

# COMMENT

## PLEASE CONFIRM YOUR ONLINE ORDER: ONE CHILD ADOPTED FROM OVERSEAS AT NO COST\*

### TABLE OF CONTENTS

|      |                                                                                       |      |
|------|---------------------------------------------------------------------------------------|------|
| I.   | INTRODUCTION .....                                                                    | 1008 |
| II.  | “THE CHILD EXCHANGE” .....                                                            | 1011 |
|      | A. <i>Who Is Involved?</i> .....                                                      | 1011 |
|      | B. <i>How Does It Work?</i> .....                                                     | 1012 |
|      | C. <i>Is Private Rehoming Human Trafficking?</i> .....                                | 1015 |
|      | D. <i>Should the United States Just Ban International<br/>        Adoption?</i> ..... | 1017 |
|      | E. <i>Why Not Just Shut Down the Sites?</i> .....                                     | 1018 |
| III. | PRE-ADOPTION .....                                                                    | 1019 |
|      | A. <i>The Hague Convention</i> .....                                                  | 1019 |
|      | B. <i>Pre-Adoption Education</i> .....                                                | 1022 |
|      | C. <i>Pre-Adoption Disclosure and Evaluations</i> .....                               | 1023 |
|      | D. <i>Pre-Adoption Contracts</i> .....                                                | 1025 |
| IV.  | POST-ADOPTION .....                                                                   | 1026 |
|      | A. <i>Post-Adoption Services Information and<br/>        Support</i> .....            | 1027 |
|      | B. <i>Post-Adoption Medical Subsidies</i> .....                                       | 1029 |

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|                                                              |      |
|--------------------------------------------------------------|------|
| V. AT ADOPTION DISSOLUTION .....                             | 1030 |
| A. <i>Interstate Compact on the Placement of Children</i> .. | 1031 |
| B. <i>Criminal Law</i> .....                                 | 1033 |
| VI. CONCLUSION .....                                         | 1034 |

## I. INTRODUCTION

What is rehoming? A quick Google search leads to pet adoption.<sup>1</sup> Wikipedia’s “Rehoming” page also redirects to “Pet Adoption,” which describes rehoming as the “process of taking guardianship of and responsibility for a pet that a previous owner has abandoned or released to a shelter or rescue organization.”<sup>2</sup> Some people, however, now also use the term in reference to adopted children.

In the fall of 2013, NBC News ran a series of segments on America’s underground network for adopted children.<sup>3</sup> The series detailed the results of an eighteen-month study conducted by international news agency Reuters, which revealed the potentially shocking truth that some “American parents use the Internet to find new families for children they regret adopting.”<sup>4</sup> Reuters identified eight online bulletin boards where parents advertised unwanted children, often adopted from foreign countries, as part of a practice referred to as “private rehoming.”<sup>5</sup> In many of the cases, the adopted children have mental health or behavioral issues resulting from their harsh or tragic childhoods.<sup>6</sup> The parents, optimistic at first, become overwhelmed and frustrated, and, for several reasons which frequently include the protection of their other children, marriage, or sanity, seek to undo through the web what they have come to consider a mistake.<sup>7</sup>

1. What Is Rehoming?, GOOGLE, <https://www.google.com/#psj=1&q=what+is+rehoming%3F> (last visited Feb. 4, 2015).

2. *Pet Adoption*, WIKIPEDIA, [http://en.wikipedia.org/w/index.php?title=Pet\\_adoption&redirect=no](http://en.wikipedia.org/w/index.php?title=Pet_adoption&redirect=no) (last visited Feb. 4, 2015); *Rehoming*, WIKIPEDIA, <http://en.wikipedia.org/w/index.php?title=Rehoming&redirect=no> (last visited Feb. 4, 2015).

3. *Nightly News: The Lost Children* (NBC television broadcast Sept. 9, 2013), available at <http://www.nbcnews.com/video/nightly-news/52966445/#52966445>; *Today: The Lost Children* (NBC television broadcast Sept. 9, 2013), available at <http://www.today.com/video/today/52960480/#52960480>.

4. Megan Twohey, *The Child Exchange: Inside America’s Underground Market for Adopted Children, About the Series*, REUTERS, <http://www.reuters.com/investigates/adoption/#article/about> (last visited Feb. 4, 2015).

5. *Id.*

6. *See id.* at *Part 1: The Network* (explaining that 152 of the 261 children advertised were described as facing troubles, including attachment disorders, and past physical and sexual abuse).

7. *See id.* (stating that the parents seeking to rehome their children spoke of the children “terrorizing them and other kids in the household”). In describing why he sought

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1009

The investigation that sheds light on this practice has been met with a mixed response.<sup>8</sup> While Reuters stirred up opinions on adoption dissolution and private rehoming,<sup>9</sup> adoption experts and members of the media have publicized similar occurrences in the past.<sup>10</sup> In fact, in January 2011, the Association of Administrators of the Interstate Compact on the Placement of Children issued an alert to child welfare authorities, warning them of the practice and declaring that it places “children in grave danger.”<sup>11</sup> Although

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to rehome his adopted daughter, one father stated that she “was destroying our home . . . causing problems in our marriage.” *Id.* at Part 3: *The Middlemen*.

8. This contentious issue has engendered passion on both sides of the debate. Compare John M. Simmons, *Rehoming Is a Monstrous Act*, HUFFINGTON POST (Sept. 18, 2013, 12:48 PM), [http://www.huffingtonpost.com/john-m-simmons/rehoming-is-a-monstrous-act\\_b\\_3943583.html](http://www.huffingtonpost.com/john-m-simmons/rehoming-is-a-monstrous-act_b_3943583.html) (describing “[a]doptive parents who walk away from their children” as “despicable” and arguing that “[n]o parent should be able to dump their children willy-nilly”), with *Adoptive Parent’s Worst Nightmare: Interview with an Anonymous Mother Who Rehomed Her Adopted Child*, ADOPTION VOICES MAG. (Oct. 17, 2013), <http://adoptionvoicesmagazine.com/adoptive-parents/adoptive-parent-rehomed-adoptee/#.VJBZ076xFUQ> (chronicling one family’s path to deciding to dissolve their adoption after finding “no help”), and *Problems with Reuters Series on Re-Homing Adopted Children (a.k.a. Adoption Disruptions)*, LAST MOM (Sept. 14, 2013), <http://lastmom.com/problems-with-reuters-series-on-re-homing-adopted-children-a-k-a-adoption-disruptions/> [hereinafter *Problems with Reuters Series*] (describing parents seeking rehoming as abused, lacking support, and “desperately seeking an option that has a higher chance for healing”).

9. Editorial, *Shut Down Internet Adoptions: ‘Re-homing’ Is For Pets, Not Children*, CHI. TRIB. (Oct. 31, 2013), [http://articles.chicagotribune.com/2013-10-31/opinion/adopt-ct-edit-1031-20131031\\_1\\_child-welfare-adoptions-two-children](http://articles.chicagotribune.com/2013-10-31/opinion/adopt-ct-edit-1031-20131031_1_child-welfare-adoptions-two-children); Mirah Riben, *Adopted Then Discarded*, DISSIDENT VOICE (Oct. 19, 2013), <http://www.dissidentvoice.org/2013/10/adopted-then-discarded/>; *There Is No Law in US that Makes It Illegal to Rehome Adopted Child*, VOICE RUSS. (Sept. 11, 2013, 9:58 PM), [voiceofrussia.com/2013\\_09\\_11/There-is-no-law-in-US-that-makes-it-illegal-to-rehome-adopted-child-expert-2029/](http://voiceofrussia.com/2013_09_11/There-is-no-law-in-US-that-makes-it-illegal-to-rehome-adopted-child-expert-2029/). Even the popular television program *Law & Order: Special Victims Unit* has chimed in. *Law & Order: Special Victims Unit, Wednesday’s Child* (NBC television broadcast Feb. 5, 2014). In a recent episode, the detectives attempted to locate a boy, fraught with attachment and developmental issues, after his overwhelmed mother rehomed him via the internet several years after adopting him from the country of Georgia. *Id.* Although expectedly dramatized, the episode portrayed a fairly accurate depiction of desperate parents, the lack of laws prohibiting rehoming, and the dangers of the practice. *Id.*

10. See, e.g., MIRAH RIBEN, *THE STORK MARKET: AMERICA’S MULTI-BILLION DOLLAR UNREGULATED ADOPTION INDUSTRY* 34–36 (2007) (detailing “an underground network of families that take in [adopted] children others do not want” (alteration in original) (quoting Wendy Koch, *Underground Network Moves Children from Home to Home*, USA TODAY, Jan. 18, 2006, at A1)); Wendy Koch, *supra* (describing the Schmitzes, who faced child trafficking charges after they “took in children adopted abroad by other people”); Clifford Levy, *Adopted Boy, 7, Is Sent Back, Outraging Russia*, N.Y. TIMES, Apr. 10, 2010, at A1 (detailing a Russian official’s push to freeze American adoptions after one Tennessee woman put her seven-year-old adopted son on a plane back to Russia alone with a note describing the boy as violent and severely psychopathic and stating “[a]fter giving my best to this child, I am sorry to say that for the safety of my family, friends and myself, I no longer wish to parent this child”); Ginny McKibben, *Suspect in Bid to Sell Child Cuts Deal*, DENVER POST, Aug. 1, 2000, at B2 (discussing Denise Kaye Thomas, who tried to sell her adopted daughter over the internet).

11. Press Release, Ass’n of Adm’rs of the Interstate Compact on the Placement of Children, ALERT: The Disruption, Dissolution and Illegal Transfer of Adoptive Children

private rehoming may have its benefits and supporters, the inescapable reality is that the practice leaves a vulnerable segment of the population at risk for abuse and neglect, and undermines the protections provided by adoption laws.<sup>12</sup>

The United States has long recognized the importance of protecting children in the adoption process.<sup>13</sup> To adopt a child from a foreign country, parents must undergo an extensive screening process, which includes a criminal background check, fingerprinting, and a home study, and the American state in which they reside must also find them eligible.<sup>14</sup> Those precautions, however, are all for naught if adoptive parents subsequently place those children with unscreened individuals.<sup>15</sup> This Comment explains the need for change, and then focuses on potential ways the law can address the problem and minimize the risk.

