

WRITTEN TESTIMONY BY
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For a Hearing of the
U.S. Senate Committee on the Judiciary
on
“Ensuring the Safety and Well-being of UCs”
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Thank you, Chairman Durbin and Ranking Member Graham, and Members of the Subcommittee for the opportunity to appear before you today. My name is Lorie Davidson, and I am a licensed clinical social worker and the Vice President for Children and Family Services at Lutheran Immigration and Refugee Service (LIRS). I have had the honor of working with Unaccompanied Children (UC) and their families for over a decade and in my current role, I oversee LIRS’s national network of UC providers.

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

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

Unique Vulnerabilities of Unaccompanied Children

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

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

LIRS's Experience Serving Unaccompanied Children

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

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

¹ Thomas M Crea, Anayeli Lopez, Theresa Taylor, and Dawnya Underwood. "Unaccompanied migrant children in the United States: Predictors of placement stability in long term foster care." *Children and Youth Services Review*, 73 (August 2016): 93–99.

<http://dx.doi.org/10.1016/j.childyouth.2016.12.009>

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

packet and complying with background check and fingerprint requirements.

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

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

Laws on Protection of Unaccompanied Children

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

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

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

of children to a suitable sponsor.

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

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

ORR Policies and Procedures for Safe and Timely Release

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

Screening Children for Trafficking Concerns in ORR Custody

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

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

Issues with Large Congregate Care Settings

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

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

Sponsor Vetting

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

every sponsor, even when a familial relationship is claimed.

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

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

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

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

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

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

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

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

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

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

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

Releasees to Category 3 sponsors

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

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

Home Study and Post Release Services

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

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

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

create a more flexible system in which providers can request up to 5 additional days to complete the home study process for cases in which the provider needs additional time to effectively assess the safety and appropriateness of a potential sponsor and placement.

- Create a system within the UC Portal to flag high-risk cases such as those in which the UC is released following a negative home study or other safety concerns have been identified to ensure that PRS providers prioritize these cases rather than allowing these cases to be placed on the current waitlist.

Data tracking and Information Sharing

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

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

Expanding Permanent Licensed Bed Capacity with Small Community-Based Providers

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

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

Legal Representation

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

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

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

Conclusion

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