

Federation for American Immigration Reform

Senate Committee on the Budget

June 28, 2024

FAIR is a national, nonprofit, public-interest organization comprised of millions of concerned citizens who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. Our organization examines trends and effects, educates the public on the impacts of sustained high-volume immigration, and advocates for sensible solutions that enhance America's environmental, societal, and economic interests today, and into the future. FAIR has over three million members and supporters of all racial, ethnic, and religious backgrounds, and across the political spectrum.

Under the Biden Administration, the vetting of unaccompanied alien children (UACs) and their sponsors has been significantly weakened to prioritize quick processing and release. Both the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) have facilitated this gross mismanagement by:

- Failing to properly vet UACs before placing them with sponsors;
- Failing to properly vet sponsors before UACs are placed; and
- Failing to perform critical follow-up after UACs' placement with sponsors.

Background

The Flores Settlement and William Wilberforce Trafficking Victims Protection Act (TVPRA) have made our UAC policies susceptible to exploitation. The Flores Settlement Agreement, signed in 1997, requires that the government release children "without unnecessary delay" to family members and other sponsors in the country. The TVPRA, passed in 2008, essentially creates a mass catch-and-release program for UACs from all countries other than Canada and Mexico by requiring that Customs and Border Protection (CBP) transfer them to HHS' Office of Refugee Resettlement (ORR) within 72 hours.¹

In late April, HHS issued a new final rule regarding the Flores Settlement Agreement.² Unfortunately, rather than eliminating incentives for UACs to enter the country illegally, the new rule reinforces incentives for them to do so, while failing to put in place safeguards to protect them.

¹ Kari Jacobson, "New Congressional Report Details Policy Failures that Allow Gang Members to Enter as Unaccompanied Minors," *Federation for American Immigration Reform*, June 24, 2024, <https://www.fairus.org/news/executive/new-congressional-report-details-policy-failures-allow-gang-members-enter>.

² Unaccompanied Children Program Foundational Rule, 45 CFR 410 (April 30, 2024), <https://www.federalregister.gov/documents/2024/04/30/2024-08329/unaccompanied-children-program-foundational-rule>.

HHS proudly touts that the rule “goes beyond the requirements of the Flores Settlement Agreement by establishing minimum services that the government must provide to unaccompanied children at Emergency and Influx Facilities.” Among its many provisions, the HHS rule expands minors’ access to “legal, post-release, and language services necessary for child well-being and compliance with immigration proceedings.” In addition, HHS says it will continue to welcome large-scale influxes of UACs by “providing comprehensive healthcare and educational services, including mental health support and classroom education.”³

Age Breakdown of UACs by Fiscal Year

AGE	FY2023	FY2022	FY2021
0-12	19%	15%	16%
13-14	12%	13%	13%
15-16	34%	36%	39%
17+*	35%	36%	33%

Office of Refugee Resettlement (ORR)

Noticeably absent from the rule is any thought of curtailing the massive influx of UACs, which has spiked dramatically since Fiscal Year (FY) 2020. From FY21-FY24YTD, more than 520,000 UACs have been encountered by Customs and Border Protection (CBP), and the large majority of these were referred to HHS and ultimately released.⁴ According to a report from the House Judiciary Committee, the number of UACs released to sponsors is “up 100 percent compared to all four years of the Trump Administration combined.” The number of UACs released to sponsors during the Biden Administration is now over 400,000.⁵ And, contrary to media coverage and messaging from open-borders advocates, most UACs transferred to HHS are teenage males, not small children. In FY23, nearly 70 percent of UACs placed

with sponsors were aged 15 and over, while just 19 percent were aged 12 and under.⁶

Last year, FAIR submitted a public comment on the Biden Administration’s proposed rule, laying out several recommendations to improve our flawed UAC policies.⁷ Unfortunately, HHS Secretary

³ Ira Mehlman, “Department of Health and Human Services Issues New Rule Designed to More Quickly Process and Release Unaccompanied Minors,” *Federation for American Immigration Reform*, June 2024, <https://www.fairus.org/departments-health-and-human-services-issues-new-rule-designed-more-quickly-process-and-release>.

