

A close-up photograph of a young child's face, looking through a red metal fence. The child's eyes are dark and expressive, and their lips are slightly parted. The fence is made of vertical bars with a rough, textured surface. The background is blurred, suggesting an outdoor setting.

At the Crossroads for Unaccompanied Migrant Children

POLICY, PRACTICE, & PROTECTION



Lutheran Immigration
and Refugee Service

Shawn Talbot / Shutterstock.com

A UNIFIED VISION FOR PROTECTING UNACCOMPANIED CHILDREN:

Statement of Principles

This “Unified Vision for Protecting Unaccompanied Children” sets out a statement of principles developed through a series of roundtable discussions hosted by Lutheran Immigration and Refugee Service. The principles are timely in their application to current compelling events, and also timeless in their enduring applicability to the care of unaccompanied children beyond this immediate humanitarian crisis. While current events continue to change and evolve, along with the U.S. government’s legislative and programmatic approaches to unaccompanied children, the relevance and necessity of these fundamental principles has never been greater, in order to ensure that there is no erosion of humanitarian and due process protections for the lives and safety of unaccompanied children.

Principle #1

Unaccompanied children are children first and foremost. U.S. policies and practices must recognize their unique vulnerabilities and developmental needs within a context of the best interests of the child.

Principle #2

Screening of children for persecution, abuse, or exploitation should be done by skilled child welfare professionals.

Principle #3

Children require individualized adjudication procedures that recognize a child’s need for trust, safety and time, in order to disclose trauma and maltreatment; in legal proceedings, unaccompanied children need legal counsel to represent their wishes, and the equivalent of a guardian ad litem (Child Advocate) to represent their best interests.

Principle #4

Children are best cared for by their families, and family unity supports children’s long-term stability and well-being. When children are in transitional situations, they should be cared for by child welfare entities in the most family-like, least restrictive setting appropriate to their needs.

Principle #5

Programs with care and custody of unaccompanied children must provide a safe and nurturing environment with trained and qualified staff who have child welfare expertise, while also preparing children and their future caregivers for a successful transition to a supportive family setting.

Principle #6

Following reunification, every unaccompanied child should receive community-based case management and support services to facilitate healthy integration and to prevent child maltreatment.

Principle #7

Children are best served when government agencies and their partners incorporate principles of accountability, collaboration, information sharing, documentation of best practices, evaluation, and quality improvement.

We represent a diverse group of service providers: both faith-based and secular, providing legal and social services, working nationally, in academia, and in local communities. Many of us have served unaccompanied children for decades, giving us a perspective beyond this immediate crisis. Some of us have worked with and provided direct services to refugee children in the U.S. and abroad, while others have focused on children in our U.S. child welfare systems. These principles developed during three national “Roundtable” meetings remained consistent in their focus on the central themes of protection, stability, accountability, and cross-system collaboration.

We are united by the certainty, and sense of urgency, that the current humanitarian crisis must be viewed through the prism of child protection and guided by these enduring principles.



Human rights for detained refugees, asylum seekers and migrants



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Please note that the recommendations included in this report should be attributed to Lutheran Immigration and Refugee Service. Although LIRS was informed by many views and perspectives, the recommendations are solely our responsibility and are not endorsed by Roundtable participants.



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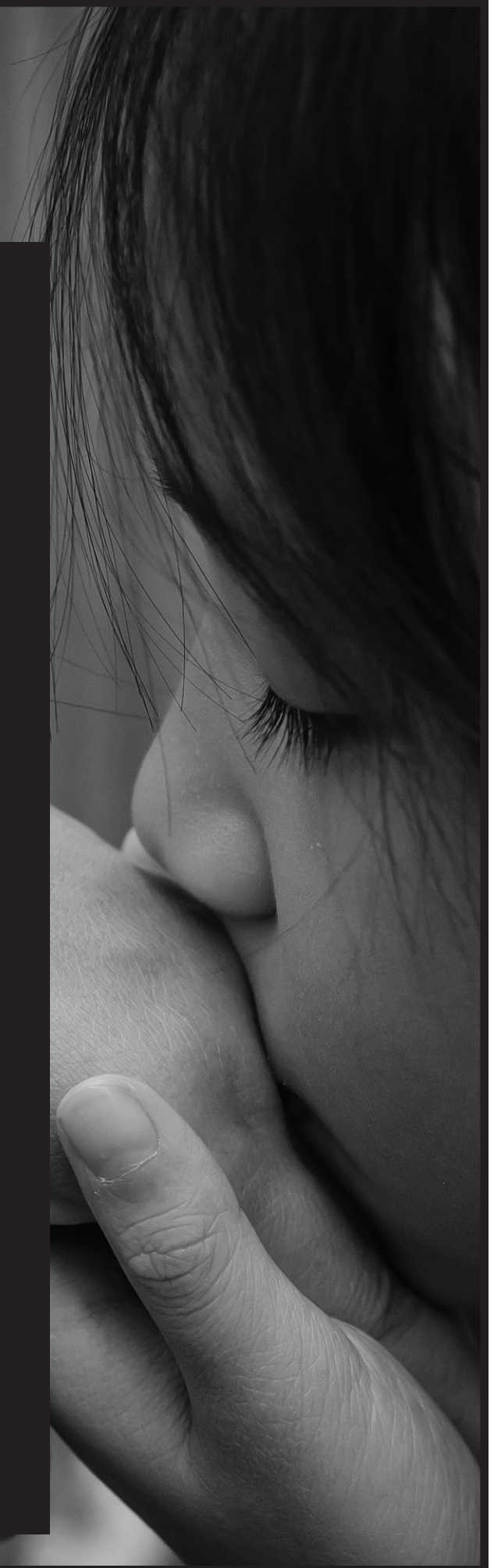
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At the Crossroads for Unaccompanied Migrant Children

Policy, Practice, & Protection



EXECUTIVE SUMMARY

Children separated from their parents are among the most vulnerable of migrant populations. This heart wrenching reality, brought vividly before the public eye in the news coverage of the large-scale flight of unaccompanied children from Central America in the summer of 2014, has informed critical aspects of U.S. government policy for many years. Yet, systemic protections for unaccompanied and separated children have also been repeatedly and consistently undermined by immigration enforcement measures that fail to take into account our nation's child welfare responsibilities or the unique legal and developmental needs of children.

Caught in the volatile crosswinds of immigration politics, the U.S. government has struggled for decades with the appropriate treatment of unaccompanied and separated children crossing the southern U.S. border. Today, as policymakers attempt to find a new balance in light of the large numbers of Central Americans who have crossed our border—with tragic stories of the violence they left behind—it is essential that our approach recognizes the extreme vulnerabilities of children who migrate alone.

This report by Lutheran Immigration and Refugee Service (LIRS) offers a range of policy and practice recommendations for the care and protection of unaccompanied children, informed by a series of three “Roundtable” meetings convened by LIRS in 2014 to consider current practice and ideal practice with unaccompanied children. The report that follows describes current policy and practice challenges and includes a set of fundamental principles for approaching work with unaccompanied children, as well as a comprehensive set of recommendations geared primarily towards U.S. government decision makers with responsibility for treatment of unaccompanied children. As a faith-based national organization with more than forty years of experience serving unaccompanied refugee and migrant children, LIRS puts forward these recommendations in a spirit of public-private collaboration and with an abiding interest in the protection of children.

In FY 2014, over 68,000 children were apprehended, of whom 51,705 were from the Northern Triangle countries of Central America—El Salvador, Guatemala, and Honduras—where rates of violence exceed that in recognized war zones. The proportion of girls and younger children also increased, creating greater risks. This marked increase in child migration highlighted

various protection gaps in the systems serving unaccompanied children. Among those detailed in this report are the following: the flawed screening process at the border, which excludes many children from protection on the basis of nationality rather than individual circumstances; the use of inappropriate holding and institutional facilities both at the border and upon subsequent transfer; weaknesses in the system of placement, reunification and follow-up that fail to fully ensure children's safety; the clear inadequacy of legal representation for children (despite heroic volunteer efforts); and budget-driven imperatives to fast-track procedures for children.

Based on the policy, practice, and protection wisdom of participants in these Roundtable meetings, LIRS developed a set of child protection principles to guide governmental and non-governmental work with unaccompanied children. These principles, laid out in the report, have now been endorsed by a wide range of organizations with an interest in the treatment of separated and unaccompanied children, and undergird the recommendations we make.

The President, the U.S. Congress, and federal government agencies must not lose sight of their legal, moral, and ethical responsibility to keep vulnerable children safe from harm. We have a proud tradition of extending protection to those who seek refuge on our shores. It is time to stop giving in to passing financial, political, and institutional pressures—with the lives of children at stake—and instead to commit to a consistent principled approach to the care and custody of unaccompanied migrant children.

SUMMARY OF RECOMMENDATIONS

- **Apprehension, Screening, and Referral to the Office of Refugee Resettlement:** Department of Homeland Security and its federal agencies should develop both standard and emergency plans for the care of children in the least restrictive environment appropriate to their needs and vulnerabilities, utilizing child welfare professionals and legal service providers, implementing expeditious transfers to the Office of Refugee Resettlement custody, and building in procedural accountability.
- **Access to Justice:** Congress, the Department of Justice, Department of Homeland Security, and Health and Human

Services should maintain and build upon existing legal protections for unaccompanied children, ensuring that unaccompanied children have access to legal counsel and Child Advocates (guardians *ad litem*) to protect their legal and best interests, including “Know Your Rights” information, Legal Orientation Programs for Custodians, and access to legal proceedings with substantive and procedural integrity, resulting in legal protection for this vulnerable population and safe repatriation for those who are returned.

- **Family Reunification:** The Office of Refugee Resettlement and its programming partners should prioritize child protection and safety in reunification decisions by revising assessment tools, improving collaboration, and preparing children and families for successful reunifications.
- **Post-Release Services:** Congress should mandate, and the Office of Refugee Resettlement should create, a continuum of post-release services so that every child released from the Office of Refugee Resettlement custody receives some level of follow-up contact in order to safeguard children by connecting them with educational, legal, and child welfare resources; Office of Refugee Resettlement and its programming partners should support and engage local community-based service providers that help children and their sponsor caregivers over the longer term so they are equipped to meet the needs of unaccompanied children and their sponsor caregivers.
- **Improving Coordination:** Department of Homeland Security, Department of Justice, and the Office of Refugee Resettlement should develop effective and efficient methods of coordination that place child protection at the center of cooperative efforts and set an example for staff, partners, and stakeholders; non-governmental organizations should proactively seek out areas for collaboration that better serve unaccompanied children and build on existing best practices.
- **Oversight and Accountability:** Congress, Department of Homeland Security, and Health and Human Services should implement systems of checks and balances through creation of monitoring and compliance systems regarding the Prison Rape Elimination Act, Trafficking Victims’ Protection Act, child protection and human rights, Significant Incident Reports, and Ombudsman’s offices that monitor children’s issues.

PREFACE

In late 2013, LIRS launched a Roundtable consultation process to bring together a wide range of experts on the care and treatment of unaccompanied children for the purpose of developing shared principles and informing recommendations for improvements to the system. Three Roundtable meetings took place in 2014, with the last occurring against the backdrop of the dramatic rise in child migration from Central America and Mexico over the summer of 2014.

With this rise in migration, many of the systems and processes that had been in place for years were thrown into crisis. Resource constraints were severe, and at the height of the crisis, some established legal or child welfare safeguards were either set aside or compromised. Since then, as the flow of migration to the United States has abated (at least temporarily), the child-serving system has continued in a state of flux, restoring safeguards and practices in some areas, maintaining measures initiated during the crisis in others, and in yet other cases, evolving new policies and procedures.

The political climate has also changed with the migration of Central American children as a flashpoint in the unfolding debate over immigration policy. Provisions that Congress made for the protection and care of children in years past are under new scrutiny and face the possibility of repeal or amendment.

It is against this volatile background that LIRS has prepared this report with an even more powerful sense of urgency to ensure that the rights and interests of children are protected.

It should be noted that this report addresses U.S. policies and procedures towards children who come to the United States unaccompanied by a parent or legal guardian. An equally compelling policy concern—although one not within the scope of this report—involves those children who are accompanied by a parent or guardian when they enter the United States (“accompanied children”). In the summer of 2014, the federal government opened large family detention facilities in Karnes, TX, and Artesia, NM, receiving widespread criticism of both the conditions of confinement and the immigration legal proceedings.¹ The re-establishment of family detention is a shameful new chapter, and the toll on children’s well-being is of particular concern. On this topic, we refer readers to

our companion report, *Locking Up Family Values, Again: The Continued Failure of Immigration Family Detention*, published by LIRS and The Women's Refugee Commission in October 2014, which updated an earlier 2007 report. In our report we conclude, "...our findings again illustrate that large-scale family detention results in egregious violations of our country's obligations under international law, undercuts individual due process rights, and sets a poor example for the rest of the world."² The Artesia facility is now closed, but a new and even larger family detention facility has since been opened in Dilley, TX, with the capacity to detain up to 2,400 women and children.

INTRODUCTION

Lutheran Immigration and Refugee Service (LIRS) has worked with unaccompanied refugee and immigrant children in the United States for nearly forty years. We are one of two organizations providing foster care to unaccompanied refugee youth who are admitted through the United States' refugee resettlement program. We have provided foster care and family reunification services to Central American and Mexican children since 2003, and to Chinese and Indian children in the decade before that. This historical viewpoint and cumulative experience affords a unique opportunity to offer insight and recommendations on the United States' current responses to unaccompanied children coming from Central America and other countries. LIRS puts forward these recommendations in a spirit of public-private collaboration and with an abiding interest in the protection of children.

For several years, the number of unaccompanied children from Central America and Mexico who are apprehended while seeking to enter the United States has been on the increase. In FY 2014, over 68,000 unaccompanied children were apprehended, of whom 51,705 were from the Northern Triangle countries of Central America: El Salvador, Guatemala, and Honduras.³ Children come unaccompanied to the United States for a range of reasons, including safety, family reunification, economic need and opportunity, or a combination of these factors. Several recent reports have established a clear causal link between the rising violence in Central America and Mexico and the migration of children who are unaccompanied by parents or caregivers.⁴

Children separated from their parents due to, or during, migration are vulnerable to a wide range of risks, such as sex

trafficking, child labor, kidnap and ransom by smugglers, forcible recruitment by criminals or armed factions, homelessness, teen pregnancy, physical deprivation, and violence and trauma. The absence of adult care and protection, in combination with a child's lack of maturity and inherent dependence, make unaccompanied children among the most vulnerable of migrant populations.



In this municipality, just like in many others, it is possible to get on a train only when in motion. Private guards prevent access to the station. In the south it is common for hundreds of undocumented people to travel in a single train.
Photo credit: Ruido.

The United States has a long tradition of welcoming newcomers and protecting the vulnerable, yet—notwithstanding this protective tradition—the U.S. government has wrestled for decades with the appropriate treatment of unaccompanied and separated children crossing the southern U.S. border, vacillating between policies that emphasize enforcement priorities on the one hand, and those that address child welfare responsibilities and the unique legal situation of children on the other.⁵ Viewed over a twenty-year span, the United States' treatment of unaccompanied and separated children⁶ has become more sensitive to the unique developmental needs, inherent dependence, and fundamental vulnerabilities of children. Critical policy changes have resulted from legal action, such as the 1997 Flores Settlement Agreement,⁷ or have been effected through the enactment of legislation.⁸

The recommendations contained in this report are an important step in continued forward movement to protect migrant children in the continuously recalibrated balance of federal priorities. The sharp increase in migration from Central America and Mexico has unfortunately made the task more difficult, as the heated rhetoric on immigration and increased political pressure to heighten

enforcement create a poor climate for reform and may actually erode child protections previously secured.

In 2014, against the backdrop of the increase in the numbers of unaccompanied children entering the United States, LIRS brought together over 40 national and local experts in a series of three full-day Roundtable meetings in Washington, DC to consider these fundamental questions regarding unaccompanied children:

1. **Exploration:** *What is current practice?* The first Roundtable assessed existing policies and services, including ideal service models, current challenges, and promising practices. (March 18, 2014)
2. **Convergence:** *What should current practice be?* The second Roundtable identified potential solutions to current challenges and methods for achieving desired change. (May 29, 2014)
3. **Action:** *How do we achieve ideal practice?* The final Roundtable prioritized key policy and practice improvements and developed a shared vision for accomplishing change, both as a group and as individual organizations. The intense media attention, heated Congressional hearings, and variety of proposed and actual policy changes in response to what the U.S. government deemed a “humanitarian crisis” created a tangible urgency for the collective deliberations. (July 16, 2014)

The practice expertise of these inter-disciplinary professionals provided the foundational background for LIRS as we drafted this report and developed the concrete recommendations for a coherent protective approach to unaccompanied children, consistent with current child welfare and refugee protection principles. *All Roundtable participants had a role to play in the formulation of the overarching principles; however, the recommendations were developed by LIRS and do not necessarily have the endorsement of the participants.*

The recommendations of this report are also drawn from the following important resources:

- **Child welfare principles from nationally recognized sources:**
 - o The Child Welfare Information Gateway of the Children’s Bureau (Administration for Children and

Families, U.S. Department of Health and Human Services): www.childwelfare.gov

- o The Child Welfare League of America’s *National Blueprint for Excellence in Child Welfare* (2013): <http://www.cwla.org/wp-content/uploads/2013/12/BlueprintExecutiveSummary1.pdf>

- **United States law and legal precedent:**

- o United States laws and court decisions relevant to unaccompanied children: <http://www.ecfr.gov>

- **International treaties and guidance:**

- o The Convention on the Rights of the Child
- o The 1951 Convention and 1967 Protocol Relating to the Status of Refugees
- o Guidance on unaccompanied children from the United Nations High Commissioner for Refugees (UNHCR): www.refworld.org

The report is structured in four parts. We begin with a brief overview of the legal and policy framework, followed by a discussion of the current context, practices, and challenges. Then, we present a set of principles developed out of the LIRS Children’s Roundtable process, which we believe should guide policy and practice with unaccompanied minors. Finally, the report concludes with recommendations to the U.S. federal government agencies and entities that have responsibility for the care and treatment of unaccompanied children.

LEGAL AND POLICY FRAMEWORK

The distinctive needs of unaccompanied children have been recognized in a number of important international legal instruments. The drafting conference for the *1951 Convention Relating to the Status of Refugees*, in which the United States participated, unanimously adopted a recommendation for governments to protect, “...refugees who are minors, in particular unaccompanied children and girls...”⁹ The *Convention on the Rights of the Child* also specifically mentions The United States’ responsibilities to provide protection and assistance to refugee-seeking children, whether unaccompanied or accompanied.¹⁰

In keeping with these international treaties, the United Nations Refugee Agency (UNHCR) has produced numerous resources and reports detailing the special needs of unaccompanied and separated children,¹¹ and the U.S. government has developed

systems of specialized care for unaccompanied children who come to the United States as planned arrivals (e.g., through the U.S. refugee resettlement program)¹² and as unplanned arrivals (e.g., those encountered by immigration authorities, particularly along the southern U.S. border).¹³ National and international organizations have developed specialized identification and caregiving procedures to protect unaccompanied children from the abuse, neglect, and exploitation to which they are susceptible.¹⁴

A variety of U.S. laws and legal decisions provide the legal framework and authority from which current policies and programs towards unaccompanied children have developed. Described below are some of the most significant pillars of the legal guidance. Further detail is provided in Appendix J.

