

# Children as Bait: Impacts of the ORR-DHS Information-Sharing Agreement

*"[The] arrest and deportation of sponsors and their adult household members puts children at risk for trafficking [and] unsafe placements. ... [F]amilies are forced to find alternate sponsors who are not their first choice or when previously safe and stable placements are disrupted. [This] contributes to the backlog of children in ORR care as fewer sponsors are willing to come forward, and as home studies are delayed and complicated. The arrest of sponsors destabilizes households."*

–Survey participant who works with 20 to 40 unaccompanied children per month<sup>1</sup>

## EXECUTIVE SUMMARY

In April 2018, agencies within the Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS) entered into an agreement to share information about unaccompanied children<sup>2</sup> in government custody and their prospective sponsors.<sup>3</sup> This agreement, which went into effect in May 2018, involved changes to the reunification or sponsorship vetting process run by the Office of Refugee Resettlement (ORR), an agency within HHS' Administration for Children and Families (ACF).<sup>4</sup> It also created a new requirement for ORR to report broad information about children to the U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) agencies within DHS.<sup>5</sup>

The Women's Refugee Commission (WRC) and the National Immigrant Justice Center (NIJC), deeply concerned about the potential impacts of the new Memorandum of Agreement (MOA), conducted a survey of individuals involved in the sponsorship application and vetting processes—including attorneys, biometrics technicians and fingerprint specialists, and child advocates—in order to better understand and document the full range of implications of this new MOA.<sup>6</sup> The findings were startling; survey participants overwhelmingly observed that, **as a result of the 2018 MOA, fewer potential sponsors—including parents, legal guardians, and close relatives such as siblings—are coming forward or completing the sponsorship vetting process out of fear that their information will be sent to CBP or ICE for immigration enforcement purposes.** Those who responded to the WRC-NIJC survey also observed: a significant slowing in processing time of sponsorship applicants; an exponential increase in the time children spend in ORR custody; and an increased possibility of children being released to alternate, non-family members or distant connections—not necessarily their preferred or safest choice<sup>7</sup> — or remaining in ORR custody for the duration of their immigration proceedings, possibly for months to years.

## I. INTRODUCTION

ORR's Division of Children's Services was created in 2003 under the Homeland Security Act with the specific objective of separating the care and custody responsibilities over migrant children from enforcement objectives.<sup>8</sup> ORR is responsible for the care and custody of unaccompanied immigrant children who are referred from either CBP or ICE. Its mandate is to ensure that children are released in a timely and safe

manner from ORR custody to sponsors, frequently parents or close relatives, who can care for them pending their immigration proceedings.<sup>9</sup> In those cases where it is not possible for children to be released, ORR is to hold children in the least restrictive setting possible. ORR's responsibility is centered on child welfare and well-being—not enforcement. Immigration enforcement powers remain in ICE's jurisdiction.

In May 2018, an MOA between ORR, ICE, and CBP went into effect. The MOA mandates continuous information-sharing on unaccompanied immigrant children beginning "at the time of referral from CBP or ICE to ORR; while in the care and custody of ORR, including in the vetting of potential sponsors and adult members of potential sponsors' households; and upon release from ORR care and custody."<sup>10</sup> Within the context of ORR care and custody, the agreement inserts DHS's enforcement agencies into the heart of the reunification or sponsorship vetting process, which previously had been centralized within ORR. It also requires ORR to report to DHS a broad range of information on children in its custody, converting ORR from a child welfare agency into more of a law enforcement body.<sup>11</sup>

This agreement parts with previous ORR agency policy on reunifications in several ways, which can be summarized into three points: 1) the type of information collected; 2) whose information is collected; and 3) how the sponsorship packets are processed. On the first two points, the agreement requires that ORR collect the fingerprints and any available documents or biographic information from the potential sponsor as well as from any adult member of the sponsor's household. Previously, ORR typically did not collect the potential sponsor's fingerprints if that potential sponsor was the parent or legal guardian of the child. The additional information-gathering burden for household members, including both fingerprints and documents or biographic information, also represents a departure from past practice.<sup>12</sup>

Finally, while in the past the vetting process was wholly centered within ORR, under the new agreement, ORR must now send the information it collects on potential sponsors to ICE. ICE, in turn, runs not only background checks but also immigration status checks. According to the MOA, "DHS will provide HHS with information necessary to conduct suitability assessments for sponsors from appropriate federal, state, and local law enforcement and immigration databases."<sup>13</sup> ICE has been clear that, through this process, it may conduct immigration enforcement against any potential sponsor or member of a sponsor's household who is found not to possess a valid immigration status.<sup>14</sup> This creates tension, as per ORR's Policy Guide, "ORR does not disqualify potential sponsors on the basis of their immigration status. ORR does seek immigration status information ... [but] it is not used as a reason to deny a family reunification application."<sup>15</sup>

On December 18, 2018, ORR reversed a portion of the agreement and changed its policy again: barring certain exceptions,<sup>16</sup> ORR is no longer requiring fingerprints for all adult members of the potential sponsor's household. According to the agency's statement announcing this change, "ORR has determined the additional steps required to fingerprint all household members has had an impact on the timely release of [unaccompanied alien children] without demonstrated benefit to the safety of children after their release from ORR care."<sup>17</sup> However, ORR will continue to collect fingerprints for all potential sponsors, including parents and legal guardians, and will continue to share this information with ICE.<sup>18</sup>