⁴ U.S. Customs and Border Protection, “Nationwide Encounters,” *U.S. Customs and Border Protection*, last modified June 20, 2024, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

⁵ House Judiciary Committee, “New Information and Testimony from Biden Administration Officials Reveal Disregard for Potential Gang Affiliation of UACs,” *House Judiciary Committee*, June 17, 2024, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-06-17%20New%20Information%20and%20Testimony%20from%20Biden%20Administration%20Officials%20Reveal%20Disregard%20for%20Potential%20Gang%20Affiliation%20of%20.pdf>.

⁶ Office of Refugee Resettlement, “Fact Sheets and Data,” *Office of Refugee Resettlement*, current as of May 14, 2024, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

⁷ Federation for American Immigration Reform, public comment on The Unaccompanied Children Program Foundational Rule, *Federation for American Immigration Reform*, Dec. 4, 2023,

Xavier Becerra and ORR Director Robin Dunn Marcos refused to make those and other commonsense changes to the final rule. Instead, HHS has remained focused on the quick processing and release of UACs, despite glaring vulnerabilities in current policy.

CBP Failure to Carry Out DNA and Biometric Testing of UACs

More broadly, beyond the HHS rule, both CBP and HHS have consistently failed to carry out adequate vetting to ensure the safety of UACs and the American people.

When unaccompanied alien children arrive at the border, they are initially screened by CBP to determine whether they meet the legal definition of a UAC. However, like other illegal aliens, many UACs arrive without documentation, and CBP personnel are forced to rely on information that the UACs provide regarding who they are, their countries of origin, and whether they have relatives in the country. This process is made even more difficult by the fact that CBP has failed to establish any comprehensive program for collecting biometric information or conducting DNA testing of UACs, to ensure that the information they provide is accurate. As a result, CBP often has no definitive way to know if a UAC is a dangerous adult with a criminal history posing as a UAC; whether a child is in fact related to their alleged parent or relative if traveling in a family unit; or whether a UAC has already been encountered at the border, which could indicate trafficking.⁸

In recent years, hundreds of adults have been caught posing as UACs to obtain a faster release into the country. According to a March 2023 Florida Grand Jury report, HHS “discovered 105 children the agency later determined were actually adults during fiscal year 2021 alone.” The report also noted that, “in just the month of August 2022, El Paso Border Patrol agents arrested seven adults aged from 19 to 26 who tried to pass as children; agents in that region have discovered more than 665 adult illegal aliens who tried to pose as unaccompanied minors to gain expedited entry into the United States in the past 12 months.”⁹

Officials across administrations have sounded the alarm on how cartels use lax UAC policies at our borders to their advantage. In 2017, Trump Administration Attorney General Jeff Sessions argued that our UAC policies suffer from “exploitation...by gang members who come to this country as wolves in sheep[s] clothing.”¹⁰ Attorney General Sessions also stated that gangs

<https://www.fairus.org/sites/default/files/2023-12/FAIR%20comment%20on%20the%20Foundational%20Rule%20for%20UAC.pdf>.

⁸ Supreme Court of Florida, “Third Presentment of the Twenty-First Statewide Grand Jury Regarding Unaccompanied Alien Children (UAC),” *Supreme Court of Florida*, March 29, 2023, <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/651d8f68-f322-4cd0-831f-74dc9b0d77a8/docketentrydocuments/8437d6e2-1c46-4575-bd21-47de83302c61>.

⁹ Supreme Court of Florida, “Third Presentment of the Twenty-First Statewide Grand Jury Regarding Unaccompanied Alien Children (UAC),” *Supreme Court of Florida*, March 29, 2023, <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/651d8f68-f322-4cd0-831f-74dc9b0d77a8/docketentrydocuments/8437d6e2-1c46-4575-bd21-47de83302c61>.

¹⁰ House Judiciary Committee, “New Information and Testimony from Biden Administration Officials Reveal Disregard for Potential Gang Affiliation of UACs,” *House Judiciary Committee*, June 17, 2024, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-06->

exploit our policies as a means to recruit new members. Echoing these remarks, in 2022, Former El Paso Sector Border Patrol Chief Gloria Chavez noted that, “Transnational Criminal Organizations exploit migrants, convincing them to pose as minors in order to be processed as such.”¹¹

This failure to thoroughly vet UACs at the border invites cartels and other criminal enterprises to exploit our UAC policies to smuggle criminals into the country, traffic children, and inflict harm on American communities.

