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Submitted for the Roundtable Panel

“The Exploitation Crisis: How the U.S. Government is Failing to Protect Migrant Children from Trafficking and Abuse,” July 9, 2024

Dear Senator Grassley,

Thank you for the opportunity to address this panel and for your consistent attention to the issue of unaccompanied migrant children. I share your concern that the federal government is failing to protect migrant children from trafficking and abuse. Roundtables like this provide a valuable forum for open and honest discussion about the problems and potential solutions available to protect this vulnerable population.

As the Acting Director of ORR during the Trump Administration, as well as a former federal prosecutor and a practicing criminal defense lawyer, I hope to offer a unique perspective on the challenging issues the current border crisis has created for unaccompanied alien children (UAC) in the care of ORR.

Sponsor Vetting and Supervision Issues

From the start of my tenure at ORR, it became evident that the vetting procedure for UAC sponsors contained weaknesses and loopholes that would allow fraudulent sponsors to take custody of UAC for trafficking, forced child labor, and abuse. The essentially toothless vetting process prioritized speed of release from ORR custody over safety, suitability of household, and accountability. UAC were pushed out to sponsors with often tenuous and undocumented family ties, questionable motives, and no assurances—let alone guarantees—that each child would be cared for appropriately. Disturbingly, as far as ORR protocols were concerned, once UACs were out of sight they were out of mind. ORR had no meaningful process for checking up on UAC after their release to putative sponsors to ensure the UAC were not being trafficked, exploited, or simply disappearing without a trace. ORR’s follow-up phone calls within 30 days of placement often went unanswered. ORR also received reports that, in cases in which UAC came into contact with U.S. courts, a high number of UAC were no longer, by the time of the first court appearance, living with the sponsor ORR had supposedly carefully vetted.

Under my guidance, ORR made major revisions to the Family Reunification Package—that is, the sponsorship vetting materials—to include a new and improved Sponsorship Verification Application (SVA). These revisions were designed to enhance significantly the ability of ORR staff to make sponsorship release decisions based upon actual data points. The new SVA required detailed information from potential sponsors that allowed for a more robust assessment of sponsor suitability.

The revised SVA also made post-release services a mandatory part of the agreement to release a UAC into a sponsor's household. The revisions required sponsors to sign on for in-person or telephone checks by ORR extending months or even years after placement. These checks were meant to ensure that the UAC were thriving in their placements and that sponsors were ensuring attendance by the UAC at required court hearings, as well as meeting the medical and educational needs of the child. Such post-release services also would provide a way for every UAC to self-report to ORR any safety or wellbeing concerns the minor might be experiencing in the sponsoring household. The processes mandated by the revised SVA would provide documented feedback as to how many and within what time frame UAC had gone missing, run away, or been abandoned by their sponsors.

Notice of the revised SVA and its data collection processes was posted for public comment in the Federal Register on Jan 5, 2021. *See* “Proposed Information Collection Activity; Sponsor Review Procedures for Unaccompanied Alien Children,” 86 Fed. Reg. 308–310 (<https://www.govinfo.gov/content/pkg/FR-2021-01-05/pdf/2020-29117.pdf>). Within thirty days, the new Biden administration had pulled down the SVA revision proposal, and ORR was back to pushing UAC through a revolving door as quickly as possible with essentially no accountability or oversight of its placement decisions. To my knowledge, there has been no effort by the Biden administration to tighten up ORR's sponsor vetting process since. Simply put, the historically high number of unaccompanied children that have come to the border since January 2021 has incentivized a revolving door policy where asking too many questions about sponsors' suitability only creates backups and slows the turnover rate of beds in ORR facilities.