Refugee Act of 1980

With passage of the Refugee Act of 1980, Congress approved the first major overhaul of U.S. refugee resettlement policy since 1952. This legislation brought the United States into conformity with its treaty obligations as a signatory to the United Nations 1951 Convention and the 1967 Protocol Relating to the Status of Refugees,¹⁵ implemented an asylum process for those needing protection after arrival to the United States, and removed anachronistic language so that refugee protection was available beyond merely those fleeing communism or the Middle East.¹⁶ Furthermore, this legislation affirmed the principle of *non-refoulement* (forbids the return of a victim to his or her persecutor) and the U.S. responsibility to not return to danger those whose life or freedom is threatened.

The Refugee Act of 1980 also included special provisions for providing care and supervision of unaccompanied refugee children, leading to the development of a network of specialized refugee foster care programs for unaccompanied refugee minors resettled in the U.S.¹⁷ Thus, the Refugee Act of 1980 demonstrates the United States' historical recognition of the vulnerabilities of unaccompanied children needing protection and our nation's commitment to providing appropriate protection and care.

Flores Settlement Agreement

In 1997, the U.S. District Court for the Central District of California approved the Flores Settlement Agreement in response to a lawsuit brought by various organizations against the former Immigration and Naturalization Service, and by

extension the U.S. Attorney General. The Flores Settlement Agreement required the U.S. government to observe certain due process, including custody and release provisions with respect to children in federal custody for immigration reasons. Specifically, the agreement stipulates that the federal government must provide safe and sanitary care for children consistent with children's vulnerabilities and ensure their safety and well-being. While children are in federal custody, government-funded programs for unaccompanied children are required to provide services such as food and shelter, health and mental health care, basic education, recreation, access to religious services, case management, and family reunification services. Furthermore, the Flores Settlement Agreement requires that children be placed in the least restrictive setting, in accordance with child welfare principles, and it established a preference for reunification with family members over continued government detention. A little more than ten years after the Flores Settlement Agreement, many of the standards from this agreement were eventually incorporated into the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).

Homeland Security Act of 2002

Following years of advocacy, investigative reporting, and litigation,¹⁸ the system for dealing with unaccompanied children who enter the United States without immigration documents changed significantly in 2002 with passage of the Homeland Security Act (HSA), which transferred unaccompanied children's care and custody responsibilities from the former Immigration and Naturalization Service (INS) to the existing Office of Refugee Resettlement (ORR), within the U.S. Department of Health and Human Services where ORR also had the responsibility of resettling unaccompanied refugee minors (URM). Under the former-INS, perennial problems included the lengthy detention of children (for months to even years) with no placement review process, lack of trauma-informed care, the use of jail-like detention facilities, physical restraints such as shackles, commingling with juvenile offenders for children who had not committed crimes, arbitrary decision making, and an intrinsic conflict of interest in being simultaneously responsible for both removal and caretaking in relation to children. Fundamentally, the structural change made by the HSA moved decision-making power from a government agency focused primarily on law enforcement, to a government agency focused primarily on human service needs and with expertise in migration and child welfare matters. The long-term implications of this change should not be overlooked,

as it represents a tangible recognition of the U.S. government's responsibility to treat unaccompanied minors as children first and foremost.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

In December 2008, then-President George W. Bush signed into law the Trafficking Victims Protection Reauthorization Act (TVPRA), initially passed in 2000 and reauthorized in 2003, 2005, 2008, and 2013. The TVPRA of 2008 recognized the inherent trafficking risks and unique vulnerabilities of children outside the care of a parent or guardian and implemented greater protection measures for unaccompanied children. The TVPRA took important steps to improve the protection of children by building on existing U.S. procedures and handling children's cases in a more sensitive manner. Children seeking asylum protection can now be initially interviewed in an office setting by U.S. asylum officers trained to hear children's claims, rather than having their asylum cases handled and cross-examined in the more intimidating and formal immigration court process. Recognizing a child's inability to navigate U.S. immigration procedures alone, the TVPRA expanded children's access to *pro bono* counsel. Finally, the TVPRA codified the existing federal practice of ensuring child welfare protections were incorporated into the custody of unaccompanied immigrant children. This included procedural protections to intercept trafficking and guarantee a child's right to a hearing before a judge. This practice safeguards due process for non-Mexican children, rather than perpetuating a migratory "revolving door" that can enable the trafficking of children. Concerns with the implementation of the TVPRA—and the current threat that the law may be rescinded or modified to the detriment of child protection—are explored in the following sections.

CURRENT CONTEXT, PRACTICES, AND CHALLENGES

A majority of the unaccompanied children coming to the United States report having fled violence, abuse and deprivation in Central America. Although the reasons for migration are complex, a significant factor in the countries of Honduras, El Salvador, and Guatemala is the endemic violence from gangs and other armed criminal actors. In Honduras, homicide levels surpass that in the worst war

zones of South Sudan and the Democratic Republic of the Congo.¹⁹ A United Nations study of global homicide identified Honduras as the most violent country in the world,²⁰ and U.S. Borders and Custom Protection (CBP) data indicated San Pedro Sula (Honduras' second largest city) as the most common city of origin for unaccompanied children.^{21,22} El Salvador and Guatemala ranked fourth and fifth in global homicide rates.²³

In 2014, the United Nations High Commissioner for Refugees (UNHCR) issued a report—*Children on the Run*—based on more than 400 interviews with unaccompanied children from Central America and Mexico. The report found that 58% of the children UNHCR interviewed in ORR and Customs and Border Protection custody disclosed reasons for their flight warranting international protection, including harm from organized armed criminal actors and violence in the home.²⁴ Since 2008 other countries in the region—such as Belize, Costa Rica, Mexico, Nicaragua, and Panama—have noted a 712% increase in asylum applications from Salvadorans, Guatemalans, and Hondurans.²⁵ Beyond these reasons for flight, unaccompanied children are vulnerable to particular risks during migration, including trafficking, sexual assault, physical deprivation, violence, trauma, exploitation by criminals, kidnap and ransom, etc.

A rise in the numbers of unaccompanied children coming to the United States has been documented over the past several years, and advocates and service providers have been calling attention to the increasing child protection issues in a number of reports. From 2003 through 2011, the number of unaccompanied children in ORR custody was between 6,000 and 8,000 a year.²⁶ These numbers began to noticeably rise at the end of FY 2011, with nearly 14,000 children placed in ORR custody in FY 2012, nearly 25,000 in FY 2013, and over 57,000 unaccompanied children in ORR care in FY 2014.²⁷ It is worth noting that ORR receives into its care only a subset of the total number of unaccompanied children picked up at the border, since about 95% of Mexican unaccompanied minors are returned to Mexico within 72 hours.²⁸ In 2014 the total number of unaccompanied children who were apprehended by CBP was over 68,500.²⁹

Within the growing population of unaccompanied children coming to the United States, the proportion of girls and younger children has increased. The Pew Research Center found that the apprehension of children ages 12 and under had increased by

117% between FY 2013 and the first eight months of FY 2014, while the number of girls increased by 77% during that same period, with the largest increases across both categories coming from Honduran children.³⁰ This shifting demographic strongly suggests that current migration is being motivated by fear rather than economic opportunity. In a related development, there has also been a dramatic increase in the migration of families with young children to the United States, with high percentages expressing a fear of return.³¹

In the following sections, we describe policy and practice in the care and custody of unaccompanied children in the United States. We also describe the challenges posed by the current system. This current system overview was heavily informed by the input of the participants in the three Roundtables that LIRS organized in 2014.



The first kilometers of this route force migrants to cross sections on foot. To avoid roads they venture into areas of dense vegetation. La Arrocera is one of these spots and is famous among migratory routes for being scenery of continuous assault and rape perpetrated by native groups. Photo credit: Ruido.

A System in Crisis

Current practice. An array of federal agencies, spread across different federal departments, touch the lives of unaccompanied children in varying ways, including the U.S. Department of Homeland Security, the U.S. Department for Health and Human Services, and the U.S. Department of Justice. This system for responding to unaccompanied minors has been in constant flux for over a decade, and the operational infrastructure has never completely caught up with the changes that have been mandated. Even before the steep rise in numbers in the summer of 2014, which

overwhelmed existing resources and capacity, the system has been subject to repeated shifts in policy and procedure whose full consequences are not well anticipated, and that are not always clearly developed as guidance to the field, leaving a patchwork of differing interpretations and approaches.

Challenges. A strong child welfare system ideally has an intentional approach to balancing the various interests at stake and operates in a predictable manner. When all of the players in the system are buffeted with changing directives, some of which undermine other aspects of the established framework, children fall through the cracks.

Apprehension and Custody of Unaccompanied Children

Current Practice. In almost all instances, the initial government encounter with unaccompanied children occurs at the point of apprehension—by Customs and Border Protection’s U.S. Border Patrol (USBP) near the southern U.S. border, or less often by Customs and Border Protection’s Office of Field Operations (OFO) at official ports of entry. In 2014, over 70% of the unaccompanied children who were identified as having entered the United States without proper documents, or who came through official inspection sites, were apprehended by U.S. Border Patrol in the South Texas Rio Grande Sector.³² Upon apprehension, agents take children to short-term holding facilities with conditions that range from enclosed cells with cinderblock benches and open toilets, to portable modular units or outdoor cages. Under the terms of the Flores Settlement Agreement, children from non-contiguous countries must be transferred to the custody of ORR as quickly as possible, and within no more than 72 hours. During the summer of 2014 when the number of refugee children from Central America was at an all-time high, ORR did not have the bed space to place children. As a result, some children remained in over-crowded CBP stations for weeks at a time. To mitigate the situation at the over-crowded CBP stations in McAllen and Nogales, Texas, CBP opened three large warehouse-style processing centers (“Service Processing Centers”) at Lackland Air Force Base (TX), Naval Base Ventura County (CA), and Fort Sill (OK).

Challenges. U.S. Border Patrol holding facilities and other holding facilities or processing centers are neither designed for nor appropriate for children. Both children and adults refer to the temporary holding facilities as “hieleras” (Spanish for “freezers”) due to their cold temperature.³³ Immense Service Processing Centers are neither designed for nor appropriate

for the care of children and conflict with basic child welfare standards of placing children in the least restrictive and most family-like setting appropriate to their needs.

In June 2014, a coalition of six legal advocacy organizations filed a formal complaint against CBP with the DHS Office for Civil Rights and Civil Liberties, as well as the DHS Office of Inspector General, on behalf of 116 unaccompanied children between the ages of 5 and 17.³⁴ The complaint alleges abuse and mistreatment against these children while in CBP custody, including physical abuse, sexual assault, beatings, use of stress positions, verbal abuse, denial of food and medical care, unsanitary conditions, shackling, and custody beyond the 72 hour maximum stipulated under the TVPRA.³⁵

In addition to enduring poor conditions and treatment, children in CBP custody do not have lawyers or Child Advocates and have limited assistance, knowledge, or even phone access to try and secure such help. This means that unaccompanied children in CBP custody are almost always interrogated alone by law enforcement officials lacking child welfare interviewing expertise, whether CBP agents or other federal law enforcement agents, without any legal representation or legal guardian present. This practice is counter to good practice in child welfare and basic due process with vulnerable populations.

Lack of Protections for Unaccompanied Children from Contiguous Countries (i.e. Mexico & Canada)

Current Practice. Children from contiguous countries (Mexico and Canada) have separate processing procedures under the TVPRA that result in rapid return for most. The procedures require DHS to make a determination that these unaccompanied children are neither trafficking victims nor children with a fear of return, and that they are able to make an independent decision to withdraw their application of admission.³⁶ In practice, this policy applies overwhelmingly to Mexican children. These regulations also stipulate that unaccompanied children should be returned to child welfare authorities during normal business hours (so that children are not returned without support in the middle of the night, raising serious safety issues), and without a lasting charge on the child's U.S. immigration record.

Under the TVPRA, DHS (in practice CBP) must make these determinations within 48 hours. If CBP is not able to do so

in a timely manner, then children from contiguous countries must be transferred to the custody of the ORR, just as children from non-contiguous countries.³⁷

Challenges. The TVPRA-mandated special screening of children from non-contiguous countries was implemented to ensure that children (almost always Mexican) receive protections required under the U.S. Refugee Act³⁸ and to ensure that children are not returned to trafficking situations. However, the implementation of this screening is largely perfunctory and does not accomplish its protective intent.³⁹ This results in CBP routinely returning unaccompanied Mexican children—many of whom face severe risks from violent criminal actors or traffickers—without a thorough examination of children's protection needs. Mexican unaccompanied children are routinely asked to make complex immigration decisions all on their own, without a lawyer or Child Advocate present. A child, by virtue of his or her very status as a child, lacks the necessary capacity to consent to a withdrawal of an application of admission without a legal guardian, lawyer, or Child Advocate assisting him or her in the process.

The current U.S. system for processing Mexican unaccompanied children has, for all intents and purposes, created a two-tiered system of processing for these children: Mexican children are rarely given access to protective and due process legal procedures, while Central American and other children have access to protective measures as a matter of standard practice. Over the past decade, the U.S. screening and adjudication process for Central American children has become increasingly child-sensitive; however, Mexican children are virtually excluded from these approaches and instead face fast-track return procedures. As a result, Central American children make up 93% of children in ORR custody, and Mexican unaccompanied children make up only 3%, a ratio that is not reflective of the protection need.⁴⁰

Custody, Transport, and Return of Unaccompanied Children

Current Practice. Practices for the transport of children are evolving and differ depending on where children are being taken. Until this past summer, agents from Immigration and Customs Enforcement (ICE) have had the responsibility for physically transporting children to ORR facilities that are located far from the border. This responsibility has rested with ICE's Juvenile and Family Residential Management Unit (JFRMU). On the other hand, if the destination ORR facility is located near the border, it is CBP officers who transport children. Typically both ICE and CBP

agents are armed and in uniform. Children may be transported in federal vehicles or in vehicles contracted from private transport companies such as G4 and Trailboss.

As part of this transportation function, ICE at times places children in special short-term facilities during transit stopovers. Some of these are contracted by ICE for the purpose of holding a child in transport for under 72 hours, but children are also held in hotels or other inappropriate locations, such as secure juvenile detention facilities. Over the past decade, with the responsibility for transport of children that came with the transfer of physical custody to ORR, ICE had started to expand its use of child appropriate shelters and instituting policies governing the hours when it is appropriate to transport children.

Due to the high numbers of child migrants from Central America in the summer of 2014, ICE initiated a revision of transport procedures. One impetus was to reduce the time burden on agents of accompanying large numbers of children being delivered to ORR facilities, but ICE also took into consideration NGO concerns about the inappropriateness of having law enforcement agents accompany children. In the fall of 2014, ICE's JFRMU began using a private contractor, MVM Inc., which employs an array of professionals (from former law enforcement to child care workers) who are assigned depending on an individualized assessment of the child's needs and safety factors. These transport agents are unarmed and not in law enforcement uniforms—recent changes that have the potential to make these agents less intimidating to children.

In addition to transport to ORR facilities, ICE is responsible for returning unaccompanied children to their countries of origin. To accomplish this, ICE agents accompany children to the home country and physically transfer custody of the child to a representative of the child's home country. Alternatively, unaccompanied minors can be returned on Justice Prisoner & Alien Transportation (JPATS) flights operated by the U.S. Marshals Service.

Challenges. There are periodic concerns with transportation practices that become more frequent during periods of higher child migration flows. These concerns include transporting children in the middle of night, using federal law enforcement personnel instead of contracting with child-appropriate workers, and using unsuitable accommodations

for stopovers during transport. While ICE's JFRMU expanded use of child appropriate shelters and civilian-clothed childcare professionals are important steps in the right direction, the specific contract with MVM, Inc. that was entered into in the fall of 2014 remains to be evaluated.

Placement of Unaccompanied Children

Current Practice. Under the TVPRA, ORR is required to promptly place unaccompanied children “in the least restrictive setting that is in the best interest of the child.”⁴¹ The Homeland Security Act (HSA) similarly requires ORR to ensure that the “interests of the child are considered” in unaccompanied children's care and custody decisions and actions.⁴² The Flores Settlement agreement stipulates the release priorities for unaccompanied children, in this order: parent, legal guardian, adult relative, or adult designated by the parent or guardian to licensed programs and others approved by ORR.⁴³

Once unaccompanied children are transferred to the care and custody of ORR, most are placed within a nationwide network of child-oriented shelter programs. Shelters are funded by ORR and operated by non-governmental organizations (both large and small, national and local, faith-based and secular), or in some cases by local governments that contract with ORR to provide a structured and supervised residential care environment. Under the HSA, ORR has responsibility for care and placement determinations, oversight and inspection of facilities, family reunification, maintenance of statistical information, planning to ensure legal counsel, and maintenance of information on Child Advocate and legal representation resources.

Shelter programs range from large institutional shelters housing hundreds of children, to mid-size facilities, to small group home-like settings. In addition to shelters, ORR contracts with a number of foster care programs around the United States which provide care for the youngest, most vulnerable children, and for trafficked, pregnant, and parenting teens. ORR also contracts with a few secure juvenile detention facilities and with residential or therapeutic treatment centers for children with behavioral health needs.

The following chart describes the numbers of facilities or placement programs available for unaccompanied children. Because of the size of the facilities, the number of children

in the shelter care programs is much higher than those in smaller programs such as foster care.

Total Number of ORR Placement Options for Children <i>All programs are licensed in accordance with state and local child licensing laws</i>	
Placement Types	Fiscal Year 2014
<i>Long-term foster care:</i> Children with legal claims but no viable family sponsors are placed with foster families while their legal cases proceed.	16
<i>Transitional foster care:</i> Short-term, home-based placements with foster families, while family reunification is pursued. Reserved for young children, trafficking victims, pregnant or parenting teens, and children with special needs.	19
<i>Shelter:</i> Facilities ranging in capacity from under 20 children to over 200, usually privately run. Children are placed in shelters pending family reunification.	72
<i>Residential treatment centers:</i> Therapeutic programs ranging in security level for children with more severe mental health needs.	2
<i>Staff-secure facilities:</i> Medium secure juvenile detention facilities with lower staff-to-child ratios.	10
<i>Secure facilities:</i> Sub-contracted county juvenile detention facilities.	5

Having access to a range of care options for unaccompanied children—from foster care to group care to shelter care to secure care—is in keeping with both the Flores Settlement Agreement and the TVPRA legislation by enabling placement of children in the least restrictive setting appropriate to their individual needs.⁴⁴ The TVPRA further requires that any secure placement decisions be reviewed monthly, and the Flores Settlement grants children the right to judicial review of their placements if they disagree with the type of placement they are given.⁴⁵

Challenges. While ORR has access to a range of placement options, it primarily relies on large institutions for placing children. The federal government’s predominant reliance upon a large institutional model has been a concern since before custody of unaccompanied children was transferred from the Immigration and Naturalization Service to ORR. Now that the custody of these children is under the Health and Human Service Department’s division of the Administration for

Children and Families, the continued reliance on this model is perplexing. U.S. child welfare programs have decreased or eliminated institutional placements, except for children with the most complex health or mental health needs. Best practice standards for short-term shelters housing homeless and runaway youth set an upper limit at “no more than 20 children and youth at one location.”⁴⁶ It therefore remains troubling that large institutions continue to be the federal government’s primary care and custody model for unaccompanied children.

