



Testimony for the Record of

Kristyn Peck, Chief Executive Officer of Lutheran Social Services of the National Capital Area

For a Hearing of the

U.S. Senate Committee on the Judiciary

Regarding

Ensuring the Safety and Well-Being of Unaccompanied Children

Dirksen Senate Office Building Room 106

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I would like to thank Chairman Durbin and Ranking Member Graham and all the members of the Senate Judiciary Committee for holding this hearing on Ensuring the Safety and Well-Being of Unaccompanied Children. We are grateful for the opportunity to share our written recommendations for protecting vulnerable children seeking safety in our country.

I am Kristyn Peck, Chief Executive Officer of Lutheran Social Services of the National Capital Area (LSSNCA). My 20-year career has been focused on administering services for and advocating on behalf of persons forced to flee their homes and seeking protection in the United States, child welfare administration and reform, and the intersection of child welfare and migration. One of my first jobs as a professional social worker in 2005 was as an advocate for children in the custody of the Office of Refugee Resettlement (ORR). My first case was of a 16-year-old girl from the Ivory Coast who had been destined to live with her “uncle” and was apprehended upon arrival at the airport. Through a psychosocial evaluation, I learned that there was a financial arrangement between her family and this man for him to get her safely to the United States and find her a job to pay her travel debts. It became clear through family tracing efforts that he was not her uncle. During my rapport-building with her, I learned that he was grooming her during phone calls, and she thought he was her boyfriend. There were plenty of indicators that if he was approved as her sponsor, she would be at risk for human trafficking, and I recommended she not be released to his care. This is an example of how the system can work to protect children. Since that time, I have served as a director of national programs providing family reunification and foster care services for unaccompanied children at the United States Conference of Catholic Bishops (USCCB); overseeing child welfare reform as the founding CEO of West Michigan Partnership for Children; and for the last two and a half years as the CEO of LSSNCA.

LSSNCA has served the greater Washington, D.C. metro area for more than 100 years. We began welcoming persons fleeing violence and persecution and seeking safety in the United States in 1941, and we continue that tradition today, providing case management, mental health services, workforce development, legal services, and foster care. Between 2021 -- 2022, we served more than 7,000 individuals from more than 48 countries. We have been serving unaccompanied children through ORR’s Unaccompanied Refugee Minors (URM) program since 1974. The first child we served in this program was a 10-year-old from Cambodia who needed open heart surgery to survive. The surgery was delayed because there was no one to pay for it, and LSSNCA guaranteed the hospital payment if they performed the operation. With the support of our generous community, LSSNCA paid off the bill over the course of a year. Today, we provide Safe Release Support for unaccompanied children in federal custody by conducting fingerprinting of potential sponsors; transitional foster care for unaccompanied children in immigration proceedings; and foster care for unaccompanied children with refugee status or another qualifying form of humanitarian immigration relief through the URM program.

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Mr. Chairman, my testimony today will highlight LSSNCA’s recommendations for how the United States can strengthen its response to ensure the safety and well-being of unaccompanied children. Underlying our recommendations is our fundamental belief that all children should be treated as we would want our own children to be treated. Many of these recommendations are not new and this is not the first time I have testified or submitted testimony on protection needs of unaccompanied children and recommendations to the U.S. government for strengthening our response. I made similar recommendations to the House Judiciary Subcommittee on Immigration and Border Security on December 10, 2014 when I was the Associate Director of Children’s Services at USCCB’s department of Migration and Refugee Services¹ and also submitted testimony for the record in front of the same Subcommittee on February 4, 2016.² Many organizations that serve and advocate on behalf of unaccompanied children and asylum-seekers have also called for increased protections for unaccompanied children for more than a decade, and so I am demanding a sense of real urgency be paid to these recommendations which are of immediate and critical consequence.