Recent investigative reporting has brought to light serious concerns about UAC placement under this current regime. *See* “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.,” *N.Y. Times*, Sec. A, p. 1 (Feb. 23, 2023) (<https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>). Although such exploitation of UAC is not a new problem, it occurs more readily and with greater magnitude when record numbers of UAC are shuffled through an already broken ORR system. During the last administration, ORR had some of the lowest numbers in its UAC facilities in recent memory. Fewer minors in ORR care meant fewer children making the dangerous and grueling trek alone and

afraid across our border, fewer cartels and coyotes getting rich off their pain and desperation, and fewer potential victims for gangs and traffickers to exploit after release. But even with the lower number of UAC in ORR shelters, such children still face uncertain outcomes if we tolerate a system in which almost anyone can claim to be a suitable sponsor, the agency lacks reliable processes to verify their suitability, and nobody has the ability or desire to be accountable for placement decisions. As part of the ORR leadership, we tried to change that.

Age Verification and Adult Infiltration Issues

During my tenure at ORR, we also began to question how U.S. Customs and Border Protection (CBP) conducts encounters at the border to understand how ORR's system for UAC was being infiltrated and exploited by adults claiming to be minors.

Despite ORR's express mission of caring only for minors who "ha[ve] not attained 18 years of age" (6 U.S.C. § 279(g)(2)(B)), I was astonished to learn that no meaningful age determination takes place at the border. Said differently, unless it is obvious that a person is *not* a minor, the CBP personnel rely exclusively on what an alien claims his or her age to be. Thus, all it takes to be delivered directly to an ORR shelter for UAC is the migrant's claim to be 17 or younger. Not surprisingly, the word is out among younger-looking migrants looking to exploit the system. They learn that someone who claims to be 17 years old gets transportation to a children's shelter, interim care, and delivery to the hands of a willing sponsor.

This haphazard process at the border (i) places ORR in the inadvertent position of violating its statutory mandate, (ii) allows limited ORR resources that ought to be devoted exclusively to minors to be consumed by care for adults, and (iii) creates obvious safety issues concerning the placement of adults alongside children in congregate care settings. State licensing of the ORR facilities also might be jeopardized if adults are found to be housed in the same facilities as minors.

Despite our serious concerns about this framework during my ORR tenure, there was little action at the border to address it. Data on the number of "age re-determinations" (that is, occasions where a putative UAC was later determined to be an adult) should be available for the years before, during, and since the Trump administration. While I no longer have access to such data, I would not be surprised if the numbers of adults found to have infiltrated ORR facilities has *dropped* significantly since January 2021, even as the number of UAC and other migrants has exploded. I would not expect that decrease because less lying is occurring at the border—hardly a plausible scenario—but because CBP and ORR have less time and resources to address the problem. Fewer age-fraud investigations will lead to fewer age re-determinations.

My recollection is that even in times of relatively low UAC encounters at the border, many hundreds—and perhaps thousands—of adults were discovered in ORR care. If the policy of the current administration is to push UAC through ORR as quickly as possible to a sponsor, regardless of safety or suitability, then addressing age-fraud in UAC facilities dedicated to caring for children must take a back seat.

As Acting Director, I pushed back on the lax policy for identifying minors at the border and asked for some empirically sound method of age determination to be done before transporting suspected adults to ORR. Given the statutory mandate to care only for minors, I advocated for procedural change that would raise the threshold, in some fashion, perhaps even having a presumption that would need more than the migrant's say-so to overcome where there was reason to question the person's age.

At the very least, any evidence arising from prior encounters with the migrant ought to be consulted. For example, if a migrant now claims to be 17½ years old but a database shows that he or she crossed another border, here or elsewhere, three years ago while claiming to be 16, then we know something is not right. Some cases can be solved just that quickly, but others are more complicated due to lack of documentation. Because ICE must deliver putative minors to ORR custody within 72 hours of encounter, I was repeatedly told that conducting any sort of age determination, either documentary or otherwise, was unworkable. That might be an unfortunate reality, but I doubt that sufficient attention has been devoted to exploring solutions. In any event, safety risks arising from the infiltration of adults into ORR care will not go away simply because an artificial time pressure invites fraud and abuse of the system.

