WOMEN'S REFUGEE COMMISSION
RESEARCH. RETHINK. RESOLVE.

Decreasing ORR's Dependence on Congregate Care: Four Recommendations for Progress

POLICY BRIEF

Since its inception, the Unaccompanied Children Program under the Office of Refugee Resettlement (ORR) has relied on congregate care for its custody of unaccompanied children. Congregate care is a catch-all term for group homes and larger institutions that care for many children away from families (see below for more details). Over the past decade, while the domestic child-welfare system has drastically reduced the use of mass congregate settings and emphasized kinship settings and family-like placements that are better for children's well-being,[1] ORR has increased its reliance on large settings. For example, as of 2019 more than 90 percent of unaccompanied migrant children have been held in facilities with more than 50 beds,[2] despite evidence that congregate care risks harming children's long-term mental health. Experts concur that "any amount of time that a young person spends in an institutional placement is too long."[3] Children averaged 30 days in ORR care in fiscal year 2022, while the length of stay was considerably longer for children placed in more restrictive settings.[4]

It is critical that ORR engage in a long-term effort to move away from congregate care and toward more appropriate practices of community-based programs or family-like foster care placements. Until this happens, a critical step to limiting congregate care includes safe reductions of length of stay. Any guiding vision should include community-based programs that offer a high quality of care, minimal time away from family, and reunifications to safe, stable homes.

Based upon ongoing research that the Women's Refugee Commission conducted with current and former staff at congregate care facilities, post-release service providers, attorneys, and child advocates across the United States, this policy brief details concrete steps toward minimizing the use of congregate care for unaccompanied children.[5] The brief also identifies four ways to enlist culturally sensitive, evidence-based, and trauma-informed approaches in working with young people within and beyond current ORR facilities. They are: (1) adopting geolocation in children's initial placements (i.e., placing children in a facility close to their family or sponsor); (2) building a pipeline of community-based care providers; (3) improving language access for non-Spanish-speaking children in custody; and (4) enhancing post-release services. Taken together, these efforts are critical to reducing ORR's reliance on congregate care, limiting children's length of stay in federal custody, and ensuring their safety following release.

What Is Congregate Care?

Although congregate care is defined by the Department of Health and Human Services to include group homes with custody of as few as 7–12 children, in the ORR context, congregate care typically refers to "a licensed or approved child care facility operated by a public or private agency and providing 24-hour care and/or treatment typically for 12 or more children who require separation from their own homes or a group living experience."[6]

ORR continues to rely predominantly on a network of very large facilities—50 beds or more—despite a precipitous shift away from institutional-based care for children nationally. ORR has a greater percentage of congregate care facilities in its provider network than states generally permit for domestic child-welfare

placements.[7] Similarly, ORR's congregate care facilities are larger than their counterparts in the domestic child-welfare systems.[8] In 2021 and 2022, tens of thousands of unaccompanied children were held in emergency intake sites (EISs) and influx care facilities (ICFs) in converted convention centers, stadiums, and military bases. Ranging from 1,000 to 5,000 beds, EISs and ICFs are unlicensed by state child welfare authorities and not bound by conditions stipulated by the *Flores* Settlement Agreement.[9]

Interviews with ORR stakeholders, including child psychologists, social workers, and family reunification specialists in ORR facilities, underscore the potential and actual harm that congregate care facilities can cause for children. Interviewees reported limited outdoor activity, restricted contact with parents and caregivers, and discriminatory treatment of LGBTQI+, Indigenous, and West African youth. Stakeholders described children simultaneously struggling to cope with the uncertainty of family reunification, procedural opacity, ongoing legal proceedings, and the possibility of deportation. Taken together, our research concludes that children should be reunified with family or sponsors as quickly as possible, while ensuring their safety and adequate support following release.[10]

Recommendations for Limiting Congregate Care and Bolstering Post-Release Services

1. In initial placement decisions, geolocation is a best practice.

Stakeholders agreed unanimously that geolocation is a best practice and should be adopted as ORR policy. That is, when a child is transferred from US Customs and Border Protection (CBP) to ORR custody, efforts should be made to place them in an ORR facility in the geographical area where the child's family (specifically, a Category 1 or Category 2 sponsor[11]) is located. For children who may not know where family members live, the potential sponsor's area code can serve as a proxy, given that most children arrive with a family member's phone number.