The conditions outlined in “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.” by Hannah Dreier of *The New York Times*³ are preventable and the solutions are known, and have been known, for years. Yet, as *The New York Times* reported, background check processes for sponsors were rolled back rather than strengthened and quick releases have been prioritized over thorough vetting of sponsors and proposed placements. This is occurring as we are seeing a national increase in child labor. Mr. Chairman, by not adequately resourcing the Office of Refugee Resettlement’s (ORR) Division of Unaccompanied Children Operations (DUCO) nor holding it accountable to prioritize robust vetting of placements and other measures to ensure safety, and by not holding states accountable for enforcing a minimum standard of child labor laws, the U.S. government is complicit in the exploitation of unaccompanied children.

1 The impact on local communities of the release of unaccompanied alien minors and the need for consultation and notification: Hearings before the Subcommittee on Immigration and Border Security of the House Judiciary Committee, 113th Cong. P 53-81 (2014) (Testimony of Kristyn Peck). Available: <https://www.congress.gov/113/chrg/CHRG-113hrg91742/CHRG-113hrg91742.pdf>

2 Another Surge of Illegal Immigrants Along the Southwest Border: Is this the Obama Administration’s New Normal?: Hearings before House Judiciary Subcommittee on Immigration and Border Security. 114th Congress (2016) (Testimony of Kristyn Peck. Available: [Kristyn-Peck-Testimony_Surge_at_Southern_Border.pdf](https://www.justiceforimmigrants.org/sites/default/files/Kristyn-Peck-Testimony_Surge_at_Southern_Border.pdf) ([justiceforimmigrants.org](https://www.justiceforimmigrants.org)))

3 Dreier, H., & Luce, K. (2023, February 25). *Alone and exploited, migrant children work brutal jobs across the U.S.* The New York Times. <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>

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Mr. Chairman, let me first comment on Senate Bill 1473,⁴ which was introduced by Senators Krysten Sinema (I-AZ) and Thom Tillis (R-NC) as well as the House Companion Bill HR. 3234.⁵ These bills would severely curtail the human and legal right to seek asylum at the U.S.-Mexico border. LSSNCA believes the underlying premise of these bills contradict U.S. asylum law, and our commitments to international human rights treaties. Fleeing war and persecution in search of a better life has always been a part of the human experience and is a major theme in the world's religions. The right to seek asylum is a cornerstone of U.S. and international law, dating back to World War II,⁶ which prompted the largest forced displacement of humans the world had ever seen, until today.⁷ There was a notorious incident where the U.S. turned away a German boat with almost 1,000 passengers – mostly Jewish asylum-seekers – and almost a quarter were murdered in the Holocaust.⁸ Following the atrocities of the Holocaust, more than a dozen countries, including the United States, agreed to never again close their doors on people fleeing persecution and seeking protection. This was the birth of the 1951 Refugee Convention.⁹ Underlying the Convention and its 1967 Protocol is the core principle of non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom.¹⁰

As it relates to unaccompanied children, LSSNCA is gravely concerned that Senate Bill 1473 would subject the most vulnerable of migrants seeking protection – children traveling alone – to expulsion or detention without access to due process.¹¹ We know that many of the children arriving at our doorstep are fleeing life or death situations, and that expulsion would send them

4 SAFEGUARD Act of 2021, S. 1473, 117th Cong. (2021). Retrieved from: <https://www.congress.gov/bill/117th-congress/senate-bill/1473>

5 To authorize the immediate expulsion of inadmissible aliens attempting to enter the United States by fraud or without a necessary entry document, and for other purposes, H.R. 3234, 118th Con. (2023). <https://www.congress.gov/bill/118th-congress/house-bill/3234>

6 UN High Commissioner for Refugees (UNHCR). (2017) A guide to international refugee protection and building state asylum systems. Handbook for Parliamentarians Pp 15-18. Retrieved June 7, 2023 from <https://www.refworld.org/docid/5a9d57554.html>