HHS Failure to Properly Vet UACs and Sponsors

After being inspected by CBP, UACs are transferred to HHS’ ORR for care and placement with sponsors. ORR is tasked with vetting both UACs and potential sponsors before placement. Under the new rule, ORR will release children to:

- 1) a parent;
- 2) a legal guardian;
- 3) an adult relative;
- 4) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the unaccompanied child's well-being;
- 5) a licensed program willing to accept legal custody; or
- 6) an adult individual or entity seeking custody, in the discretion of ORR, when it appears that there is no other likely alternative to long term custody, and family unification does not appear to be a reasonable possibility.¹²

While this order of priority appears to consider the best interests of alien children and potential sponsors, failures in vetting both UACs and their sponsors have led to significant issues, including safety risks for both the children and sponsors.

Perhaps most concerning, HHS has no policy in place to DNA test UACs and their potential sponsors. Without DNA testing, ORR has no definitive way to determine whether UACs are in fact related to sponsors claiming to be parents or relatives. By March 2023, approximately 90,000 UACs had been turned over to someone who claimed to be a family member without DNA testing and document verification. ORR has repeatedly claimed that it prioritizes UAC placement with family above other categories of sponsors. However, evidence shows that ORR “appears to use the term ‘immediate relative’ exceedingly loosely, including extended family members outside the

[17%20New%20Information%20and%20Testimony%20from%20Biden%20Administration%20Officials%20Reveal%20Disregard%20for%20Potential%20Gang%20Affiliation%20of%20.pdf](#).

¹¹ Adam Shaw, “Border Patrol nab hundreds of illegal immigrant adults posing as children,” *Fox News*, Aug. 24, 2022, <https://www.foxnews.com/politics/border-patrol-nab-hundreds-illegal-immigrant-adults-posing-children>.

¹² Unaccompanied Children Program Foundational Rule, 45 CFR 410 (April 30, 2024), <https://www.federalregister.gov/documents/2024/04/30/2024-08329/unaccompanied-children-program-foundational-rule>.

nuclear family.”¹³ Put simply, ORR is applying its own guidelines loosely to more quickly place UACs with sponsors.

ORR also fails to consider a sponsor’s immigration status during the vetting process. This means that under current policy, UACs can be placed with other illegal aliens in the country, some of whom may be criminals looking to traffic them for sex, labor, and other exploitative reasons. This is especially concerning given that there is evidence that violent gangs “have UAC members graduate to adulthood and apply to sponsor other UAC members.”¹⁴ Additionally, failing to consider immigration status in determining sponsor suitability could result in children being placed with illegal alien sponsors who encourage UACs not to cooperate with immigration proceedings.

Not only is HHS failing to vet sponsors, but HHS is also not properly vetting UACs before placement. As detailed by the House Judiciary Committee, HHS does not request UACs’ criminal records from their home countries to determine whether they are affiliated with dangerous gangs or pose a threat to public safety. The Committee’s report found that HHS does not even have a policy in place to refer gang-affiliated or criminal UACs to the Department of Justice (DOJ) for investigation or prosecution.¹⁵

The Biden Administration’s consistent failure to address abuse of our UAC policies has had far-reaching and sometimes devastating consequences. Just one example can be seen in the tragic murder and sexual assault of Kayla Hamilton, a 20-year-old girl who was brutally raped and strangled to death in her room in 2022. Hamilton’s alleged murderer, a 17-year-old illegal alien from El Salvador, was apprehended by Border Patrol in Texas in March 2022, and was placed with a sponsor, allegedly his first cousin, in May of that year. He then ran away a month later.