Home Studies Prior to Family Reunification

Current Practice. Unaccompanied children can be released from ORR custody to relatives or family friends who meet certain requirements (called “sponsors”). Under the provisions of the TVPRA, ORR is required to verify a sponsor’s identity and relationship to the child and to determine that the sponsor can provide for a child’s “physical and mental well-being” and does not pose a risk to the child.⁴⁷ Under the TVPRA, ORR is mandated to complete a home study for children in the following situations: child trafficking victims; children with disabilities or other special needs; children who have experienced physical or sexual abuse, or those with mental health issues.⁴⁸ LIRS is one of several national organizations able to conduct home studies across the country, a service provided by LIRS to ORR and the former INS since 1994.

Home studies assess the suitability of a child’s placement with a particular sponsor through interviews with the child, caseworker, and family members; completion of a home visit and suitability assessment; and an analysis of other information related to the child’s specific needs. Home study reports include a recommendation about reunification with a particular sponsor, followed by a review and recommendation by a case coordinator (described below), after which ORR makes the final decision regarding reunification.

Challenges. The 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. The same principle should be applied in family placements involving this population of unaccompanied children; however, despite their common usage and requirement in other types of placement decisions involving children, ORR requests home studies on a very limited basis. Home studies are a protective and preventive measure in safeguarding children,

particularly when children have been separated from caregivers for many years, when children have not previously lived with a particular relative caregiver, or when identified risk factors are present. A higher number of unaccompanied children fit this vulnerable profile than current home study usage reflects.

Case Coordination

Current Practice. Since 2010, ORR has relied upon General Dynamics Information Technology (GDIT) to provide case management services, as well as the review of home studies and sponsor documentation, to inform ORR's release decisions for unaccompanied children. GDIT is a for-profit contracting agency whose traditional areas of expertise have been in defense, engineering, and information technology. For ORR contracts, GDIT employs child welfare professionals to conduct the review of family reunification or transfer documents and to make recommendations regarding release.

Challenges. What ORR currently calls "Case Coordination" (previously called a "Third-Party Review") was originally designed to provide a neutral appraisal of reunification or transfer options. Since GDIT took on this function, this process has moved away from a quasi-independent third party review approach—where an independent entity upholds the best interest of the child in a system replete with other institutional pressures—to functioning as ORR staff.

In review meetings where release and transfer decisions are made, typically the only people present are the facility staff, the GDIT case coordinator, the ORR federal field supervisor (FFS), and sometimes an ICE agent. The child in question and his or her legal representative or Child Advocate are rarely allowed to participate or make a recommendation regarding these issues, nor is the child's parent or legal guardian. The child's wishes and legal concerns are not independently represented in the decision-making process, leaving the child and the legal guardian with little to no voice. A parent who has a child in ORR custody has no means to recommend a placement in an ORR facility near the parent, nor can he or she request a review regarding reunification decisions. Similarly, a child's lawyer or Child Advocate may not have the opportunity to adequately express his or her concerns regarding the release of a child to an inappropriate caregiver or discuss how the transfer of a child may impact the child's legal case. Finally, the ORR system provides for no neutral external review for

the decisions made. While LIRS understands the need to subcontract out responsibilities of compliance monitoring for family reunification applications and transfer applications, the need for more systemic checks and balances remains.

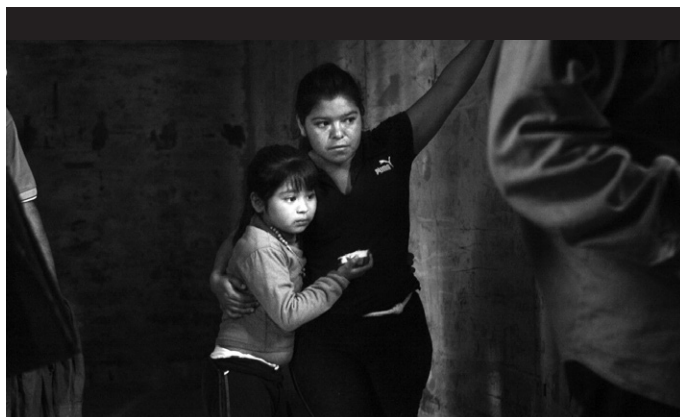
Family Reunification Timeframes

Current Practice. For the majority of children, ORR facilitates placement with relatives or family friends living in the United States. Since ORR assumed responsibility for the care and custody of unaccompanied children, the amount of time that most children spend in federal custody prior to placement with sponsors has been steadily decreasing, in part as a response to budgetary pressures. This trend became more noticeable starting in fall 2011 with the increase in the number of children in ORR custody. Prior to this time, children remained in ORR custody for an average of 72 days. By the summer of 2012, ORR accelerated the placement of children with sponsors, with the average length of time in ORR custody ranging from 40-45 days.⁴⁹ In early 2014, the average length of stay was approximately 35 days.⁵⁰ During the summer of 2014, as part of the U.S. government's response to the large increase in unaccompanied children, ORR began placing children with U.S. relatives more rapidly and with less thorough background check procedures in order to reduce lengths of stay. With each significant increase in arrivals of unaccompanied children, ORR revised its reunification procedures in order to create bed space for children awaiting ORR placement from CBP holding cells.

Challenges. ORR has issued a number of shifting directives to shelter care providers establishing "length of stay" goals for children in its custody. These directives appear to be driven by financial pressures rather than children's best interests. In domestic child welfare situations, institutional interests are counter-balanced by the involvement of guardians *ad litem* and juvenile court judges who are not part of those institutions, yet in the U.S. system for unaccompanied children, even Child Advocates are dependent upon ORR for funding. Despite the fact that ORR has potentially conflicting budgetary and caregiving interests, there is no external independent authority reviewing care and custody decisions.

Safe Release and Fingerprinting

Current Practice. Potential sponsors for unaccompanied children must undergo a fingerprint clearance and



The Guatemalan Melisa and Beverly, 24 and 7 years old, inside one of the coaches that go toward Ixtepec. In Tapachula, Chiapas, they were intercepted by agents of the National Migration Institute to whom they had to deliver 1,000 pesos (about \$100) in order for them to be able to continue their journey.

Photo credit: Ruido.

background check as part of the ORR documentation requirements established to protect the safety of the child. LIRS operates a national network of 20 fingerprinting sites located in nonprofit organizations. The Safe Release Support fingerprinting program has been successful in providing a less costly and less intimidating location to complete sponsor processing and necessary paperwork, while also connecting families with local legal, health and mental health care, education, and social service providers.

Challenges. Working under tight timelines, ORR does not uniformly require or wait for fingerprint results before releasing children, which raises some serious safety concerns. The fingerprinting process is also often a critical missed opportunity to support sponsors and set children and families up for successful reunifications by providing additional sponsor orientation and education about the family reunification process, legal proceedings, school enrollment requirements, and community resources in order to create a safety net and support system for children and families.

Follow-Up Services

Current Practice. After release to their sponsors, and despite the significant challenges inherent in the reunification process, the percentage of released children who receive follow-up services fluctuates and is subject to allocation of funding.

When follow-up services are provided, they greatly assist

children and their families and provide a means to track the welfare of children for a period of time following release. Under the current system, the only children who routinely receive follow-up services are that small number (estimated at less than 15%) who were found to face a level of risk warranting a home study of the prospective sponsor. Recommendations for services to other children whose situations are tenuous are frequently denied by ORR.

Where provided, follow-up services offer significant protections to unaccompanied children. They emphasize safety, school enrollment, connection to legal assistance and local community services, and the critical importance of continuing with immigration proceedings. These services follow the child in the event the child changes address, and they include at minimum a monthly contact with the child, with home visits and reports required at 14-day, 60-day, and 180-day intervals after the child's reunification with the sponsor. At 180 days after reunification, the child's situation is assessed to determine whether continued follow-up services are needed, with extension requests decided upon by ORR.

Challenges. The number and proportion of children receiving follow-up care is inadequate, and decision-making priorities regarding which children are initially referred and later extended remain unclear. Service providers working with unaccompanied children report that many have suffered significant experiences of trauma, including as victims of violence, severe maltreatment, and sexual assault. Researchers evaluating follow-up services in four program locations found that, "Many UAC may be 'at risk' even if they are not flagged as such by detention center staff."⁵¹

Legal Services and Legal Representation

Current Practice. Children in ORR shelters are provided with an orientation to the legal system by nonprofit legal service organizations offering "Know Your Rights" presentations. Similarly, parents and sponsors in many communities where children go are provided with legal orientation presentations as part of the release process. These presentations generally provide an overview of the legal process and legal options available, an individual screening to determine potential legal options, and information on securing legal representation. They do not guarantee legal representation during immigration proceedings.

Legal service funding increased significantly in 2014, yet so did the number of children needing legal assistance. Children still come to immigration court alone and unrepresented, left to navigate a complex system in a foreign language with far-reaching implications for their safety and well-being. The issues and consequences addressed in immigration court are arguably similar in magnitude to those dealt with in juvenile court, where children are assured either legal representation, a guardian *ad litem*, or both. Nonetheless, unaccompanied children lack the protections children have in juvenile court and at best navigate a patchwork of legal services, with many receiving no representation at all.

Ultimately, there remains no guarantee of government-appointed legal counsel for minors in immigration proceedings, meaning that children still face immigration court and removal proceedings alone. While families and children are allowed to obtain their own legal representation, most children and their families do not have the financial resources to pay for a private attorney.⁵² ORR and the Department of Justice provide some funding for legal representation, but, despite additional funding and the establishment of a “Justice AmeriCorps” in 2014, the gap between the need and available legal services grew wider.⁵³

The Transactional Records Access Clearinghouse of Syracuse University, which maintains statistics on the legal process, reports that children make up about 11% of the immigration court caseload.⁵⁴ Moreover, “The representation rate of children in immigration court has dropped precipitously, from 71% in 2012 to as low as 14-15% in some months of 2014. As data on case outcomes indicates, legal representation vastly increases the chances that a child will appear in immigration court: Over the last decade, only 6.1% of children with counsel received in absentia (in the child’s absence) removal orders, compared with 64.2% of unrepresented children.”⁵⁵

Challenges. Increased DOJ and ORR funding for legal representation is a welcome move in the right direction, but it is not enough. Nonprofit organizations and the pro bono legal community simply do not have the capacity to fully meet the need. As a result, many children are unrepresented. The rapid and constant turnover of children within shelter facilities and in an absence of safeguards in the legal system, create a serious challenge to effective and child appropriate legal rights and representation services.⁵⁶ Many children are released from ORR

custody before they have attended a presentation. Nonprofit and volunteer legal service providers are unable to individually screen all children in order to identify those with possible legal relief.

Furthermore, limits on the DOJ “Justice AmeriCorps” funding means that youth ages 16 and 17, the largest segment of the unaccompanied minor population, are excluded from being helped by the program. Thus, a significant number of unaccompanied children may be ordered removed because they lack an attorney, not because they lack a claim to legal protection.

Child Advocates

Current Practice. The TVPRA authorized ORR to appoint “Child Advocates” (immigration guardians *ad litem*) for children in immigration proceedings. While attorneys represent a child’s expressed wishes, Child Advocates are intended to represent a child’s best interests within immigration custody and proceedings. Conceptually similar to guardians *ad litem* in juvenile court, Child Advocates are appointed to the most vulnerable unaccompanied children in immigration proceedings, such as children acting against their own best interests (e.g., asking to be placed in, or returned to, harmful or life-threatening situations). In other cases, children may be too young to participate in proceedings, they may have a mental health issue or physical disability, there may be a custody dispute over which parent or relative should care for the child, the child’s wishes may differ from the parent’s wishes for the child, or there may be other complicated situations in which there is disagreement about what is best for a particular child. In these types of cases, a Child Advocate meets regularly with the child to understand the child’s story and background, gathers information from different sources about the child’s individual circumstances, and makes recommendations to decision makers about what is in the child’s best interests.

Challenges. Child Advocates play an important role in the children’s cases to which they are assigned; however, they are provided for only a small percentage of unaccompanied children. This contrasts with the federal government’s requirement in the domestic child welfare context that the states provide guardians *ad litem* for all children in abuse and neglect proceedings, as a prerequisite to certain federal funding.⁵⁷ At the end of FY 2014, ORR expanded funding for Child Advocate services, but these services are still only provided to a small portion of cases and only in a handful

of designated geographic locations around the country. Moreover, the Child Advocate's authority depends upon independence in championing the best interests of the child; this independence would be strengthened by funding the Child Advocate program outside of ORR (such as the Department of Justice), and by ensuring that Child Advocate programs have no conflicting financial or programmatic interests. Conflicts of interest in relation to immigrants and children have been recognized and programmatically fixed previously (e.g. separating the caregiving responsibility for children from the enforcement and adjudication responsibilities, and separating judicial responsibilities for immigrants from enforcement responsibilities), and a similar fix is achievable in this instance.

Immigration Court Procedures

Current Practice. Unaccompanied children are subject to immigration removal proceedings during which they must prove their eligibility for some form of legal relief or be ordered removed. Children released to family sponsors continue with immigration court hearings after their reunification with relatives. In 2014, ICE began more routinely issuing immigration court date "notices to appear" (NTAs) for the location to which a child would be assigned after reunification. This welcome change promotes due process and efficiency for government and legal service providers by eliminating superfluous procedural requirements for a "change of venue" that previously prevailed in nearly every unaccompanied child's case. Elimination of this step helps to reduce the previously common problem of children being ordered removed in *absentia* because the child's hearing occurred in the shelter location after the child had already been released, or because the child did not know when and where the hearing was being held.

The TVPRA transferred the adjudication of children's asylum claims from the immigration court judges (EOIR) to Asylum Officers within USCIS. The case of an asylum-seeking child is paused in the immigration court in order to proceed to the Asylum Office for an adjudication interview. This agency shift results in a more child-friendly environment and child-sensitive procedure for handling children's asylum claims and represents a positive protection change implemented for children in the last several years.

Challenges. When children's court cases languish for years, they are denied the legal resolution that is necessary in child development for a sense of permanency. However, when the

legal process is excessively speedy, children and their legal representatives are not afforded sufficient time to adequately prepare a case. Children's cases pose particular challenges because of the additional time required to establish the relationship of trust that is necessary for children to work effectively with legal providers. In July of 2014, EOIR began implementing highly expedited scheduling of children's hearings, referred to by many immigration advocates as the "rocket docket." In this system, unaccompanied children's hearings are given priority in court docketing, with rescheduled hearings at typically two to three week intervals.⁵⁸

Other pending cases are deferred in order to keep the cases of unaccompanied children at the front of the docket. For reasons that appear motivated by "get tough" enforcement priorities rather than due process or protection concerns, the immigration court has effectively fast-tracked the most vulnerable population under its jurisdiction.

Summary

The federal government has implemented many effective policies and practices that are protective and child-sensitive, but they are either limited to a small proportion of unaccompanied children, or they are inconsistently applied and subject to the pressures of the government's interests rather than children's interests. These fluctuating policies and patchy protective measures towards unaccompanied children are at cross-purposes, providing unpredictable assistance to a few while leaving the majority of children unprotected. Of major concern, as described in more detail previously, are the following:

- A disparate and discriminatory two-tiered screening process at the border based on nationality rather than child protection, and dependent upon interviews with children by enforcement agents rather than child welfare specialists;
- Use of border detention cells initially, and large institutional facilities subsequently, as the primary care and custody approaches with children;
- Guidelines for placement, reunification, and follow-up procedures that lack a consistent application of fundamental child welfare principles and essential conflict of interest protections;

- Insufficient provision of legal representation and child advocate assistance to ensure protection and due process for children;
- Intentional fast-tracking of legal procedures for children, despite their vulnerability and need for more time to build trust and case preparation.

In sum, the federal government lacks a consistent protective approach to unaccompanied children, driven instead by a constant flux of fiscal, political, and bureaucratic concerns. A better approach is not out of reach. The U.S. government has demonstrated the capacity to implement a system of care, custody, and legal adjudication based on child welfare and protection principles. The recommendations that follow in the section titled “Child Protection Principles” are intended to inform a systematic review of current practice and the development of a more coherent framework, based on the best interests of the child and legal protection.

CHILD PROTECTION PRINCIPLES

The federal government plays a unique role in the care and custody of unaccompanied migrant children by directly overseeing child welfare services for a diverse group of children placed throughout the country. Within the United States, almost all child welfare policies and services are established and provided at the state or local county level, with federal government funding mechanisms used as the incentive for ensuring compliance with federal laws and guidelines. By contrast, unaccompanied migrant children are taken directly into federal government custody at the time they are initially identified (typically near a U.S. border or port of entry), with custody remaining the responsibility of the federal government until children are released to the care of a responsible adult relative or sponsor. Some professionals working with unaccompanied children have deemed this the federal government’s “shadow child welfare system,” since child custody and child welfare services are typically within state purview.

Federal child welfare policies are organized around the core goals of promoting safety, permanency, and well-being, language introduced in the Adoption and Safe Families Act of 1997. Together, these core goals of safety, permanency, and well-being comprise a practical application of the best interests of the child principle, a foundational notion in child

welfare. At root, this report questions whether the federal government adequately applies the best interests principle and core goals of safety, permanency, and well-being in the federal government’s dual role as child welfare standard-bearer in relation to states, and simultaneously child welfare provider in relation to unaccompanied children.

This section of our report draws on resources from the “Child Welfare Information Gateway” (CWIG), a federally managed collection of “the best information and resources to help [child welfare professionals] protect children and strengthen families.”⁵⁹ Through the Child Welfare Information Gateway, the federal government identifies and disseminates a repository of best practices for working with children and families, including children outside the care of a parent and children from diverse cultural backgrounds. This storehouse of pertinent knowledge should be more intentionally integrated into the government’s practices with unaccompanied migrant children. Since the federal government provides this online resource to aid state and county child welfare providers, it is referenced here as representative of current U.S. statutes and best practices.

The framework described below is built around a set of principles that emerged from the Roundtable meetings on unaccompanied children convened by LIRS. Since their development in the Roundtable process, these principles have been formally endorsed by a wide range of organizations engaged with unaccompanied minors. References to the federal Child Welfare Information Gateway, the national Child Welfare League of America, and international treaties and guidance from the United Nations are also included in order to situate U.S. approaches to unaccompanied children at the crossroads of child welfare practice and refugee and migration policy.