Interviewees contended that geolocation is advantageous for several reasons. First, placement close to family facilitates communication with and support of the sponsor in completing the requisite paperwork, which can be cumbersome. Interviewees working with children in ORR custody believed that, in general, children are released sooner when placed near their parent or family member. Second, visitation with potential sponsors can reduce the stress of children who spend protracted time in ORR custody. This is especially applicable for children who are reunifying with parents or family members after prolonged separations. Third, family reunification specialists reported that observing the child with the potential sponsor can identify or alleviate safety concerns; if needed, specialists can more quickly turn to a more appropriate sponsor or placement. Fourth, geolocation allows legal service providers who have already prescreened children while in ORR custody to continue to provide legal representation following release. This additionally alleviates the considerable financial and logistical burden on children to find legal representation in a new location. Fifth, geolocation can aid with warm handoffs to area social service providers who provide key resources, such as information about state laws for securing health insurance and assistance with school enrollment. Lastly, geolocating children close to family members relieves travel costs for ORR and logistical burdens of transportation arrangements for facility staff.

2. ORR must build a pipeline of community-based care providers.

The ultimate goal of ending congregate care, including large-scale facilities, for unaccompanied children will not happen overnight. Despite repeated directives from Congress, ORR has failed to take adequate meaningful steps necessary to limit its reliance on congregate care. ORR must proactively invest in long-term, community-based programs for unaccompanied children. This includes launching a series of pilot programs

that are culturally sensitive, evidence based, and trauma informed. Over the long run, these community-based placements will prove cost-effective when compared to the daily cost of $775 per bed in influx facilities and $290 per bed in shelters[12] and the nearly $4.79 billion spent on emergency influx and intake facilities.

Networks of community-based care exist in the domestic child welfare system, including community-based placements, small group homes, and foster care. These programs provide trauma-focused, intensive care for children and youth in home-like environments that facilitate their healthy development. Children attend local schools and are integrated into the community. To establish a pipeline of providers, the Administration for Children and Families (ACF) and ORR should:

- provide technical training assistance to community-based organizations to navigate federal funding applications, operational requirements, and reporting;
- engage outside child welfare experts, subject matter experts, and impacted community members to conduct site visits and provide consultation and recommendations to community-based organizations;
- create a public plan to transition to 100 percent small-scale facilities with attention to the known challenges across contracting and grant-making, staffing limitations, availability, outreach, recruitment of potential providers, program officer oversight, and organizational reporting;
- improve handoffs to community service providers in areas where unaccompanied children reunite with family; and
- prescreen sites and secure contracts of a variety of models of care in advance, rather than identifying out-of-network placements on a case-by-case basis.

3. Rectify problems of children's language access in care.

ORR and its subcontractors are required by law "to take reasonable steps to provide meaningful access" to interpretation.[13] According to interviewees, however, children's rights to use their primary language and their access to interpreters are regularly sidestepped within ORR facilities. The primarily affected children are Indigenous children from Central America who are presumed to speak Spanish, but whose primary languages are often Indigenous languages. When asked why language lines are not used, facility staff described the inconvenience of scheduling telephonic interpreters when they can "get by" in Spanish, that interpretation prolongs meetings with children amid high caseloads, and a lack of awareness of children's language rights due to high staff turnover within facilities. Further, several respondents reported that children are dissuaded from using their native language with other children, and are even separated to different pods or during activities to ensure that staff can understand the conversations. According to researchers, the deliberate separation of children from the same linguistic communities is a form of linguistic racism.[14] Legal advocates said that children are misidentified as potentially trafficked and, conversely, not flagged as trafficked or vulnerable to trafficking because of mistakes in the intake and family reunification processes when an interpreter is not used.

Language-proficiency problems negatively impact the quality of children's care in ORR custody and likely lengthen the time that children spend apart from their families. ORR should expressly prohibit practices that prevent children from using their chosen language; incorporate training guidance for facility staff; provide translated signage in all facilities of many of the dominant languages of children in their custody; and provide regular monitoring that facilities are complying with children's consistent and meaningful access to interpretation. In addition, at time of intake, ORR should direct facility staff to ask children their first language and to use language access lines when completing all required intakes.[15] For children, the use of

their own language relieves stress, provides cultural familiarity, and enhances communication. While more time and cost intensive, the use of interpretation ensures greater accuracy of information and safety of the child's eventual placement.

