

ORR and DHS Information-Sharing Emphasizes Enforcement Over Child Safety

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. The following summarizes these changes and their implications.

- **DHS and HHS See Children as Bait or Suspects First, Not Children:**

- ◆ The MOA will undermine family reunification, the [fundamental principle of child welfare law](#), by turning safe placement screening into a mechanism for immigration enforcement. This contradicts HHS's goal of placement with the most appropriate caregiver.
 - » The agreement exploits the natural desire of children to seek protection with family and the fundamental desire of family to protect their children to elicit information for law enforcement rather than family reunification purposes.
- ◆ DHS drops the [pretense of protecting children](#) from trafficking in its [stated purpose](#) for collecting information on sponsors--identifying and arresting those subject to removal.
- ◆ Mandating that [HHS report a broad range of information on children in its custody to DHS and providing DHS access to HHS's internal case database](#), the MOA transforms child welfare professionals into probation officers—without the due process protections.

- **Previous System Prioritized the Child's Wellbeing:**

- ◆ ORR kept its recordkeeping systems separate from DHS, with specific processes for DHS to request full access to individual files.
 - » DHS only accessed general demographic information in [ORR database system](#).
- ◆ DHS obtained ORR case files on individual children through a [delineated request process](#).
- ◆ ORR provided ICE an individual child's discharge form 24 hours before a child's release to a sponsor. The discharge form included the child's new address and the sponsor's name and relationship to the child. It did not include the sponsor's immigration status.
- ◆ Per [ORR policy](#), a sponsor's immigration status was not taken into consideration when determining suitability of a child's placement with a sponsor. Instead, the focus was the ability of the potential sponsor to provide a safe home for the child pending his or her immigration proceedings, ascertained in part through several background checks.
 - » However, ORR acknowledged that DHS had independent tools to check the immigration status of sponsors and do other background checks. The [raids against sponsors](#) in summer 2017 [bore this out](#).

- **New DHS-ORR Memorandum of Agreement Shifts ORR Focus to Immigration Enforcement:**

- ◆ ICE's purpose in collecting information on potential sponsors is [to identify new targets for arrest, detention, and deportation](#).
 - » While ORR will still be responsible for processing and vetting a potential sponsor, ICE will run background checks (criminal and immigration) and then provide that information to ORR for their determination of the suitability of the sponsor.

- » In another major departure from former practice, the MOA stipulates that ORR will also provide ICE with the name, date of birth, address, fingerprints, and any available documents or biographic information about not only the sponsor but also all adult members of the potential sponsor's household.
- » While the share of children being released to parents was [nearly 60%](#) from 2014 to 2015, it has dropped to [41% so far in FY18](#). ICE's sponsor "vetting" will accelerate not only the decline in releases to parents, but also releases overall, leading to longer stays in ORR custody.
- ◆ ORR must now report a lot of information about children in its custody to ICE. The list of mandatory reporting requirements is long, with broad, undefined terms, and without any explanation of its purpose or how ICE will use the information.
 - » While ICE may have been able to obtain some of the now-mandatorily shared information in the past, especially with respect to trafficking indicators or major incidents in ORR custody, the MOA is silent on how the broad reporting requirements on children's behavior to ICE—an immigration enforcement agency—serves the child's best interest. Instead, the new reporting requirements demonstrate a law enforcement, rather than child welfare approach to care of unaccompanied children in ORR custody.
- **Children Will Suffer So That DHS Can Drive Up Its Arrest Numbers:**
 - ◆ The MOA's targeting of sponsors increases the risk that a child will be released to a more distant relative, an unrelated sponsor, into a foster care program, or not released at all. In turn, this will increase the child's risk of:
 - » *Trafficking.* Providers are highly concerned that undocumented family members will fear coming forward to sponsor their children, instead seeking – or even paying – documented individuals in the community to come forward and claim to be a child's sponsor. This type of arrangement will put the families and children at increased risk of exploitation and trafficking by the third-party sponsor. At a minimum, it will result in an increased number of lost contact cases, as the documented sponsor may not actually be the one caring for the child upon release from ORR—making it difficult to ensure that the child is in a stable environment, connected to community resources, and understands the need to appear at his or her immigration proceedings.
 - » *Return to danger.* For those children with no sponsor willing to come forward, [indefinite detention will lead children to abandon](#) valid protection claims to request return to their home countries despite risks of serious harm and death.
 - ◆ Developmentally prone to [attribute the experiences and emotions of others to their own thoughts and actions](#), children are likely to interpret their own search for protection as the cause of their family member's vulnerability to deportation or prosecution.
 - ◆ The success of a child's claim for protection often [depends on facts and documentation from her parent](#), especially when she is of tender age. Arrest, detention, and deportation of the parent increases the likelihood the child will be deported to danger and erodes the child's right to due process.
 - ◆ By increasing the likelihood that children will remain in custody, DHS and HHS reject the [TVPPRA's recognition](#) that it is in a child's best interests—as well as the government's fiscal interests—to be with a family member rather than remain detained.
- **How Members of Congress Can Take Action to Protect Children:**
 - ◆ Insist that DHS leadership place clear limits on its authority or discretion to use the information obtained pursuant to the Memorandum of Agreement for enforcement.
 - ◆ Insist that HHS provide clear and complete information to unaccompanied children, potential sponsors, and their household members on how their data may be used.
 - ◆ Advocate for robust funding for federal programs serving the best interests of unaccompanied immigrant children, including community-based residential care, home studies, and post-release services.

