, even the Obama Administration admitted that there is a nexus between human smuggling networks and other transnational crimes. On July 25, 2011, the staff of the Obama National Security Council released its “Strategy to Combat Transnational Organized Crime: Addressing Converging Threats to National Security.”<sup>30</sup> A section therein captioned “Transnational Organized Crime: A Growing Threat to National and International Security”<sup>31</sup> stated: “International human smuggling networks are linked to other trans-national crimes including drug trafficking and the corruption of government officials. They can move criminals, fugitives, terrorists, and trafficking victims, as well as economic migrants. They undermine the sovereignty of nations and often endanger the lives of those being smuggled.”

That document explained that human smuggling is a large and profitable criminal enterprise, noting: “In its 2010 report *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, the United Nations Office on Drugs and Crime (UNODC) estimated that the smuggling of persons from Latin America to the United States generated approximately \$6.6 billion annually in illicit proceeds for human smuggling networks.”<sup>32</sup>

Second, as noted, human smuggling also imposes a significant human cost on those who are smuggled, even voluntarily, as again even the Obama Administration admitted. In an August 2014 press release<sup>33</sup>, for example, the White House spoke of “the criminal organizations and

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<sup>30</sup> *Strategy to Combat Transnational Organized Crime*, NATIONAL SECURITY COUNCIL, July 25, 2011, available at: <https://obamawhitehouse.archives.gov/administration/eop/nsc/transnational-crime>

<sup>31</sup> *Transnational Organized Crime: A Growing Threat to National and International Security*, NATIONAL SECURITY COUNCIL, July 25, 2011, available at: <https://obamawhitehouse.archives.gov/administration/eop/nsc/transnational-crime/threat>.

<sup>32</sup> *Id.*

<sup>33</sup> *The Obama Administration’s Government-Wide Response to Influx of Central American Migrants at the Southwest Border*, THE WHITE HOUSE OFFICE OF THE PRESS SECRETARY, Aug. 1, 2014, available at:

smuggling rings that are exploiting” illegal entrants, and described the journey of children and adults “from Central America — at the hands of smugglers” as “unbelievably dangerous.”

Among the initiatives described therein was the so-called “Dangers Awareness Campaign,” described as “an aggressive . . . outreach effort and an urgent call to action to community groups, the media, parents and relatives in the U.S. and Central America to not put the lives of children at risk by attempting to illegally cross the southwest border.”<sup>34</sup>

Specific instances of danger to those migrants as they traveled through the United States were detailed in August 2014 by National Geographic reporter Scott Johnson.<sup>35</sup> The perils of the journey were also earlier detailed in a March 2014 broadcast of “All Things Considered” on *NPR* captioned “The Rarely Told Stories of Sexual Assault against Female Migrants.”<sup>36</sup> The transcript includes descriptions of sex trafficking and sexual assault of migrants on the journey north through Mexico and into the United States.<sup>37</sup> It tells of a pharmacy in the northern Mexican city of Altar where female migrants go for birth control to prevent pregnancies in case they are raped, as well as a story of a mother who “was confused why a coyote at the start of the trip would offer her and other women birth control.”<sup>38</sup> The reason became apparent when she could not keep up with the group, and one of the coyotes agreed to wait for her in exchange for

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<https://obamawhitehouse.archives.gov/the-press-office/2014/08/01/obama-administration-s-government-wide-response-influx-central-american->

<sup>34</sup> *Id.*

<sup>35</sup> Scott Johnson, *Busy “Pipeline” Migrant Route Makes Texas Town Hub for Human Smuggling, Easy highway access and a frontier lawlessness has transformed Falfurrias*, NATIONAL GEOGRAPHIC, Aug. 10, 2014, available at: <https://news.nationalgeographic.com/news/2014/08/140810-immigration-minors-smuggling-central-america-texas/>.