Part II of this Comment delves into the private rehoming problem, describing the practice and the players in more depth, and using actual illustrative accounts to highlight the danger. It goes on to address several questions that speak to why no easy fix exists for this issue: why this might not meet the definition of human trafficking, and why neither banning international adoption altogether, nor shutting down adoption dissolution forums, can solve the problem.

Part III explores the ways lawmakers might remedy the rehoming problem by addressing the shortcomings of pre-adoption requirements. Mandating more complete pre-adoption disclosure, screening, education, and agreements could help minimize the risk that parents adopt children they are not actually prepared to raise, and, thereby, minimize the risk that parents turn to private rehoming.

However, pre-adoption mandates are not enough. Part IV of this Comment explains the need for post-adoption support and discusses how expanding availability of support could combat rehoming. Providing more thorough information regarding post-adoption services, medical subsidies, and affordable resources could help parents cope with the stress of raising children with health and behavioral issues.

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(Jan. 2011), <http://www.reuters.com/investigates/adoption/#article/part1> (follow “the official wrote” hyperlink).

12. Privately dealing over the internet is “an end run on all the safeguards in place for adoption proceedings.” McKibben, *supra* note 10 (quoting Prosecutor Bob Chappell).

13. *See, e.g.*, Act of May 24, 1851, ch. 324, 1851 Mass. Acts 815 (stating that a judge must find the adoptive parents to be “of sufficient ability to bring up the child, and furnish suitable nurture and education”).

14. *Intercountry Adoption: Who Can Adopt?*, U.S. DEP’T ST., [http://adoption.state.gov/adoption\\_process/who.php](http://adoption.state.gov/adoption_process/who.php) (last updated Jun. 1, 2013).

15. *See supra* note 12 and accompanying text.

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1011

Nevertheless, some adoptive families, even with information and support, may find themselves unable to remain together as a functioning family. Therefore, lawmakers must also provide a means of protection for cases in which the adoption fails. Part V examines the limitations of current law that might provide such protection. Authorities might use the Interstate Compact on the Placement of Children or state criminal statutes regarding endangering the welfare of a child to deter risky private rehoming. However, to ensure universal protection and consistency, federal lawmakers must pass a law dealing explicitly with dissolution and private rehoming, and encompassing pre-adoption and post-adoption requirements. By choosing not to take such steps, lawmakers choose to leave vulnerable children exposed and defenseless to the risk of the dangerous practice of private rehoming.

## II. “THE CHILD EXCHANGE”<sup>16</sup>

Unfortunately, the rehoming problem has no easy fix. Instead, it calls for a comprehensive solution.<sup>17</sup> Lawmakers must understand the parties and dangers associated with these rehoming transactions to understand the magnitude of the issue and develop the best possible solution.<sup>18</sup>

### A. *Who Is Involved?*

Through its eighteen-month investigation, Reuters exposed online discussion boards on Yahoo and Facebook geared towards private rehoming.<sup>19</sup> Specifically, Reuters identified 261 children

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16. Twohey, *supra* note 4.

17. See *infra* Part VI.

18. Cf. Rachel Maddow, *To Fix a Problem, One Must First Understand It*, MSNBC (July 9, 2012, 8:00 AM), <http://www.msnbc.com/rachel-maddow-show/fix-problem-one-must-first-underst> (“[P]olicymakers aren’t able to address [a] problem if they don’t understand it.”).

19. Twohey, *supra* note 4, at *Part 1: The Network*. Following the investigation, Yahoo removed the boards identified. *Id.* It is still relatively easy, however, to find adoptive parents seeking to dissolve their adoption; in a Google search for “adoption from disruption forum” the first result is a forum on Adoption.com. Adoption from Disruption Forum, GOOGLE, <https://www.google.com/#hl=en&q=adoption+from+disruption+forum> (last visited Feb. 4, 2015). The forum includes posts and comments from a number of adoptive parents who have either dissolved an adoption or are considering doing so. *Disruption Support*, ADOPTION.COM FORUMS, <http://forums.adoption.com/disruption-support/> (last visited Feb. 4, 2015). In a post from October 2013, the month following the publication of the Reuters investigation, one mom wrote that she daydreamed of her adopted son “getting eaten by a shark.” *Where to Start Disruption—Int’l Adoption in CA*, ADOPTION.COM FORUMS (Oct. 19, 2013, 11:07 AM), <http://forums.adoption.com/disruption-support/421516-where-start-disruption-intl-adoption-ca.html>. Although she did not advertise the ten-year-old for private rehoming outright, she did declare her desire to dissolve the adoption and even

advertised through the Yahoo group called Adopting-from-Disruption since 2007.<sup>20</sup> The majority of those children, at least 70%, were born overseas, and many were described as dealing with some sort of issue stemming from their lives pre-adoption, including attachment disorders and physical and sexual abuse.<sup>21</sup> Many of the parents of these troubled children feel that they have exhausted their options,<sup>22</sup> but that does not always seem to be the case; for example, one parent advertised an eight-year-old girl from China after having her home for only five days.<sup>23</sup>

Parents and children are not the only players involved in private rehoming, however.<sup>24</sup> Others, who are rarely licensed as social workers or adoption specialists, serve as the middlemen in these transactions, helping to set up overwhelmed adoptive parents with potential secondary families.<sup>25</sup> While this could serve as a possible safety net, unfortunately, most of these middlemen leave the screening of prospective parents to the families advertising the children.<sup>26</sup>

### B. *How Does It Work?*

Forlorn parents meet a secondary family online.<sup>27</sup> The only screening that occurs is the screening that the adoptive parents are capable of and choose to do.<sup>28</sup> In some cases, the adoptive parents may seek legal advice or attempt to consult a state agency for advice or assistance, but in many, they do not, and, screened or not, these secondary families, through simple power of attorney

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contemplated lying to the social worker supervising the adoption and to the foreign country where the child was born about the state of the adoption. *Id.*

20. Twohey, *supra* note 4, at *Part 1: The Network*.

21. *Id.*

22. Melissa Puchalla, who advertised her adopted child online, claimed no one understood what she was going through. *Id.* at *Part 3: The Middlemen*. Gary Barnes explained that he and his wife “reached a turning point when it got to where [they] couldn’t find any help or get any help, and [they] had tried every suggestion.” *Id.* Tom Mealey was “so desperate,” and Glenn Mueller had “nobody [to] turn to.” *Id.*; see also *Adoptive Parent’s Worst Nightmare: Interview with an Anonymous Mother Who Rehomed Her Adopted Child*, *supra* note 8 (describing one family’s decision to end their adoption after over four years of struggling).

23. Twohey, *supra* note 4, at *Part 1: The Network*.

24. See *Disruption/Rehoming Question?*, ADOPTION.COM FORUMS (Jan. 21, 2013, 7:19 PM), <http://forums.adoption.com/foster-parent-support/412201-disruption-rehomingquestion.html> (asking about privately rehoming adopted children for an adoptive father with whom the poster had been “put in contact with”).

25. See Twohey, *supra* note 4, at *Part 3: The Middlemen*.

26. *Id.* Tim Stowell, the founder of the secret Facebook group called Way Stations of Love, says he leaves the vetting to the adoptive families, and in many cases, he never knows what happens to the children advertised on his group. *Id.*

27. See *id.* at *Part 1: The Network*.

28. See *id.* at *Part 3: The Middlemen*.

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1013

documents, take on these adopted children.<sup>29</sup> Although these documents do not actually transfer guardianship, practically, they allow the secondary parents to act as the child's parents, permitting them to enroll the child in school, make medical decisions on the behalf of the child, and discipline the child, among other things, making private rehoming through the internet a seemingly simple process.<sup>30</sup>

For Todd and Melissa Puchalla, rehoming their adopted daughter did seem rather simple.<sup>31</sup> Two years after the Puchallas adopted Quita from Liberia, they found her new parents—through the internet.<sup>32</sup> A few weeks later, the Puchallas drove to Nicole and Calvin Eason's mobile home and dropped Quita there; no child welfare officials or attorneys attended the exchange.<sup>33</sup> Quita's parents "simply signed a notarized statement declaring these virtual strangers to be Quita's guardians."<sup>34</sup> Unbeknownst to the Puchallas at the time, the Easons were not the "wonderful" couple they seemed to be.<sup>35</sup> Welfare authorities had removed Nicole Eason's biological children from her home years earlier, and children the Easons babysat had accused them of sexual abuse.<sup>36</sup> According to Quita,

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29. *Id.* at Part 1: *The Network*. In fact, free forms are available online for anyone to complete and use. *Care of Minor Child*, USLEGAL.COM, <http://freelegalforms.uslegal.com/power-of-attorney/care-of-minor-child/> (last visited Feb. 4, 2015).

30. Twohey, *supra* note 4, at Part 1: *The Network*. One online form exemplifies the powers parents can grant through these power of attorney documents:

The Attorney-in-Fact named . . . shall have the following powers in regard to the health, education and general welfare of the Minor Child(ren):] . . . to consent to any x-ray examination, anesthetic, medical or surgical diagnosis or treatment, and hospital care . . . [t]o do and perform any and all acts necessary or required that a natural parent would perform in reference [to] education . . . [t]o perform and provide discipline . . . [and to] perform and act as Natural parent in reference to any and all legal matters necessary or desirable for the custody, care and education of [the] Minor Child(ren) . . . .

*Care of Minor Child*, *supra* note 29.

31. The Puchallas found a secondary family, the Easons, just two days after posting an ad online. Twohey, *supra* note 4, at Part 1: *The Network*.

32. *Id.*

33. *Id.*

34. *Id.* The document the Puchallas signed, entitled "Designation of Guardians and Durable Power of Attorney," designated the Easons to "act as guardian" of Quita and purported to give the Easons the authority to: "[maintain] residential custody of [Quita] . . . approve medical treatment of any kind or type or to disapprove the same . . . designate schooling for [Quita], and access [] any and all of [Quita's] educational records . . . [and] generally act in loco parentis." *Id.* (follow "As happened in Quita's case" hyperlink).

35. *Id.* at Part 1: *The Network*.