- **Roundtable Principle #1: Unaccompanied children are children first and foremost. U.S. policies and practices must recognize their unique vulnerabilities and developmental needs within a context of the best interests of the child.**

The “best interests of the child” serves as the fundamental concept in child welfare matters. This idea constitutes the foundation for child-related decision making in all U.S. state statutes⁶⁰ and is enshrined in the Convention on the Rights of the Child.⁶¹ The best interests of the child are federally interpreted to include considerations of safety, permanency

(stability), and well-being, particularly in decisions around children's "custody, placement, or other critical life issues."⁶² In addition, decisions concerning budget, policy, and law must take into consideration their impact on children.⁶³

Specific considerations related to children's best interests include access to basic needs; connections to family and community; preservation of racial, ethnic, cultural, and religious identity; protection from abuse, neglect, torture, and discrimination; protection and representation in legal proceedings; and participation in matters affecting children's lives.⁶⁴

Short-term and long-term decision making regarding unaccompanied migrant children in the United States must be based upon the fundamental principle of the best interests of the child. All children share the same human rights, regardless of their immigration status.⁶⁵

- **Roundtable Principle #2: The screening of children for persecution, abuse, or exploitation should be done by skilled child welfare professionals.**

Initial government encounters with unaccompanied children are important and can determine ensuing protective measures. The U.S. government must ensure that unaccompanied children are appropriately screened after identification in border areas or internally. Screening mechanisms with children must be designed to protect them from persecution, from trafficking, and from return to or placement in abusive situations.⁶⁶ Such screening procedures should be conducted by seasoned professionals with expertise in eliciting information from children in a manner that builds trust, empowers children to act in their own best interests, and avoids re-traumatizing children through inappropriate questioning, punitive treatment, or commingling with adults.⁶⁷ Child Advocacy Centers provide an evidence-based multidisciplinary approach to sensitively screening children for maltreatment.⁶⁸

- **Roundtable Principle #3: Children require individualized adjudication procedures that recognize a child's need for trust, safety, and time in order to disclose trauma and maltreatment; in legal proceedings, unaccompanied children need legal counsel to represent their wishes and the equivalent of a guardian *ad litem* (Child Advocate) to represent their best interests.**

Due to their vulnerability, stage of development, competency, and lack of maturity, children require adult assistance in proceedings that affect their lives, including immigration proceedings. Legal representation is required to facilitate due process and adequate protection and to enable efficient and effective decision making proceedings that involve children.⁶⁹ As with children in domestic child welfare proceedings, Child Advocates (immigration guardians *ad litem*) are also critical to ensure that children's best interests are brought forward in decision making, such as when children request placement in, or return to, unsafe or life-threatening situations.⁷⁰

U.S. decision makers (including immigration judges and asylum officers) should recognize that children often require more time than adults to develop trusting relationships before disclosing painful experiences.⁷¹ Asylum applications, and other forms of legal relief, are complex and time consuming to prepare, and even more so with a child applicant. Fast-track procedures involving children risk re-traumatizing children and overlooking important information with relevance to a child's need for protection. Fast-track procedures can also undermine the rapport-building process necessary to develop a child's case and thereby make counter-productive the proceedings intended to afford protection.⁷²

Many unaccompanied children have experienced trauma prior to leaving home, during transit, or upon apprehension in the United States. Decision makers and service providers should be knowledgeable about the impact of trauma on a child's psychological and emotional health, and family sponsors should be connected with relevant community resources to help children heal from such experiences. A trauma-informed approach encourages the development of trusting relationships and respect for a child's story, emotions and psychological health.⁷³ This includes respecting when children are not yet ready to talk about the trauma they have experienced.

- **Roundtable Principle #4: Children are best cared for by their families, and family unity supports children's long-term stability and well-being. When children are in transitional situations, they should be cared for by child welfare entities in the most family-like, least restrictive setting appropriate to their needs.**

Family care is the best place for children, and support services can help families strengthen their ability to

appropriately provide for children.⁷⁴ Unaccompanied children may need short-term, out-of-home care while U.S. relatives are located and screened. In keeping with out-of-home care principles in the United States, federal custody of unaccompanied children should occur in the least restrictive setting appropriate to each child's needs.⁷⁵ Children who remain in out-of-home care for longer periods of time should have their cases reviewed regularly to ensure that their best interests are given primary consideration.⁷⁶

A small number of unaccompanied children may not be able to be placed with family sponsors. These children should receive specialized foster care in the least restrictive setting, meeting their cultural and linguistic needs while immigration legal proceedings are pending.⁷⁷

- **Roundtable Principle #5: Programs with care and custody of unaccompanied children must provide a safe and nurturing environment with trained and qualified staff who have child welfare expertise, while also preparing children and their future caregivers for a successful transition to a supportive family setting.**

Unaccompanied children should be protected from all forms of maltreatment while in out-of-home care in the United States, from the point of initial encounter with immigration officials to the point of family reunification, long-term foster care placement, or return to the child's home country.⁷⁸

Ideally, children being placed with relatives or other adult sponsors are protected by the completion of home assessments and provision of follow-up services to ensure the appropriateness of the home and the child's safety and well-being.⁷⁹ Such protective procedures are routine prior to the placement of children in the domestic child welfare system, and similar protective measures should be ensured with unaccompanied children as well.

Staff serving unaccompanied children should have education and experience relevant to working with the unaccompanied minor population and should undergo orientation, training, and continuing education to appropriately meet the specialized needs of these children.⁸⁰

Family sponsors for unaccompanied children should be prepared for successful reunifications by incorporating

principles of family support services so that parents and other relative caregivers are connected with relevant community services to assist them in providing appropriate care, meeting children's needs, and preventing and resolving problems as needed.⁸¹

- **Roundtable Principle #6: Following reunification, every unaccompanied child should receive community-based case management and support services to facilitate healthy integration and to prevent child maltreatment.**

Unaccompanied children, their families, and their communities are best served by establishing cooperative and collaborative relationships across public and private organizations.⁸² Follow-up services provided after reunification with U.S.-based family can greatly enhance school enrollment, participation in the legal process, and community integration through connections with health, mental health, and social service providers.⁸³

Follow-up services that help families in their caregiving role also serve a preventive function by reducing contributing factors to child maltreatment, health issues, and placement disruptions.⁸⁴

- **Roundtable Principle #7: Children are best served when government agencies and their partners incorporate principles of accountability, collaboration, information sharing, documentation of best practices, evaluation, and quality improvement.**

Public and private agencies that work with unaccompanied children should share data, identify best practices, examine program outcomes, and encourage innovation.⁸⁵ Information sharing and collaboration between public and private agencies, as well as inter-agency collaboration between private service providers, improve service transitions from one agency to another and support accountability and evaluation.⁸⁶ Government funders and contracted service agencies should prioritize research to continually improve services in pursuit of providing effective services in the best interests of the child.⁸⁷ The federal Children's Bureau has developed practical guidance for effective practice, such as *A Framework to Design, Test, Spread and Sustain Effective Practice in Child Welfare*.⁸⁸ Such knowledge and resources should be integrated into the government's approaches to working with unaccompanied children and their families.

RECOMMENDATIONS

LIRS’s recommendations focus on improving access to justice for children, the long-term sustainability of services, preventive approaches to protect children, and strengths-based programming.

Apprehension, Screening, and Referral to ORR

The initial period after apprehension is fraught with risk for unaccompanied children. They are in the physical and legal custody of the Department of Homeland Security (Enforcement and Removal Operations or the U.S. Border Patrol), which has neither a child welfare mandate, nor deep expertise in this area. The facilities in which children are held are unacceptable for this population, there are significant legal risks to children who complete legal forms and undergo the initial phases of screening without the assistance of legal counsel, and safeguards against various forms of abuse are inadequate. It is essential that children be transferred into the custody of an institution with child-appropriate facilities and child welfare expertise as quickly as possible, that decisions with far-reaching consequences for child well-being be made with an independent child welfare voice in the process, and that safeguards against abuse be strengthened.

- **DHS agencies (CBP and ICE)** should develop contingency plans to respond to increased migration, ensuring that children will be placed in the least restrictive environment appropriate to their needs and vulnerabilities. Children should be expeditiously transferred to ORR custody
- **CBP, Border Patrol, and the Office of Field Operations** should:
 - o Permit EIOR to have legal orientation presentation (LOP) tables at all CBP Central Processing Centers for unaccompanied children and allow access to these tables by all unaccompanied children.
 - o Utilize child welfare professionals with backgrounds in trauma-informed forensic interviewing, as well as child welfare, trafficking, and asylum law, to perform all screening in accordance with TVPRA Section 235(a).
 - o Refrain from in-depth screening of children from *non-contiguous* countries, as such screening is not required by the TVPRA and is conducted more fully

- when unaccompanied children are transferred to ORR custody. Develop guidelines and training for situations when DHS or CBP interviewing of children serves a legitimate law enforcement purpose.
- o Ensure that all children have the support and consultation of attorneys before signing documents (e.g., I-770 and I-213), and have attorneys present during any processing, interviews, or screening of children (e.g., during completion of CBP Form 93).
- o Make available to Congress and NGOs documentation from children’s processing, interviews, or screening to improve procedural accountability.

- **DHS agencies** should implement a rigorous and accessible system for reporting abuse that is accessible to children, their families, staff of the federal agencies, attorneys, non-governmental organizations, and any other entities interacting with children while in DHS custody.



Border wall separating Mexico (left) from the United States. Photo credit: Ruido.

Access to Justice

Legal protections for unaccompanied children fleeing harm are being threatened. Existing laws provide critical protections for some children, and they should not be overturned. However, the existing legal system does not adequately protect all children who are endangered. New forms of protection are needed that recognize the particular dangers faced by children. Even for unaccompanied children who do qualify for the protection under existing U.S. laws, there are challenges in securing needed protection or even a fair hearing. Among the problems are lack of legal representation, the absence of an adult caregiver or

guardian to provide assistance, and a host of procedural challenges or approaches that are not appropriate for children, which taken together create severe barriers to access to justice.

- **Congress** should maintain existing protections for unaccompanied children, upholding provisions of the TVPRA and HSA, in keeping with the principles of the best interests of the child. The statutory definition of an unaccompanied child should not be changed.
- **Congress** should expand the legal immigration provisions available to children to ensure that children in need of legal protection have access to relief and that children facing severe danger, even if otherwise inadmissible, are not returned to a country where they will be harmed.
- All children should have an attorney, whether *pro bono* or government provided, when appearing before an immigration judge:
 - o **Congress** should ensure by statute that all children have an attorney, and should appropriate funds for this purpose.
 - o **DOJ, DHS, HHS** should work together to ensure that every unaccompanied child in immigration proceedings is appointed legal counsel and that no child appears in immigration proceedings unrepresented.
 - o **DOJ** should expand the “Justice AmeriCorps” project providing attorneys for children in immigration proceedings and increase the age of eligibility to any child under age 18.
 - o **Immigrant-serving NGOs** should create a centralized, updated, web-accessible legal services database so that nonprofit legal service referrals are easy, accurate, and standardized.
 - o **Immigrant-serving NGOs** should create a standard referral mechanism between legal service providers so that unaccompanied children are assured of receiving legal service provider information for the area to which children are being released, as well as youth service organizations and state specific practices.
- Every unaccompanied child and their parents or caretakers should have access to legal rights presentations. To achieve this, **EIOR in consultation with ORR** should:
 - o Ensure that the Legal Orientation Program for Custodians (LOPC) is accessible to all sponsors and collaborates with ORR’s local follow-up service providers for unaccompanied children.
 - o Introduce other mechanisms for expanding access to LOPC services, such as video, web-based, or telephone.
 - o Ensure that all materials from EOIR as it pertains to accredited representation lists and other LOPC materials are to be incorporated into the family reunification packets as additional resources.
 - o ORR should ensure that while unaccompanied children are in ORR custody they receive “Know Your Rights” (KYR) information—regarding standard rights and procedures that pertain to federal custody, court proceedings, educational rights, and living with sponsors—and involve NGOs and law school clinics in provision of KYR information.
- **CBP, ICE, and ORR** should ensure that Child Advocates (immigration guardians *ad litem*) are appointed to the following populations, implementing concrete referral procedures, training, and adequate financial support: vulnerable unaccompanied children in federal custody, children requesting voluntary departure, children facing separation from parents or guardians, children being returned (to ensure safe returns in the best interests of the child), and children in both the detained and non-detained dockets.
- All legal proceedings should be carried out in a manner that recognizes the unique vulnerabilities and developmental maturity of children. **DOJ (EOIR)** should:
 - o Expand and require more child-friendly approaches, recognizing the vulnerabilities and developmental needs of unaccompanied children.
 - o Eliminate videoconferencing with children, in particular for substantive legal proceedings. (Video presentations are appropriate for information-sharing but are not acceptable for adjudications of children.)
 - o Require individualized hearings for children and eliminate group removal proceedings for children.
 - o Adhere to confidentiality in children’s court hearings, with unrelated respondents removed from the courtroom.
 - o Update “Guidelines for Immigration Court Cases

Involving Unaccompanied Alien Minors” (OPPM 07-01) and “raise the bar” across jurisdictions by adopting uniform best practices and incorporating child welfare principles.

- o Ensure that children have a voice in the proceedings that affect them.
 - o Involve Child Advocates when additional documentation is needed, including recommendations about what is in a child’s best interests.
 - o Ensure that children have the necessary developmental and cognitive capacity before making any determinations.
 - o Provide regular training and education for immigration judges on child protection principles, child development, specific forms of relief available to children, and appropriate questioning of children.
 - o Expand use of juvenile dockets for both detained and non-detained children.
 - o Designate skilled and sensitive immigration judges to handle juvenile dockets, in addition to internal reporting and tracking mechanisms for judges who mishandle juvenile dockets or cases.
- Particular care should be taken in children’s cases to ensure both substantive and procedural integrity. Hearings should be scheduled in a reasonable time—neither too quickly, nor with long delays. Documents should follow the child.
 - o **DOJ (EOIR)** should ensure in children’s cases that all forms of legal relief are explored and that safe repatriation is assured, especially when children are unrepresented.
 - o **DHS** should ensure that the deportation of children to their countries of origin occurs only when the U.S. government is assured that they can be safely repatriated and that prosecutorial discretion is used in situations of compelling humanitarian concerns.
 - o **DHS and DOJ (EOIR)** should ensure the issuance of notices to appear (NTAs) *after* the release of unaccompanied children to sponsors to improve procedural efficiency, to reduce unnecessary court proceedings, and to protect children from *absentia* removal orders due to procedural delays or notification issues.
 - o **DOJ (EOIR)** should ensure that all parts of legal proceedings are interpreted, sensitive to indigenous

language needs and sidebars which sometimes go un-interpreted.

Family Reunification

With the increase in the number of children coming into its custody, ORR significantly shortened the timeframe for the family reunification process. In some cases, the shortened timeframe results in inadequate screening of families and sponsors for their capacity to provide for children’s safety, stability, and well-being. Children also often do not have preparation for the legal or psycho-social issues they will be facing upon reunification. To improve the safety of the reunification process, **ORR and its programming partners** should:

- Prioritize child protection and safety in reunification decisions over timelines based on fiscal concerns.
- Revise the ORR sponsor assessment tool and sponsor reunification packet to ensure gathering of relevant information that promotes children’s safety, stability, and well-being.
- Improve collaboration between shelters and social service providers that provide home study and follow-up services.
- Monitor the impact of changes to fingerprint background check requirements.
- Expand prerelease services available at fingerprinting sites as an efficient proactive approach to preparing sponsors for reunification (e.g., peer support groups, sponsor orientation to the family reunification process, education about legal proceedings and school enrollment requirements, connection to community resources, etc.)
- Effectively prepare children for the reunification transition to new sponsors and communities, addressing expectations, challenges, and potential realities.

Post-Release Services

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. For a child with identified risk factors at the time of release or later, additional

support to ensure the child's well-being is essential. Anti-trafficking and child abuse protocols should be an integral part of the post-release support system. Families who are receiving children must also be provided with information and support services to aid the reunification process. Both children and receiving families would benefit from opportunities for mutual support.

- **Congress** should mandate post-release services for every child released from ORR custody and appropriate funds for this purpose.
- **ORR** should create a comprehensive post-release follow-up system, requiring providers to:
 - o Conduct home visits with reunified unaccompanied children to promote safety, stability, and well-being.
 - o Develop a check-in protocol for unaccompanied children, particularly those reunified with sponsors using "quick release" or minimal sponsor screening procedures.
 - o *At a minimum*, make at least one follow-up phone call following reunification to inquire about school enrollment, court participation, connection to legal resources, stability of placement, etc.
- **ORR and its programming partners** should ensure the safety of children at risk. All partners in the system should:
 - o Implement identification and Anti-Trafficking in Persons (ATIP/ORR) referral mechanisms for victims of trafficking.
 - o Involve local child welfare authorities in cases of abuse and neglect and (for programming partners) notify ORR in cases where a local investigation is not occurring.
 - o Implement the Young Center's proposal for a bilingual "child text hotline" for unaccompanied children seeking urgent help post-release (i.e. a system that does not record the child's call or text on the phone used, for safety purposes).
- Post-release services should be designed with the particular needs and vulnerabilities of unaccompanied children in mind. **ORR and its programming partners** should:
 - o Implement trauma-informed approaches with children, their families, and service providers.
 - o Develop model guidance for discussing "mental

health" issues and services in a culturally appropriate and non-stigmatizing manner (e.g. understanding culturally specific terms—such as evil eye, fright, or nerves—and common somatic complaints within the context of mental health needs).

- o Ensure that unaccompanied children are enrolled in school following reunification, recognizing that school attendance is compulsory for most children and serves as a local social safety net.
- **ORR and its programming partners** should provide ongoing support to children and their families or sponsors to ensure safety, stability, and well-being of the child and to assist families and sponsors with the reunification process:
 - o Ensure that information "follows the child" during transfers or release from custody, including provision of health records, vaccinations, legal records, school records, and federal identification documents.
 - o Provide information resources to children and sponsors in a format that is engaging, useful, and culturally appropriate, using social media formats familiar to unaccompanied children and their sponsors.
 - o Because many families experience difficulties enrolling children into school, develop a sponsor "script" that families can use when enrolling children in school after release to minimize school enrollment barriers and delays.
 - o Develop a brief "fact sheet" on the relevance of the McKinney-Vento Homeless Assistance Act for unaccompanied children, and share with sponsors and post-release service providers to enable sponsors to advocate for the children in their care who may be considered homeless (e.g. in relation to school enrollment hurdles).
- **ORR and its programming partners** should provide opportunities for peer support:
 - o Create culturally sensitive and therapeutically appropriate spaces for children to address trauma and reunification stressors, such as support groups, peer-to-peer support programs, family support services, etc.
 - o Expand post-release services to include support groups for sponsors and reunified children, follow-up calls and visits, school enrollment assistance,

social service referrals, etc.

- o Develop a “peer navigator model” so that children and sponsors can be trained to support other more recent arrivals in local communities.
- o Fund new or existing Central American community organizations to help them address the needs of newly arrived youth and their sponsors.

• **ORR and its programming partners should** engage the broader community in assistance to newly reunified families:

- o Infuse public messaging about this population with language that recognizes the strengths and protective factors inherent in Central American families.
- o Work with local communities on violence prevention and community engagement models to ensure that unaccompanied children are not profiled or targeted by law enforcement or others due to the tenor of media coverage.
- o Partner with local child welfare providers on community education and family preservation services in order to prevent family breakdown.
- o Build support mechanisms into schools systems (e.g., school social workers, counselors, psychologists, ESL teachers), so they can be equipped to meet the needs of unaccompanied children after reunification.
- o Conduct outreach to national school social worker, counselor, psychologist and teacher organizations, as well as national child welfare organizations, to share information about unaccompanied children as well as relevant legal, health, and trauma issues.
- o Make connections with culturally appropriate mental health providers in local receiving communities and provide information about new unaccompanied child arrivals.
- o Connect with national networks of newcomer schools to good resources of cultural information on Central Americans (example: CAL backgrounders).

Improved Coordination

The federal agencies with responsibility for the care and protection of unaccompanied children should develop effective and efficient methods of coordination that place child protection at the center of cooperative efforts. Cooperation across agency lines and a commitment to providing and replicating quality

care and protection set an example for staff, partners, and stakeholders. Likewise, non-governmental organizations should proactively seek out areas for collaboration that better serve unaccompanied children and build on existing best practices.

• **ORR, DHS, and DOJ should:**

- o Improve communication between agencies, improve data sharing between agencies without compromising a child’s safety, and facilitate communication and best practice sharing between programs for unaccompanied children that receive federal funds.
- o To ensure legal services for unaccompanied children and improve appearance rates, EIOR in coordination with ORR should share quarterly statistics of representation of unaccompanied children who have been released to sponsors with data organized by state and immigration court to legal service and post-release service providers.
- o EIOR should coordinate with ORR to ensure post release services are provided in low legal representation jurisdictions to better assist the families with locating legal services and provide orientation to immigration courts. Legal Service providers can use the statistics to expand the development of pro bono resources where there is a greater need.
- o In coordination with ORR, EOIR should develop new models of LOPC service provision by streamlining the service model to incorporate other service offerings: safe release sites for fingerprinting, family reunification packet assistance, and sponsor orientations for social services.