<sup>36</sup> Steve Inskip, *Transcript, The Rarely Told Stories Of Sexual Assault Against Female Migrants*, National Public Radio, Mar. 23, 2014, available at: <https://www.npr.org/2014/03/23/293449153/the-rarely-told-stories-of-sexual-assault-against-female-migrants>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*



sex with her daughter. She refused, and the pair “only survived because they found Border Patrol.”<sup>39</sup>

More recent reports tell a similar story. In May 2017, *Doctors Without Borders* (commonly known by its French acronym “*MSF*”) issued a report captioned “Forced to Flee Central America’s Northern Triangle, A Neglected Humanitarian Crisis.”<sup>40</sup> Among the findings in that report was the fact that “68.3 percent of the migrant and refugee populations entering Mexico reported being victims of violence during their transit toward the United States” and that almost “one-third of the women surveyed had been sexually abused during their journey.”<sup>41</sup> *MSF* patients cited therein “reported that the perpetrators of violence included members of gangs and other criminal organizations, as well as members of the Mexican security forces responsible for their protection.”<sup>42</sup>

That *MSF* report also describes some of the physical hazards that those migrants face during their journey: “Migrants and refugees walk for hours in high temperatures, on unsafe and insecure routes to evade authorities. . . risk falling from the cargo trains that transport them along the route, or ride on overcrowded trucks without food, water or ventilation for hours.”

Each of these are dangers that the Trump administration (as the Obama administration before it, as I have noted previously) has attempted to prevent through its border policies.

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<sup>39</sup> *Id.*

<sup>40</sup> *Forced to Flee Central America’s Northern Triangle, A Neglected Humanitarian Crisis*, DOCTORS WITHOUT BORDERS, May 2017, available at: [https://www.doctorswithoutborders.ca/sites/default/files/msf\\_forced-to-flee-central-americas-northern-triangle\\_0.pdf](https://www.doctorswithoutborders.ca/sites/default/files/msf_forced-to-flee-central-americas-northern-triangle_0.pdf).

<sup>41</sup> *Id.*

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

## The Care and Custody of UACs

On November 25, 2002, President George W. Bush signed the Homeland Security Act of 2002.<sup>43</sup> Section 462 of that act vested jurisdiction over the care and placement of UACs in removal proceedings with ORR.<sup>44</sup> That provision is codified at 6 U.S.C. § 279.<sup>45</sup>

Prior to the passage of that bill, responsibility for the detention and release of UACs had rested with the former Immigration and Naturalization Service (INS).<sup>46</sup> In exercising that responsibility, since 1997, the INS had been operating under the restrictions set forth in the settlement agreement in *Flores v. Reno*.<sup>47</sup>

*Human Rights First* has explained that *Flores* “imposed several obligations on the immigration authorities,” falling into three categories: to release children “without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody”; “to place children in the ‘least restrictive’ setting appropriate to their age and any special needs”; and to “implement standards relating to the care and treatment of children in immigration detention.”<sup>48</sup> The Ninth Circuit has made it clear that the *Flores* settlement agreement creates a presumption in favor of the release of alien minors.<sup>49</sup>

It should be noted that *Flores* does not apply only to UACs. In a July 2016 opinion<sup>50</sup> the Ninth Circuit held that the settlement applies to accompanied *and* unaccompanied alien children.

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<sup>43</sup> Homeland Security Act of 2002, Pub. L. 107-296 (2002), § 462, *available at*: [https://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](https://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf).

<sup>44</sup> *Id.*

<sup>45</sup> 6 U.S.C. § 279 (2019), *available at*: <https://www.law.cornell.edu/uscode/text/6/279>.

<sup>46</sup> *See id.*

<sup>47</sup> *Flores v. Reno*, Stipulated Settlement Agreement, *available at*: [https://cliniclegal.org/sites/default/files/attachments/flores\\_v\\_reno\\_settlement\\_agreement\\_1.pdf](https://cliniclegal.org/sites/default/files/attachments/flores_v_reno_settlement_agreement_1.pdf).

<sup>48</sup> *The Flores Settlement: A Brief History and Next Steps*, Human Rights First, Feb. 19, 2016, *available at*: <https://www.humanrightsfirst.org/resource/flores-settlement-brief-history-and-next-steps>. And

<sup>49</sup> *Flores v. Lynch*, 828 F. 3d 898 (9<sup>th</sup> Cir. 2016), *available at*: <https://cdn.ca9.uscourts.gov/datastore/opinions/2016/07/06/15-56434.pdf>.

