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March 5, 2024

## VIA ELECTRONIC TRANSMISSION

Ms. Robin Dunn Marcos  
Director  
Office of Refugee Resettlement  
Department of Health and Human Services  
330 C Street SW  
Washington, D.C. 20201

Ms. Marcos:

I write to you today to better understand the steps the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) plans to take to prevent the exploitation of unaccompanied children once they are released from ORR custody. As you are aware, The New York Times and other media outlets published a series of damning reports in 2023 about unaccompanied children being seriously injured or killed while illegally working dangerous jobs around the country. ORR is responsible for protecting children from “smugglers, traffickers, or others who might seek to victimize or otherwise engage the child in criminal, harmful or exploitative activity,” which includes working dangerous jobs in exploitative conditions.<sup>1</sup> These recent reports, however, expose the Biden administration’s failure to reform ORR’s sponsor vetting and child placement procedures and its inability to coordinate with other federal agencies to protect unaccompanied children.

Unfortunately, this is not a new problem, but one that is decades-long and spans multiple administrations. In 2016, the Senate Committee on Homeland Security and Governmental Affairs’ Permanent Subcommittee on Investigations (PSI) released a bipartisan report that found that the Obama administration had “systemic deficiencies” in ORR’s sponsor vetting and child placement procedures that led to the human trafficking of unaccompanied children.<sup>2</sup> For example, PSI discovered that some children were held captive and forced to work on an egg farm six or seven days a week for 12 hours a day, and were forced to turn over their paycheck to their traffickers

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<sup>1</sup> *ORR Unaccompanied Children Program Policy Guide: Section 2*, OFF. OF REFUGEE RESETTLEMENT, <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.1> (last updated Oct. 6, 2023).

<sup>2</sup> Staff of S. Comm. on Homeland Sec. and Governmental Affs., Permanent Subcomm. on Investigations, 114th Cong., *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement* 26, <https://cmsny.org/wp-content/uploads/2016/02/Majority-Minority-Staff-Report-Protecting-Unaccompanied-Alien-Children-from-Trafficking-and-Other-Abuses-2016-01-282-1.pdf>.

under the threat of physical harm to their families if they did not comply.<sup>3</sup> PSI concluded that ORR failed to, among other things, conduct adequate background checks, home studies, and to detect when a sponsor, or group of unrelated sponsors, sought custody of multiple unrelated children.<sup>4</sup>

Instead of learning from these mistakes, the Biden administration has again relaxed sponsor vetting requirements amid the chaos at the southern border. Since assuming office in January 2021, over 370,000 unaccompanied children have been referred to ORR custody by the Department of Homeland Security.<sup>5</sup> To accommodate this influx, ORR loosened sponsor vetting requirements, mirroring the flawed policies of the Obama administration. For example, Field Guidance #10, released in March 2021, reduced the information collected by case managers, removed third-party review of the sponsor screening process, and removed background checks and identity verification for adult household members in cases involving a sponsor who is the child’s parent or legal guardian.<sup>6</sup> Field Guidance #11, also released in March 2021, reduced the background checks and identity verification required in cases involving a sponsor who is a sibling, grandparent, cousin, or other close relative.<sup>7</sup>

In 2022, the HHS Office of Inspector General (OIG) issued a report that found serious issues with Field Guidance #10 and #11. In interviews, ORR staff told the HHS OIG “that these changes have weakened ORR’s ability to vet sponsors and protect children from risks such as trafficking and exploitation” and that “[c]ase management staff are encouraged to do *the absolute minimum vetting of sponsors* to effectuate the quickest releases.”<sup>8</sup> As a result, “there are *safety issues* that are likely being overlooked.”<sup>9</sup> ORR case managers acknowledged this issue in an internal memo released by The New York Times last year, noting their concerns that “labor trafficking was increasing” and that ORR had become a place “that rewards individuals for making quick releases, and not one that rewards individuals for preventing unsafe releases.”<sup>10</sup> Inexplicably, both field guidances are still in place today despite the HHS OIG finding that they increase a child’s risk of release to an unsafe sponsor.

Earlier this month, HHS OIG released another report, which found that ORR failed to comply with its sponsor vetting requirements. In 16 percent of unaccompanied children’s case files, HHS OIG

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<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* at 2-3.

<sup>5</sup> *Fact Sheets and Data*, OFF. OF REFUGEE RESETTLEMENT, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data> (last updated Jan. 26, 2024).

<sup>6</sup> Off. of Refugee Resettlement, FG-#10, Expedited Release for Eligible Category 1 Cases (Mar. 22, 2021), <https://www.acf.hhs.gov/sites/default/files/documents/orr/FG-10%20Expedited%20Release%20for%20Eligible%20Category%20Cases%202021%2003%2022.pdf>.