36. *Id.* The deputy who helped to remove Nicole's second child wrote in his report that the condition of the home was "deplorable" and that Nicole had "severe psychiatric problems" as well as "violent tendencies." *Id.* (follow "wrote in his report" hyperlink).

on her first night with the Easons, they told her to join them in their bed; Nicole was naked.<sup>37</sup>

When the Easons later moved Quita out of state without notifying the Puchallas, state authorities became involved and discovered that the Easons had faked the home study<sup>38</sup> they presented to the Puchallas.<sup>39</sup> Eventually, Quita returned to the parents who had given her up through the internet.<sup>40</sup> The state charged neither the Puchallas nor the Easons with any crime.<sup>41</sup> According to authorities, no one had committed a crime.<sup>42</sup>

Unlike the Puchallas, some parents do attempt to screen the secondary family, but many suffer from such frustration that they are not in a position to be picky.<sup>43</sup> Even Tom Mealey, a police officer, surrendered his five-year-old son, adopted from Guatemala, to the Easons after meeting them online.<sup>44</sup>

The behavioral and mental health issues that make rehomed children challenging to raise also make them especially vulnerable to abuse.<sup>45</sup> According to Michael Seto, an expert on the sexual

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37. *Id.* at Part 1: *The Network*.

38. *Id.* A home study involves an in-depth review of the prospective adoptive parents and their home, which generally includes the following: an in-person interview and home visit; an evaluation of the parents' physical, mental, and emotional capabilities; descriptions of finances and living conditions; and inquiries into substance, child, and sexual abuse. *Intercountry Adoption: Home Study Requirements*, U.S. DEP'T ST., [http://adoption.state.gov/adoption\\_process/who\\_can\\_adopt/homestudy.php](http://adoption.state.gov/adoption_process/who_can_adopt/homestudy.php) (last visited Feb. 4, 2015).

39. Twohey, *supra* note 4, at Part 1: *The Network*. The document the Easons provided to the Puchallas was short and lacked a great deal of information standard to home studies. Compare *Intercountry Adoption: Home Study Requirements*, *supra* note 38 (describing a home study as an in-depth review that includes interviews and inquiries, home visits, various evaluations, and detailed descriptions of the parents and home), with Twohey, *supra* note 4, at Part 1: *The Network* (follow "document attesting to their parenting skills" hyperlink) (broadly recommending the Easons as "good prospective adoptive parents" and stating that the Easons were sincerely motivated to adopt, that they were mature and well-adjusted, and that it would be "easy to conclude that a child would be welcomed into a loving, stable family and would be given every opportunity to grow into his/her own person" with no reference at all to a home visit, finances or living conditions, or any inquiry into past accusations of abuse). The brevity of the document, along with its many grammatical errors, might have been a red flag an attorney or adoption official could have sighted, had anyone consulted one. *Id.*

40. Twohey, *supra* note 4, at Part 1: *The Network*.

41. *Id.*

42. *Id.*

43. One woman, offering her eleven-year-old son from Guatemala, wrote, "I am totally ashamed to say it but we do truly hate this boy!" *Id.* Another mother, offering her twelve-old-daughter, wrote, "I would have given her away to a serial killer, I was so desperate." *Id.* at Part 2: *The Dangers*.

44. *Id.* at Part 4: *The Failures*. Later, Tom Mealey called the incident "horribly embarrassing" and commented that he and his wife were glad that it was "just the Easons" because it "could've been Hannibal Lecter." *Id.*

45. See JILL GOLDMAN ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVS., A COORDINATED RESPONSE TO CHILD ABUSE AND NEGLECT: THE FOUNDATION FOR PRACTICE

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1015

abuse of children at the Royal Ottawa Health Care Group in Canada, advertising details of things like substance abuse or sexual promiscuity essentially equates to “waving a red flag” for predators.<sup>46</sup> Before Nicole Eason procured Quita, she had another ten-year-old, also given up by his adoptive family, also found online.<sup>47</sup> At that time, Nicole lived with another man, Randy Winslow.<sup>48</sup> The state later convicted Randy Winslow, a self-described “lil boylover” who referred to the ten-year-old as his “fun boy,” of sending and receiving child pornography.<sup>49</sup>

In total, the Reuters investigation revealed that Nicole Eason, whose past was marred with accusations of physical and sexual abuse of children, obtained six children through the online underground market for adopted children.<sup>50</sup> That revelation exemplifies the risks of private rehoming, a problem which, unfortunately, authorities cannot easily address using current legislation, such as human trafficking laws.<sup>51</sup>

### C. *Is Private Rehoming Human Trafficking?*

It might be.<sup>52</sup> According to Reuters, private rehoming does not qualify as human trafficking because the party adopting the child is not paying to adopt.<sup>53</sup> However, this explanation conflicts with

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32–33 (2003) (explaining that “children who are perceived by their parents as ‘different’ or who have special needs—including children with disabilities, as well as children with chronic illnesses or children with difficult temperaments—may be at greater risk of maltreatment” as “[t]he demands of caring for [those] children may overwhelm their parents”).

46. Twohey, *supra* note 4, at *Part 2: The Dangers*. One parent wrote that his young daughter showed “sexualized behaviors.” *Id.* Another described her young son as “handsome,” “obedient,” and “eager to please.” *Id.* at *Part 1: The Network*. A third wrote that the dad had been “inappropriate with her.” *Id.* at *Part 2: The Dangers*.

47. *Id.* at *Part 2: The Dangers*.

48. *Id.*

49. Plea Agreement at 2, *United States v. Winslow*, No. 3:07-CR-00072-TMB, 2008 WL 7122825 (D. Alaska Feb. 12, 2008); Twohey, *supra* note 4, at *Part 2: The Dangers*.

50. Twohey, *supra* note 4, at *Part 4: The Failures* (referencing the five-year-old Guatemalan boy Nicole got from Officer Tom Mealey, the ten-year-old boy she and Randy Winslow picked up in a hotel parking lot, the eight-year-old girl she found through an online moderator, the fourteen-year-old Russian boy who had lived with his adopted family for over ten years, the thirteen-year-old Russian girl who had already been rehomed once, and Quita).

51. *Infra* Part II.C.

52. According to the Human Trafficking Prosecution Unit of the United States Department of Justice, human trafficking crimes involve acts of “compelling or coercing a person’s labor, services, or commercial sex acts.” *Human Trafficking Prosecution Unit: Overview*, U.S. DEPT JUST., <http://www.justice.gov/crt/about/crm/htpu.php> (last visited Feb. 4, 2015).

53. Reuters, Comment on *Welcome to Our Live Chat with Reuters’ Megan Twohey About Today’s Special Reports of Online Groups Used to Exchange Adopted Children in the United States*, FACEBOOK (Sept. 9, 2013, 9:04 AM), <https://www.facebook.com/Reuters/posts/630015230352170>.

that of the website Human Trafficking Search, which states that rehomings is a form of human trafficking despite the lack of money exchanged.<sup>54</sup>

The law is unclear. Chapter 77 of Title 18 of the United States Code addresses human trafficking.<sup>55</sup> The only section that explicitly addresses children makes it illegal to recruit, harbor, transport, or obtain a child and cause them to engage in a commercial sex act.<sup>56</sup> The statute defines the term “commercial sex act” as “any sex act, on account of which anything of value is given to or received by any person.”<sup>57</sup> Rehomed children have accused secondary families of sexual abuse in the past,<sup>58</sup> and, arguably, the secondary family provided the adoptive family relief from the unwanted child that could be considered “of value.” The statute does not define “value.”<sup>59</sup> Absent a statutory definition, courts give words their ordinary meanings.<sup>60</sup> Multiple definitions of “value” appear in Merriam-Webster’s Dictionary, which could provide ammunition to argue that what the secondary families give to the adoptive families is either “of value” or is not.<sup>61</sup> Either way, the statutory language limits this crime to cases in which a sex act occurs, and does not apply broadly to all private rehoming.<sup>62</sup>

Other provisions make it unlawful to hold a person in debt servitude<sup>63</sup> or as a condition of compulsory labor,<sup>64</sup> to force or coerce labor,<sup>65</sup> or to recruit or transport persons for labor or

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54. Michelle Lillie, *Rehoming Adopted Children*, HUM. TRAFFICKING SEARCH (Oct. 18, 2013), <http://humantraffickingsearch.net/wp/rehoming-adopted-children/>.

55. 18 U.S.C. §§ 1581–1596 (2012).

56. *Id.* § 1591(a).

57. *Id.* § 1591(e)(3).

58. See Twohey, *supra* note 4, at *Part 5: The Survivors* (describing how one young girl was sexually assaulted by the man to whom she was sent by her adoptive family).

59. See 18 U.S.C. §§ 1581–1596.

60. See *Perrin v. United States*, 444 U.S. 37, 42 (1979) (“A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”).

61. One definition of “value” refers to monetary value—“the monetary worth of something: marketable price.” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 1305 (Frederick C. Mish et al. eds., 10th ed. 1998). Thus, one might argue that “value” here is limited to monetary value and that providing relief to adoptive families by taking their unwanted children off of their hands has no such monetary value. However, another definition is “relative worth, utility, or importance,” which indicates that something can be “of value” without necessarily being of monetary value. *Id.* One might argue that the relief the adoptive families receive from the secondary families taking their children is of relative worth, utility, or importance to those adoptive families.

62. See 18 U.S.C. § 1591.

63. *Id.* § 1581(a).

64. *Id.* § 1584(a).

65. *Id.* § 1589(a).

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1017

services.<sup>66</sup> Although some rehomed children may be subject to such conditions, no statute encompasses the practice of private rehoming in its entirety.<sup>67</sup> Therefore, absent sexual abuse or forced labor, an adoptive family who takes the risk of privately rehoming their child has seemingly not committed a human trafficking crime.<sup>68</sup>

#### D. Should the United States Just Ban International Adoption?

Since it seems the majority of parents advertising online adopted their children from other countries, an easy solution is to halt international adoption altogether—if Americans never adopt the children, Americans can never privately rehome them.<sup>69</sup>

Most adoptions, however, both domestic and international, do not end in adoption dissolution.<sup>70</sup> “[A]doption—whether domestic or intercountry—is not inherently flawed.”<sup>71</sup> A ban on international adoption, moreover, might deprive many children of their basic human right to family.<sup>72</sup> A ban on international adoption, therefore, does not seem to be the right answer to protecting children.

66. *Id.* § 1590(a).

67. *See id.* §§ 1581–1596.