A recently leaked draft memorandum, authored by administration officials, titled, "Policy Options to Respond to Border Surge of Illegal Immigration," indicates that the true intent of the new policy was not to ensure the safety of unaccompanied children, but rather to identify undocumented sponsors and place them into removal proceedings. **Moreover, the memorandum indicates that officials considered the negative effects of information sharing, but assumed that they would only be short term, and believed that deterring migration was more important than the safety and well-being of vulnerable children.**<sup>19</sup>

This revelation strengthens the argument made by opponents of the MOA, including lawyers, child welfare advocates, and members of the immigration advocacy community that information-sharing between ORR, ICE, and CBP is damaging and endangers children and their families. In fact, since the MOA has been implemented, it has resulted in the prolonged detention of children, which has been shown to have a disastrous impact on the physical and mental health of children,<sup>20</sup> and increases the risk of children being placed in unsafe conditions or situations,<sup>21</sup> as the WRC-NIJC survey also confirms. By compromising the privacy and confidentiality of children and their families, the MOA may result in children withholding critical information that could be used to protect them and that may also jeopardize their immigration cases.

## II. THE DEVELOPMENT OF ORR'S FAMILY REUNIFICATION POLICIES

In response to public outcry and pressure from Congress over certain unsafe reunifications in 2014, and with a stronger overall focus on child well-being after the 2014 surge in arrivals of unaccompanied children, ACF implemented new policies to reduce or prevent trafficking and other harms, including expanding the circumstances in which they conduct home studies of potential sponsors and conducting post-release case management in order to ensure children's safety. Then-ACF Acting Assistant Secretary Mark Greenberg stated that, in revising their sponsorship vetting processes, ACF was attentive to concerns about provisions that may deter parents or other close family members from sponsoring children.<sup>22</sup> This was intended to prioritize the health and safety of children and to ensure they spend the least amount of time possible in government custody, which is known to have a significant and lasting negative impact on their physical and mental health.<sup>23</sup>

From approximately 2014 to May 2018, fingerprinting and background checks were required only during sponsorship vetting when the potential sponsor was not a parent or legal guardian, or in cases where there was a documented risk to the safety of the child. Moreover, ACF was careful not to form an agreement with external agencies, such as DHS, that would allow those agencies to use shared sponsor information for immigration enforcement.<sup>24</sup> This suggests that ACF believed they could take steps to protect unaccompanied children without requiring fingerprints from everyone in a sponsor's household and without sharing data with DHS. This was done with the understanding that ORR was created to ensure child welfare, not to be a partner in immigration enforcement.<sup>25</sup>

ORR developed **categories of sponsors**, depending on the relationship of the potential sponsor to the child in its custody (ORR Policy Guide §2.2.1):

**Category 1** includes parents or legal guardians.

**Category 2** consists of immediate relatives, such as a brother, sister, aunt, uncle, grandparents, or first cousins.

**Category 3** includes other sponsors, such as distant relatives or unrelated adults, such as family friends.

**Category 4** is when no sponsor has been identified.

Many practitioners believe the 2018 MOA—even with the December 2018 change—not only will impede efforts to ensure the protection and well-being of the child, but also will further perpetuate family separation, as parents, legal guardians, and other potential sponsors refuse to come forward or withdraw from the process due to the increased fear of deportation.

## III. FINDINGS FROM WRC-NIJC SURVEY OF CHILD WELFARE STAKEHOLDERS

In administering the survey, WRC and NIJC sought to compile diverse and candid feedback about the effects of the MOA, and as such the participants' anonymity was guaranteed. The survey was circulated from November 14, 2018 to December 31, 2018; however, the last response was received on December 14, days prior to the policy change effectuated on December 18 to no longer require the fingerprinting of household members who were not applying for sponsorship of a child in ORR custody. Thus, the results do not reflect the impact of that policy change on the process (to see a list of the survey questions, please refer to the Annex, page 12). This section outlines the key findings.

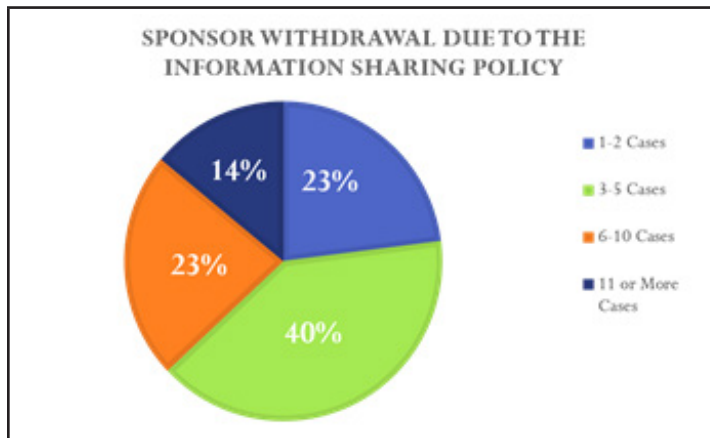
### Snapshot of survey participants:

- 47 individuals responded, including biometrics technicians and fingerprinting specialists, child advocates, and lawyers.
- Participants were from 20 states across the U.S., plus Washington, D.C., including (in order from most to least represented): California; Texas; North Carolina; Pennsylvania; Massachusetts; Michigan; Kansas; Arizona; Washington; Tennessee; New Jersey; Georgia; Illinois; Connecticut; Louisiana; South Carolina; Virginia; Oregon; Washington, D.C.; and Maryland.
- All but one individual works with at least 1 to 10 unaccompanied children each month and the largest percentage of survey participants (28%) work with 20 to 40 unaccompanied children per month.
- 46% of participants worked with 1 to 10 sponsors, potential sponsors, or family members of an unaccompanied child per month since the enactment of the new MOA.

### A. The DHS-ORR information sharing policy has caused sponsors to withdraw from the vetting process

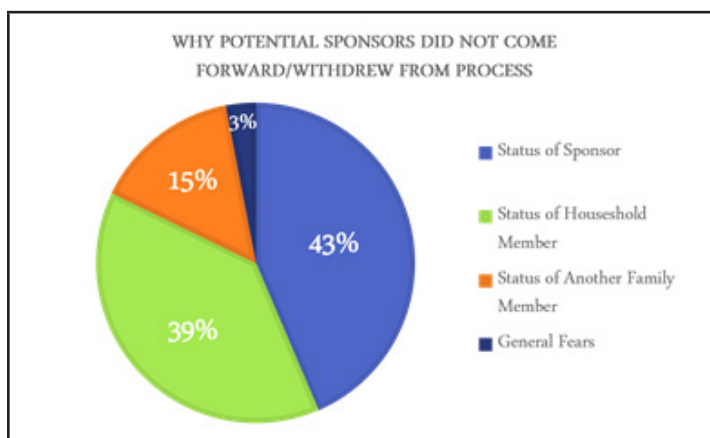
The new ORR-DHS information-sharing policy has severely deterred family members from sponsoring children in ORR custody.

- As compared to one of the most recent, large-scale enforcement efforts against sponsors (known as the "sponsor raids" of 2017<sup>26</sup>) and its assumed negative consequences, 62% of survey participants said that they have observed even fewer sponsors willing to come forward or to complete the sponsorship vetting process, as a result of the MOA.
- **75% of participants responded they were aware of potential sponsors deciding not to come forward or withdrawing from the sponsorship vetting process due to the information-sharing policy.** Of that 75%:
  - » 14% were aware of 11 or more cases
  - » 23% were aware of 6-10 cases
  - » 40% were aware of 3-5 cases
  - » 23% were aware of 1-2 cases.



The survey revealed that fear stemming from the potential sponsor's own immigration status was the top reason for withdrawing their application or refusing to sponsor children:

- **Roughly 43% of survey participants noted that sponsors withdrew from or failed to come forward for the vetting process because of their own immigration status:**
  - » Roughly 39% due to the immigration status of a household member;
  - » Approximately 15% due to the immigration status of another family member; and
  - » 3% due to general fears or apprehension.



## B. ICE has initiated immigration enforcement actions against potential sponsors and children as a result of the MOA

ICE has used the information-sharing policies enacted by the MOA for enforcement purposes against family members of children in ORR custody. Of those who responded to the survey, **42% knew of specific instances where ICE or CBP initiated enforcement actions against adults which may have been the result of the MOA.** Overall, the results of the survey appear to indicate that ICE and CBP are using information provided through the MOA to carry out immigration enforcement against parents and immediate relatives of children in ORR custody. This correlates with public reporting that, between late July and late November 2018, ICE had arrested 170 sponsors, of whom 64% were arrested on suspicion of being in the country without immigration status.<sup>27</sup>

Additionally, 17% of survey participants indicated that they were aware of immigration enforcement by ICE against children, including evidentiary submissions or allegations in immigration court, due to information sharing. Of these participants, 44% were aware of three to five such cases, and 56% were aware of one to two cases.

## **C. ORR-DHS information sharing has detrimental consequences, including the potential for family separation, an increased risk of child endangerment, and challenges in the reunification process**

Survey participants outlined other severe, negative consequences of the information-sharing policy beyond those already outlined in this report. **The following information—including case examples, anecdotes, and general comments—was obtained from responses to a series of open-ended questions in the survey.** To protect the anonymity of the survey participants, no confidential or personal information will be shared in this report.

### **1. Family members are unwilling to sponsor children in ORR custody due to fear of retaliatory enforcement**

The fear of being discovered, arrested, and detained continues to discourage potential sponsors from sponsoring children. One survey participant described **a child who, despite having many family members and family friends in the United States, could not find a sponsor before she turned 18 due to the information-sharing policy.** Eventually, the child was sent to a homeless youth shelter because she had nowhere else to go. Another survey participant detailed the difficult decision families have been forced to make:

“There are many more minors that I have interacted with, and families who have been forced to decide between the safety of the child in our [ORR] care and their own safety and well-being, forcing a different type of family separation. We have had parents of children struggle to put their other children in danger in order to accept an unaccompanied minor. That is not something a family should EVER struggle with. This MOA has been detrimental to the reunification process and it further places children in danger post-reunification. ... It’s traumatic in and outside of ORR shelters.”