<sup>7</sup> Off. of Refugee Resettlement, FG-#11, Temporary Waivers of Background Check Requirements for Category 2 Adult Household Members and Adult Caregivers (Mar. 31, 2021), <https://www.acf.hhs.gov/sites/default/files/documents/orr/FG-11%20Temporary%20Waiver%20of%20Background%20Check%20Requirements%202021%2003%2031.pdf>.

<sup>8</sup> Christi A. Grimm, Inspector Gen., *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children*, U.S. DEP’T OF HEALTH & HUM. SERVS. OFF. OF INSPECTOR GEN. 16-17 (Sept. 2022), <https://oig.hhs.gov/oei/reports/OEI-07-21-00251.pdf> (emphasis added).

<sup>9</sup> *Id.* at 17 (emphasis added).

<sup>10</sup> Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. TIMES (Feb. 25, 2023), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html?searchResultPosition=1>.

found “one or more required sponsor safety checks lacked *any* documentation indicating that the checks were conducted.”<sup>11</sup> HHS OIG also found that in 35 percent of case files “sponsor-submitted IDs contained legibility concerns”<sup>12</sup> and in 22 percent of cases that “ORR did not conduct timely Safety and Well-Being Follow Up Calls.”<sup>13</sup> The fact that these basic checks were not completed underscores ORR’s decision to prioritize speed over safety when releasing unaccompanied children at a time when there are record levels of children being exploited.

In an attempt to remedy these systemic deficiencies, the Department of Labor (DOL) and HHS announced a new interagency task force in February 2023 to address the historic increase in child labor violations, particularly involving unaccompanied children. The Departments claim that the task force will ensure “timely information regarding active child labor investigations” is shared with HHS to allow it “to apply additional scrutiny in the sponsor vetting process when warranted because of geographic or other concerns.”<sup>14</sup> However, since the task force was formed over one year ago, HHS has not made any meaningful changes to its sponsor vetting and child placement processes. In fact, as noted above, ORR continues to use field guidance that weakened sponsor vetting requirements, despite criticism from the HHS OIG and ORR’s own staff.<sup>15</sup>

ORR also conducted an audit of its vetting practices for sponsors who sponsored three or more children to whom they were not related. ORR conducted this audit internally and released the results in June 2023. While ORR concluded that it followed its own policies and procedures with respect to sponsor vetting—essentially giving itself a clean bill of health—it did not conduct a holistic review of the entire program.<sup>16</sup> ORR audited an extremely small subset of cases, accounting for fewer than one percent of children released during the fiscal year 2021-2022 review period. ORR also did not examine familial sponsors despite evidence that a sponsor’s familial relationship to an unaccompanied minor does not eliminate the likelihood that the child will end up working in unlawful conditions.<sup>17</sup> In fact, The New York Times reported that ORR’s own caseworkers estimate two-thirds of all unaccompanied minors end up working full time upon release from ORR custody, including those who live with family members.<sup>18</sup>

ORR admits that it needs to improve data collection on child well-being following their release from ORR custody, and says that it intends to standardize the questions it uses during Safety and Well-Being Follow Up Calls to ask whether the child is working, and whether the working

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<sup>11</sup> Christi A. Grimm, Inspector Gen., *Gaps in Sponsor Screening and Followup Raise Safety Concerns for Unaccompanied Children*, U.S. DEP’T OF HEALTH & HUM. SERVS. OFF. OF INSPECTOR GEN. 12 (Feb. 2024), <https://oig.hhs.gov/oei/reports/OEI-07-21-00250.pdf> (emphasis added).

<sup>12</sup> *Id.* at 14-15.

<sup>13</sup> *Id.* at 18-19.

<sup>14</sup> *Departments of Labor and Health and Human Services Announce New Efforts to Combat Exploitative Child Labor*, U.S. DEP’T OF HEALTH & HUM. SERVS. (Feb. 27, 2023), <https://www.hhs.gov/about/news/2023/02/27/departments-labor-and-health-and-human-services-announce-new-efforts-combat-exploitative-child-labor.html>.

<sup>15</sup> Grimm, *supra* note 8.

<sup>16</sup> *Update on Efforts to Mitigate Child Labor Exploitation and Internal Audit on Placement Process Used to Transfer Custody of Unaccompanied Children to Vetted Sponsors*, OFF. OF REFUGEE RESETTLEMENT (June 2023), <https://www.acf.hhs.gov/sites/default/files/documents/orr/update-on-efforts-to-mitigate-child-labor-exploitation-internal-audit-placement-process.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> Dreier, *supra* note 10.

conditions are appropriate.<sup>19</sup> ORR also admits that children working illegally, being exploited, or not attending school are not reported to ORR, but rather are reported to Child Protective Services or other authorities as part of the standard process.<sup>20</sup> To remedy these gaps, ORR claims it will explore policy changes that will expand Post-Release Services and use ORR-funded non-profits to provide these children services, including virtual check-ins and intensive in-home engagements, as well as other community services.<sup>21</sup> Under current law, ORR “does not have statutory authority to provide more than *voluntary* follow-up services.”<sup>22</sup> Since it is unlikely that a sponsor exploiting a child for illegal labor would voluntarily accept these services, post-release efforts are likely to be ineffective at preventing the exploitation of these children. This makes it all the more important for ORR to ensure that unaccompanied children are released only to qualified sponsors and that its collaboration with state entities and DOL—both of which have enforcement authorities—drastically improves.