<sup>50</sup> *Id.*

Under *Flores*, DHS can only detain alien minors for 20 days before releasing them to HHS to be placed in foster or shelter situations until they locate a sponsor.<sup>51</sup>

The policies set forth in the *Flores* settlement agreement encourage UACs to enter the United States illegally, and encourage the parents of UACs to hire smugglers to bring their children to the United States.<sup>52</sup> Further, they encourage people to bring their own children (or children whom they claim to be their own)<sup>53</sup> with them when they make the perilous journey to the United States, thinking they will be released if they are travelling with those children. The agreement has also “incited smugglers to place children into the hands of adult strangers so they can pose as families and be released from immigration custody after crossing the border, creating another safety issue for these children.”<sup>54</sup>

On December 3, 2008, President Bush signed the William Wilberforce Trafficking Victims Reauthorization Protection Act of 2008 (TVPRA).<sup>55</sup> The TVPRA distinguishes between UACs from “contiguous” countries (Canada and Mexico) from aliens who are nationals of “non-contiguous” countries.<sup>56</sup> A UAC from a contiguous country can be returned if the alien has not been trafficked and does not have a credible fear.<sup>57</sup> Under the TVPRA, however, OTMs are to

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<sup>51</sup> *Unaccompanied Alien Children and Family Units Are Flooding the Border Because of Catch and Release Loopholes*, U.S. DEP’T OF HOMELAND SECURITY, Feb. 15, 2018, available at: <https://www.dhs.gov/news/2018/02/15/unaccompanied-alien-children-and-family-units-are-flooding-border-because-catch-and->

<sup>52</sup> *See id.* (“These legal loopholes lead to ‘catch and release’ policies that act as a ‘pull factor’ for increased future illegal immigration.”).

<sup>53</sup> *See* Andrew Arthur, *Fake Family Units at the Border*, CENTER FOR IMMIGRATION STUDIES, Feb. 15, 2019, available at: <https://cis.org/Arthur/Fake-Family-Units-Border>.

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

<sup>55</sup> *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, §235, Pub. L. 110-457 (2008), available at: <https://www.congress.gov/bill/110th-congress/house-bill/7311?q=%7B%22search%22%3A%5B%22William+Wilberforce+Trafficking+Victims+Protection+Reauthorization+Act+of+2008%22%5D%7D&r=1>.

<sup>56</sup> *See id.*

<sup>57</sup> *Id.* § 235(a)(2), 8 U.S.C. § 1232(a)(2).

be transferred to the care and custody of HHS within 72 hours and placed in formal removal proceedings, even if they have not been “trafficked.”<sup>58</sup>

Significantly, section 235(c)(2) of the TVPRA requires that each UAC “be promptly placed in the least restrictive setting that is in the best interest of the child.”<sup>59</sup> That section continues: “A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense,” with a requirement that “placement of a child in a secure facility shall be reviewed, at a minimum, on a monthly basis. . . to determine if such placement remains warranted.”<sup>60</sup>

ORR statistics reveal that the average length of time that a UAC remained in that office’s care in FY 2018 was 60 days<sup>61</sup>, in one of 100 shelters that HHS operates in 17 states.<sup>62</sup>

As CRS describes the placement process, “ORR will arrange to house the child either in one of its shelters or in foster care; or the UAC program reunites the child with a family member.”<sup>63</sup> Initially, the majority “are cared for . . . through a network of state-licensed, ORR-funded care providers that offer classroom education, mental and medical health services, case management, and socialization and recreation.”<sup>64</sup> That office “oversees different types of shelters to accommodate unaccompanied children with different circumstances, including

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<sup>58</sup> *Id.* at §§ 235(a)(3) and (b), 8 U.S.C. §§ 1232(a)(3) and (b).

<sup>59</sup> *Id.* at § 235(c)(2), 8 U.S.C. § 1232(c)(2).

<sup>60</sup> *Id.*

<sup>61</sup> *Facts and Data, General Statistics*, OFFICE OF REFUGEE RESETTLEMENT, Feb. 13, 2019, available at: <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>62</sup> *Fact Sheet, Unaccompanied Alien Children Program*, DEP’T OF HEALTH AND HUMAN SERVICES, ADMIN. FOR CHILDREN AND FAMILIES, Dec. 2018, available at: [https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied\\_alien\\_children\\_program\\_fact\\_sheet\\_december\\_2018.pdf](https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_alien_children_program_fact_sheet_december_2018.pdf).

<sup>63</sup> William A. Kandel, *Unaccompanied Alien Children: An Overview*, CONGRESSIONAL RESEARCH SERVICE, at 8, Jan. 18, 2017, available at: <https://fas.org/sgp/crs/homsec/R43599.pdf>.