According to survey participants, **some families have moved away, gone into hiding, or disappeared without a trace for fear that ICE will come to their homes and detain family members.** Fear of detention and/or deportation also seems to have encouraged some potential sponsors to omit or not disclose the full details regarding other individuals living in the same household. These potential sponsors worry that if they leave the questions regarding their immigration status blank on the new ORR forms, their application will not be considered. For others, the fear and risk is too great and they have completely withdrawn their sponsorship applications.

Unfortunately, for many parents and families, these fears have become their reality. In one instance, **a mother was served with a Notice to Appear when she picked up her child from ORR custody. She was not told that she was being charged with removal, and she did not know that she was in removal proceedings until she received a hearing notice in the mail. A father was in the process of attempting to sponsor his 11-year-old son when ICE apprehended him outside his home as he was leaving for work.** He was living with his wife and another child at the time. Eventually, the wife was able to sponsor the 11-year-old child who was being held in ORR custody. However, the family eventually moved because they were afraid that the wife would also be apprehended.



**One sponsor's husband was arrested and detained by ICE during a home study while he was leaving for work.** Now, the home is less stable and there are concerns about whether the sponsor will be able to support her children financially. Another member of the household was also arrested. In another case, a child's aunt was detained at work after she offered to sponsor him. Lastly, a survey respondent detailed the story of a mother who had just received her two children from ORR custody; the mother was notified by ICE that she was required to accept a Notice to Appear in person for her 12-year-old child, and did not appreciate the risk she herself would face by appearing before ICE.

## **2. Children remain in ORR custody for extended periods of time due to the MOA, potentially impeding or complicating any chance for immigration relief**

Children whose sponsors are afraid to come forward—or who withdraw from the sponsorship process entirely—because of the ORR-DHS MOA wind up spending a longer amount of time in ORR custody.<sup>28</sup> In addition to harming mental and emotional well-being, prolonged time spent in ORR affects a child's case and eligibility for potential legal remedies. One survey respondent described **a child with Special Immigrant Juvenile Status (SIJS) who was nearing her 18th birthday while in ORR custody. The child needed to be released from ORR custody to pursue her SIJS case, but members of the potential sponsor's household were unwilling to be fingerprinted.** In another case, **a child who was about to age out was not able to be released from ORR custody, as he only had one other relative in the country and the new requirements discouraged that relative from coming forward. Instead, at 6 a.m. on his 18th birthday, ICE transferred the child to an adult detention center.**

Longer lengths of stay in ORR custody also mean that children with legitimate asylum cases are left unable to access the necessary support, documents, and information needed from their parents, or even attorneys, to properly build their case. Furthermore, children who do not believe that the information they share with ORR will be kept confidential—and not used against them or their parents—are likely to withhold critical information about their circumstances that may affect their case and put them and their families at risk for deportation.

## **3. Mandatory fingerprinting has caused major delays in processing potential sponsors, and ultimately in reunification**

The mandatory fingerprinting requirements under the MOA have caused huge delays in the release process. For example, some **biological parents have had to wait for six months or longer to receive their children.** Not only has the new policy caused great delays and immense stress to the children themselves, but it has also placed a strain on ORR shelters, case managers, and individual families. These delays have contributed to a significant increase in the amount of time children spend in detention.

## **4. The new policy puts children in ORR custody and post-release at a greater risk of harm**

As one survey participant noted: “[A]rrest and deportation of sponsors and their adult household members puts children at risk for trafficking, unsafe placements, runaway, and other safety concerns when children and their families are forced to find alternate sponsors who are not their first choice or when previously safe and stable placements are disrupted. This also contributes to the backlog of children in ORR care as fewer sponsors are willing to come forward, and as home studies are delayed and complicated. The arrest of sponsors destabilizes households.”

Child welfare research and best practice at the state level has confirmed that, in foster and adoption situations, where it is not possible for children to remain in the home with their parent(s), placement with family members over non-relatives is preferred because it maintains children's connections to their families. In addition, children placed with a family member tend to experience better behavioral development, mental health functioning, and placement stability than children placed with non-relatives or in other forms of care.<sup>29</sup> In the immigration system, the detention of children has been found to be detrimental to children's well-being and often creates health impacts, such as developmental or psychosocial problems, that will have long-term health consequences.<sup>30</sup> Further, children and adolescents who are detained for extended periods of time are at a greater risk of exploitation, abuse, and/or trauma and are more likely than others to experience feelings of isolation and detachment.<sup>31</sup>

The MOA, however, creates daunting barriers for families to sponsor their children, especially for close relatives (Category 2 sponsors) and also for parents and legal guardians (Category 1), according to the survey results. Survey participants provided examples of situations in which, after learning about the new policy, potential sponsor after potential sponsor dropped out, including parents and close relatives of children. This has led to families seeking less desirable, distant connections to sponsor their children—ultimately placing the children at a greater risk of harm.