4. **Provide localized, wrap-around services for unaccompanied children released to a non-relative sponsor.**

Post-release services (PRS) are contracted, social-service support provided to children following their release from ORR custody. PRS currently operate via bridging and referral programming in which a PRS worker connects the child and sponsor to critical mental health, medical, legal, and educational resources in their local community via a series of phone calls, mailings, or emails.[16] Depending on the need, in-person visits are conducted. Stakeholders interviewed for this study, including PRS providers, affirmed the importance of localized services for children following release from ORR custody and called for expanded, in-person services for all children.

One stakeholder explained how teenagers are commonly prohibited from enrolling in public schools despite their legal right to attend school: "They need someone knowledgeable about the US to accompany and advocate for them when school administrators are unlawfully turning them away." Others emphasized that PRS should be provided by local service providers who are knowledgeable of the nuances of state law and educational practices that may obstruct school enrollment, and who have up-to-date information regarding service availability. One stakeholder explained, "The flyers provided are out of date or organizations on the forms are maxed out; kids really need people who have relationships with a community of providers." As one PRS provider stated, "They need accompaniment, not more flyers."

One challenge is that current PRS schemes are insufficient to meet the diverse needs of unaccompanied children. An ideal approach is to align PRS to a localized, wrap-around service model. Interviewees emphasized, however, that PRS should never be used to delay the reunification of a child and sponsor and that families should continue to be allowed to decline the services.[17]

Given renewed concerns about the labor exploitation of unaccompanied children, ORR should:

- offer PRS to all children released to a non-relative sponsor ("category 3" sponsors);
- offer PRS if requested by the child, family, or sponsor;
- include an immediate, individualized needs assessment for child, sponsor, and family (as relevant) following release in all levels of PRS;
- ensure that PRS needs assessments result in local, in-person social-service brokerage rather than remote referrals; and
- eliminate the PRS backlog—which, at the time of writing, stands at well over 10,000 cases—with a goal that PRS appointments be in place when reunification occurs.

In contrast to traditional PRS services, which are service driven and problem based, wrap-around services enlist a strengths-based, needs-driven approach that builds on individual and family strengths. Wrap-around services are evidence-based, culturally responsive accompaniment practices that promote child and family involvement in setting goals to ensure children's well-being. These services are also more effective in ensuring children are safe given the close and trusting relationship children have with their care team. Engaging in local, community-based partnerships to provide wrap-around services simultaneously will strengthen ORR's network for placing children in the least restrictive environment and move the US toward ending congregate care for all children.

This policy brief was written by Lauren Heidbrink, PhD, associate professor of human development at California State University, Long Beach, and consultant for the Women's Refugee Commission. It was reviewed and edited by Katharina Obser, Mario Bruzzone, Dale Buscher, Joanna Kuebler, and Diana Quick of the Women's Refugee Commission.

For more information, contact Mario Bruzzone, MarioB@wrcommission.org.

Women's Refugee Commission

The Women's Refugee Commission (WRC) improves the lives and protects the rights of women, children, and youth who have been displaced by conflict and crisis. We research their needs, identify solutions, and advocate for programs and policies to strengthen their resilience and drive change in humanitarian practice. Since our founding in 1989, we have been a leading expert on the needs of refugee women, children, and youth and the policies that can protect and empower them. womensrefugeecommission.org.

August 2023

Endnotes

1 For example, the Family First Prevention Services Act of 2018 codified that children should be placed in the least restrictive setting appropriate to their needs, prioritizing family and small-group care. Family First Prevention Services Act. Public Law (P.L.) 115—123, https://www.acf.hhs.gov/cb/title-iv-e-prevention-program#:~:text=The%20Family%20First%20Prevention%20Services,candidates%20for%20foster%20care%2C%20pregnant.

2 N. Desai, M. Adamson, E. Pirrotta, L. Cohen, and N. E. Wang (2019, December), *Child Welfare & Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policymakers,* p. 9, https://youthlaw.org/sites/default/files/attachments/2022-02/Briefing-Child-Welfare-Unaccompanied-Children-in-Federal-Immigration-Custody-A-Data-Research-Based-Guide-for-Federal-Policy-Makers.pdf.

3 Casey Family Programs (2022), "What are the outcomes for youth placed in group and institutional settings?" p. 1, https://www.casey.org/media/22.07-QFF-SF-Group-placements_fnl-1.pdf. See also: Chapin Hall and Chadwick Center (2016), "Using Evidence to Accelerate the Safe and Effective Reduction of Congregate Care for Youth Involved with Child Welfare," https://www.chapinhall.org/wp-content/uploads/effective_reduction_of_congregate_care_0.pdf. For a compilation of youth experiences in domestic child welfare, including the importance of eliminating institutional placements, see S. Fathallah and S. Sullivan (2021), *Away from Home: Youth Experiences of Institutional Placements in Foster Care*, https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf.