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

nonsecure shelter care, secure care, and transitional foster care facilities.”<sup>65</sup> According to CRS, juveniles may only be held in secure facilities under specific circumstances: if they are “charged with criminal or delinquent actions; if they “threaten[] or commit[] violence”; they “display[] unacceptably disruptive conduct in a shelter”; they present[] an escape risk”; are “in danger and . . . detained for” their “own safety”; or they are “part of an emergency or influx of minors that results in insufficient bed space at nonsecure facilities.”<sup>66</sup>

“The same care providers also facilitate the release of UAC to family members or other sponsors who are able to care for them.”<sup>67</sup> The Administration for Children and Families (ACF), the HHS component with jurisdiction over ORR, explains that “[t]he overwhelming majority of UACs “are released to suitable sponsors who are family members within the United States . . . to await immigration hearings.”<sup>68</sup> As of December 2018, ORR had “provided care for and found suitable sponsors for over” a quarter million UACs.<sup>69</sup> ACF explains that potential sponsors of UACs must “undergo background checks and complete a sponsor assessment process that identifies risk factors and other potential safety concerns,” including fingerprinting and “a criminal public records check and a sex offender registry check.”<sup>70</sup> Further, “ORR also conducts background checks on adult household members and individuals identified in a potential sponsor’s care plan.”<sup>71</sup>

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<sup>65</sup> *Id.*

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

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

<sup>68</sup> *Id.*

<sup>69</sup> *Fact Sheet, Unaccompanied Alien Children Program*, DEP’T OF HEALTH AND HUMAN SERVICES, ADMIN. FOR CHILDREN AND FAMILIES, Dec. 2018, available at:

[https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied\\_alien\\_children\\_program\\_fact\\_sheet\\_december\\_2018.pdf](https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_alien_children_program_fact_sheet_december_2018.pdf).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

A home study is also required by ORR in certain instances before releasing a child.<sup>72</sup> Home studies are required by law, including for: a child who has been a victim of trafficking; children with disabilities; in instances “where the child has been a victim of physical or sexual abuse under circumstances that indicate that the child’s health or welfare has been significantly harmed or threatened”; as well as “where the child’s sponsor clearly presents a risk of abuse, maltreatment, exploitation or trafficking, to the child based on all available objective evidence.”<sup>73</sup> In addition, “per ORR policy, a home study is required for any child to a non-relative sponsor who is seeking to sponsor multiple children, or has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children.”<sup>74</sup> Finally, “ORR requires a home study for children who are 12 years of age and under before releasing to a non-relative sponsor.”<sup>75</sup> In FY 2018, ORR conducted 3,641 home studies.<sup>76</sup>

In assessing the suitability of a potential sponsor, ORR also evaluates that sponsor’s ability to ensure that the UAC will appear at all future removal hearings.<sup>77</sup> Most aliens who are apprehended entering the United States illegally are subject to expedited removal under section 235(b) of the Immigration and Nationality Act (INA).<sup>78</sup> UACs, however, are not, but rather are placed directly into removal proceedings.<sup>79</sup> Many fail to appear for those proceedings.

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

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

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

<sup>76</sup> *Facts and Data, General Statistics*, OFFICE OF REFUGEE RESETTLEMENT, Feb. 13, 2019, available at: <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>77</sup> *See Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs, Permanent Subcomm. on Investigations*, 115<sup>th</sup> Cong. (2018) (statement of Steven Wagner, Acting Assistant Secretary, Administration for Children and Families, U.S. Dep’t of Health and Human Services, at 6), available at: <https://www.hsgac.senate.gov/imo/media/doc/Wagner%20Testimony.pdf>.

<sup>78</sup> Section 235(b) of the INA, 8 U.S.C. § 1225(b), available at: <http://uscode.house.gov/view.xhtml?req=granuleid%3AU5C-prelim-title8-section1225&num=0&edition=prelim>.

<sup>79</sup> Hillel R. Smith, *An Overview of U.S. Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*, CONGRESSIONAL RESEARCH SERVICE, Nov. 27, 2018, available at: <https://fas.org/sgp/crs/homsec/LSB10150.pdf>.