68. *See id.*

69. *See, e.g.,* Frowner, Comment on *Regret Your International Adoption? There’s An App for That!*, METAFILTER (Sept. 9, 2013, 9:43 AM), <http://www.metafilter.com/131766/Regret-your-international-adoption-Theres-an-app-for-that> (“[I]nternational adoptions in general should be halted.”); Need\_MindBleach, Comment on *Unhappy with the Foreign Child You Adopted? Just Post an Ad Online to “Rehome” Them with Someone Else*, FARK (Sept. 9, 2013, 12:53 PM), <http://www.fark.com/comments/7924909/Unhappy-with-foreign-child-you-adopted-Just-post-an-ad-online-to-rehome-them-with-someone-else> (“Ban foreign adoptions and this wouldn’t be a problem.”).

70. *See* Sharon Jayson, *International Adoptions: Kids Older, Have Special Needs*, USA TODAY (Oct. 30, 2013, 12:03 AM), <http://www.usatoday.com/story/news/nation/2013/10/30/international-adoption-special-needs/3307633/> (“Most adoptions do work out.”).

71. Richard Carlson, *Seeking the Better Interests of Children with a New International Law of Adoption*, 55 N.Y.L. SCH. L. REV. 733, 734 (2011). “For all the risks it might pose in any individual case, it remains the best way to match many thousands of children in need with prospective parents . . .” *Id.*

72. Paul Barrozo, *Finding Home in the World: A Deontological Theory of the Right to be Adopted*, 55 N.Y.L. SCH. L. REV. 701, 730–31 (2011).

The international human rights of the child reject the avoidable vulnerability, suffering, regimentation, and isolation of children without parents. Because the effects of institutionalization, abandonment, and second-class belonging generally prevent children from fully enjoying most other rights later in life, the human right to grow in a family is a pre-condition for the enjoyment of most other human rights.

*Id.* at 731. “Unparented children and prospective parents around the world should meet, regardless of country, race, or culture. Global adoption is the preeminent institutional mechanism for making this happen.” *Id.* at 730.

*E. Why Not Just Shut Down the Sites?*

Following publication of the Reuters investigation, the Illinois Attorney General urged Yahoo and Facebook to police online groups where parents may advertise their adopted children.<sup>73</sup> Although Yahoo swiftly removed six rehoming groups identified by Reuters, citing violations of their terms-of-service agreement, the Facebook page called “Way Stations of Love” thrived, with approximately 275 members at the time of the Reuters story.<sup>74</sup> A spokeswoman from Facebook defended the company’s decision not to remove the forum, stating “that the Internet is a reflection of society, and people are using it for all kinds of communications and to tackle all sorts of problems, including very complicated issues such as this one.”<sup>75</sup> Apart from obvious freedom of speech concerns,<sup>76</sup> other considerations make just shutting down rehoming sites the wrong answer. While “it’s easy to conclude that more monitoring of adoptive families and limiting access to social media/internet ‘sites’ would be the solution . . . this does great disservice to the vast amount of credible and readily available, trauma-informed and attachment-focused resources that are *also* available on the Internet.”<sup>77</sup>

Because adoptive families need post-adoption support,<sup>78</sup> and some find that support online,<sup>79</sup> shutting down the sites, assuming it is even possible to do so in the vast expanse of the World Wide Web, does not seem to be the answer. Instead of a quick fix, lawmakers must address private rehoming comprehensively, by attacking the problem with legislation on all fronts: pre-adoption, post-adoption, and at the time of dissolution.

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73. Megan Twohey, *Lawmakers Demand Stop to Parents Giving Away Adopted Kids on Internet*, NBC NEWS (Oct. 29, 2013, 4:51 PM), [http://investigations.nbcnews.com/\\_news/2013/10/29/21236625-lawmakers-demand-stop-to-parents-giving-away-adopted-kids-on-internet?lite](http://investigations.nbcnews.com/_news/2013/10/29/21236625-lawmakers-demand-stop-to-parents-giving-away-adopted-kids-on-internet?lite).

74. Twohey, *supra* note 4, at *Part 3: The Middlemen*; see also *id.* (follow the “Facebook page called Way Stations of Love” hyperlink).

75. *Id.* at *Part 1: The Network*.

76. See Twohey, *supra* note 73 (acknowledging the difficulty of balancing freedom of speech protections with limiting troubling content).

77. Press Release, Julie Beem, Lynne Lyon & Nancy P. Hemenway, A Joint Response to the Reuters/NBC “Rehoming” Report from the Attachment & Trauma Network (ATN), Attach-China International and INCIID (Sept. 13, 2013), *available at* <http://www.attachmenttraumanetwork.com/pdf/Reuters%20response%20-%20ATN,Attach-China%20&%20INCIID-09132013.pdf>.

78. See *infra* Part IV.

79. See, e.g., *Problems with Reuters Series*, *supra* note 8 (“Fortunately, I was able to develop a huge online support system of other moms in similar situations through blogs and message groups.”).

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1019

### III. PRE-ADOPTION

More thorough upfront screening, disclosure, education, and agreements could help to minimize the risk that parents will adopt children they are not actually prepared to raise, thereby minimizing the risk that frustrated parents will seek solace in private rehoming. Lawmakers can respond to the shortcomings of the current legislation and regulations in several ways to better meet the goal of ensuring each adoption serves the child's best interests.<sup>80</sup>

#### A. *The Hague Convention*

Currently, the Hague Convention and its implementing legislation govern international adoptions and set forth pre-adoption requirements. On May 29, 1993, countries from around the world joined in the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption:

*a* to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;

*b* to establish a system of co-operation amongst Contracting States<sup>81</sup> to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

*c* to secure the recognition in Contracting States of adoptions made in accordance with the Convention.<sup>82</sup>

The Convention, which entered into force in the United States in April 2008,<sup>83</sup> applies where a child resides in one of the participating countries and has been or is being moved to another participating country for adoption.<sup>84</sup> According to the Convention, an adoption only takes place if the competent authorities of the receiving country "have determined that the prospective adoptive parents are eligible and suited to adopt" and "have ensured that the prospective adoptive parents have been counselled as may be

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80. See *infra* note 87 and accompanying text (explaining one of the goals of federal adoption legislation is to ensure adoptions are in the children's best interests).

81. Although the Hague Convention referred to the participating countries as "states," to avoid confusion with the states of the United States of America, this Comment uses the term "countries."

82. Hague Convention on Protection of Children and Co-operation in Respect of International Adoption art. 1, May 29, 1993, 32 I.L.M. 1134.

83. *Intercountry Adoption: Hague Convention*, U.S. DEP'T ST., [http://adoption.state.gov/hague\\_convention.php](http://adoption.state.gov/hague_convention.php) (last visited Feb. 4, 2015).

84. *Id.*

necessary.”<sup>85</sup> Thus, the Convention provides special protection to children coming from and going to participating countries, including the United States.<sup>86</sup>

The United States implemented the Hague Convention through the Intercountry Adoption Act (IAA) “to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children’s best interests.”<sup>87</sup> To meet these goals, the Act designates the Department of State as central authority, with the Secretary of State as the head, and confers rulemaking power onto the Secretary.<sup>88</sup> The regulations promulgated by the Department pursuant to its rulemaking authority require adoption service providers to become licensed in the American state of residence, and accredited or approved by one of the Department’s designated accreditation entities.<sup>89</sup> The regulations also require that accredited adoption agencies prepare home studies on adoptive parents<sup>90</sup> and that adoption agencies provide at least ten hours of education to prospective parents.<sup>91</sup> Additionally, competent

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85. Hague Convention on Protection of Children and Co-operation in Respect of International Adoption, *supra* note 82, art. 5.

86. *Intercountry Adoption: Hague vs Non-Hague Adoption Process*, U.S. DEP’T ST., <http://travel.state.gov/content/adoptionsabroad/en/hague-convention/hague-vs-non-hague-adoption-process.html> (last visited Feb. 4, 2015).

87. Intercountry Adoption Act of 2000, Pub. L. No. 106-279, § 2(b)(2), 114 Stat. 825, 826 (codified at 42 U.S.C. § 14901(b)(2) (2012)).

88. 42 U.S.C. § 14911. The “Secretary [of State] may prescribe such regulations as may be necessary to carry out central authority functions on behalf of the United States.” *Id.*

89. 22 C.F.R. §§ 96.2, 96.12 (2014).

90. *Id.* § 96.47(a). The home study must include the following:

Information about the prospective adoptive parent(s)’ identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom the prospective adoptive parent(s) would be qualified to care (specifying in particular whether they are willing and able to care for a child with special needs); [a] determination whether the prospective adoptive parent(s) are eligible and suited to adopt; [a] statement describing the counseling and training provided to the prospective adoptive parent(s); [and] [t]he results of a criminal background check on the prospective adoptive parent(s) . . .

*Id.*

91. *Id.* § 96.48(a). The training must address the following, among several other things:

[T]he general characteristics and needs of children awaiting adoption, and the in-country conditions that affect children[;] . . . [t]he effects on children of malnutrition, relevant environmental toxins, maternal substance abuse, and of any other known genetic, health, emotional, and developmental risk factors[;] . . . [i]nformation about the impact on a child of leaving familiar ties and surroundings[;] . . . [d]ata on institutionalized children and the impact of institutionalization on children[; and] . . . [i]nformation on attachment disorders

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1021

authorities of the country of origin must prepare the child's medical records and provide prospective parents at least two weeks to review those records.<sup>92</sup> In these ways, the Convention attempts to protect the children of international adoption.

While the Convention serves as a potential safeguard for children adopted from participating countries, however, it does not provide the same protection to children from other foreign countries.<sup>93</sup> The United States responded to that gap with the Intercountry Adoption Universal Accreditation Act of 2012 (IAUAA).<sup>94</sup> The IAUAA, which went into effect in July 2014, extends the accreditation requirements of the Convention to all adoption service providers, even those located in nonparticipating countries.<sup>95</sup>

In a response to the Reuters investigation, the U.S. Department of State pointed to the IAUAA as a potential solution to the private rehoming problem.<sup>96</sup> Other experts, however, recognize that the IAUAA does not do enough.<sup>97</sup> In its response to the investigation, Holt International Child Services declared that, while the IAUAA moves in the right direction, it still leaves a "gaping hole" and "oversight" in the protection of children, which lawmakers must correct.<sup>98</sup> Increasing education requirements,

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and other emotional problems that institutionalized or traumatized children and children with a history of multiple caregivers may experience, before and after their adoption . . . .

*Id.* § 96.48(b).