7 Zampano, G., Moloney, L., & Juan, J. (2015, September 22). Migrant crisis: a history of displacement. *The Wall Street Journal*. Retrieved June 7, 2023, from <http://graphics.wsj.com/migrant-crisis-a-history-of-displacement/>

8 United States Holocaust Memorial Museum. (n.d.). *Voyage of the St. Louis*. United States holocaust memorial museum. <https://encyclopedia.ushmm.org/content/en/article/voyage-of-the-st-louis>

9 *The 1951 refugee convention*. UNHCR UK. (n.d.). Retrieved June 9, 2023 from <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>

10 UN High Commissioner for Refugees (UNHCR). (2017) A guide to international refugee protection and building state asylum systems. Handbook for Parliamentarians Pp 17-20. Retrieved June 7, 2023 from <https://www.refworld.org/docid/5a9d57554.html>

11 “LSSNCA urges Members of Congress to oppose recently introduced legislation: S.1473 and H.R. 3234”, Retrieved June 7, 2023 from: <https://lssnca.org/newsroom/news.html/article/2023/05/30/lssnca-urges%09members%20of-congress-to-oppose-recently-introduced-legislation-s-1473-and-h-r-3234>

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back to death.^{12 13} It is our moral and legal obligation to allow them to pursue humanitarian relief through our immigration court system. Those who are found eligible for immigration relief would become contributing members of communities; repatriation should only occur for those who are not found eligible.

We also oppose the use of detention as a deterrent to migration. We believe detention penalizes those seeking safety and protection, and conflicts with religious teachings to welcome the stranger. Detention inflicts further trauma and harm on individuals who have already been subjected to violence and persecution and has detrimental effects on children whose brains are still developing. According to the American Association of Pediatrics, “qualitative reports about detained unaccompanied immigrant children in the United States found high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems. Additionally, expert consensus has concluded that even brief detention can cause psychological trauma and induce long-term mental health risks for children.”¹⁴

Children who have experienced acute or ongoing trauma frequently experience delays in speech, reading ability, and school readiness: “Trauma-induced changes to the brain can result in varying degrees of cognitive impairment and emotional dysregulation that can lead to a host of problems, including difficulty with attention and focus, learning disabilities, low self-esteem, impaired social skills, and sleep disturbances.”¹⁵

LSSNCA’s recommendations today will focus on four areas: **1.) ensuring meaningful access to protection, 2.) strengthening family reunification policies and procedures, 3.) developing and deploying a screening process for sponsors of unaccompanied that includes intelligence from the Administration for Children and Families’ Office on Trafficking in Persons (OTIP), the Department of Labor (DOL), the National Center for Missing and Exploited Children (NCMEC) and federal law enforcement, and 4.) improving enforcement of existing state child labor laws.**

12 *Forced to Flee Central America’s Northern Triangle: a neglected humanitarian crisis*. Doctors Without Borders. (2017, May). Retrieved June 8, 2023 from https://www.msf.org/sites/default/files/msf_forced-to-flee-central-americas-northern-triangle_e.pdf

13 Angelo, P. (2021, March 22). Why Central American migrants are arriving at the U.S. border. Council on Foreign Relations. <https://www.cfr.org/in-brief/why-central-american-migrants-are-arriving-us-border>

14 Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. (2017) *American Academy of Pediatrics*. 139(5):e20170483. Retrieved June 7, 2023 from [Detention of Immigrant Children | Pediatrics | American Academy of Pediatrics \(aap.org\)](https://www.aap.org/pediatrics/immigrant-children)

*Names have been changed to protect the identities of program participants.

15 Child Welfare Information Gateway. (2017). Supporting brain development in traumatized children and youth. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau. Retrieved June 7, 2023 from <https://www.childwelfare.gov/pubpdfs/braindevtrauma.pdf>

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Underlying these recommendations is the “best interest of the child principle” which is used in the domestic child welfare system. The Children’s Bureau indicates that “best interest determinations are generally made by considering a number of factors related to the child’s circumstances and the parent or caregiver’s circumstances and capacity to parent, with the child’s ultimate safety and well-being the paramount concern.”¹⁶

Before I discuss our recommendations in more detail, I would like to share more about the conditions children are fleeing, which underscores their need for protection.