• **ORR and its programming partners should:**

- o Convene meetings with local communities, stakeholders, and refugee communities to garner support for helping unaccompanied children and sponsors at the local level.
- o Engage the Interagency Working Group on Separated and Unaccompanied Children (in Washington, D.C.) for outreach and information sharing with child welfare and juvenile justice agencies.
- o Organize a discussion with national refugee and immigrant serving organizations to promote information sharing and collaboration to help unaccompanied children and sponsors, document

best practices nationally and locally, and reframe the local and national dialogue around unaccompanied children as a refugee protection issue.

• **Roundtable Participants and Other Interested NGOs** should:

- o Work collaboratively to track and respond to proposals that would change or weaken existing protections.
- o Work collaboratively on public messaging to be inclusive of refugee and immigrant serving communities.
- o Develop working groups around “border,” “shelter,” and “release” issues (as was modeled during this Roundtable series), with a convening agency taking leadership for each area and conducting follow-up calls every 3-6 months.
- o Use the LIRS-hosted “childimmigration” listserv to share data, resources, advocacy needs, and opportunities and to coordinate national appeals for urgent action.
- o Create a web-based library of shared data and resources regarding unaccompanied children.

• **Immigrant-serving NGOs** should:

- o Initiate “asset-mapping” across the country by collecting specialized service information accessible to other NGOs.

Oversight and Accountability

Unaccompanied children warrant special consideration because of their level of vulnerability. In order to implement existing protective measures as well as the further recommendations laid out in this report, and to ensure that they are adhered to, monitoring and oversight systems should be strengthened. Checks and balances are a hallmark of U.S. government structures and must be implemented in systems that provide care and protection to unaccompanied children, along with regular reporting mechanisms and reflective practices.

- **Congress** should require regular reporting on compliance with U.S. and international laws relating to unaccompanied children, as well as their implementing regulations (ex: Flores Settlement Agreement, TVPRA, Prison Rape Elimination Act [PREA]). Congress should also monitor shelter care practices and track the

response to abuses committed against children.

- **DHS and HHS** should each appoint an independent external entity with expertise in child interviewing to undertake human rights monitoring and compliance with U.S. and international law. Such monitoring should look at systemic issues, including the length of time, type of placement, and overall treatment of children while in federal custody. Monitors should submit regular reports to Congress and findings should be made public.
- **DHS agencies (CBP and ICE)** should track and report on adherence to TVPRA requirements, including:
 - o Transfer of unaccompanied children to HHS custody as soon as possible within the 72-hour mandate.
 - o Transfer of Mexican unaccompanied children to ORR custody if DHS is unable to determine the child’s fear of return or trafficking risk within 48 hours of apprehension.⁸⁹
- **DHS (CBP and ICE) and HHS** should each create an Ombudsman’s Office, independent from any of the custodial agencies (Enforcement and Removal Operations and U.S. Border Patrol under DHS, and ORR under HHS). Children should have confidential access to contact the Ombudsman, and all children should receive notice of this right verbally and by having it posted throughout facilities in a language they can understand. The Ombudsman’s Offices should be accountable for receiving reports of alleged abuses committed against children while in federal custody, documenting trends, coordinating with the PREA coordinator, ensuring investigation of such abuses, coordinating with outside monitoring agencies, and reporting findings of abuse to Congress and stakeholders.
- **DOJ** should create a reporting and monitoring mechanism to hold immigration judges hearing children’s cases accountable for adhering to child-friendly procedures in their courtrooms.
- **ORR** should monitor and respond appropriately to “significant incident reports” (SIRs) and licensing sanctions at ORR-funded programs, sharing information, tracking outcomes, and implementing follow-up procedures (while mindful of confidentiality requirements).

- **DHS and ORR** should track the treatment of unaccompanied children housed in temporary emergency response facilities (such as Department of Defense facilities and other new emergency facilities), ensuring adherence to child welfare principles and practices.
- **DHS and HHS** should allow timely access to all custodial facilities, including emergency response facilities, by nongovernmental organizations in order to promote accountability and collaboration.
- **Immigrant-serving NGOs** should document and report abuses by federal agencies towards children, following the complaint model used by immigration legal advocates.
- **Immigrant-serving NGOs** should monitor situations in which children are separated from parents and other family members (i.e., cases in which government treatment creates unaccompanied minors), in order to develop improved practice recommendations.

CONCLUSION

The federal government should adopt a consistent principled approach, grounded in the best interests of the child, to the care and custody of unaccompanied migrant children, rather than allowing policy and practice to be driven by financial, political, and institutional pressures.

Children have developmental needs for safety, permanency, and well-being. The child welfare laws of the United States recognize these needs. However, the principles that inform our child welfare laws are not consistently observed in our treatment of unaccompanied migrant children. These children deserve safety, nurture, and care combined with a protective responsibility towards potential asylum seekers and victims of trafficking, child maltreatment, and other human rights violations.

The existing U.S. protections for children represent decades of expertise that have been developed over time in response to increased knowledge and competence in serving this vulnerable population. The experienced professionals who participated in the LIRS Roundtable series of meetings were deeply concerned by the grave danger that could face unaccompanied children if existing protections are weakened.

With so many children at risk, this is not the time to roll back protections for children, but rather for the U.S. federal government to advance as a leader, both regionally and globally, in the protection of migrating children. This should be done by establishing clear principles for their humane and just treatment.

This report has laid out the broad principles that should provide a framework for addressing the needs of unaccompanied children. We have also offered an extensive list of specific recommendations that concretely apply those principles. These principles and recommendations are informed by the expertise of our Roundtable participants, and we believe them to be considered and timely, as their relevance and necessity have never been greater.



Channel separating El Paso, Texas, from Ciudad Juarez seen through the railings of the border crossing bridge
Photo credit: Ruido.

The opening sentence of the U.S. Refugee Act of 1980 provides clear direction:

“The Congress declares that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands...”⁹⁰

As a faith-based organization, LIRS takes further direction from the biblical exhortations to welcome the stranger, to protect the vulnerable, to love our neighbor, and to see the face of God in those who seek our help.⁹¹

The President, the U.S. Congress, and federal government agencies must not lose sight of their legal, moral, and ethical responsibility to keep vulnerable children safe from harm.

ENDNOTES

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- [5] For example, "An underlying tension in dealing with UAC is the philosophical positions of the government agencies involved in the handling of the children. Specifically, the dominant cleavage line from which many other issues spring is that of whether the UAC should be treated as humanitarian refugees or as unauthorized aliens subject to expedited removal." From: Chad Haddad, *Unaccompanied Alien Children: Policies and Issues*, Congressional Research Service, (March 1, 2007): 13, <http://www.rcusa.org/uploads/pdfs/CRS%20UAC%20Report%202007.pdf>.
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- [9] United Nations High Commissioner for Refugees (UNHCR), p. 11, <http://www.unhcr.org/3b66c2aa10.html>. The United States is a signatory only to the 1967 Protocol Relating to the Status of Refugees, which removed time limits and geographic limitations present in the 1951 Convention.
- [10] UN General Assembly, *Convention on the Rights of the Child (CRC)*, Article 22, (November 20, 1989), <http://www.refworld.org/docid/3ae6b38f0.html>. The CRC is considered to have the force of customary law, given its wide global ratification. The U.S. has signed but not ratified the CRC. South Sudan is the only other United Nations member state that has not yet ratified the CRC.
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- [17] INA 412 (A)(iv).
- [18] Amnesty International, *Why Am I Here? Children in Immigration Detention*, (2003), <http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/unaccompanied%20children%20in%20immigration%20detention.pdf>. Women's Refugee Commission, *Prison Guard or Parent? INS Treatment of Unaccompanied Refugee Children*, (2002); <https://womensrefugeecommission.org/search?q=prison+guard+or+parent; Human Rights Watch Detained and Deprived of Rights>, (December 1998), <http://www.hrw.org/legacy/reports98/ins2/>; Flores Stipulated Settlement Agreement (1997), <http://www.centerforhumanrights.org/PDFs/FloresStipulatedSetlmt%20AGMT.pdf>.
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- [20] United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide*, (2013), <https://www.unodc.org/gsh/en/index.html>.
- [21] Consejo Ciudadano para la Seguridad Pública y la Justicia Penal A.C., "Por Tercer Año Consecutivo, San Pedro Sula es la Ciudad Más Violenta del Mundo," (January 15, 2014), <http://www.seguridadjusticiaypaz.org.mx/biblioteca/view/download/5/177>.
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- [23] UNODC (2013).
- [24] UNHCR, *Children on the Run*, 6.
- [25] Data from 2008 to 2013. UNHCR, "Statement to the Appropriations Committee on the Review of the President's Emergency Supplemental Request for Unaccompanied Children and Related Matters," (July 10, 2014), http://www.appropriations.senate.gov/sites/default/files/hearings/UNHCR%20Statement%20UAC.7.10.14.FINAL_.pdf.
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- [27] ORR, "About Unaccompanied Children's Services," <http://www.acf.hhs.gov/programs/orr/programs/ucs/about#FAQs>.
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- [35] TVPRA at § 235(b)(3), see also *Flores v. Reno Stipulated Settlement Agreement*, Case No. CV 85-4544-RJK(Px) (1997), at Section V, ¶ 12. P.
- [36] P.L. 110-457, Title II, Subtitle D § 235(a)(2), 122 Stat. 5074
- [37] TVPRA § 235(a)(4).
- [38] U.S. Refugee Act of 1980, Public Law 96-212, 94 Stat. 102 (Mar. 17, 1980).

- [39] See: Betsy Cavendish and Maru Cortazar, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, Applesseed, (2011), <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>. Women's Refugee Commission & Orrick Herrington & Sutcliffe LLP, *Halfway Home: Unaccompanied Children in Immigration Custody*, (2009), <http://www.womensrefugeecommission.org/programs/migrant-rights/unaccompanied-children>; Center for Gender and Refugee Studies & Kids in Need of Defense, *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, (2013), http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf
- [40] ORR, "About Unaccompanied Children's Services," <http://www.acf.hhs.gov/programs/orr/programs/ucs/about#FAQs>.
- [41] TVPRA § 235 (c)(2).
- [42] Homeland Security Act of 2002, § 426(b).
- [43] Flores, 10.
- [44] The Flores settlement requires the least restrictive setting "appropriate to the minor's age and special needs, while the TVPRA codifies that children be "... promptly placed in the least restrictive setting that is in the best interest of the child." *Flores v. Reno Stipulated Settlement Agreement*, at § IV, ¶ 11; TVPRA at § 235(c)(2).
- [45] TVPRA § 235(c)(2) and Flores § VII ¶ 24B.
- [46] Council on Accreditation, *Standards for Public Agencies, PA-SH 10: Services for Homeless and Runaway Children and Youth* (2015), <http://coanet.org/standard/pa-sh/10/>.
- [47] TVPRA § 235(c)(3)(A).
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- [53] The Transactional Records Access Clearinghouse (TRAC) has noted that the representative rate for children ranged from 60%-70% from 2008 until October 2012. Since then, the representation rate for children in immigration court proceedings has steadily declined, as the number of children in removal proceedings has continued to increase. The representation rate for unaccompanied children was 71% in FY2012; 48% in FY2013; and 20% in FY2014. The difference that legal representation makes for a child cannot be overstated: In FY2014, only 11% of unrepresented children were granted permission to stay in the U.S.; for children with legal representation, 69% were granted permission to stay. TRAC, "Representation for Unaccompanied Children in Immigration Court" (November 25, 2014), <http://trac.syr.edu/immigration/reports/371/>
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- [56] American Bar Association, *A Humanitarian Call to Action: Unaccompanied Alien Children at the Southwest Border*, (October 17, 2014), http://www.americanbar.org/content/dam/aba/administrative/immigration/UACSstatement_authcheckdam.pdf
- [57] Child Abuse Prevention and Treatment Act, 42 U.S.C. 5106a(b)(2)(A)(xiii).
- [58] Brian M. O'Leary, Chief Immigration Judge, Executive Office for Immigration Review, U.S. Department of Justice, "Docketing Practices Relating to Unaccompanied Children's Cases in Light of the New Priorities" (September 10, 2014), <http://www.justice.gov/eoir/statspub/Docketing-Practices-Related-to-UACs-Sept2014.pdf>.
- [59] Child Welfare Information Gateway (CWIG), *General FAQs*, <https://www.childwelfare.gov/aboutus/faq/general/>.
- [60] As well as the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands.
- [61] UN General Assembly, *Convention on the Rights of the Child (CRC)*, Article 3, (November 20, 1989), <http://www.refworld.org/docid/3ae6b38f0.html>.
- [62] Child Welfare Information Gateway (CWIG), *Determining the Best Interests of the Child*, http://www.childwelfare.gov/pubpdfs/best_interest.pdf. See also: Child Welfare League of America (CWLA), *National Blueprint for Excellence in Child Welfare* (Washington, D.C.: CWLA Press), 62-76.
- [63] UNICEF, *Fact Sheet: A Summary of the Rights under the Convention on the Rights of the Child, Article 3*, http://www.unicef.org/crc/files/Rights_overview.pdf.
- [64] CWLA, p. 27-35. See also: CRC, Articles 6, 19, 22, 24, 27, 28.
- [65] CWLA, p. 31; CRC, Articles 2, 22.
- [66] CRC, Articles 22, 34, 35, 36.
- [67] CRC, Article 37; UN High Commissioner for Refugees (UNHCR), *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (February 1997), ¶5.2, ¶5.12, <http://www.refworld.org/docid/3ae6b3360.html>.
- [68] CWIG, "Child Advocacy Centers," <https://www.childwelfare.gov/topics/responding/iaa/investigation/multidisciplinary/advocacy/>.
- [69] UNHCR, *Guidelines on...Children* (1997), ¶8.3.
- [70] "All States... provide in their statutes for the appointment of representation for a child involved in a child abuse or neglect proceeding. Approximately 41 States... provide for the appointment of a guardian ad litem to represent the best interests of the child." CWIG, *Representation of Children in Child Abuse and Neglect Proceedings* (2012), 2, <https://www.childwelfare.gov/pubPDFs/represent.pdf>; UNHCR, *Guidelines on...Children* (1997), ¶5.7.
- [71] UNHCR, *Guidelines on...Children* (1997), ¶8.2, ¶8.4
- [72] CWIG, "Trauma-Informed Practice," <https://www.childwelfare.gov/topics/responding/trauma/>. See also: CWLA, p. 69-70.
- [73] CWLA, p. 48-49.
- [74] CWIG, "Philosophy and Key Elements of Family-Centered Practice," <https://www.childwelfare.gov/topics/famcentered/philosophy/>; CRC, Articles 9, 10. UNHCR, *Guidelines on...Children* (1997), ¶9.8.
- [75] The Social Security Act, Sec. 475(5) equates least restrictive setting with more family like settings: "(5) The term 'case review system' means a procedure for assuring that—(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child...". Available at: http://www.ssa.gov/OP_Home/ssact/title04/0475.htm; UNHCR, *Guidelines on...Children* (1997), ¶7.6.
- [76] CRC, Article 25; UNHCR, *Guidelines on...Children* (1997), ¶7.5.
- [77] CWLA, p. 115.
- [78] CRC, Article 20.
- [79] "In all cases, before a child can be placed in the home of a relative, the child-placing agency must do an assessment to determine that the relative is 'fit and willing' to provide a suitable placement for the child, able to ensure the child's safety, and able to meet the child's needs." CWIG, *Placement of Children with Relatives* (2013), <https://www.childwelfare.gov/pubPDFs/placement.pdf>.
- [80] CWLA, p. 96-105.
- [81] CWIG, "Introduction to Family Support and Preservation," <https://www.childwelfare.gov/topics/supporting/introduction/>.
- [82] CWLA, p. 41-42.
- [83] UNHCR, *Guidelines on...Children* (1997), ¶10.3.
- [84] CWIG, "Introduction to Family Support and Preservation."
- [85] CWLA, p. 80.
- [86] CWIG, "Information Systems and Data," <https://www.childwelfare.gov/topics/management/info-systems/> See also: UNHCR, *Guidelines on...Children* (1997), ¶10.2, ¶12.
- [87] CWLA, p. 79-92. See also: CWIG, "Evaluating Program, Practice, and Service Effectiveness," <https://www.childwelfare.gov/topics/management/effectiveness/>.
- [88] Framework Workgroup, *Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services* (February 2014), https://www.acf.hhs.gov/sites/default/files/cb/pii_ttap_framework.pdf.
- [89] TVPRA § 235(a)(4).
- [90] PL. 96-212, Title I, Sec. 101(a), <http://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>.
- [91] Deuteronomy 10:19; Isaiah 1:17; Luke 10:27; Matthew 25: 31-46.

MOVING FORWARD FOR MIGRANT CHILDREN: Practice, Policy, and Protection

ROUNDTABLE SERIES OVERVIEW

Lutheran Immigration and Refugee Service (LIRS) will host a series of three roundtable dialogues to assess the current state of service responses by government agencies, private organizations, and local communities, towards children arriving in the U.S. due to forced migration. The largest share of these children—referred to by the U.S. government as Unaccompanied Alien Children (UAC)—are fleeing violence and deprivation in Central America in migration numbers that have surpassed outflows from recognized armed conflicts in Southern Sudan and the Democratic Republic of the Congo. The characteristics and root causes of this current “surge” have been examined effectively in recent reports by KIND, the Women’s Refugee Commission and the UNHCR.

LIRS intends to complement and build on this existing work by facilitating discussions focusing on the following overarching themes:

1. **Exploration:** *What is current practice?* Assessing existing policies and services, including ideal service models, current challenges, and promising practices. (March 18, 2014)
2. **Convergence:** *What should current practice be?* Identifying potential solutions to current challenges and methods for achieving desired change. (May 29, 2014)
3. **Action:** *How do we achieve ideal practice?* Prioritizing key policy and practice improvements and developing a shared vision for accomplishing change, both as a group and as individual organizations. (July 16, 2014)

At the conclusion of the Roundtable Series, a summary of recommended improvements will be refined and disseminated among participants. This summary is expected to include the following types of recommendations.

1. **Advocacy Priorities:** Executive, legislative and programmatic recommendations will be compiled to advance administrative practices by various federal agencies in order to improve short-term safety and well-being of UAC, as well as long-term permanency and integration opportunities for migrating children in the U.S. LIRS will distill these recommendation outcomes into a report on behalf of the Roundtable consultation group.
2. **Direct Practice Improvements:** Direct service recommendations, as well as documentation of existing good practices, will be collected in order to replicate what is working well, to develop pilot projects of promising new ideas, to incorporate knowledge and service approaches from domestic service provision, and to explore specific service areas needing further research.