92. *Id.* § 96.49 (stating that the agency must provide a copy of the child's medical records to the prospective adoptive parents as early as possible, but no later than two weeks before the adoption is to take place). Additionally, the agency must use reasonable efforts to obtain and provide information regarding when the state assumed custody of the child and the child's condition at that time, any history of significant illnesses or special needs, growth and developmental data, and information on known health risks common to the region in which the child resides. *Id.* The agency must also use reasonable efforts to obtain and provide social information about the child, including "[i]nformation about the child's birth family and prenatal history and cultural, racial, religious, ethnic, and linguistic background; . . . [i]nformation about all of the child's past and current placements prior to adoption[;] . . . and [i]nformation about any birth siblings whose existence is known." *Id.*

93. *Intercountry Adoption: Hague vs. Non-Hague Adoption Process*, *supra* note 86.

94. Intercountry Adoption Universal Accreditation Act of 2012, Pub. L. No. 112-276, 126 Stat. 2466.

95. *Id.*

96. See *Intercountry Adoption: Universal Accreditation Act of 2012*, U.S. DEP'T ST., <http://travel.state.gov/content/adoptionsabroad/en/hague-convention/agency-accreditation/universal-accreditation-act-of-2012.html> (last updated Sept. 17, 2014).

97. See, e.g., KERRY O'HALLORAN, *THE POLITICS OF ADOPTION: INTERNATIONAL PERSPECTIVES ON LAW, POLICY & PRACTICE* 168 (2d ed. 2009) ("The Hague Convention, as important as it undoubtedly is, provides only a framework of minimum standards for regulating intercountry adoption. *Even if fully implemented by all the countries engaged in this practice it would still fall short of ensuring that optimal standards prevail in all instances for all the children concerned.*" (emphasis added)).

98. Press Release, Holt Int'l Children's Servs., Holt International Children's Services, the Agency That Pioneered Intercountry Adoption Responds to Reuters Child Trafficking

enforcing mandated disclosure, requiring mental health evaluations, and using pre-adoption contracts would provide another layer of protection for these vulnerable children.

### B. Pre-Adoption Education

“It is widely accepted among adoption professionals today that parental preparation, education and support is crucial for the stability of an adoption and for the long-term emotional well-being of all family members.”<sup>99</sup> Unfortunately, the current law includes a relatively minor pre-adoption education requirement of only ten hours of training, which falls far below the typical thirty hours of training required when Americans adopt children from the U.S. foster care system.<sup>100</sup> Given the importance of pre-adoption preparation and education, and the fact that more preparation and education generally yield better adjustment outcomes,<sup>101</sup> it is illogical to require so little training from those adopting internationally. International adoptions pose no fewer challenges than domestic adoptions; in fact, what the Reuters investigation revealed may indicate the opposite.<sup>102</sup> Moreover, adoption expert David Brodzinsky, Research and Project Director at the Evan B. Donaldson Adoption Institute, who has been described as “one of the most highly regarded researchers, educators and authors in the field of adoption and foster care,”<sup>103</sup> recommends pre-adoption education for prospective international adoptive parents “over and above” the ten-hour-minimum.<sup>104</sup> A higher education requirement, therefore, could help families better decide if international adoption befits them and better prepare those families who decide it does.

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Reports (Sept. 11, 2013), available at <http://www.holtinternational.org/media/pressreleases/Holt%20Reuters%20Response%20Press%20Release%202%20pg.pdf>.

99. DAVID BRODZINSKY, EVAN B. DONALDSON ADOPTION INST., ADOPTIVE PARENT PREPARATION PROJECT PHASE I: MEETING THE MENTAL HEALTH AND DEVELOPMENTAL NEEDS OF ADOPTED CHILDREN 1 (2008), available at [http://adoptioninstitute.org/old/publications/2008\\_02\\_Parent\\_Preparation.pdf](http://adoptioninstitute.org/old/publications/2008_02_Parent_Preparation.pdf).

100. Twohey, *supra* note 4, at Part 2: *The Dangers*; see also *Foster and Adoption Services: Training (PRIDE)*, N.J. DEPT CHILD. & FAMILIES, <http://www.nj.gov/njfofosteradopt/services/training/> (last visited Feb. 4, 2015) (mandating nine three-hour training sessions); Tex. Adoption Res. Exch., *Steps to Become a Foster/Adoptive Parent*, TEX. DEPT FAM. & PROTECTIVE SERVICES, [http://www.dfps.state.tx.us/adoption\\_and\\_foster\\_care/get\\_started/steps.asp#pride](http://www.dfps.state.tx.us/adoption_and_foster_care/get_started/steps.asp#pride) (last visited Feb. 4, 2015) (declaring that sixteen hours of training is insufficient and mandating a thirty-five-hour competency-based training program).

101. See BRODZINSKY, *supra* note 99, at 5–6.

102. See Twohey, *supra* note 4, at Part 1: *The Network* (revealing that at least 70% of the children advertised online were born in foreign countries).

103. *About: Our People: Staff: David Brodzinsky, Ph.D.*, EVAN B. DONALDSON ADOPTION INST., <http://adoptioninstitute.org/about/our-people/staff/#david-brodzinsky-phd> (last visited Feb. 4, 2015).

104. BRODZINSKY, *supra* note 99, at 15.

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1023

*C. Pre-Adoption Disclosure and Evaluations*

Full disclosure about the child's history, health, and risks of psychiatric disorders can also help prospective parents make an educated decision.<sup>105</sup> The Intercountry Adoption Act requires agencies to use reasonable efforts to obtain and disclose to the prospective adoptive parents the child's medical and social history,<sup>106</sup> but may also hinder enforcement of that requirement. While the Department of State created a complaint review process,<sup>107</sup> the Act explicitly excludes a private right of action against those who violate its terms, meaning that the Act does not provide an avenue for an adoptive parent to sue an agency that fails to meet its requirements.<sup>108</sup>

Wronged parents may have another means to enforce mandated disclosure, however.<sup>109</sup> "Wrongful adoption is a cause of action that adoptive parents may assert against adoption agencies or independent practitioners for failure to disclose known health and other background information about the children these parents have adopted."<sup>110</sup> In 1995, the Supreme Judicial Court of Massachusetts recognized wrongful adoption as a cause of action allowing liability for claims based on "both intentional and negligent misrepresentation to adoptive parents about a child's history prior to adoption" and adding that adoption agencies "have an affirmative duty to disclose to adoptive parents information about a child that will enable them to make a knowledgeable decision about whether to accept the child for adoption."<sup>111</sup> While wrongful adoption may provide a potential means to enforce disclosure, its use is limited—"[t]he circumstances in which the adoptive parents can recover under this theory, however, differ vastly among states[.]" and "[a]

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105. "[F]amilies with less accurate preplacement information about the child will have less realistic expectations about behavior, resulting in long-term frustration for both parent and child." RICHARD P. BARTH & MARIANNE BERRY, *ADOPTION AND DISRUPTION: RATES, RISKS, AND RESPONSES* 108 (1988). "When not informed ahead of time, sexual abuse and behavioral problems were surprises to which families had difficulty adjusting." *Id.* at 120.

106. 22 C.F.R. § 96.49 (2014).

107. 22 C.F.R. § 96.69.

108. 42 U.S.C. § 14954 (2012).

109. MADELYN FREUNDLICH & LISA PETERSON, *WRONGFUL ADOPTION: LAW, POLICY, & PRACTICE* 11 (1998).

110. *Id.*

111. *Mohr v. Commonwealth*, 653 N.E.2d 1104, 1112 (Mass. 1995). In this case, the adoptive parents sued the adoption agency after it failed to disclose that their five-year-old adopted daughter's biological mother had been diagnosed with schizophrenia and that the little girl herself had missed developmental milestones and had been diagnosed with cerebral atrophy and mental retardation. *Id.* at 1107–08.

number of courts, while recognizing such a claim, have limited its applicability to specific circumstances.”<sup>112</sup>

Mandatory disclosure, however, can only help to the extent that the adoption agency knows of the child’s social background and health issues.<sup>113</sup> Since many of the private rehoming cases cite a mental health issue, often Reactive Attachment Disorder (RAD),<sup>114</sup> as a primary reason the parents feel frustrated and want to rehome,<sup>115</sup> mandatory pre-adoption mental health screenings would likely help.<sup>116</sup>

For example, a “physician may notice that a child has problems with emotional attachment by their first birthday.”<sup>117</sup> So, if a physician examines the child and diagnoses RAD, and the adoption agency makes the prospective adoptive parents aware of that diagnosis and arms them with information about its implications,<sup>118</sup> the parents may decide that they are unable or unwilling to handle those implications and forego the adoption.

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112. Thanda A. Fields, Note, *Declaring a Policy of Truth: Recognizing the Wrongful Adoption Claim*, 37 B.C. L. REV. 975, 976 (1996); see also D. Marianne Brower Blair, *Getting the Whole Truth and Nothing But the Truth: The Limits of Liability for Wrongful Adoption*, 67 NOTRE DAME L. REV. 851, 866–68 (1992).

113. The law only requires agencies to disclose information they can reasonably obtain. 22 C.F.R. § 96.49 (2014).

114. RAD “is a complex psychiatric illness that can affect young children,” which “is characterized by serious problems in emotional attachments to others.” Am. Acad. Child & Adolescent Psychiatry, *Reactive Attachment Disorder*, FACTS FOR FAMILIES, Mar. 2011, available at [http://www.aacap.org/App\\_Themes/AACAP/docs/facts\\_for\\_families/85\\_reactive\\_attachment\\_disorder.pdf](http://www.aacap.org/App_Themes/AACAP/docs/facts_for_families/85_reactive_attachment_disorder.pdf).

Most children with Reactive Attachment Disorder have had severe problems or disruptions in their early relationships. Many have been physically or emotionally abused or neglected. Some have experienced inadequate care in an institutional setting or other out-of-home placement such as a hospital, residential program, foster care or orphanage. Others have had multiple or traumatic losses or changes in their primary caregiver.

*Id.*

115. See Twohey, *supra* note 4, at *Part 1: The Network* (stating that 106 of the 261 advertised children Reuters identified were described as having an attachment disorder).

116. According to one expert:

The preadoption visit can be helpful for the adoptive family. Parents may request the pediatrician review medical records of the child and/or [biological] parents. The pediatrician may be able to use those records to help parents determine additional questions that could clarify a particular health issue and help parents clarify what special needs they are prepared to accept.