Moreover, the MOA between ORR and DHS has contributed to a broad-spectrum fear of immigration enforcement in the U.S. immigrant community, preventing both children and adults from living in the U.S. without fear of reprisal. A survey participant noted that **"children have become more fearful of participating in positive, normal activities such as attending school and going outside in their neighborhoods, and sponsors have become increasingly fearful of accompanying the minors to court."** **The ORR-DHS information-sharing policy has created a culture of fear for immigrant communities that wish only to aid their children and families.**

## IV. CONCLUSION

The MOA represents a dramatic change from past practice—replacing the best interests of children with the operational expediency of immigration enforcement. While the Trump administration was aware that this policy would delay reunifications and result in longer lengths of stay in ORR facilities, it was expected that this policy would act as a deterrent—ultimately reducing the number of children seeking safety in the United States. Turning safe placement screening into a mechanism for immigration enforcement directly contradicts and undermines ORR's goal of placement with the most appropriate caregiver. Further, it exploits the natural desire of children to seek protection with family and the fundamental desire of family to protect their children. In essence, by enacting this policy, the U.S. government is using children as bait with the clear intent of punishing parents and deterring them from protecting their children.

In summary, the data from this survey show the negative impact that the DHS-ORR MOA has had on the reunification process:

- Many potential sponsors are fearful of coming forward and/or are experiencing retaliation for coming forward by ICE or CBP because of their own immigration status or the status of people in their household.
- As a result of fear surrounding the MOA itself and the lengthier sponsorship vetting process that has resulted from its implementation—for those sponsors who do not withdraw from consideration—



children are remaining in detention for a much longer time. Children who turn 18 in ORR custody and who haven't been reunified with a sponsor prior to their birthday risk transfer to an adult detention center run by ICE.

- Delays in the process and longer lengths of stay in detention frustrate a child's ability to reunify with their family, cause significant harms to a child's well-being and their immigration cases and potential legal remedies, and strain ORR's shelter capacity.
- The backlogs have resulted in the use of influx or emergency shelters, such as the Homestead facility in Homestead, Florida. As of the end of February 2019, over 1,600 unaccompanied children were being held there. The Congressional Hispanic Caucus visited Homestead on February 19, 2019 and found children between the ages of 13 and 17, separated from their families, being shackled, and kept in "prison-like" conditions while waiting for a sponsor to claim them.<sup>32</sup>

As these findings make clear, the MOA between DHS and ORR must immediately be dissolved. The type of information sharing it requires runs contrary to ORR's mission as a child welfare agency. The limitations Congress placed on ICE/DHS's use of the information obtained through the MOA for fiscal year 2019<sup>33</sup> are a welcome step. Further efforts to maintain and enhance these restrictions are recommended until the agreement is dissolved.