ROUNDTABLE GUIDING PRINCIPLES¹

We take particular inspiration for these Roundtable discussions from the spirit of Articles 20, 22, and 25 of the Convention on the Rights of the Child:

- “Children who cannot be looked after by their own family have a right to special care and must be looked after properly by people who respect their ethnic group, religion, culture, and language.” [Art. 20]
- Refugee and asylum seeking children should receive protection, humanitarian aid, and family tracing assistance. When parents or family cannot be found, these children should be protected like any other children unable to live with their family. [Art. 22]
- “Children who are looked after by their local authorities, rather than their parents, have the right to have these living arrangements looked at regularly to see if they are the most appropriate. Their care and treatment should always be based on ‘the best interests of the child.’ ” [Art. 25]
- In addition, the following principles are provided to guide our shared vision:
- A child is a person below the age of 18. [Art. 1] Young adults between 18 and 21 may need additional support and assistance in the transition from youth to adulthood.
- Programming and decision making regarding children should be based on the best interests of the child principle. [Art. 3]
- Children have a right to life; their survival and developmental needs should be supported. [Art. 6]
- “Children seeking asylum should not be kept in detention;” however, if used, detention should only be as a measure of last resort and for the shortest appropriate period of time.² Children should be placed in the least restrictive setting appropriate to their safety and developmental needs.
- Children should be reunited with family members, provided that safety and developmental needs can be met. [Art. 9]
- Children should be allowed to share their views and to participate in decision making that concerns them. [Art. 12, 13, 14]

[1] Guiding principles for the Convention on the Rights of the Child, http://www.unicef.org/crc/files/Guiding_Principles.pdf; Fact Sheet summary of the CRC, http://www.unicef.org/crc/files/Rights_overview.pdf.

[2] UNHCR (1997). Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum. <http://www.unhcr.org/3d4f91cf4.pdf>.

ROUNDTABLE PARTICIPANTS

The following individuals participated in one, two, or three of the LIRS Roundtable meetings. Their views helped to inform this document, but their names do not indicate an individual or organizational endorsement of the contents of this report. The contents and recommendations are the sole responsibility of Lutheran Immigration and Refugee Service.

- Stacie Blake, U.S. Committee for Refugees and Immigrants (USCRI)
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- Wendy Young, Kids in Need of Defense (KIND)

ROUNDTABLE PROCESS

Roundtable Strategy

LIRS invited a diverse cross-section of multi-disciplinary professionals to participate in this three-part series of meetings held in Washington, D.C. in March, May, and July of 2014. Thirty to thirty-five people participated in each meeting, with a total 44 participants across all three meetings, representing existing stakeholders in the current system as well as those who might provide new perspectives on the care of unaccompanied children, including representatives from national voluntary agencies providing child welfare services for unaccompanied immigrant children as well as refugee resettlement programming, migration and child welfare policy advocates, immigration legal service providers, academics from social work and immigrant child welfare, and community-based organizations from receiving communities.

Roundtable Topics

Described below are the primary discussion areas from each Roundtable meeting.

- **Roundtable #1.** At the first Roundtable meeting, participants focused on the challenges and barriers that exist within the current system of care and custody of unaccompanied children. In addition, participants shared knowledge of current best practices in the care and custody of unaccompanied children. Barriers and best practices were each considered within the context of prerelease (while children are still in federal custody) and post-release (after children are released to family sponsors, released to alternative long-term care, or returned to their countries of origin). In addition, barriers and best practices were examined from different vantage points, including the perspectives of agencies, children and families, and communities.
- **Roundtable #2.** At the second Roundtable meeting, LIRS presented preliminary findings from its own research efforts (described below). In addition, LIRS presented an unaccompanied children “Decision Tree” which visually charts the complex decision-making processes that occur between the time of apprehension to the time of release from federal custody. Participant responses regarding challenges and best practices from the first meeting were summarized and reintroduced during the second Roundtable meeting for further prioritizing through small group discussion. Roundtable participants then broke up into small groups to discuss system recommendations and best practices in relation to three contextualized service areas: the southern U.S. border, ORR-funded shelters, and after placement with sponsors.
- **Roundtable #3.** The last meeting commenced with an update on the rapidly changing policy situation. Participants again broke into two smaller groups, focusing on either legal services or social services. Small group responses from the second meeting had been further synthesized and condensed for a last refinement during this final collective meeting. The day closed with discussion of coalition building and methods for continuing the collaborative and collegial child protection work initiated with this Roundtable series.

Incorporation of Research

To inform these Roundtable meetings, LIRS incorporated current research (conducted by LIRS and by others) in order to identify and add to the existing knowledge base regarding unaccompanied children. These efforts included the following:

1. **Sharing research knowledge:** LIRS coordinated cross-disciplinary dialogue about current research by facilitating a teleconference discussion between 14 professionals around the United States engaged in various research efforts related to unaccompanied children.
2. **Conducting focus groups:** LIRS staff and Dr. Jayshree Jani, Assistant Professor of Social Work at the University of Maryland Baltimore County, coordinated focus group discussions with unaccompanied children and with sponsors living in Maryland. In addition, six individual interviews were conducted with sponsors living in Virginia. These focus groups and interviews focused on the adjustment of the youth, their understanding of the legal process, and current needs. The qualitative data obtained from these research efforts were shared during the second Roundtable and helped participants to incorporate the voice and views of Central American families themselves.
3. **Following up with families:** During the second Roundtable, LIRS staff and Dr. Jayshree Jani shared preliminary results from follow-up phone calls with 100 family sponsors with whom unaccompanied children had been reunified. Contact was made with adult sponsors at 14 days, 90 days, and 180 days following a child's reunification in order to assess specific needs of children who were not otherwise receiving any follow-up services after release. While preliminary, these results provided insight into both the needs and strengths of families with whom unaccompanied children have been reunited.
4. **Seeking service provider input:** Between the second and third Roundtable meeting, LIRS and Dr. Jani conducted an online survey of legal and social service practitioners regarding their assessment of current needs of the unaccompanied children and families they were serving, and the needs of the service providers themselves. Results of these online surveys were shared during the second Roundtable meeting.

ROUNDTABLE ASSESSMENT: Best Practice and Ideal Practice

In the Roundtable meetings convened by LIRS, participants discussed current best practices with unaccompanied children and then described ideal practice by reimagining the current system.

Current Best Practice

Best practices identified by Roundtable participants revolved around custodial services (while children are in ORR custody) that are more family-like and more home-like, that recognize the individuality and participation of children and their families and that use creative approaches to connect with children. Community-based supports and services (after children are reunified with sponsors) focused on education, legal, child welfare, and related services at the local level.

Specific best practices focused on these primary areas:

1. Modeling home and family in-care and custody programs for unaccompanied children¹

- Adopting program models that incorporate the safe and nurturing environment of home by using smaller facilities, more family-like placements, and more homelike settings that support and celebrate the uniqueness of each child, and programs that allow for seamless transitions from one type of care to another (e.g. from transitional foster care to long-term foster care without the child having to experience a placement disruption).
- Developing connections between unaccompanied children's service providers and with service providers from other fields, such as those who serve undocumented and homeless populations, in order to learn from other programs that serve children in transition.

2. Using approaches that empower unaccompanied children

- Looking at children's needs holistically, empowering them to take a more active role in decision making about themselves, encouraging child participation, and listening to what children have to say.

3. Implementing supportive and preventive approaches to working with sponsor families²

- Giving sufficient time for shelter clinicians to facilitate contact and re-establish connection between children and sponsors who have experienced lengthy separations, so that children and their families are set up for successful kinship placements that will last and are in the best interests of the child.
- Using pre-reunification contact with sponsor families at designated fingerprinting sites as an opportunity

[1] "Children are placed according to their best interests in the most family-like and familiar setting possible." Council on Accreditation, Standards for Public Agencies, PA-FKC 6.03: Child Placement (2015), <http://coanet.org/standard/pa-fkc/6/Z>

[2] "Parents receive individualized services and supports that address their family's needs, increase their capacities for effective parenting, and assist them in preparing for reunification or facilitating other permanency options for their children." Council on Accreditation, Standards for Public Agencies, PA-FKC 8: Services for Parents (2015), <http://coanet.org/standard/pa-fkc/8/>.

to determine broader service needs that will support children after reunification with their families.

- Learning from family preservation models as an approach to supporting successful reunification of sponsors and children with more complex needs.

4. Valuing schools as protective partners³

- Ensuring that all children are enrolled in school after placement with sponsors and recognizing the protective role that schools play by educating children; by linking children and families to community partners; by providing a safety net and a community integration support system.
- Intentionally creating connections between ORR-funded community follow-up service providers and children's school social workers to promote children's safety, permanency and well-being.

5. Providing legal and Child Advocate services

- Ensuring that children have access to legal protection and due process through provision of competent immigration legal services while in federal custody and after placement with sponsors.
- Provision of Child Advocates to look out for children's best interests in immigration legal proceedings.

6. Provision of other complementary and creative support services

- Using creative therapeutic approaches with unaccompanied children, such as artistic expression, to help communicate about and heal from traumatic experiences.
- Pursuing diverse sources of funding for special programs, seeking out additional data, and engaging in privately funded research projects to examine and improve services to unaccompanied children.

Ideal Practice: Reimagining the System

Roundtable participants considered what an ideal system for unaccompanied children might look like and how it would be different from the existing system for unaccompanied children that has developed over time in the United States.

An **ideal system** for unaccompanied children would include:

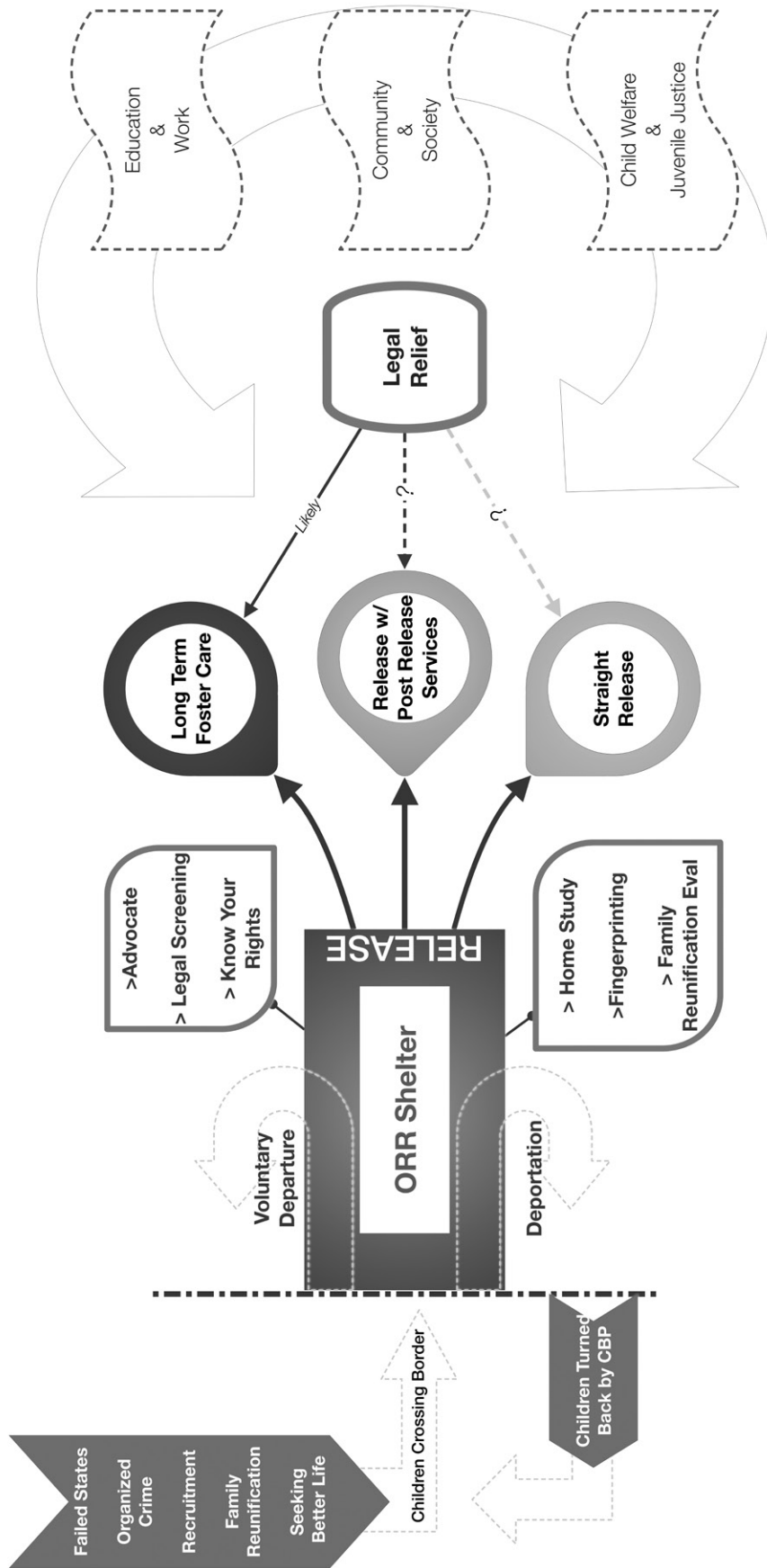
- Building a child-centered, multi-disciplinary system developed around the **best interests of the child** standard;
- Modeling the best elements of the **juvenile and family court** systems (e.g., protection oriented, grounded in children's best interests);

[3] "Children receive support to achieve their full educational potential..." Council on Accreditation, Standards for Public Agencies, PA-FKC 9.05: Services for Children and Youth (2015), <http://coanet.org/standard/pa-fkc/9/>.

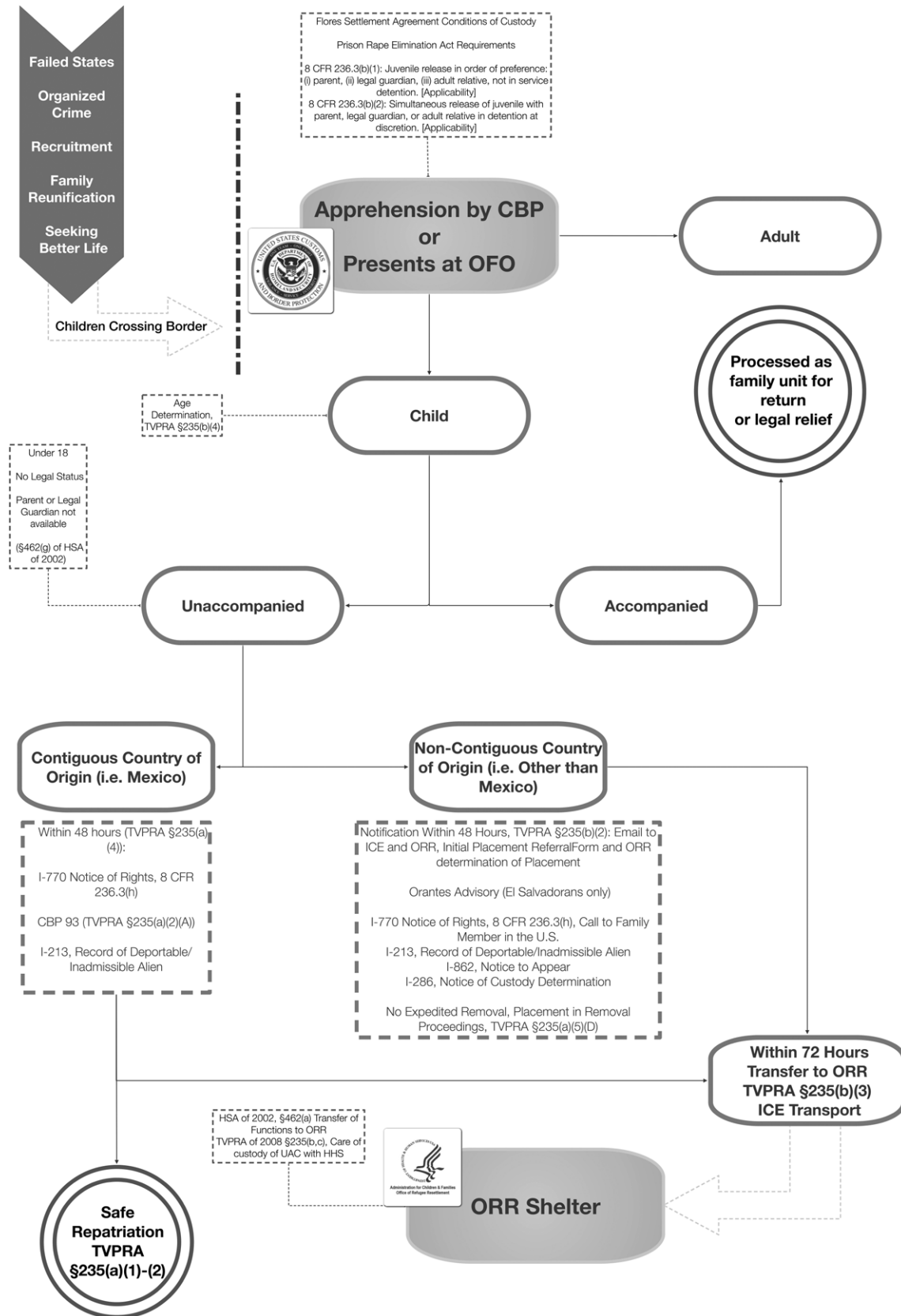
- Providing **attorneys and Child Advocates** for every child;
- Creating **additional forms of relief** (ex: a best interests visa specific to children);
- Creating an **information firewall** between HHS & DHS;
- **Screening of children by child welfare specialists** rather than law enforcement personnel;
- Immigration proceedings that are **affirmative and non-adversarial** with a specialized corps of interviewers;
- Completing a **home visit prior to sponsor placements**, rather than a paper-based review system;
- Incorporating **service elements that follow children** into the community after sponsor placement, rather than services primarily focused within the shelters;
- **Linking children to local community services** after release, including coordination between legal and social service providers;
- ORR **responding proactively to emerging needs** by staying focused on the big picture;
- ORR providing **program management, oversight, quality assurance, data collection and sharing**, with case management handled by qualified grantees;
- ORR brings together the **expertise and resources of other government agencies** to support unaccompanied children and build connections with state systems that can serve children and families;
- Accessing **in-country processing** for children with protection needs so that children do not have to make a dangerous journey to the U.S.;
- Using the **refugee resettlement** program as a model;
- Addressing the **root causes** of migration within sending countries.

The participants in the Roundtable meetings were conscious of the current challenges in protecting and serving unaccompanied children, but participants were also hopeful that improvements are possible through collaboration between service providers, as well as between governmental agencies, non-governmental organizations, local U.S. communities and Central Americans themselves.