Veronnie F. Jones et al., *Comprehensive Health Evaluation of the Newly Adopted Child*, 129 PEDIATRICS e214, e215 (2012) (footnotes omitted), available at <http://pediatrics.aappublications.org/content/129/1/e214.full.pdf+html>.

117. *Reactive Attachment Disorder*, *supra* note 114.

118. Children with RAD often experience the following symptoms: severe colic and feeding difficulties, failure to gain weight, detached and unresponsive behavior, difficulty being comforted, preoccupied or defiant behavior, inhibition or hesitancy in social interactions, and disinhibition or inappropriate familiarity or closeness with strangers. *Id.*

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1025

They, therefore, will not become overwhelmed parents seeking relief through the internet.<sup>119</sup>

#### D. Pre-Adoption Contracts

In response to the Reuters investigation, one congresswoman complained that her cat has more protection than these children do—when she adopted her cat, she signed a contract prohibiting her from rehoming it.<sup>120</sup> In fact, most pet adoption agreements include a provision prohibiting rehoming.<sup>121</sup> Pet owners who violate these agreements, moreover, become liable for breach of contract, and courts can order them to return the pet or pay money damages.<sup>122</sup>

Extending this same protection to children by mandating a similar provision in adoption contracts might make parents think twice before rehoming their adopted children.<sup>123</sup> The potential liability may not deter those who do not believe the adoption agencies will catch them, but the provision itself would increase caution and awareness.<sup>124</sup>

A safety net written into the adoption agreement, spelling out what should happen in the event the adoptive parents wish to dissolve the adoption, would provide an additional layer of protection for the child.<sup>125</sup>

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119. One potential hindrance is the lack of reputable physicians available in some of the foreign countries from which these children are being adopted. In Russia, for example, “[a] health crisis has emerged . . . due to . . . inadequate healthcare . . . inefficiency and a lack of resources throughout the health care system.” Christine Danton, *The Health Crisis in Russia*, TOPICAL RES. DIG.: HUM. RTS. IN RUSS. & THE FORMER SOVIET REPUBLICS, 2007, at 42, 42, available at <http://www.du.edu/korbel/hrhw/researchdigest/russia/health.pdf>.

120. Twohey, *supra* note 73.

121. Cherie Travis, *Humane Law Forum: Avoiding Adopter Roulette*, ANIMAL SHELTERING, Mar.–Apr. 2011, at 49, 49, available at [http://www.animalsheltering.org/resources/magazine/mar\\_apr\\_2011/law\\_forum\\_avoiding\\_adopter\\_roulette.pdf](http://www.animalsheltering.org/resources/magazine/mar_apr_2011/law_forum_avoiding_adopter_roulette.pdf).

122. *Id.* at 50.

123. Toni Hoy, Patches Family Found.-R.A.D., *Response to Reuter’s Rehoming Series*, FACEBOOK (Sept. 13, 2013), <https://www.facebook.com/PatchesFamilyFoundation/posts/363338917143891>.

124. *Cf.* Doug Gross, *AT&T Asks Drivers to Take No-Texting Pledge*, CNN TECH, <http://www.cnn.com/2012/08/15/tech/mobile/att-texting-pledge/> (last updated Aug. 15, 2012, 9:18 PM) (stating that AT&T’s CEO acknowledges that the pledge not to text and drive “can be spotty in terms of verifiable results” but believes that “anything that draws attention to the problem is a plus”).

125. *See* Hoy, *supra* note 123 (“Prenuptial agreements are drawn up to protect both partners in the unfortunate event of marriage dissolution. Living trusts and wills are drawn up to manage assets at a time of unknown loss such as death. Orphaned and foster children should have the same legal protections in place as newlyweds and nearly dead.”).

## IV. POST-ADOPTION

While pre-adoption requirements might weed out parents who are not really prepared to handle an adoptive child and educate those who could be, unrealistic optimism clouds judgments concerning future life events. The social-psychological phenomenon known as the “optimism bias” causes people to judge negative events as less likely to happen to themselves than to the average person.<sup>126</sup> For example, nearly half of all marriages in the Western world end in divorce, but newlyweds estimate their chances of divorce at almost zero.<sup>127</sup> Additionally, people “hugely underestimate their chances of losing their job or being diagnosed with cancer.”<sup>128</sup> Similarly, adoptive parents, even ones who have received training and information, likely believe that their adoptions will go well.<sup>129</sup> They have been made aware of the potential behavioral and mental health issues. They have been told that it will be challenging, but they believe they can do it. They believe the child will love them, will attach to them, will change and grow for them. In many cases, they are right.<sup>130</sup> In some cases, however, they are wrong.<sup>131</sup> Those cases require post-adoption support, care, and education to minimize the risk of adoption dissolution and private rehoming.<sup>132</sup>

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126. Geeta Menon, Ellie Kyung & Nidhi Agrawal, *Biases in Social Comparisons: Optimism or Pessimism?*, 108 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 39, 39–40 (2009).

127. TALI SHAROT, THE SCIENCE OF OPTIMISM: WHY WE'RE HARD-WIRED FOR HOPE 1 (e-book 2012).

128. *Id.*

129. According to Zia Freeman, an adoption counselor who has twenty years of experience in the field and has dealt with at least two dozen disruptions:

We [give parents] a huge list of behaviors to expect and they're not fun. But I'll have parents come back and say to me, "I sat through those classes and heard you say that, but I still believed it wouldn't happen to me. That I wouldn't get a kid that wouldn't respond to my love.

Diane Mapes, *It Takes More Than Love: What Happens When Adoption Fails*, TODAY PARENTS (Aug. 1, 2012, 6:14 AM), <http://www.today.com/moms/it-takes-more-love-what-happens-when-adoption-fails-918076>; see also *Problems with Reuters Series*, *supra* note 8 (“I felt ready. I'd wanted to be a mom my whole life. I knew it would be hard, but I felt prepared. Boy, was I overly optimistic!”).

130. See Tina Traster, *Who Would Give Up an Adopted Child?*, N.Y. POST (Oct. 12, 2013, 10:19 PM), <http://nypost.com/2013/10/12/for-adoptive-families-love-cant-always-conquer-all/> (“In many adoptions, children do attach and have normal, adjusted, successful lives.”).

131. See *id.* (stating that the odds of attachment are “stacked” against some adopted children). According to Adam Pertman, executive director of the Evan B. Donaldson Adoption Institute, “[t]he myth that love will conquer all is just that, a myth.” *Id.*

132. See SUSAN LIVINGSTON SMITH, EVAN B. DONALDSON ADOPTION INST., KEEPING THE PROMISE: THE CRITICAL NEED FOR POST-ADOPTION SERVICES TO ENABLE CHILDREN AND FAMILIES TO SUCCEED (Oct. 2010), available at [http://adoptioninstitute.org/old/publications/2010\\_10\\_20\\_KeepingThePromise.pdf](http://adoptioninstitute.org/old/publications/2010_10_20_KeepingThePromise.pdf) (explaining the critical need for

2015] *PLEASE CONFIRM YOUR ONLINE ORDER* 1027

Post-adoption services do exist: support groups for adoptive parents and adopted children, counseling, workshops, and seminars.<sup>133</sup> Still, many parents that have resorted to private rehoming indicate that they felt no help existed.<sup>134</sup> According to a report published by Child Welfare Information Gateway, a service of the Children's Bureau, Administration for Children and Families, and the U.S. Department of Health and Human Services,<sup>135</sup> parents who dissolve most often mention a lack of information about where to go for services and the cost of services as the two biggest barriers to making the adoption successful.<sup>136</sup> Lawmakers can respond to shortcomings in current post-adoption services in several ways.

A. *Post-Adoption Services Information and Support*

Requiring adoption agencies to provide packets of post-adoption resource information, tailored to the parents' location and the child's needs, would alleviate the problem of lack of information.<sup>137</sup> Because needs arise over time, lawmakers should require agencies to provide or identify a hotline or other interactive source for parents who have questions about which resource suits them or where to go to access more information.<sup>138</sup> That way, if parents become overwhelmed they can refer back to the packet for direction and guidance.<sup>139</sup>

Still, without professional assistance in "interpreting the [behavior] and the reactions of the child on the basis of his personality, his past experiences and the type of attachment he developed up to that time[.]" adoptive parents may misinterpret their child's behavior "as a lack of love, of gratitude or of the wish to integrate."<sup>140</sup> Post-adoption follow-up visits could provide the

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post-adoption services); Susan Myers, *International Adoption and Post-Placement Services*, ADOPTION TODAY, Feb.–Mar. 2007, at 58, 59 (declaring that "post-adoption services are vital to the ongoing success of intercountry adoption").

133. CHILD WELFARE INFO. GATEWAY, FINDING AND USING POSTADOPTION SERVICES 6–8 (Sept. 2012), available at [https://www.childwelfare.gov/pubPDFs/f\\_postadoption.pdf](https://www.childwelfare.gov/pubPDFs/f_postadoption.pdf).

134. See *supra* note 22 and accompanying text.

135. CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/> (last visited Feb. 4, 2015).

136. CHILD WELFARE INFO. GATEWAY, ADOPTION DISRUPTION AND DISSOLUTION 7 (2012), available at [https://www.childwelfare.gov/pubPDFs/s\\_disrup.pdf](https://www.childwelfare.gov/pubPDFs/s_disrup.pdf).

137. See CHILD WELFARE INFO. GATEWAY, *supra* note 133, at 1–9 (demonstrating the importance of parents' ability to find post-adoption services and providing information about where parents can receive post-adoption help).

138. See *id.* at 6–8 ("Since family needs will emerge and change over time, parents need to know where to go when they have questions or want services.").

139. See *id.*

140. *Fact Sheet No. 30: The Follow-Up and Post-Adoption Services*, INT'L SOC. SERVICE (Int'l Reference Ctr. for the Rights of Children Deprived of Their Family, Geneva, Switz.), Feb.

opportunity for a professional to observe the adopted child and provide assistance in interpreting his behavior.<sup>141</sup> Some foreign countries already require post-adoption reports on the health and welfare of adopted children.<sup>142</sup> These reports, some of which a social worker must prepare, offer adoptive parents an opportunity to confirm their child's adjustment and development.<sup>143</sup> However, American federal regulations do not require such post-adoption reports or home visits.<sup>144</sup> Although some argue that such follow-up should only occur upon request of the family,<sup>145</sup> some families may never make that request, even if they are struggling.<sup>146</sup> Mandated post-adoption follow-up visits by social workers or adoption specialists would provide even hesitant parents with an opportunity to ask questions and receive advice, and would provide the government with an opportunity to ensure the safety of vulnerable children.