ORR says that, over the next six to 12 months, it intends “to work with an outside entity to conduct an in-depth review of random samples of all children, stratified by sponsor category.”<sup>23</sup> However, it is not clear what sponsor categories ORR intends to include as part of this review and whether sponsors with familial relationships to the unaccompanied child will be an included category.

As the Director of ORR, you have the ability to make systematic changes to ensure that children leaving your custody are not placed in dangerous situations. To best understand what corrective actions ORR and the interagency task force are currently taking or intend to take to address the unprecedented rise in child exploitation, I ask that you answer the following questions, on a question-by-question basis, **by March 19, 2024.**

1. What is ORR’s process for performing background checks on all potential sponsors? Please include:
  - a. The types of background checks conducted, based on sponsor category;
  - b. The name of the outside entity that performs the required background checks; and,
  - c. Whether ORR requires Federal Bureau of Investigation (FBI) background checks for any or all sponsors.
2. What information does ORR request and collect from parental sponsors before releasing a child into their custody?
3. What information does ORR request and collect from non-parental sponsors before releasing a child into their custody?
4. Between January 2021 and January 2024, how many sponsors has ORR conducted a home visit for during the vetting process? Please also produce:

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<sup>19</sup> *Update on Efforts to Mitigate Child Labor Exploitation and Internal Audit on Placement Process Used to Transfer Custody of Unaccompanied Children to Vetted Sponsors*, *supra* note 16, at 14.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (emphasis added).


<sup>23</sup> *Id.* at 15.

- a. The information ORR requires to determine that the potential sponsor has the financial resources needed to support the child;
  - b. The information ORR requires to determine that the potential sponsor has adequate housing and physical space to support the child; and
  - c. The information ORR requires to ensure the child will be placed into school and not made to work during their time with the potential sponsor.
5. Please provide all informational materials ORR shares with sponsors and children in its custody about federal child labor laws before a child is released to a sponsor.
6. As part of post-release services, has ORR ever received reports that unaccompanied children were found to be working in violation of federal child labor laws? Please also explain:
  - a. How many unaccompanied children have been found working in violation of federal child labor laws since January 2021;
  - b. Which entity reported this information; and
  - c. How ORR remedied each incident.
7. Does ORR plan to rescind Field Guidance #10 and Field Guidance #11 in light of the HHS OIG's finding that they led to an increased risk of trafficking and exploitation? If not, why not?
8. Please produce a copy of all internal memos sent by ORR staff to supervisors between March 2021 and January 2024 that reference concerns with ORR's sponsor vetting requirements, including, but not limited to, Field Guidance #10 and Field Guidance #11.
9. Has ORR contracted with, or does it plan to contract with, an outside entity to conduct an in-depth review into its vetting processes to ensure unaccompanied children are only placed with qualified sponsors? If so, please include in your response:
  - a. The name and address of the company ORR currently contracts with or plans to contract with;
  - b. The parameters of the audit, including what categories of sponsors are included in the audit; and,
  - c. When the third party is expected to conclude its audit.
10. Please produce a copy of the contractual agreement between any outside entity and ORR related to a review of ORR's sponsor vetting processes.
11. If ORR has not contracted with an outside entity to conduct an in-depth review into its vetting processes, please explain why ORR has not engaged with an outside entity to perform this work.

12. ORR admits that it needs to improve data collection on child well-being post-release from ORR custody and that it intends to standardize the questions it uses for safety and well-being calls to include whether the child is working, and whether the working conditions are appropriate. It has been eight months since this admission. Please explain:
  - a. How ORR has, or intends to, improve data collection on child well-being post-release from ORR custody; and,
  - b. How ORR has standardized the questions it uses for safety and well-being calls to include whether the child is working.
13. Please produce a copy of the updated standardized questions ORR uses for safety and well-being calls.
14. It has been eight months since ORR disclosed its intent to make policy changes that will utilize ORR-funded non-profits to provide unaccompanied children post-release services, which include virtual check-ins and intensive in-home engagements as well as other community services. Please explain what relevant policy changes ORR has made, or intends to make.
15. As part of its interagency task force, does ORR receive any notification from DOL when DOL discovers unaccompanied children working in violation of federal labor laws? If so, detail what information ORR receives from DOL.
16. Will ORR begin tracking the geographic clusters where high numbers of unaccompanied children are released to non-parent sponsors? If so, will ORR share that data with DOL as part of its interagency task force?

Thank you for your prompt attention to this important matter.

Sincerely,



Bill Cassidy, M.D.

Ranking Member

Senate Committee on Health,

Education, Labor, and Pensions