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- i See Yeganeh Torbati, REUTERS, [Trump administration will fingerprint child migrants' parents](#), May 29, 2018; Eli Hager, N.Y. TIMES, [Young Migrants: Victims of Gangs or Members of Them?](#), May 1, 2018.
- ii See, e.g., ACF, Child Welfare Information Gateway, [Best Interests of the Child](#) (2016).
- iii See, e.g., Jenny Jarvie, L.A. TIMES, [Immigrant rights groups denounce new ICE policy that targets parents of child migrants](#), June 30, 2017.
- iv Privacy Act of 1974; Notice of Modified System of Records, [83 Fed. Reg. 20844](#) (proposed May 8, 2018).
- v See ORR's [UAC Portal](#).
- vi ORR's webpage describing [Requests for UAC Case File Information](#).
- vii See ORR Policy Guide [Sec. 2.5.2](#).
- viii See Nat'l Immigrant Justice Center, et al., [Complaint to DHS Acting Inspector General and DHS Office of Civil Rights and Civil Liberties Re: ICE and CBP Coercive Enforcement Actions against Sponsors of Unaccompanied Children Conducted in Violation of Family Unity, Protection, and Due Process Rights](#) (Dec. 6, 2017); see also KIND, [Targeting Families: How ICE Enforcement Against Parents and Family Members Endangers Children](#) (Dec. 2017).
- ix [83 Fed. Reg. 20844](#) ("Purpose(s) of the System...To screen individuals to verify or ascertain citizenship or immigration status, immigration history, and criminal history to inform determinations regarding sponsorship of unaccompanied alien children who are in the care and custody of HHS and to identify and arrest those who may be subject to removal") (emphasis added).
- x Government Accountability Office, Testimony Before the Permanent Subcommittee on Investigations, Senate Committee on Homeland Security and Governmental Affairs, [Unaccompanied Children: DHS and HHS Have Taken Steps to Improve Transfers and Monitoring of Care, but Actions Still Needed](#), April 26, 2018, at 9.
- xi [Statement of Steven Wagner, Acting Asst. Sec'y, Admin. for Children and Families, U.S. Dep't of Health & Human Services](#), Before the Permanent Subcommittee on Investigations, Senate Committee on Homeland Security and Governmental Affairs, April 26, 2018 at 3.
- xii See, e.g., Am. Academy of Pediatrics, [Detention of Immigrant Children](#), PEDIATRICS (Apr. 2017), at 6-7.
- xiii See, e.g., Barbara Milrod, NEWSWEEK, [Why Children Bear the Brunt of Trump's America: The Stress Test](#), May 29, 2017.
- xiv See Women's Refugee Cms'n, et al, [Betraying Family Values: How Immigration Policy at the United States Border is Separating Families](#), Jan. 10, 2017, at 3-4.
- xv See 8 U.S.C. § 1232(c). In 2015, the average daily cost of maintaining an unaccompanied child in ORR custody was \$248 a day. See Government Accountability Office, [Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody](#), at 66 (July 2015).