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## ENDNOTES

- 1 Women's Refugee Comm'n & Nat'l Immigrant Just. Ctr., Survey: Impacts of ORR-DHS Memorandum of Agreement (MOA) (hereinafter "Survey.") (Anonymized.)
- 2 See 6 U.S.C. § 279 (g)(2) (defining "unaccompanied alien child"); see also William A. Kandel, Unaccompanied Alien Children: An Overview, Congressional Res. Serv. (Jan. 18, 2017), <https://fas.org/sgp/crs/homsec/R43599.pdf> (providing a legal definition of unaccompanied minors).
- 3 See Memorandum of Agreement Among the Off. of Refugee Resettlement of the U.S. Dep't of Health & Hum. Services and U.S. Immigr. and Customs Enf't, U.S. Customs and Border Prot. of the U.S. Dep't of Homeland Sec. Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters (hereinafter "MOA"), available at: <https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf>.
- 4 See Off. of Refugee Resettlement, Sponsor Handbook, Dept. of Health & Hum. Services, accessible at [https://www.acf.hhs.gov/sites/default/files/orr/5\\_31\\_17\\_sponsor\\_english\\_handbook\\_003.pdf](https://www.acf.hhs.gov/sites/default/files/orr/5_31_17_sponsor_english_handbook_003.pdf) (detailing the sponsorship application process).
- 5 One justification ORR has provided for its participation in the MOA is that the policy is necessary to combat human trafficking. However, experts on human trafficking have argued that this policy actually "undermine[s] efforts to combat trafficking of migrant children. See Brief of Amicus Curiae Human Trafficking Legal Ctr., added to J.E.C.M. et al. v. Scott Lloyd, No. 1:18-cv-00903 (LMB/MSN) (E.D. Vir. 2018), \*1-\*2. Another justification ORR has provided is that "DHS will [now] share with ORR more detailed background information on each [unaccompanied child] upon initial referral and transfer to ORR," and that this information "will assist ORR in strengthening its initial placement decisions, particularly in cases where the [child] has a gang affiliation or criminal background." See Statement of Steven Wagner, acting assistant Secretary of ACF, HHS, before the Subcommittee on Border Security and Immigration, Committee on the Judiciary, U.S. Senate, May 23, 2018, <https://www.acf.hhs.gov/olab/resource/testimony-of-steven-wagner-on-care-and-placement-of-unaccompanied-children>.
- 6 Clinic students with American University, Washington College of Law's International Human Rights Law Clinic (IHRLC) also conducted seven in-person and telephonic interviews with former administration officials, legal practitioners, and other experts regarding the MOA and its impacts on the sponsorship application process and child welfare. The students also assisted in the drafting of this report.
- 7 See generally Brief of Amicus Curiae Human Trafficking Legal Ctr., added to J.E.C.M. et al. v. Scott Lloyd, No. 1:18-cv-00903 (LMB/MSN) (E.D. Vir. 2018); see also Women's Refugee Comm'n & Nat'l Immigrant Just. Ctr., *ORR and DHS Information-Sharing Emphasizes Enforcement Over Child Safety*, \*1, \*1, <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-ICE-MOA.pdf>. See also Nat'l Immigrant Just. Ctr., *NIJC And Immigrant Rights Advocates Demand Civil Rights Investigation into ICE Raids That Targeted Sponsors of Unaccompanied Children* (Dec. 6, 2017), <https://www.immigrantjustice.org/index.php/press-releases/nijc-and-immigrant-rights-advocates-demand-civil-rights-investigation-ice-raids>.
- 8 Homeland Security Act of 2002, 6 U.S.C. § 279.
- 9 See 6 U.S.C. § 279 (g)(2); ORR, Children Entering the United States Unaccompanied: Introduction, Jan. 30, 2015, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-0>; see also, Stipulated Settlement Agreement, *Flores v. Reno*, Case No CV85-4544-RJK (C.D. Cal. 1996) (Flores was intended to protect the rights and well-being of unaccompanied juveniles in custody of the U.S. Immigration and Naturalization Service).
- 10 MOA
- 11 *Id.* See also U.S. Conf. of Catholic Bishops, Women's Refugee Comm'n, Nat'l Immigrant Just. Ctr., Lutheran Immigrant & Refugee Serv., & Young Ctr. for Immigrant Children's Rights, The ORR and DHS Information-Sharing Agreement and its Consequences, <https://justiceforimmigrants.org/2016site/wp-content/uploads/2019/01/Updated-formated-MOA-backgrounder-1.17.19.pdf> (last updated Jan. 17, 2019); Women's Refugee Comm'n & Nat'l Immigrant Just. Ctr., *ORR and DHS Information-Sharing Emphasizes Enforcement Over Child Safety*, \*1, <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-ICE-MOA.pdf>. For information regarding past interagency coordination and information-sharing efforts between ORR and DHS, see also the U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Staff Report: Oversight of the Care of Unaccompanied Alien Children, Aug. 2018, p. 29-34.
- 12 See generally Statement by Mark Greenberg, former acting assistant secretary at ACF, before the Committee on the Judiciary, U.S. Senate, Feb. 23, 2016, p. 7-8, <https://www.judiciary.senate.gov/imo/media/doc/02-23-16%20Greenberg%20Testimony.pdf> (detailing the background check process and the "enhancements" the agency made in January 2016).
- 13 MOA, \*1.
- 14 83 FR 20844 (May 8, 2018), <https://www.regulations.gov/document?D=DHS-2018-0013-0001>.
- 15 ORR Policy Guide § 2.6, last revised June 7, 2018, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.6.3>.
- 16 ORR's Division of Policy and Procedures, "FAQ: December 2018, Fingerprint Modifications Pursuant to ORR Operational Directive," \*1 ("Adult household members do not require fingerprinting, unless: (1) a public records check reveals possible disqualifying factors identified in Section 2.7.4 of the ORR Policy Guide; (2) there is a documented risk to the safety of the child; (3) the child is especially vulnerable; or (4) the case is being referred for a home study.")
- 17 Robert Moore, Thousands of Migrant Children Could be Released with Trump's Major Policy Reversal, Texas Monthly, Dec. 18, 2018, <https://www.texasmonthly.com/news/trump-fingerprint-policy-change-reduce-migrant-children-detention-tornillo/>.