However, social workers are not health professionals, and health issues may arise that were not known or identifiable prior to the adoption.<sup>147</sup> A requirement that parents have the child's physical and psychological health evaluated annually for a set number of years could help parents know what they face and help children get the medical treatment they need.<sup>148</sup> An additional

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2007, available at <http://www.iss-ssi.org/2009/assets/files/thematic-facts-sheet/eng/30.Post%20adoption%20follow-up%20eng.pdf>.

141. See *id.* (arguing that post-adoption follow-up assistance by trained professionals should be offered to parents as a supportive measure).

142. Office of Children's Issues, *Intercountry Adoption from A to Z*, U.S. DEP'T ST. 35, [http://travel.state.gov/content/dam/aa/pdfs/Intercountry\\_Adoption\\_From\\_A\\_Z.pdf](http://travel.state.gov/content/dam/aa/pdfs/Intercountry_Adoption_From_A_Z.pdf) (last visited Feb. 4, 2015).

143. *Id.*

144. See 22 C.F.R. § 96.51 (2014) ("When post-adoption reports are required by the child's country of origin, the agency or person includes a requirement for such reports in the adoption services contract and makes good-faith efforts to encourage adoptive parent(s) to provide such reports." (emphasis added)).

145. *Fact Sheet No. 30: The Follow-Up and Post-Adoption Services*, *supra* note 140.

146. "Families often report wanting 'closure' once they return home with their child, and experience the ongoing post-adoption visits as an intrusion or an obligation they have to meet." Myers, *supra* note 132, at 58–59; see also *Where to Start Disruption—Int'l Adoption in CA*, *supra* note 19 (expressing hesitation to meet with a social worker for a home visit because of problems with the adopted child).

147. See Jones et al., *supra* note 116, at e214 ("Although [some health] concerns may be addressed before adoption, many of these issues persist and continue to be significant or do not become apparent until after the time of placement in an adoptive home.").

148. Children with Reactive Attachment Disorder, for example, which many of the parents seeking to privately rehome cited, require an individualized treatment plan. *Reactive Attachment Disorder*, *supra* note 114. While treating children with Reactive Attachment Disorder is challenging, "close and ongoing collaboration between the child's family and the treatment team will increase the likelihood of a successful outcome." *Id.* If lawmakers had required those parents to have their child evaluated, and a doctor had diagnosed and prescribed a treatment plan, they may not have resorted to private rehoming via the internet.

2015] *PLEASE CONFIRM YOUR ONLINE ORDER* 1029

problem, however, may be a lack of medical professionals who specialize in the issues internationally-adopted children most often face.<sup>149</sup> To some degree, adoption agencies including references to specialists in the information packets can remedy this problem, but an initiative for more therapists and pediatricians who specialize in the needs of internationally-adopted children may also be necessary.<sup>150</sup>

Additionally, a major issue adoptive parents face in their pursuit of medical care is cost.<sup>151</sup> Although post-adoption information and social support helps parents deal with challenges before they reach their breaking point, parents also need financial aid.

### *B. Post-Adoption Medical Subsidies*

Parents cited expense as a primary reason their adoptions failed.<sup>152</sup> Children suffering from RAD and other mental health disorders may need extensive therapy and treatment, which can prove expensive.<sup>153</sup>

Currently, the federal government does provide subsidies to help pay for medical costs for some adopted children.<sup>154</sup> However, these generally do not extend to international adoptees:

The Federal adoption assistance program under title IV-E was intended to provide permanency for children with special needs in public foster care by assisting States in providing ongoing financial and medical assistance to the families who adopt them. As a result, the statutory requirements for title IV-E adoption assistance eligibility are

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149. Some parents complain that therapists and pediatricians with whom they have dealt were not experts in the field and did not really understand the problems of their child. See, e.g., Beem, Lyon & Hemenway, *supra* note 77 (“There are very, very few trauma-informed, attachment-focused therapists and mental health professionals throughout the United States, and the competent and available ones are overwhelmed with the need and the intensity of the demand for their services.”); *Problems with Reuters Series*, *supra* note 8 (“Services to help are pretty much nonexistent. Sure, there are plenty of therapists. . . . But they don’t understand attachment and trauma. They say they do. They don’t. Specialists who truly get it and can offer real, meaningful, life-changing assistance are few and far between.”).

150. See Beem, Lyon & Hemenway, *supra* note 77 (“There is a critical need to train more mental health professionals in early childhood trauma . . .”).

151. See *supra* note 136 and accompanying text.

152. See *supra* note 136 and accompanying text.

153. See Jeff Howe, *Paying for My Special-Needs Child*, TIME (June 24, 2014), <http://time.com/author/jeff-howe/> (declaring that parents of children with special needs share “the eviscerating cost of [their] children”).

154. *Adoption Subsidy*, N. AM. COUNCIL ON ADOPTABLE CHILD., <http://www.nacac.org/adoptionssubsidy/adoptionssubsidy.html> (last visited Feb. 4, 2015).

geared to needy children in public child welfare systems *and are difficult, if not impossible, to apply to children who are adopted from abroad.*<sup>155</sup>

“Instead, internationally adopted children are expected to fall under their parent’s insurance, and insurance companies are not willing to pay for the extensive therapy or residential treatment required to address the needs of these traumatized children.”<sup>156</sup> The government leaves parents of children adopted internationally, therefore, the same parents most likely to seek private rehoming online, to fend for themselves.<sup>157</sup> In fact, other post-adoption services have similar limits in availability.<sup>158</sup> Extending eligibility to international adoptees could help those parents get their vulnerable children the help they need.

Together with pre-adoption requirements, these post-adoption measures would reduce the likelihood of an overwhelmed parent turning to private rehoming by breaking down the two biggest barriers to a successful adoption.

## V. AT ADOPTION DISSOLUTION

While pre- and post-adoption requirements can help minimize the risk of adoptions failing, “[t]he reality is that some adoptive families, despite years of effort and multiple and varied interventions, find themselves unable to remain together

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155. CHILDREN’S BUREAU, CHILD WELFARE POLICY MANUAL § 8.2B.6 (2009) (emphasis added), *available at* [http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=175](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=175). Although the statute does not categorically exclude international adoptees from participation in the adoption assistance program, “it is highly improbable that children who are adopted abroad by U.S. citizens, or are brought into the U.S. from another country for the purpose of adoption, will meet the criteria.” *Id.* Some states provide financial assistance for “nonrecurring expenses,” but their requirements, too, can preclude international adoptees. *International Adoptions and Adoption Subsidies*, N. AM. COUNCIL ON ADOPTABLE CHILD., <http://www.nacac.org/adoptionsubsidy/factsheets/internationaladoption.html> (last visited Feb. 4, 2015).

156. Beem, Lyon & Hemenway, *supra* note 77.

157. Families eligible for and enrolled in Medicaid, however, may receive some assistance. *Early and Periodic Screening, Diagnostic, and Treatment*, MEDICAID, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Early-and-Periodic-Screening-Diagnostic-and-Treatment.html> (last visited Feb. 4, 2015) (explaining that the Early and Periodic Screening, Diagnostic and Treatment benefit, which is available for children under age twenty-one who are enrolled in Medicaid is “key to ensuring that children and adolescents receive appropriate preventive, dental, mental health, and developmental, and specialty services”).

158. *See* Beem, Lyon & Hemenway, *supra* note 77 (“[F]or families who adopt internationally the resources are virtually non-existent.”); *see also* CHILD WELFARE INFO. GATEWAY, *supra* note 133 (“[S]ome organizations may offer services only to certain groups [like] families who have adopted children through foster care . . .”).

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1031

as a functioning family.”<sup>159</sup> Adoption dissolution “occurs when parents that have finalized an adoption relinquish their parental rights to that child; the child is then either adopted a second time by another family, or placed in the state foster care system.”<sup>160</sup> Because failed adoptions may be inevitable to some degree, lawmakers must also provide protection at the stage of adoption dissolution. Authorities can use both the Interstate Compact on the Placement of Children and state criminal statutes regarding endangering the welfare of a child to prevent adoption dissolution from becoming private rehomings.

A. *Interstate Compact on the Placement of Children*

All fifty states have enacted the Interstate Compact on the Placement of Children (ICPC) to foster cooperation with each other in the interstate placement of children with the following goals:

- (a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (d) Appropriate jurisdictional arrangements for the care of children will be promoted.<sup>161</sup>

The ICPC requires a party who is sending a child to another state to furnish notice to the appropriate public authorities in the state into which the child is to be sent.<sup>162</sup> The notice must contain the following: the child’s name, place, and date of birth; the

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159. Jon Bergeron, Jr. & Robin Pennington, *Supporting Children and Families When Adoption Dissolution Occurs*, ADOPTION ADVOC., Aug. 2013, at 1, 1, available at [https://www.adoptioncouncil.org/images/stories/NCFA\\_ADOPTION\\_ADVOCATE\\_NO62.pdf](https://www.adoptioncouncil.org/images/stories/NCFA_ADOPTION_ADVOCATE_NO62.pdf).

160. *Id.* People often refer to this as adoption disruption, but “technically a disruption occurs when a family is planning to legally adopt a child—who is typically in their custody as a foster child—but decides not to complete the adoption finalization.” *Id.*

161. Text of *Interstate Compact on the Placement of Children*, AM. PUB. HUM. SERVICES ASS’N, <http://www.aphsa.org/content/AAICPC/en/TextofIContheplacementofchildren.html> (last visited Feb. 4, 2015).

162. *Id.*

identity and address of the parents; the name and address of the person to whom the child is to be sent; and a full statement of the reasons for sending the child.<sup>163</sup> The child cannot be sent until the receiving state notifies the sending state, in writing, that the “placement does not appear to be contrary to the interests of the child.”<sup>164</sup>

Reuters suggested the ICPC as a potential safeguard against the risks of private rehomings, but law enforcement is largely unaware of it and seldom enforces it.<sup>165</sup> Additionally, each individual state determines penalties for violating the ICPC,<sup>166</sup> so they are not consistent across the country and most are relatively minor.<sup>167</sup> Authorities can use the current ICPC to deter risky private rehomings, but the government must first increase awareness, encourage enforcement, and intensify penalties for violations.