Gangs Exploit the ORR's Transportation and Placement of UAC

During my ORR tenure, I also became aware of an alarming number of gang related crimes being perpetrated by former UAC. My attention to this problem started as a research project when several high-profile gang indictments and arrests occurred in the D.C.-Maryland-Virginia (DMV) region. News stories listed the names of the accused individuals and often their country of origin and immigration status. Out of curiosity, I cross-checked those names against ORR records and began to see a high correlation between these defendants and former UAC status. As a criminal defense attorney who encountered MS-13 gang members as court-appointed counsel, I was aware of intense gang recruitment in the migrant communities in the DMV area—especially among newly arrived children who were dropped into local school systems after placement with relatives through ORR. I learned through credible testimony in court that gangs often fill the social gap for these kids when they have no other support systems in their new communities. UAC are often unable to speak English and thrown into new schools and surroundings that neither support them nor meet their educational or emotional needs.

Once this connection between gang-related criminal charges and former UAC became apparent to me, I commenced a larger project to cross reference more data. Specifically, I used a DOJ task force report issued in October 2020 entitled "Full-Scale Response: A Report on the Department of Justice's Efforts to Combat MS-13 from 2016-2020 (<https://www.justice.gov/archives/ag/page/file/1329776/dl?inline>). One big takeaway from that report was headlined in the DOJ press release reproduced below:

Department Has Prosecuted More than 700 MS-13 Gang Members Over the Last Four Years; Approximately 74 Percent of these Defendants Were Unlawfully Present in the United States

(<https://www.justice.gov/opa/pr/departments-justice-releases-report-its-efforts-disrupt-dismantle-and-destroy-ms-13>).

Taking the DOJ data, I posed this daring question: How many of the MS-13 gang members who were pulled into our criminal justice system were also former UAC? My ORR staff's preliminary findings were that approximately one-third of those charged in the 700 MS-13 gang related cases referenced in the report had been UAC who went through ORR custody and placement. That metric speaks volumes to the issues this panel seeks to address. If one-third of the most violent gang members committing crimes in our country are former UAC, then ORR bears some responsibility for having placed them directly into the MS-13 pipeline. Outcomes should matter, yet ORR has operated in a consequence-free environment to the detriment of these children and our country. If UAC end up in the hands of gangs and human traffickers, 1, 5, or 10 years after placement, we know that the vetting process is broken and we have merely facilitated gang recruitment for MS-13 and other transnational criminal organizations with tax payer money.

Conclusion

It is my well-informed opinion that ORR is not serving the UAC or tax payers effectively. Decisions to change the way we address the deficiencies are now up to legislators and other policymakers informed by discussions like this.

If I can make one suggestion it would be to continue to question the revolving door policy that has dominated ORR practices under the current administration. We must have a child-focused approach rather than one that rewards hasty decision making and zero accountability. Without transparency into the effectiveness of the placements nobody really knows the extent of the problems. We need outcome-based performance metrics, such as the type of tracking that could be done with UAC records and gang related crime I initiated. Such inquiries and procedures will allow policies to be fashioned that are supported by actionable data rather than some false

notion that holding a child in an ORR facility too long is the real danger he or she faces. Additionally, transparency and data points will guide better sponsor vetting, better placement decisions, and better border policies generally.

We should not wait until another *New York Times* article exposes new or additional horrors that await these UAC. Don't we have a responsibility to track these outcomes and address them systematically within the ORR network of providers? Is ORR handing children over to traffickers, exploiters, and gangs? How will we ever know if the people entrusted with serving this population are allowed to silence voices within the agency that dare to speak out and to suppress data that would support systemic change?

I recommend formalizing a mechanism that tracks outcomes for both positive and negative markers. The post-release services we recommended during my tenure as Acting Director are one way of creating an actionable data set that shows how well placement decisions are made and what pitfalls ORR is creating for UAC along the way. Such data should be reported to stakeholders and used by ORR to set policies in place that address the real issues that face UAC post placement, rather than slamming the door behind them when they leave and wishing them well.

Only when real solutions to these issues are implemented will UAC stand a chance at the life all children deserve—one that protects them from abuse and exploitation while letting them continue to grow up and thrive no matter where they are.

Thank you for the opportunity to address this panel and thank you again for your commitment to finding solutions to the serious issues facing the UAC program and this vulnerable population.