It was later revealed that DHS and HHS made critical errors in the vetting and release of Hamilton’s alleged murderer. The alien was found to have gang tattoos and had been “arrested by police in El Salvador on January 21, 2020, for ‘illicit association’ with the dangerous MS-13 gang.” If HHS had a policy to cross reference criminal records and gang affiliation of UACs in their home countries, Hamilton’s murder could have been prevented.¹⁶

HHS Failure to Conduct Adequate Follow-Up

Under current policy, ORR is tasked with providing post-release services (PRS) to UACs it releases to sponsors. ORR coordinates PRS on different scales depending on the circumstances of the UAC and their sponsor. The levels of PRS include: (1) virtual check-ins; (2) case management

¹³ Supreme Court of Florida, “Third Presentment of the Twenty-First Statewide Grand Jury Regarding Unaccompanied Alien Children (UAC),” *Supreme Court of Florida*, March 29, 2023, <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/651d8f68-f322-4cd0-831f-74dc9b0d77a8/docketentrydocuments/8437d6e2-1c46-4575-bd21-47de83302c61>.

¹⁴ Ibid.

¹⁵ House Judiciary Committee, “New Information and Testimony from Biden Administration Officials Reveal Disregard for Potential Gang Affiliation of UACs,” *House Judiciary Committee*, June 17, 2024, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-06-17%20New%20Information%20and%20Testimony%20from%20Biden%20Administration%20Officials%20Reveal%20Disregard%20for%20Potential%20Gang%20Affiliation%20of%20.pdf>.

¹⁶ Ibid.

services; and (3) intensive in-home engagements.¹⁷ ORR works with nonprofit organizations across the country after UACs are placed to provide these services. Although some services, such as access to legal services and school enrollment, could be eliminated in order to direct funding to other useful and critical needs, post-release follow-up of UACs is crucial.

While ORR states that PRS are instrumental in ensuring UAC safety and wellbeing, it also notes that, “PRS are not mandatory; once a child is released to a sponsor, they are no longer in the custody of ORR.” All UACs placed with sponsors are eligible to receive PRS, but those services are only legally required in instances where a home study (“an in-depth investigation of the potential sponsor’s ability to ensure the child’s safety and well-being”) is also mandated.¹⁸ Those instances include when the child is a victim of severe trafficking, has special needs, has been significantly harmed by physical or sexual abuse, or the “child’s sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking, to the child.”¹⁹

A lack of follow-up has resulted in numerous failures by ORR to keep track of UACs after release and ensure that they are in safe placements. In 2023, a *New York Times* report revealed that HHS could not locate at least 85,000 UACs who had been placed with sponsors. The report went on to note that many UACs are placed into exploitative situations, often being forced to work dangerous jobs, and face abuse because the Biden Administration has “ramped up demands on [HHS] to move the children quickly out of shelters and release them to adults.”²⁰

In a hearing held by the House Oversight Committee in April 2023, Members of Congress pressed ORR Director Robin Dunn Marcos on the agency’s repeated shortfalls in the care and placement of UACs. Regarding the loss of contact with 85,000 UACs, Dunn Marcos could not provide any clarity and instead dodged questions on the topic. She separately provided a letter stating that it was HHS policy to make three phone calls to the numbers provided by sponsors following UAC placement. In that hearing, it was also revealed that ORR had eliminated proof of address requirements and exempted immediate relatives other than a parent or legal guardian from background checks when facilities faced backlogs in March 2021.²¹

¹⁷ Office of Refugee Resettlement, “ORR Unaccompanied Children Program Guide: Section 6,” *Office of Refugee Resettlement*, current as of Feb. 28 2024, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-6>.

¹⁸ Office of Refugee Resettlement, “ORR Unaccompanied Children Program Policy Guide: Guide to Terms,” *Office of Refugee Resettlement*, current as of Dec. 20, 2023, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-guide-terms#:~:text=Home%20Study%20%E2%80%94%20A%20home%20study,child's%20safety%20and%20well%2Dbeing>.

¹⁹ Office of Refugee Resettlement, “ORR Unaccompanied Children Program Policy Guide: Section 2,” *Office of Refugee Resettlement*, current as of April 1, 2024, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.4.2>.