- 18 *Id.*
- 19 See Policy Options to Respond to Border Surge of Illegal Immigration (hereinafter “Policy Options Memo”), cited in J.E.C.M. *et al.* v. Scott Lloyd, No. 1:18-CV-903-LMB (E.D. Vir. 2019).
- 20 See, e.g., Leila Schochet, *Trump’s Family Incarceration Policy Threatens Healthy Child Development*, Ctr. for American Progress (July 12, 2018), <https://www.americanprogress.org/issues/early-childhood/reports/2018/07/12/453378/trumps-family-incarceration-policy-threatens-healthy-child-development/>.
- 21 See generally Brief of Amicus Curiae Human Trafficking Legal Ctr., *supra* note 4, \*8-\*13.
- 22 See Interview with Mark Greenberg, former acting assistant secretary at ACF (Jan. 15, 2019); see also Statement of Steven Wagner, acting assistant secretary, ACF, before the Permanent Subcomm. on Investigations, S. Comm. on Homeland Sec. and Governmental Aff., April 26, 2018 at p. 3, <https://www.hsgac.senate.gov/imo/media/doc/Wagner%20Testimony.pdf>.
- 23 See Leila Schochet, *Trump’s Family Incarceration Policy Threatens Healthy Child Development*, Ctr. for American Progress (July 12, 2018), <https://www.americanprogress.org/issues/early-childhood/reports/2018/07/12/453378/trumps-family-incarceration-policy-threatens-healthy-child-development/>.
- 24 See Interview with Mark Greenberg, *supra* note 22.
- 25 *Id.*
- 26 See also Nat’l Immigrant Just. Ctr., *NIJC And Immigrant Rights Advocates Demand Civil Rights Investigation into ICE Raids That Targeted Sponsors of Unaccompanied Children* (Dec. 6, 2017), <https://www.immigrantjustice.org/index.php/press-releases/nijc-and-immigrant-rights-advocates-demand-civil-rights-investigation-ice-raids>.
- 27 Geneva Sands, “ICE arrested 170 potential sponsors of unaccompanied migrant children,” CNN, Dec. 10, 2018, <https://www.cnn.com/2018/12/10/politics/ice-potential-sponsors-arrests/index.html>.
- 28 An HHS official reported in October 2018 that the average length of stay in ORR custody was 74 days, more than double what it was in 2016. See Jonathan Blitzer, *To Free Detained Children, Immigrant Families are Forced to Risk Everything*, The New Yorker, Oct. 16, 2018, <https://www.newyorker.com/news/dispatch/to-free-detained-children-immigrant-families-are-forced-to-risk-everything>. As of early February 2019, advocates reported that children averaged 67 days in Homestead, not including time the children may have spent in other shelters. See John Burnett, *Inside the Largest and Most Controversial Shelter for Migrant Children in the U.S.*, National Public Radio, Feb. 13, 2019, <https://www.npr.org/2019/02/13/694138106/inside-the-largest-and-most-controversial-shelter-for-migrant-children-in-the-u-s>.
- 29 See *supra* note 25; see also Children’s Bureau, ACF, HHS, Placement of Children with Relatives: State Statutes Current Through January 2018, Child Welfare Information Gateway, <https://www.childwelfare.gov/pubPDFs/placement.pdf>, 1; Child Welfare Information Gateway. (2014). In-home services in child welfare. Washington, DC: HHS, Children’s Bureau, Mar. 2014, [https://www.childwelfare.gov/pubPDFs/inhome\\_services.pdf](https://www.childwelfare.gov/pubPDFs/inhome_services.pdf), 2 (“Removing children from their families is disruptive and traumatic and can have long-lasting, negative effects. There are a number of stressors for a child that are associated with removal and can add to the initial trauma of maltreatment, including dealing with the substantiation of abuse and/or neglect findings and having to cope with parental loss.” (Schneider & Phares, 2005); Committee on Child Maltreatment Research, Policy, and Practice for the Next Decade: Phase II; Board on Children, Youth, and Families; Committee on Law and Justice; Institute of Medicine; National Research Council; Petersen AC, Joseph J, Feit M, editors. *New Directions in Child Abuse and Neglect Research*. Washington (DC): National Academies Press (US); 2014 Mar 25, p. 6-7; The Child Welfare System, <https://www.ncbi.nlm.nih.gov/books/NBK195980/>; American Bar Association, *Permanency Planning: Kinship Care May Lead to Increased Behavioral Well-Being*, Sept. 2008, <https://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/sept08.pdf>.
- 30 Marion Hart, *Why Detaining Children is Harmful*, UNICEF USA, June 21, 2018, <https://www.unicefusa.org/stories/why-detaining-children-harmful/34488>; International Detention Coalition, *Captured Childhood*, Chapter 5 Impacts of Detention on Children, March 2012, <https://idcoalition.org/wp-content/uploads/2012/03/IDC-Captured-Childhood-Report-Chap-5.pdf>.
- 31 *Id.*
- 32 Monique O. Madan & Jimena Tavel, *‘It has a prison-like feel’: Lawmakers tour Homestead shelter in hopes of shutting it*, Miami Herald (Feb. 19, 2019) <https://www.miamiherald.com/news/local/immigration/article226443430.html>.
- 33 See 116th Congress, Consolidated Appropriations Act, 2019, H. J. Res. 31, §224, <https://www.congress.gov/116/bills/hjres31/BILLS-116hjres31enr.pdf>: (“(a) None of the funds provided by this Act or any other Act, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the components funded by this Act, may be used by the Secretary of Homeland Security to place in detention, remove, refer for a decision whether to initiate removal proceedings, or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))) based on information shared by the Secretary of Health and Human Services. (b) Subsection (a) shall not apply if a background check of a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor reveals— (1) a felony conviction or pending felony charge that relates to— (A) an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43))); (B) child abuse; (C) sexual violence or abuse; or (D) child pornography; (2) an association with any business that employs a minor who— (A) is unrelated to the sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor; and (B) is— (i) not paid a legal wage; or (ii) unable to attend school due to the employment; or (3) an association with the organization or implementation of prostitution.”)