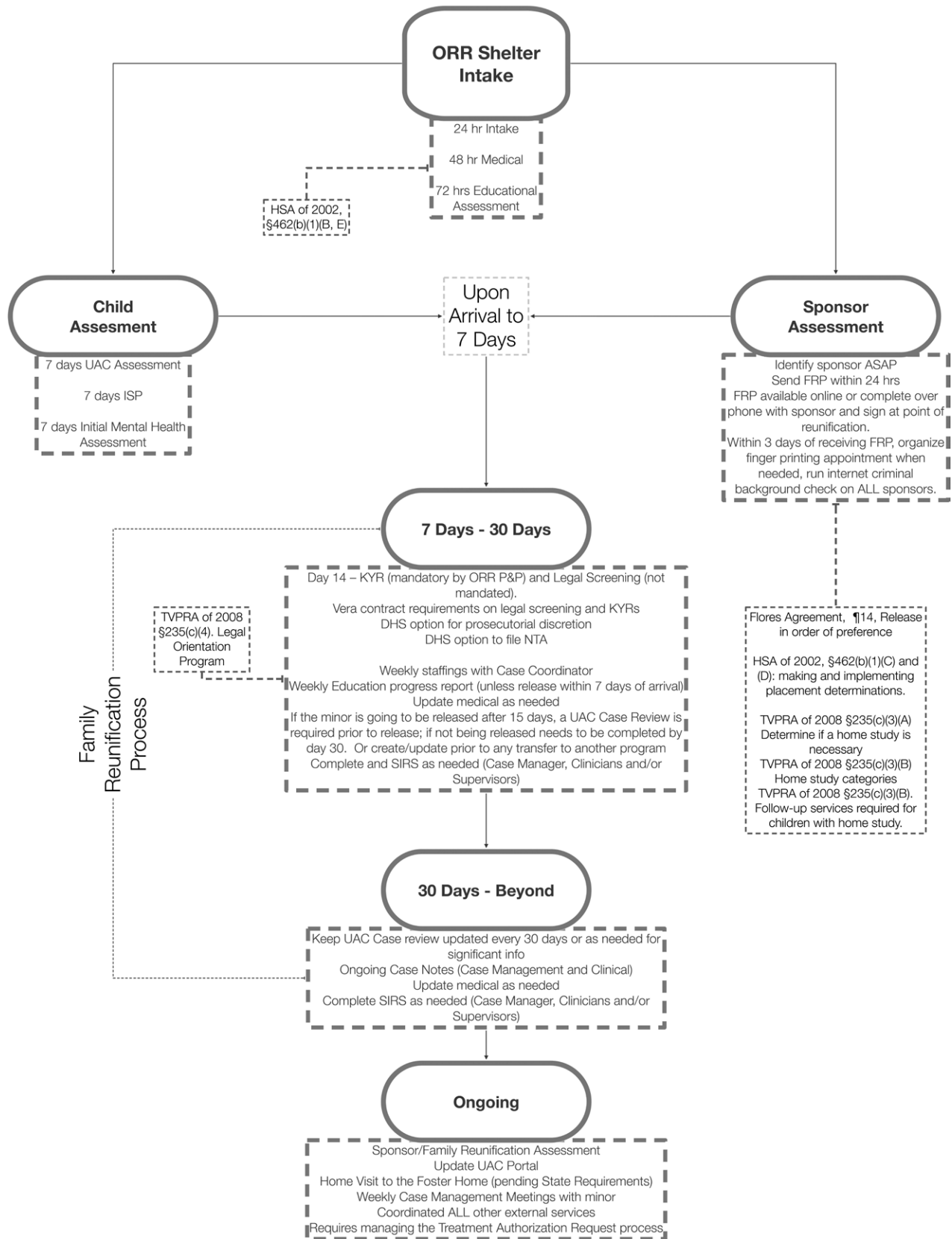
UNACCOMPANIED IMMIGRANT MINORS – SYSTEM OVERVIEW



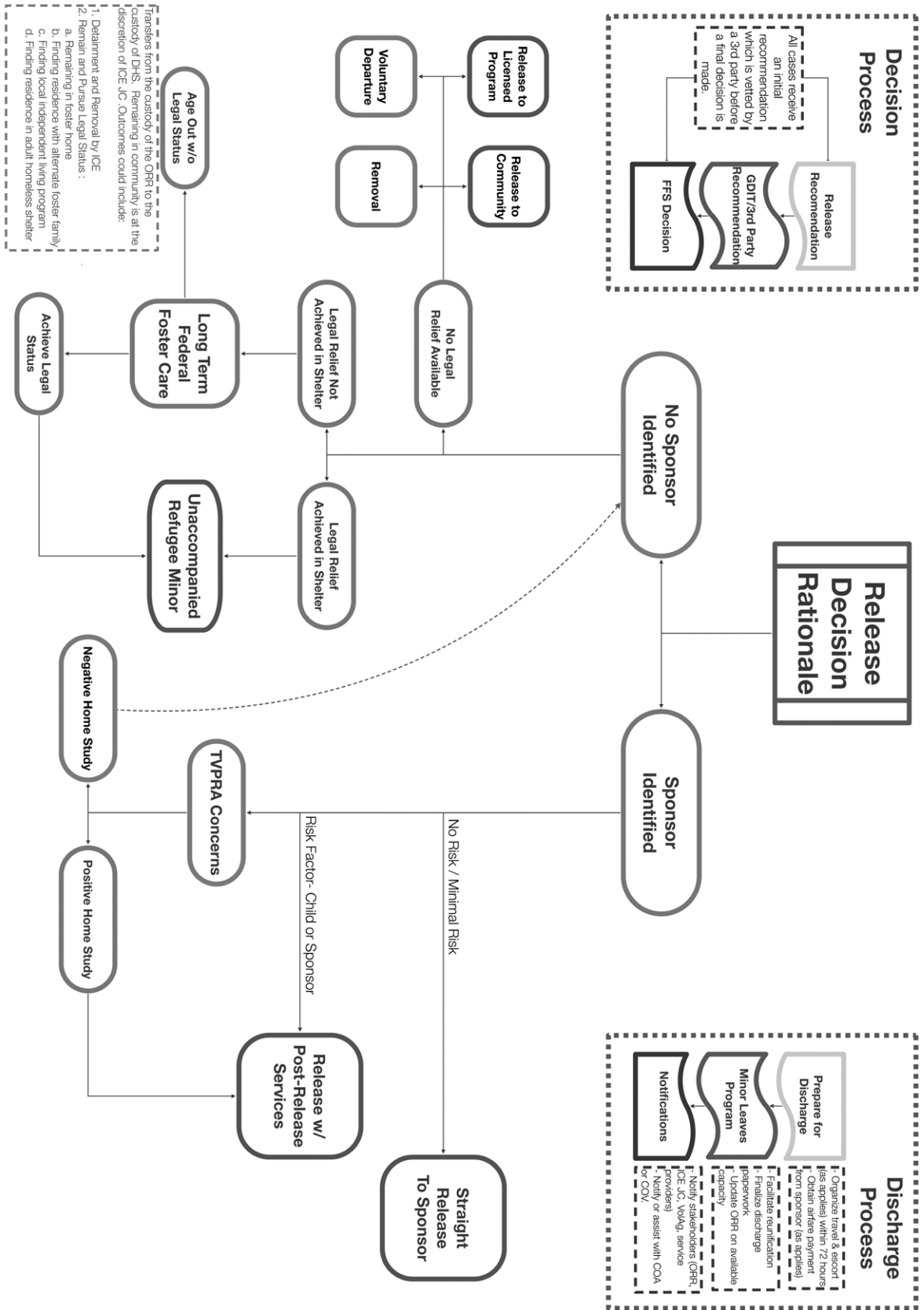
UC DECISION TREE: APPREHENSION



UC DECISION TREE: SHELTER



UC DECISION TREE: RELEASE



Transfers from the custody of the ORR to the custody of DHS. Remaining in community is at the discretion of ICE/IC. Outcomes could include:

1. Detainment and Removal by ICE
2. Remain and Pursue Legal Status:
 - a. Remaining in foster home
 - b. Finding residence with alternate foster family
 - c. Finding local independent living program
 - d. Finding residence in adult homeless shelter

POST-RELEASE

Study Summary and Policy Recommendations

Benjamin J. Roth, PhD & Breanne L. Grace, PhD
University Of South Carolina | College Of Social Work

Introduction

Immigrant children who enter the United States unaccompanied by a parent or guardian and without legal status are defined by the US legal system as unaccompanied alien children (UAC). Recent reports from UNHCR,¹ the Immigration Policy Center,² and other sources³ have explored the reasons why UAC are leaving their countries of origin. These reports have documented the threats of violence and privation that explain why they would risk journeying to the US border. However, with the exception of reports on the legal options available to UAC once they arrive,⁴ much less attention has been dedicated to questions concerning the well-being of UAC after they are apprehended at the border. According to federal law, many UAC have the right to be released to a family member or responsible adult in the US—a “sponsor”—while their deportation proceedings are pending. This study examines well-being outcomes for a particularly vulnerable subset of UAC who are released to sponsors: those who receive post-release services.

Post-release services. Upon apprehension at the border, UAC are placed in the custody of the U.S. Department of Health and Human Service’s Office of Refugee Resettlement (ORR). ORR then makes placement and service decisions for each child. Federal law allows ORR to release UAC to sponsors in the US—typically family members—and assign them to post-release services if they meet certain risk criteria. Risk criteria include a history of being trafficked or abused, mental health concerns, or a disability. Post-release services (PRS) are provided by ORR-funded agencies to facilitate processes of family reunification and community integration. These agencies deliver PRS locally, wherever UAC and their sponsors live. Rather than offer a model for PRS, ORR provides a list of mandatory service goals that agencies must satisfy: (1) ensure the safe placement of UAC; (2) refer UAC to legal services; (3) assist UAC with school enrollment and engagement; (4) link UAC to medical services; and (5) arrange for mental health services. PRS support typically last for 6 months. We know relatively little about how post-release services are delivered by local agencies, how the nature of these services may vary depending on where sponsors live, or the effectiveness of these services.

Study design. Drawing on case studies of four post-release programs run by one ORR-funded agency—Lutheran Immigrant and Refugee Service (LIRS)—in four different states (MD/VA, NC, GA, and SC), this study explores the scope of services provided by these programs; the needs of UAC who ORR has classified in need of post-release services; and the challenges UAC face to finding the services and resources they need.⁵ Semi-structured interviews with case managers and program coordinators are supplemented by interviews with 20 UAC and their sponsors. All interviews were recorded and transcribed. This is the only evaluation of PRS that we are aware of which was conducted by outside experts. It is exploratory in nature. We recommend conducting a large-scale and quantitative analysis to assess the ultimate success of post-release services overall, but this study is a necessary first step. Study findings and recommendations for ORR identify the core elements that should be more rigorously conceptualized and operationalized before launching a comprehensive evaluation.

¹ http://www.rcusa.org/uploads/pdfs/UAC_UNHCR_Children%20on%20the%20Run_Full%20Report.pdf

² http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf

³ <http://www.rcusa.org/uploads/pdfs/Mission%20To%20Central%20America%20FINAL.pdf>

⁴ http://www.uchastings.edu/centers/cgrs-docs/traacherous_journey_cgrs_kind_report.pdf and

<http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>

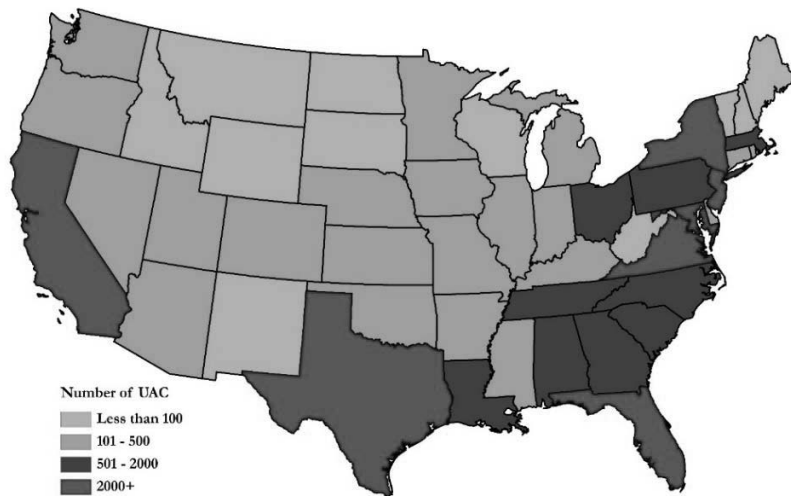
⁵ This study was funded by LIRS, but the authors collected the data for the report independently. The report represents the authors’ views based on analysis of these data. Together with the authors, LIRS hopes that this report serves to inform policymakers and practitioners of the risks and opportunities inherent in our nation’s response to children who are seeking safety and protection at our borders.

Findings

Addressing the unique needs of each UAC is heavily influenced by the availability of local services where UAC are placed. The complex layers of trauma and exposure UAC have experienced combined with the particular characteristics of where they are placed can present distinct challenges for UAC and their families. In particular, UAC who settle in non-traditional immigrant receiving contexts—whether in states such as North Carolina or suburbs outside of large cities—are likely to encounter significant obstacles to accessing the supports that they need. The convergence of these factors makes it more difficult for PRS caseworkers to refer UAC to the community services they need.

Unaccompanied Children Released to Sponsors, 2014

Source: ORR UAC release data from January 1 – September 30



In keeping with ORR requirements, PRS case managers help connect UAC to attorneys, schools, mental health services, medical providers, and many other critical resources. PRS providers consistently state that legal services are the most important referral for UAC. Yet, they also report that it can be the most challenging referral to make, depending on the availability of affordable legal service providers. Referrals to other types of services can also be difficult, particularly in some suburbs and rural areas—where many UAC are being placed with sponsors—where there are relatively few such providers. Regardless of geography, available services that are culturally and linguistically accessible often have long wait-times and limited bilingual services. While services are conceptualized as separate domains—health, mental health, education, community—these services are compounding. For example, education influences a child’s engagement in the legal system, health and mental health influence

educational outcomes, and an understanding of the legal process allows children to better engage in their communities.

The actual implementation of PRS extends well beyond ORR’s minimum requirements, and requires extensive capacity-building and support. Because of the challenges posed by the needs of each UAC and the distinct assemblage of resources available in the communities where they live, the work of PRS case managers is more complex, nuanced and expansive than outlined by ORR. In effect, PRS providers exceed the minimal program requirements stipulated by ORR. However, this comes at significant cost to these organizations and case managers. The complicated nature of each case, the immense geography of UAC settlement and the variation of resources by site strain organizational funds, require large investments of time, and heavily tax case managers and their supervisors. Case management requires a teamwork approach. Case managers need additional support and feedback to manage the idiosyncrasies of each case. Too often, however, the demands of the position and the dispersed geography of the children they serve require case managers to be away from the office for extended periods of time. While it is not always possible for case managers to regularly interact with one another, support from LIRS Children Specialists provide case managers critical support through monthly meetings, email, and assistance in the field through phone contact.

Minors who receive PRS comply with Immigration Court reporting requirements. Sponsors and UAC are told at release that they must appear at all Immigration Court hearings, and available data suggests that the vast majority comply with this requirement. Minors who receive PRS benefit from additional information about what to expect in Immigration Court and referrals for local and trusted legal service providers. PRS case managers remind minors of their court dates and may even accompany them to court. However, while PRS are time-limited, the legal process for UAC is not. During the six months of PRS, case managers are only able to provide needed supports during the minor’s first (and possibly second) court date.

Recommendations for ORR

The screening process for determining which UAC receive post-release services needs to be rigorously evaluated.

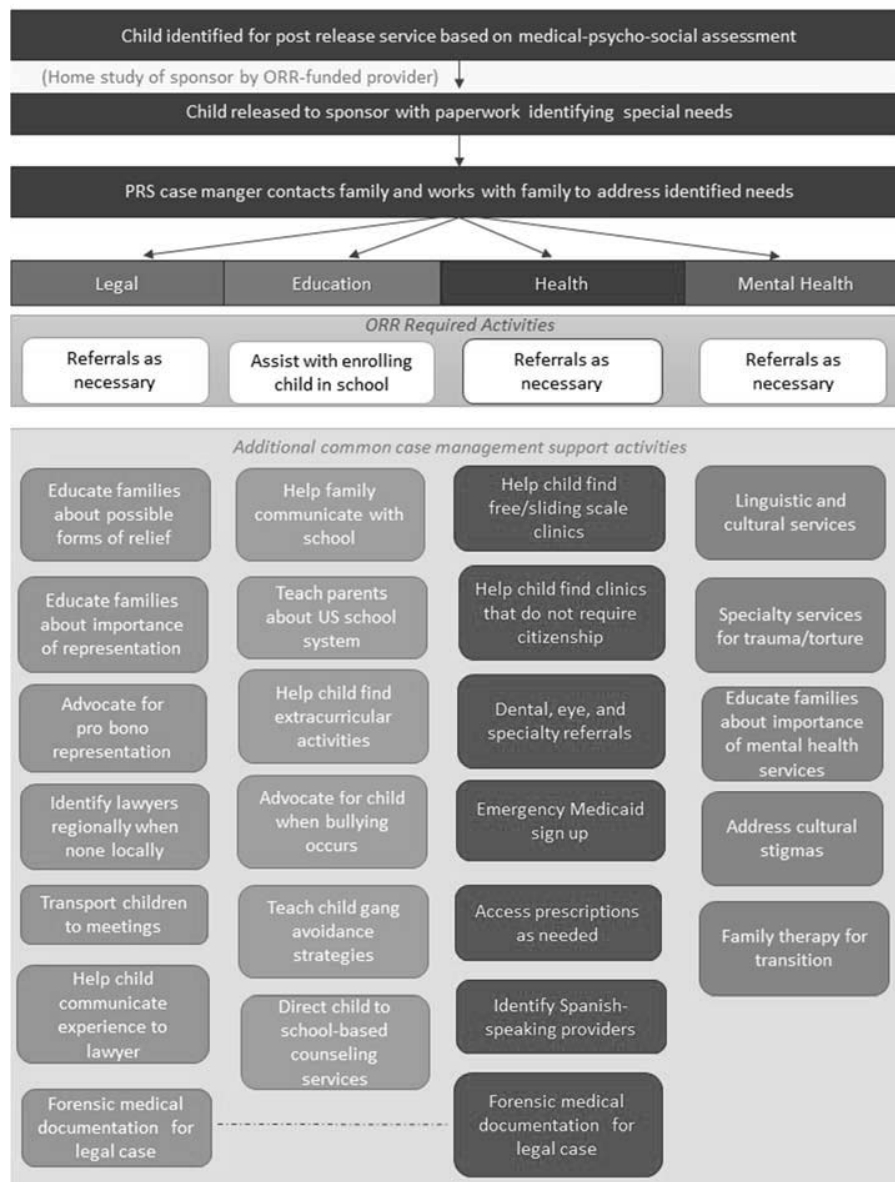
We have some concerns about the accuracy of the instruments used to determine which UAC are in need of post-release services. Many UAC may be “at risk” even if they are not flagged as such by detention center staff. This is not to suggest that

the professionals making these determinations are unequipped to do so. Rather, accurate assessments may be limited by the length of time they have to assess these children, the nature of the trauma many UAC have experienced, and the location of assessment. Based on UAC narratives of their migration experience and what other researchers have shown, many of the factors that contribute to why a UAC presents with “at-risk” symptoms are the norm rather than the exception. These children are fleeing countries with high rates of violence. They have traveled hundreds of miles across multiple borders without a parent or guardian, often enduring hunger, danger, and human rights abuses along the way. Why, then, are not more UAC recommended for PRS? It is conceivable that UAC in detention would be reticent to disclose details about their traumatic experiences to someone they do not know in an unfamiliar facility in a different country. We should not mistake their caution under these circumstances as an indicator that they do not require post-release services.

PRS goals need to be clarified by ORR. Case managers regularly exceed ORR expectations. Their experiences provide insight into how ORR objectives can be reformulated to more accurately reflect the challenges and importance of family reunification and community integration. LIRS centralized support mechanisms—including trouble shooting, trainings, and print materials—are vital to case managers’ ability to do their jobs on a daily basis. Although current ORR expectations are

fairly minimal, due to a lack of resources in some locations these basic expectations are exceedingly difficult to meet without additional support.

Post Release Service Schedule



We underscore that, while the goal of post-release services is to connect UAC to the supports they need, there is considerable variation in (a) the sponsors that receive them, (b) the communities where they settle (urban, suburban, rural), and (c) the types and availability of local service providers in these places. The interaction of these factors can exacerbate the need for services, limit UAC access to services, or both. With these variable conditions in mind, we recommend that a more comprehensive evaluation of post-release services is needed to determine what works and under what conditions.