4 According to *Lucas R. v. Azar,* from November 2017 to March 2020, the average length of stay for children placed in secure and medium-secure facilities was 183.8 days, https://youthlaw.org/sites/default/files/2022-03/Doc%20376.pdf.

5 California State University, Long Beach IRB #23126. Initial interviewees were recruited via snowball sampling, a non-probability sampling technique that begins with identifying potential research participants who then nominate additional interviewees. At the time of writing, Heidbrink conducted 40 one-on-one interviews (45-90 minutes in length) via zoom with stakeholders within the ORR system. Stakeholders include facility staff (program directors or administrators, family reunification specialists, mental health clinicians, caseworkers, and education specialists); post-release service providers and administrators; attorneys; and child advocates, among others. Special attention was paid to interviewing stakeholders serving young people in various sizes and types of ORR facilities and programs geographically distributed throughout the country.

6 The definition from the US Department of Health and Human Services, ORR's parent agency, also includes group homes of 7–12 children as congregate care. See: US Department of Health and Human Services. (2015). A national look at the use of congregate care in child welfare. Washington, DC., https://www.acf.hhs.gov/sites/default/files/documents/cb/cbcongregatecare_brief.pdf.

7 The Family First Preventive Services Act limits states' use of federal funds to place children in congregate care settings and provides financial incentives to promote the use of kinship care and family-foster care.

8 Desai et al., p. 9.

9 The *Flores* Settlement Agreement regulates the treatment of unaccompanied minors in federal custody, including both the preference for their release and the conditions of care for those who do remain in custody. For a history, see: https://www.aila.org/infonet/flores-v-reno-settlement-agreement.

10 Safe release of the unaccompanied children has drawn renewed attention due to child labor exploitation. The risk factors for child labor are largely structural, and recent cases have impacted children from socially marginalized populations with multiple intersecting vulnerabilities, such as undocumented status, limited proficiency in English and Spanish, and income-poverty. Beyond rigorous vetting of sponsors, safe release involves preventive services, swift and effective intervention when a child finds themselves in an exploitative labor situation, and improved service coordination in communities of release. See Women's Refugee Committee et al. (2023), *Building Comprehensive Services and Supports for Unaccompanied Children in Light of the Child Labor Crisis*, https://www.womensrefugeecommission.org/research-resources/building-comprehensive-services-and-supports-for-unaccompanied-children-in-light-of-the-child-labor-crisis.

11 ORR defines a "category 1" sponsor as a parent or legal guardian; "category 2" sponsor as a sibling, grandparent, or other immediate relative; and "category 3" sponsor as other sponsor, such as distant relatives and unrelated adult individuals, https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2.

12 W. Kandel (2021, September 1), *Unaccompanied Alien Children: An Overview, Congressional Research Service*, R43599, https://www.acf.hhs.gov/orr/about/ucs/facts-and-data.

13 Title III of the Americans with Disabilities Act, https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf. Title VI of the Civil Rights Act of 1964 requires federally funded programs to provide equal access to individuals with limited English proficiency, 42 U.S.C. § 2000d; 45 C.F.R. § 80.

14 S. Dovchin (2020), "Introduction to special issue: Linguistic racism," *International Journal of Bilingual Education and Bilingualism,* 23(7), 773-777.

15 We note that delays in language access lines may lead providers to alternative arrangements for interpretation, which ORR should accept on a case-by-case basis so long as the child's needs and best interests are primary.

16 Level 1 PRS are remote services, whereas Level 2 PRS involve an initial in-person meeting. According to ORR policy, PRS case workers maintain a caseload of 1:25 up to 1:40.

17 ORR Policy Guide 6.2.3 specifies that a delay to release for PRS availability can only occur for children who are mandated Home Studies under the Trafficking Victims Protection Reauthorization Act of 2008 (approximately 6–10% of unaccompanied children) and then only after an individualized assessment from the youth's case manager. See https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-6.

Women's Refugee Commission, 15 West 37th Street, 9th Floor, New York, NY 10018
info@wrcommission.org | www.womensrefugeecommission.org | @wrcommission