Specifically, according to statistics from the Executive Office for Immigration Review (EOIR), the Department of Justice component with jurisdiction over the immigration courts, the number of UACs who were ordered removed *in absentia*, that is, after failing to appear for immigration court, has skyrocketed from 450 in FY 2010 to 6,662 in FY 2018<sup>80</sup>, an almost 1,500 percent increase during a period of time when the number of UACs apprehended increased about 272 percent (from 18,411 in FY 2010<sup>81</sup> to 50,036 in FY 2018<sup>82</sup>). In fact, in FY 2018, half of all case completions involving UACs were *in absentia* orders according to EOIR, compared to an overall *in absentia* average of 25 percent of all case completions.<sup>83</sup>

Further, not all sponsors of UACs are in the United States legally. Between February 2014 and September 2015, for example, 56,000 (80 percent) of UACs were placed with sponsors illegally in the United States and an additional 700 were placed with sponsors in deportation proceedings.<sup>84</sup> In FY 2014, according to CRS, most of the UACs who were released were placed with parents or legal guardians.<sup>85</sup>

Nothing in the INA prevents DHS from placing any sponsor of a UAC into removal proceedings. Section 224 of the Consolidated Appropriations Act, 2019<sup>86</sup>, however, effectively bars DHS from using information obtained from HHS “to place in detention, remove, refer for a

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<sup>80</sup> *Unaccompanied Alien Child (UAC) In Absentia Removal Orders*, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Oct. 24, 2018, available at: <https://www.justice.gov/eoir/page/file/1107711/download>

<sup>81</sup> *Total Unaccompanied Alien Children (0-17 Years Old) Apprehensions By Month - FY 2010*, UNITED STATES BORDER PATROL, undated, available at: <https://www.cbp.gov/sites/default/files/assets/documents/2018-Jul/BP%20Total%20Monthly%20UACs%20by%20Sector%2C%20FY10-FY17.pdf>.

<sup>82</sup> *Southwest Border Migration FY2018*, U.S. CUSTOMS AND BORDER PROTECTION, Nov. 9, 2018, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2018>.

<sup>83</sup> *Comparison of in absentia rates*, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Oct. 24, 2018, available at: <https://www.justice.gov/eoir/page/file/1083096/download>.

<sup>84</sup> Joseph J. Kolb, *Implementation of a Law to Protect Trafficking Victims Has Become a Public Safety Issue*, CENTER FOR IMMIGRATION STUDIES, Nov. 3, 2016, available at: <https://cis.org/Report/Implementation-Law-Protect-Trafficking-Victims-Has-Become-Public-Safety-Issue>.

<sup>85</sup> William A. Kandel, *Unaccompanied Alien Children: An Overview*, CONGRESSIONAL RESEARCH SERVICE, at 10 n.51, Jan. 18, 2017, available at: <https://fas.org/sgp/crs/homsec/R43599.pdf>.

<sup>86</sup> H.R.J. Res. 31, § 224, 116<sup>th</sup> Cong. (2019), available at: <https://www.congress.gov/116/bills/hjres31/BILLS-116hjres31enr.pdf>.

decision whether to initiate removal proceedings, or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of” a UAC, with limited exceptions.

ORR provided post-release services to 14,088 UACs in FY 2018<sup>87</sup>, and that office also conducts post-release checks.<sup>88</sup> In particular, an ORR case manager will contact the sponsor 30 days after the UAC is released to confirm that the UAC is still living with the sponsor, is in school, knows about upcoming court appearances, and is safe.<sup>89</sup> If the case manager, or any other ORR grantee or contractor having contact with the UAC, is concerned about the UAC’s well-being, they must report their concerns to any relevant investigative agencies, and notify ORR of immediate dangers to a child’s safety or well-being.<sup>90</sup> Local law enforcement is notified about such concerns to remove the UAC from an unsafe situation.<sup>91</sup>

There is no apparent legal requirement that ORR conduct such post-release checks, or be responsible for the post-release care of UACs<sup>92</sup>, although notably Congress is free to implement such requirements. If it were to do so, however, it would be incumbent on Congress to provide ORR the necessary resources to undertake this task.

### Conclusion

Thank you again for inviting me to testify today. I look forward to answering any questions you may have.

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<sup>87</sup> *Facts and Data, General Statistics*, OFFICE OF REFUGEE RESETTLEMENT, Feb. 13, 2019, available at: <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>88</sup> *See Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs, Permanent Subcomm. on Investigations*, 115<sup>th</sup> Cong. (2018) (statement of Steven Wagner, Acting Assistant Secretary, Administration for Children and Families, U.S. Dep’t of Health and Human Services, at 7), available at: <https://www.hsgac.senate.gov/imo/media/doc/Wagner%20Testimony.pdf>.

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

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

<sup>91</sup> *Id.* at 7-8.

<sup>92</sup> *Id.* at 8.