ORR must develop a therapeutic approach to case management. A therapeutic case management model involves approaching each case from an individual perspective and creating treatment plans based on the needs of the UAC and sponsor, not solely on ORR requirements. A therapeutic approach is relevant throughout the life of a case, but must begin right from the start. Case managers’ ability to support UAC and their families is predicated on rapport that is established through extensive face-to-face contact. This trust is necessary to effectively match UAC needs with local resources and services—many times connecting them to mainstream institutions that are unfamiliar to both UAC and their sponsor.

PRS providers need additional resources and the option to extend case management services beyond six months.

Depending on where PRS providers are located, the expectation that they connect immigrant children to community services can be extremely difficult. In the case of legal service providers in some rural and suburban areas, there are very few affordable attorneys familiar with immigration courts and the possible legal claims available to UAC. Our findings suggest that without case management support it is even less likely that UAC and sponsors would connect to these resources. While we strongly recommend a more focused and clearly delineated set of goals, indicators, and measures, we also recognize that the extreme disparity in resources by locations poses the greatest problem. UAC do not have a uniform experience with sponsors after release. In effect, national, local, and family contexts deeply shape individual outcomes. A model program would address these resource and geographic disparities in order to maximize PRS effectiveness and create a more equitable engagement with the legal system.

ASSESSING NEED AND UTILIZATION OF COMMUNITY SERVICES AMONG UNACCOMPANIED CHILDREN RELEASED FROM FEDERAL CUSTODY WITHOUT FOLLOW-UP SERVICES

AUGUST 25, 2014

Research Collaboration between Lutheran Immigration & Refugee Service, Children's Services & Jayshree Jani, University of Maryland, Baltimore County

Background and Purpose: Unaccompanied immigrant and refugee youth, referred to as “Unaccompanied Alien Children” (“UAC”) under federal law, enter the U.S. daily to escape violence, political oppression, extreme poverty, and chronic instability in their native countries, or as victims of human trafficking. U.S. legal authorities place UAC in shelter care until a sponsor/caregiver is identified. The Office of Refugee Resettlement (“ORR”) contracts with Lutheran Immigration and Refugee Services Children’s Services (“LIRS CS”) to provide in-shelter and follow-up services to UAC. These follow-up services utilize a typical case management structure coordinated by community providers, including referrals for legal assistance, mental health and substance abuse treatment, educational programs, and medical care.

Although these services are considered an integral component of UAC’s integration into the community, only 5-10% of youth released from shelters receive post-release follow-up services. The Trafficking Victims Protection Re-Authorization Act (TVPRA) of 2008 requires the Secretary of Health and Human Services to conduct follow-up services, during the pendency of removal proceedings, for children for whom a home study was conducted. Home studies are required if the child is a victim of severe trafficking in persons, has a disability as defined in Section 3 of the American Disabilities Act, if the child has been a victim of physical or sexual abuse under circumstances that indicate that the UAC’s health or welfare has been significantly harmed or threatened, or if the proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child. The TVPRA also authorizes the Secretary 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. The rest of the children are reunified without services to support or monitor them after release. The research reported in this paper sought to assess the specific needs of children released from shelter care with no follow-up services.

Methods: The sample initially included 100 sponsors of UAC released from LIRS-affiliate shelters without follow-up services beginning in July 2013. All of the children in the sample were Central American, ~60% were male, and 86% were under 14 (See demographic characteristics below). Those sponsors who agreed to participate were contacted at 14 days, 3, 6, 9, and 12 months post-shelter release, the typical LIRS’s follow-up services home visit schedule. At each interval, a researcher gathered qualitative and quantitative data recording the family’s challenges and successes in accessing educational, legal, health, and mental health services, and social networks in the community without case management support.

In April 2014, research began to add a second 100 UAC sponsors of children released from LIRS-affiliate shelters with no follow up services. This group includes only sponsors of children who are over 14 years old at the time of release. As of August 25, 2014, 53 sponsors had agreed to participate in the research. Releases seem to be slower than during initial data collection of the first 100 sponsors. Researchers have completed about

15 3-month calls, and note that of those 15, approximately 3 are unable to be contacted, and 2 are no longer living with the intended sponsor. Six-month calls will begin in October 2014. Some trends noted during data collection with this second group of sponsors:

- There seem to be fewer sponsors willing to participate at the initial call/ more questions regarding the survey since the surge on the border began.
- A majority of sponsors report enrolling their children in school; however, they report not being aware that vaccinations were done at the shelters, and are re-vaccinating their children for school enrollment.
- Very few sponsors are aware of the LOPC program, nor are they aware of the LOPC telephone number.
- It seems that few sponsors are reading or looking at the ‘packet’ given to them at release.
- Legal issues and finding affordable legal aid is sponsors’ biggest concern.

Country of Origin	44% Honduras 35% El Salvador 18% Guatemala 3% Mexico
Gender	58% Male 42% Female
Age	86% Under 14 (“Tender Age”) 14% 14 and Older
Sponsor Location (By State)	26% TX; 17% CA; 12% NY; 10% MD; 7% VA; 6% GA; 6% NJ; 2% AR; 2% CO; 2% FL; 2% LA; 2% TN; 1% MA; 1%MS; 1% 1% NC; 1% PA; 1% OR; 1% WA

Participant Demographics—First 100 Sponsors

Results (First 100 Sponsors): Preliminary data indicate that families can access and utilize community-based services independently. At six months, 100% of UAC’s still lived with their intended sponsor; 98% were enrolled in school; and 61% had accessed medical care. However, research also found that sponsors had difficulty resolving certain problems on their own, the most common of which was understanding legal processes and accessing legal assistance. By six months, only 28% of respondents had obtained legal aid. At 14 days, only 45% of respondents had accessed the Executive Office for Immigration Review hotline to gather case status information. After being contacted by the researchers and informed about the EOIR hotline, 93% of respondents had done so by the six month interval.

Key Results – First 100 Sponsors Up to 6 Months

	14 Days (N=100)	3 Months (N=89)	6 Months (N=71)
With Intended Sponsor	100%	100%	100%
Enrolled in School	71%	97%	98%
Safety Problems	1%	0%	0%
Accessed EOIR Hotline	45%	83%	93%
Had a Court Date	2%	17%	38%
Had Legal Aid	4%	15%	28%
Identified MH Concerns	19%	18%	14%
Accessed MH Care	6%	.04%	.04%
Identified Physical Health Concerns	13%	10%	10%
Accessed Medical Care	26%	47%	61%
Attended Church	66%	75%	76%

Recent Update as of August 25, 2014: 9 month calls completed for first 100 Sponsors

- Children are still with intended sponsors and attending scheduled court appointments at 9 & 12-months.
- Sponsors continue to report very few safety concerns.
- 9-month calls are completed, and we have completed about 50% of 12-month calls
- Since the 6-month calls, about 10 more families have become unreachable.
- Reports of health and mental health concerns remain about the same as at 6-months
- A majority of children completed the school year and will move to the next grade.
- Many children attended summer ESL classes.
- We are noting an increase in court dates scheduled, and of those with a court date, many have an attorney. However, at 12-months, some youth's names are still not in the EOIR hotline.
- Legal issues and finding affordable legal aid remain sponsors' biggest concern.

Conclusions and Implications: The research process served as an unintended intervention by identifying the lack of awareness of available services and service utilization among sponsors. The researchers found that while families were initiating the process of integration, ongoing sponsor and child support was useful to facilitate understanding of system navigation. Findings from the study underscore the importance of supporting locally-based service interventions and outreach that take into account the individuality of each community in order to enhance the existing capacities of UAC sponsors. Such services could include support for schools as they absorb diverse and changing demographics, are a major point of integration, and are an opportunity for social inclusion. In addition, the research supports exploration of a peer navigation program that could tap into the expertise of existing community members.

CHILD PROTECTION LAWS REGARDING UNACCOMPANIED CHILDREN

Child Protection Laws Regarding UACs	Protections under the Law
<p><i>William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, § 235 (codified at 8 U.S.C. § 1232).</i></p>	<p>The TVPRA specifically sought to expand the protection of unaccompanied children by incorporating the following ideas and principles:</p> <ul style="list-style-type: none"> • Limiting CBP custody <ul style="list-style-type: none"> o Children should be in CBP custody for no longer than 72 hours, other than exceptional circumstances. o Mexican minors are protected from non-refoulement of Mexican by establishing procedures to guarantee Mexican unaccompanied children are screened for trafficking crimes and for asylum claims before being repatriated to Mexico. If DHS cannot make a determination within 48 hours or the child is too young to make an independent decision, the Mexican child must be transferred to ORR. • Protecting unaccompanied children from expedited removal procedures <ul style="list-style-type: none"> o Unaccompanied children are ensured due process by access to a full proceeding before an immigration judge. o Minors are eligible for Voluntary Departure at no cost to the child, given their inherent dependency. o All Mexican unaccompanied minors who are transferred to ORR also are guaranteed this due process right. Mexican minors who do not meet the non-refoulement criteria above are returned to Mexico in accordance with contiguous country agreements. • Providing access to legal orientation and counsel <ul style="list-style-type: none"> o “To the greatest extent practicable,” ORR must provide unaccompanied children access to attorneys in legal proceedings, as a matter of protection. This however, does not guarantee a right to legal access at government expense. • Codifying custody requirements specified in the Flores Settlement Agreement <ul style="list-style-type: none"> o Reaffirmed the principle that children must be placed in the “least restrictive” setting and that secure detention should only be utilized for the safety of the child or the community. o Outlined procedures for release to immediate family members, extended relatives, and other sponsors. o Delineated child welfare protections for ORR <ul style="list-style-type: none"> • Potential sponsors are required to have an identity verification and assessment for potential risk to the child through background checks. • Safe release to a sponsor requires a home study and post-release follow-up services for especially vulnerable children (i.e. those who survived trafficking, child abuse, or have special needs.) • Permits (but does not require) ORR to provide post-release services for children to better integrate into their new homes and communities. • Allows ORR to appoint Child Advocates for trafficking victims and particularly vulnerable children. • Advancing safe repatriation <ul style="list-style-type: none"> o Calls on ORR, DHS, and the Department of State to work together to ensure that children are not repatriated to their home countries in unsafe manners by running a pilot repatriation program.

	<ul style="list-style-type: none"> o Requires DHS to consult human rights reports when assessing whether to repatriate a child. • Improving Special Immigrant Juvenile Status <ul style="list-style-type: none"> o Expands and clarifies the definition of Special Immigrant Juvenile Status (a form of legal relief that is available to unaccompanied alien children who have been abused, abandoned, or neglected) so that more vulnerable children are eligible for this type of relief. o U.S. Citizenship and Immigration Services (USCIS) is prohibited from denying Special Immigrant Juvenile status to a self-petitioner, solely based on age, so long as the person was a minor on the date the application was filed.
<p><i>Perez-Funes v. District Director, INS, 619 F. Supp. 656 (C.D. Cal. 1985).</i></p>	<p>The Perez-Funes case:</p> <ul style="list-style-type: none"> • Addresses the voluntary departure process, finding that the voluntary departure process violated the Due Process Clause of the Fifth Amendment. • Issues a permanent injunction requiring Immigration and Naturalization Service (INS) to give detained minors notice of alternatives to voluntary departure and an opportunity to contact a parent, close adult relative, friend, or legal services before presenting the voluntary departure form. • Requires the federal government to ensure that children understand their due process rights. • Prohibits the government from removing unaccompanied children through voluntary departure procedures without first assuring that they were properly informed of and understood alternatives to voluntary departure.
<p><i>Flores Settlement Agreement, Case No. CV 85-4544RJK(Px (1997)</i></p>	<p>The Flores Settlement Agreement, sets forth guidelines regarding the detention, release, and treatment of children in detention. Flores is applicable to ALL children—unaccompanied and accompanied children in immigration custody—as it so states in the class definition, “The certified class in this action shall be defined as follows: ‘All minors who are detained in the legal custody of the INS.’”</p> <p>Specifically the agreement provides that:</p> <ul style="list-style-type: none"> • Children are entitled to legal protections that include judicial review and access to representation, human rights monitoring, and courts. • Children must be held in the least restrictive setting taking into consideration to their age and vulnerability/special needs. • Except in extraordinary situations, children must be released from CBP custody no more than 72 hours after apprehension. • Children should be released from custody without unnecessary delay to a parent, legal guardian, adult relative, individual specifically designated by the parent, licensed program, or, alternatively, an adult who seeks custody who DHS deems appropriate. • Children may not be detained with an unrelated adult for more than 24 hours. • Children must be in humane living conditions while in custody. <p>Exhibit 1 of the Flores Agreement stipulates minimum standards for the care of minors. This includes:</p> <ul style="list-style-type: none"> • Suitable living conditions and adequate food, clothing, and personal grooming items. • Appropriate medical, dental, and mental health care. • Educational services. • A reasonable right to privacy. <p>The other Exhibits of the Flores Agreement set forth instructions for services officers regarding the processing, treatment, and placement of minors; contingency plans; and agreements concerning facility visits.</p>

<p><i>Perez-Olano Settlement Agreement, Case No. CV 05-3604 (2010)</i></p>	<p>The Perez-Olano Settlement Agreement:</p> <ul style="list-style-type: none"> • Provides that “specific consent” from DHS, HHS and DOJ is only required for applicants in HHS custody who are seeking a juvenile court order to alter their status or placement, otherwise Special Immigrant Juvenile Status (SIJS) applicants do not need the federal government’s “specific consent” to enter state juvenile court proceedings. • Any waiver of these rights must be knowing, intelligent, and voluntary • Creates an appeal process if specific consent is denied. • Provides “age-out” protection by requiring that DHS not reject or deny applicants based on age, if a complete application for SIJS was filed before reaching age 21. • Provides that in certain circumstances United States Immigration and Customs Enforcement (ICE) will join in motions to reopen removal proceedings for juveniles who were granted SIJS status and who seek to adjust their status to that of a lawful permanent resident.
<p><i>Orantes Injunction, affirmed by Orantes-Hernandez, et al. v. Holder, D.C. No. 82-1107-MMM (9th Cir. 2008)(unpublished).</i></p>	<p>The Orantes Injunction is a permanent injunction that applies only to Salvadorans in DHS custody who are eligible to apply for asylum. It requires DHS to:</p> <ul style="list-style-type: none"> • Advise detainees orally and in writing of their right to apply for asylum, right to request a deportation hearing, and right to be represented by counsel • Ensure the privacy of attorney-client communications • Provide legal materials on immigration relief in English and Spanish • Provide adequate telephone access • Provide updated and accurate legal services lists <p>Under the injunction, DHS may not coerce or attempt to persuade Salvadoran detainees to accept voluntary departure.</p>
<p><i>Homeland Security Act (2002), Pub. L. No. 107-296, Title IV, Subtitle E, § 462 (codified at 6 U.S.C. §279).</i></p>	<p>Section 462 transfers the responsibilities of caring for and placing unaccompanied children from the Commissioner of the Immigration and Naturalization Service to the Director of the Office of Refugee Resettlement.</p>
<p><i>Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, §§ 1101 and 1261 (codified at 42 U.S.C. §15607 and 8 U.S.C. § 1232).</i></p>	<p>The Violence Against Women Reauthorization Act (VAWA):</p> <ul style="list-style-type: none"> • Extends the application of the Prison Rape Elimination Act (PREA), which requires the adoption of standards of detection, prevention, reduction, and punishment of rape and sexual assault in federal facilities, to all immigration detention facilities that are under the authority of the DHS and HHS. • Provides that DHS must consider alternatives for unaccompanied children aging out of HHS custody. Specifically requiring DHS to consider “placement in the least restrictive setting available after taking into account the alien’s danger to self, danger to the community, and risk of flight. Such aliens shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien’s need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home.” • Authorizes expansion of the Child Advocate program to three new sites within three years. • Extends to the ORR federal foster care program to certain U visa recipients.

Immigration and Nationality Act (INA), sections 101(a)(42) and 208, as amended by the Refugee Act of 1980 (based on the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees)

The Immigration and Nationality Act § 101(a)(42):

- Defines the term “refugee” as “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion”
- Establishes the authority for provision of foster care, health care, and other child welfare services to unaccompanied refugee children.
- Explicates in §208 asylum application procedures for “any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status...”
- Gives initial jurisdiction for unaccompanied children’s asylum applications to asylum officers (rather than the Executive Office for Immigration Review).
- Exempts unaccompanied children from the one-year filing deadline and removal to a “safe third country.”
- Provides “age-out” protection against government processing delays, by continuing derivative eligibility as children for unmarried applicants who reach age 21 while their applications are still pending for certain immigration benefits (i.e. asylum, refugee status, VAWA, family-based and employment-based visas). (Child Protection Status Act)

ROUNDTABLE ACRONYMS

ATIP: Anti-Trafficking in Persons, a program of the Office of Refugee Resettlement that identifies and serves victims of human trafficking

CBP: Customs and Border Protection of the Department of Homeland Security; includes oversight for U.S. Border Patrol

DHS: United States Department of Homeland Security

DOD: United States Department of Defense

DOJ: United States Department of Justice

EOIR: Executive Office for Immigration Review, the immigration court system located within the United States Department of Justice

FEMA: Federal Emergency Management Agency

HHS: United States Department of Health and Human Services, which includes the Office of Refugee Resettlement

HSA: Homeland Security Act of 2002, which dissolved the former Immigration and Naturalization Service and divided its responsibilities into ICE and USCIS, created the Department of Homeland Security, and brought under one departmental umbrella Transportation Security Administration, U.S. Secret Service, FEMA, U.S. Coast Guard, CBP, ICE, USCIS, as well as other offices and responsibilities

ICE: United States Immigration and Customs Enforcement, the branch of DHS responsible for investigative and interior immigration enforcement activity

INS: Immigration and Naturalization Service, which formerly held responsibility for both immigration enforcement and benefits. The agency was dissolved in 2003 following the passage of the Homeland Security Act and the creation of ICE and USCIS

KYR: “Know Your Rights” presentations providing legal rights and information to children and adults; typically given by nonprofit legal service providers

LOPC: Legal Orientation Program for Custodians, a program of EOIR providing information about legal proceedings and responsibilities of adult caregivers for unaccompanied children in immigration proceedings

NGO: Non-governmental organization; may also be called nonprofit or voluntary agency

NTA: A “Notice to Appear,” which is a letter given or mailed to an immigrant in removal proceedings with the date the immigrant is to appear in immigration court

OPPM: An Operating Policies and Procedures Memorandum, issued by EOIR on various topics

ORR: Office of Refugee Resettlement, which is responsible for care and custody of unaccompanied children; part of the United States Department of Health and Human Services

OTM: “Other than Mexican,” a term used by Customs and Border Protection for an immigrant who is from any country other than Mexico

SIR: “Significant incident report,” documentation submitted by ORR service providers following certain events involving children while in ORR custody (such as maltreatment, attempted suicide, physical conflict, etc.)

TVPRA: The Trafficking Victims Protection Reauthorization Act of 2008

UAC: “Unaccompanied alien child,” the term introduced in the Homeland Security Act of 2002, is defined as “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.

UNHCR: United Nations High Commissioner for Refugees, the UN refugee agency

USCIS: United States Citizenship and Immigration Services



Founded in 1939, **Lutheran Immigration and Refugee Service** is nationally recognized for its leadership with and for refugees, asylum seekers, unaccompanied children, migrants in detention, families fractured by migration, and other vulnerable populations. LIRS serves migrants and refugees through over 60 grassroots, legal and social service partners nationwide.



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