## ANNEX: SURVEY CIRCULATED BY WRC AND NIJC

### Surveying Impacts of ORR-DHS Memorandum of Agreement (MOA)

In May 2018, the Office of Refugee Resettlement (ORR), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP) entered into a Memorandum of Agreement (MOA) mandating continuous information-sharing on unaccompanied immigrant children beginning when CBP or ICE takes them into custody through their release from ORR custody. This includes information on the children's potential sponsors, usually family members, as well as anyone else living with the sponsor. The MOA represents a dramatic change from past practice—replacing the best interests of children with the operational expediency of immigration enforcement. During a Congressional hearing on September 18, 2018, a senior ICE official testified that, pursuant to the MOA, 41 potential sponsors had already been arrested, of whom 70% were picked up for not being in a lawful immigration status (i.e., undocumented).

The National Immigrant Justice Center (NIJC) and Women's Refugee Commission (WRC) are conducting this survey to collect non-personally identifiable information from stakeholders working with unaccompanied immigrant children and their sponsors and families to ascertain the impacts of the new information-sharing protocols. NIJC and WRC will use any information collected in aggregated form only, for the purposes of evaluating the impacts of the information-sharing and of educating Members of Congress, their staff, and the public on these impacts. As part of the survey process, NIJC and WRC may individually follow up with survey participants.

Should you have any questions or concerns, please do not hesitate to contact NIJC Director of Policy, Heidi Altman, at [haltman@heartlandalliance.org](mailto:haltman@heartlandalliance.org) or 312-718-5021 or WRC Policy Advisor, Leah Chavla, at [leahc@wrcommission.org](mailto:leahc@wrcommission.org) or 202-750-8598. Please find additional information on ORR information-sharing with DHS here: <http://www.immigrantjustice.org/staff/blog/unaccompanied-immigrant-children-made-tools-immigration-enforcement>.

(\* Indicates required questions.)

What is your name? (Your personal information will not be shared.)

What is your email address? (Again, this will not be shared. It is so that we can contact you if we have a follow-up question.)

Where in the country do you work? (Geographic location, as specific as you feel comfortable sharing, but please at least list a state.) \*

On a monthly basis, approximately how many unaccompanied immigrant children do you work with?

- ( ) 1-10
- ( ) 11-20
- ( ) 20-40
- ( ) 40-60
- ( ) more than 60

On a monthly basis, subsequent to May 13, 2018, approximately how many sponsors, potential sponsors, or family members of unaccompanied immigrant children do you work with?

- ( ) 1-10
- ( ) 11-20
- ( ) 20-40
- ( ) 40-60
- ( ) more than 60

(Continuation of above.)

Are you aware of any cases in which a potential sponsor of an unaccompanied immigrant child decided not to come forward or withdrew from the sponsorship process in whole or in part because of ORR information-sharing with ICE? \*

- ( ) Yes
- ( ) No

If you are aware of any cases described in the preceding question, please identify the approximate quantity below.

- ( ) 1-2 cases
- ( ) 3-5 cases
- ( ) 6-10 cases
- ( ) 11 or more cases

If you are able to/to the extent possible, please indicate the most common sponsor category these potential sponsors fell into (i.e., most of the sponsors that did not follow through the process fell into which sponsor category):

- [ ] Category 1
- [ ] Category 2
- [ ] Category 3
- [ ] Don't know
- [ ] Other:

(Continuation of above.) Again, if you are able to/to the extent possible, do you know the reason why most of the potential sponsors ultimately did not come forward or withdrew from the process?

- [ ] Potential sponsor's immigration status (including not having a valid status)
- [ ] Immigration situation of a household member
- [ ] Immigration situation of another family member
- [ ] Other:

Are you aware of any enforcement action by ICE or CBP against an adult since May 2018 that may have occurred in whole or in part because of ORR information-sharing with ICE? \*

- ( ) Yes
- ( ) No

If you are aware of any enforcement actions against adults described in the preceding question, please identify the approximate quantity below.

- ( ) 1-2 cases
- ( ) 3-5 cases
- ( ) 6-10 cases
- ( ) 11 or more cases

Are you aware of any enforcement action by ICE (including evidentiary submissions or allegations in immigration court) against an unaccompanied immigrant child since May 2018 that may have occurred in whole or in part because of ORR information-sharing with ICE? \*

- ( ) Yes
- ( ) No

If you are aware of any enforcement actions against children described in the preceding question, please identify the approximate quantity below.

- ( ) 1-2 cases
- ( ) 3-5 cases
- ( ) 6-10 cases
- ( ) 11 or more cases



(Continuation of above.)

What difference have you observed in the number of sponsors coming forward or completing the process now in comparison to the enforcement efforts (targeting sponsors) from summer of 2017? (The so-called "sponsor raids.") \*

- ( ) More sponsors coming forward now
- ( ) Less sponsors coming forward now
- ( ) No difference
- ( ) Don't remember/not sure
- ( ) Didn't work in this field at that time

If you would like to share the narrative of a child's or family's story of the impacts of ORR-DHS information-sharing, please do so below. (If you share a story and haven't provided us with your email address above, please let us know if there is a good way to contact you in case we want to use this story to highlight the results of the survey.)

Are there any other issues or trends related to ORR information-sharing with DHS that you would like to flag? Anything else you want to comment on?