²⁰ Hannah Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.,” *The New York Times*, Feb. 28, 2023, <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

²¹ House Oversight Committee, “Hearing Wrap Up: ORR Director Fails to Answer Questions About 85,000 Lost Unaccompanied Alien Children, Flawed Vetting of Sponsors, and More,” *House Oversight Committee*, April 18, 2023, <https://oversight.house.gov/release/hearing-wrap-up-orr-director-fails-to-answer-questions-about-85000-lost-unaccompanied-alien-children-flawed-vetting-of-sponsors-and-more%E2%80%94>

Additional problems in the UAC program were highlighted in a February 2024 report issued by the HHS Office of the Inspector General (OIG) entitled “Gaps in Sponsor Screening and Follow-up Raise Safety Concerns for Unaccompanied Children.” Here, the Inspector General examined the cases of nearly 17,000 UACs released to sponsors in March and April of 2021, and found a litany of mistakes that jeopardized the safety of UACs. In particular, the Inspector General found that; (1) ORR failed to conduct timely safety and well-being follow-up calls in 22 percent of cases, and failed to document follow-up calls in UAC case files in 18 percent of cases; (2) the case files of 19 percent of UACs released to sponsors with pending FBI fingerprint or state registry checks were not updated with results of those checks; (3) for 16 percent of cases, one or more required sponsor safety checks did not have documentation that the checks were conducted; and (4) in 5 percent of cases, records were not updated with child welfare outcomes or sponsorship history.²²

Case Files Lacking Documentation on Sponsor Safety Checks

Safety Check	No. of Case Files	Point Estimate	95% Confidence Interval
UC Portal Address Check	40 of 342	10.5%	7.4%–14.7%
SmartyStreets	5 of 342	1.0%	0.4%–2.4%
Google Earth/Google Maps ¹	4 of 342	0.6%	0.2%–1.9%
Missing Address Check Total²	43 of 342	10.9%	7.8%–15.1%
Internet Criminal Public Records Check	1 of 342	0.2%	0.03%–1.4%
Sex Offender Name Check	1 of 342	0.7%	0.1%–4.9%
Sex Offender Address Check	13 of 342	4.2%	2.0%–8.7%
FBI Fingerprint Check	0 of 189 ³	0%	0.0%–13.9%
Child Abuse and Neglect Registry Check ⁴	0 of 23 ³	N/A	N/A
Missing Background Check Total⁵	15 of 342	5.1%	2.6%–9.8%
Missing Address and Background Checks Rollup⁶	55 of 342	15.6%	11.3%–21.0%

HHS Office of the Inspector General review of ORR case files, 2022

ORR has consistently failed to carry out proper vetting, instead attempting to shift blame for their mistakes onto other parties. While the border crisis has dramatically increased ORR’s workload, the root problem lies in its ineffective policies and a lack of urgency to address the clear exploitation of our UAC policies.

²² Department of Health and Human Services Office of the Inspector General, “Gaps in Sponsor Screening and Followup Raise Safety Concerns for Unaccompanied Children,” *Department of Health and Human Services*, Feb. 2024, <https://oig.hhs.gov/oei/reports/OEI-07-21-00250.pdf>.

Conclusion

The evidence shows that UACs are at risk of being abused and trafficked, both on their way to the United States and once inside the country. Yet, Biden Administration policies continue to prioritize the quick release of these children ahead of their safety. Clearly, reform is needed.

FAIR recommends that:

- 1) DHS mandate the collection of biometric data and DNA testing of UACs when encountered by CBP to verify age and identity.
- 2) HHS begin DNA testing UACs and sponsors to verify familial relationships and protect against human trafficking and exploitation of minors.
- 3) HHS require ORR to conduct background checks on all UACs, including contacting home countries or last habitual residence to gather information on criminal records.
- 4) HHS refer all criminal/gang-affiliated UACs to DOJ for investigation or prosecution and hold those UACs in secure facilities rather than releasing them.
- 5) HHS extend background checks – including criminal and immigration status checks – to everyone in a sponsor’s household before placement to ensure safe home environments for UACs.
- 6) HHS only release children to parents or legal guardians to protect UACs from criminals and other bad actors.
- 7) Children designated as UACs with illegal alien parents or legal guardians in the country no longer be categorized as UACs and be processed for removal with their illegal alien parents or guardians.

Absent significant reform, our policies will continue to be exploited by gangs and other criminal entities. It is important that Congress enact reforms to end this abuse and ensure that UACs are processed quickly and sent home, not placed in potentially dangerous situations with unvetted sponsors. HHS and DHS must also be held accountable for their failure to address this crisis, and FAIR urges both to implement meaningful policy reforms to better detect bad actors and protect UACs.