However, the Association of Administrators of the Interstate Compact on the Placement of Children is currently pushing states to adopt a new ICPC that would not protect international adoptees at risk for private rehomings. According to the Association, while the current ICPC applies to interstate placements by parents who place with nonrelatives, like in private rehoming, the proposed ICPC would apply only to children in foster care or children being placed for adoption by a public agency.<sup>168</sup> The new ICPC will go into effect if and when thirty-five states pass it.<sup>169</sup> Currently, only eleven states have enacted the new ICPC, but one chamber in a twelfth state has passed it, and a thirteenth has introduced it.<sup>170</sup>

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163. *Id.*

164. *Id.*

165. Twohey, *supra* note 4, at *Part 1: The Network*.

166. See Text of *Interstate Compact on the Placement of Children*, *supra* note 161 (stating that an illegal placement “may be punished or subjected to penalty in either jurisdiction in accordance with its laws”).

167. Twohey, *supra* note 4, at *Part 1: The Network* (proclaiming that “[s]ome states attach criminal sanctions—generally, misdemeanors” while “[o]ther states aren’t explicit about how violations should be handled” at all); see, e.g., TEX. FAM. CODE ANN. § 162.107 (West 2014) (making the violation of the ICPC a Class B Misdemeanor); Megan Twohey, *Adopted Girl: I was ‘Re-homed’ After Reporting Dad’s Alleged Sex Abuse*, NBC NEWS (Mar. 21, 2014, 5:04 AM), <http://www.nbcnews.com/storyline/re-homing/adopted-girl-i-was-re-homed-after-reporting-dads-alleged-n57671> (quoting a deputy director of Ohio’s Department of Job and Family Services as saying, “There are no sanctions or criminal penalties in Ohio for violating the ICPC”).

168. *Interstate Compact on the Placement of Children (ICPC): Side by Side Comparison of the New and Current ICPC*, AM. PUB. HUM. SERVICES ASS’N, <http://www.aphsa.org/content/dam/AAICPC/PDF%20DOC/NewICPCSidebySide.pdf> (last visited Feb. 4, 2015).

169. *New ICPC*, AM. PUB. HUM. SERVICES ASS’N, <http://www.aphsa.org/content/AAICPC/en/NewICPC.html> (last visited Feb. 4, 2015).

170. Alaska, Florida, Indiana, Louisiana, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Rhode Island, and Wisconsin have enacted the new ICPC. *Id.* One chamber in Kentucky has passed the new ICPC and the Arizona legislature has introduced it. *Id.*

2015] PLEASE CONFIRM YOUR ONLINE ORDER 1033

If the new ICPC does go into effect, it will no longer serve as a means to deter dangerous private rehoming via the internet.

Additionally, adoptive parents could privately rehome a child within state lines, which would render even the protection of the current ICPC moot.<sup>171</sup> The ICPC, therefore, cannot be the only protection at the time of dissolution; state criminal law might also offer some protection.

### B. Criminal Law

Without a law explicitly criminalizing private rehoming, authorities may deter adoptive parents from putting their child in the hands of strangers with charges of child abuse crimes, such as endangering the welfare of a child or child abandonment.<sup>172</sup> Additionally, some states have enacted laws that prohibit or regulate the use of advertising for private adoption placements.<sup>173</sup> In fact, in 2013, prosecutors charged a young mother in Texas with advertising for placement of a child after she attempted to put her three-year-old son up for adoption on Craigslist.<sup>174</sup>

Still, since state law varies, this solution would also lack national consistency.<sup>175</sup> Only thirty states currently have laws

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171. See Text of *Interstate Compact on the Placement of Children*, *supra* note 161 (regulating only the *interstate* placement of children).

172. See Riben, *supra* note 9 (“Prosecuting all of the players for endangering the welfare of these children—when they become known—might make some think a bit more . . .”).

173. CHILD WELFARE INFO. GATEWAY, USE OF ADVERTISING AND FACILITATORS IN ADOPTIVE PLACEMENTS 2 (2012), available at <https://www.childwelfare.gov/pubPDFs/advertising.pdf>. Child Welfare Information Gateway, a service of the U.S. Department of Health and Human Services, defines advertising as “the publication in any public medium, either print or electronic, of either an interest in adopting a child or the availability of a specific child for adoption,” and “[p]ublic media include newspapers, periodicals, radio, television, telephone book listings, the Internet, billboards, or print fliers.” *Id.*

174. Robert Stanton, *Houston Police Find ‘Desperate’ Mom’s Ad to Give Away Boy*, 3, HOUS. CHRON. (May 14, 2013), <http://www.chron.com/news/houston-texas/Houston/article/Houston-police-find-desperate-mom-s-ad-to-give-4515363.php>. The ad, which was very similar to many of the rehoming ads identified by Reuters, read as follows:

Hi, I’m trying to adopt out my 3-year-old child to a good home. I’m not in a good place in my life and don’t feel like I can care for him properly but I don’t know where to start. If you know anyone who is interested in caring for him please let me know. I’m a single mom and can’t do this. Thanks, Desperate.

*Id.*

175. See generally CHILD WELFARE INFO. GATEWAY, DEFINITIONS OF CHILD ABUSE AND NEGLECT (2014), available at <https://www.childwelfare.gov/pubPDFs/define.pdf> (outlining what constitutes child abuse or neglect in each state for purposes of intervention by child welfare officials); NAT’L DISTRICT ATT’YS ASS’N, CHILD ENDANGERMENT/FAILURE TO PROTECT LAWS (2014), available at [http://www.ndaa.org/pdf/Child%20Endangerment%202014\\_%208\\_25\\_2014\\_FINAL.PDF](http://www.ndaa.org/pdf/Child%20Endangerment%202014_%208_25_2014_FINAL.PDF) (compiling state criminal child endangerment statutes); NAT’L DISTRICT ATT’YS ASS’N, CHILD NEGLECT AND ABANDONMENT (2011), available at [http://www.ndaa.org/pdf/Child%20Neglect%20&%20Abandonment\\_2011.pdf](http://www.ndaa.org/pdf/Child%20Neglect%20&%20Abandonment_2011.pdf)

prohibiting parents from advertising adoption; children in the remaining twenty states are without that protection.<sup>176</sup> Like with human trafficking laws, moreover, these criminal statutes do not address private rehoming directly, leaving gaps in protection.<sup>177</sup>

Federal lawmakers must enact a law directly and explicitly criminalizing private rehoming, but even such a comprehensive law would not do enough on its own.<sup>178</sup> Lawmakers must account for the shortcomings of current law and policy that cause parents to become desperate in the first place. Lawmakers must address the issue at all points—pre-adoption, post-adoption, *and* at the stage of adoption dissolution—to ensure maximum protection of these vulnerable children.

## VI. CONCLUSION

A lot must happen for a parent who is willing to go through the lengthy process of adopting a child from overseas to become a parent who is willing to post an ad online offering that same child to near strangers. Private rehoming, once a term reserved for pets, negates all of the protective measures taken by adoption agencies and places vulnerable children at great risk.

Since publication of the Reuters investigation, a handful of states have taken action. In April 2014, Wisconsin became the first state to pass a law specifically aimed at curbing private rehoming.<sup>179</sup> The law expands the state's prohibition against advertising related to adoption, requires judicial approval to delegate parental powers to an agent for longer than one year, prohibits the interstate transfer of children, and directs a study of adoption disruption and dissolution.<sup>180</sup> In June 2014, Louisiana's governor signed a similar bill prohibiting parents from placing

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(compiling state criminal child abandonment statutes); NAT'L DISTRICT ATT'YS ASS'N, CRIMINAL CHILD NEGLECT (2012), *available at* <http://www.ndaa.org/pdf/Criminal%20Child%20Neglect.pdf> (compiling state criminal child neglect statutes).

176. CHILD WELFARE INFO. GATEWAY, *supra* note 173, at 2 ("Approximately 30 States currently have laws that in some way limit or regulate the use of advertising in adoptive placement.").

177. Reuters identified such gaps in its investigation—after authorities recovered Quita from the Easons, authorities in New York, Illinois, and Wisconsin all failed to charge anyone with any crime. Twohey, *supra* note 4, at *Part 1: The Network*.

178. *See* Beem, Lyon & Hemenway, *supra* note 77 ("The best and *only* way to eliminate the need for families to create their own 'underground network' is to take the network *above ground* by providing appropriate services and support . . .").

179. Megan Twohey, *Wisconsin Passes Law to Curb Private Custody Transfers of Children*, REUTERS (Apr. 16, 2014, 5:28 PM), <http://www.reuters.com/article/2014/04/16/us-wisconsin-adoption-idUSBREA3F1VS20140416>.

180. Act of Apr. 16, 2014, 2013 Wis. Sess. Laws 314 (to be codified at WIS. STAT. §§ 48.028, 48.825, 48.979, 948.25).

2015] *PLEASE CONFIRM YOUR ONLINE ORDER* 1035

children in the physical custody of nonrelatives permanently without court approval.<sup>181</sup> Colorado, Ohio, and Florida have also introduced bills meant to protect children from the dangers of private rehoming.<sup>182</sup>

Several federal lawmakers have also begun to discuss the need for more protection.<sup>183</sup> Unfortunately, however, no easy fix exists; instead, the problem demands a comprehensive solution, one that addresses shortcomings in the adoption process at all stages. Lawmakers can mandate pre-adoption measures to ensure that adoptive parents understand their commitment and post-adoption resources to help parents who have become overwhelmed by that commitment. Authorities can bend current law to protect children in some cases of adoption dissolution. However, to ensure universal protection and consistency, federal lawmakers must enact a law dealing explicitly with adoption dissolution and private rehoming, and encompassing both pre-adoption and post-adoption requirements.

*Destinee Roman*

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181. See Act of June 20, 2014, 2014 La. Acts 721 (to be codified at LA. CHILD. CODE ANN. arts. 1217, 1239, 1255, 1282–1285).

182. Twohey, *supra* note 179. Illinois lawmakers have also pushed to address the problem. Twohey, *supra* note 73.

183. See Twohey, *supra* note 73 (discussing U.S. lawmakers' push to address the rehoming problem); Twohey, *supra* note 179, (explaining that a group of federal Congressmen are "seeking hearings to 'identify ways to prevent these dangerous practices'").