Most of the unaccompanied children we serve report having been subjected to violence and persecution within the microcosm of their own communities. Children report being targeted by gangs and threatened with their lives for sex, labor, and participation in gang activities while they try to make their way to school. In Central America, the failure of systems and institutions that are supposed to protect communities from bad actors has been well documented.¹⁷ These environments, ones we would not hope for our own children to grow up in, leave families with no other choice but to ensure their children escape to a safer life.

The children we are welcoming at our borders are kids like Allan* who fled Honduras. According to the World Bank, Honduras has high levels of poverty and inequality. More than half of its population is under the age of 24 years old, and Honduras’ homicide rate is the third highest in Latin America.¹⁸ Allan, who was habitually threatened by gang members was eventually kidnapped by them, and physically assaulted as a warning to his family to comply with their financial demands. His family took these threats seriously, as prior to this, his brother, Jose, had been murdered by the gang. Allan continued to be physically and verbally attacked following the kidnapping. His mother, who could not protect him, knew he needed to be in the United States to live a safe and fulfilling life.

¹⁶ Child Welfare Information Gateway. (2020). Determining the best interests of the child. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau. P.2 Retrieved June 7, 2023 from https://www.childwelfare.gov/pubpdfs/best_interest.pdf

Restrepo, D. (2021, March 5). Central Americans are fleeing bad governments. *Foreign Affairs*. Retrieved June 8, 2023 from <https://www.foreignaffairs.com/articles/central-america-caribbean/2021-03-05/central-americans-are-fleeing-bad-governments>

¹⁸ Padilla, M. T. (2021, June 27). Unaccompanied children on the move: From Central America to the US via Mexico. *E-International Relations*. Retrieved June 8, 2023 from <https://www.e-ir.info/2021/06/27/unaccompanied-children-on-the-move-from-central-america-to-the-us-via-mexico/>

RECOMMENDATION 1: ENSURE MEANINGFUL ACCESS TO PROTECTION

a. Keep avenues to asylum open

The life-or-death situations children and families are fleeing in Central America are well-documented and require multiple safe pathways to protection. While the administration has recently introduced increased in-country processing and expanded refugee allocations¹⁵, these measures may not be accessible to all nor offer the needed protections surrounding seeking asylum in-country. Thus, the legal and human right to seek asylum at our borders, as codified in U.S. and international law, must remain a viable avenue to protection. LSSNCA strongly opposes any efforts by the U.S. government to restrict access to asylum, expel children and families before they have a meaningful opportunity to petition for asylum with support of an attorney, or support interdictions of families and children in Mexico before they have access to asylum proceedings.¹⁹

b. Increase information accessibility for unaccompanied children on their rights and resources

LSSNCA recommends that ORR/DUCO, OTIP, and DOL collaborate on developing literature, training, and tools to educate children on their rights, the ORR/DUCO release process, resources, and the information on the process to request such resources. This information should be victim-centered, trauma-informed, and culturally relevant, and in languages representing the languages spoken and read by unaccompanied children. This information should also continuously be reinforced and revisited during post-placement visits. By empowering children with information on risk factors of human trafficking, child labor laws, and abuse and neglect in child-friendly language, unaccompanied children can be active participants in ensuring their own safety.

c. Provide unaccompanied children pro bono legal representation

The United States immigration system is considered quite complex, and because it is considered part of our civil laws and not our criminal laws, there is no right to paid government counsel for those who cannot afford an attorney. This means that most

19 LSSNCA's Public Comment Regarding the Notice of the Proposed Rulemaking: Circumvention of Lawful Pathways. (The Administration's Proposed Asylum Restrictions). (2023, March 27). *Lssnca.Org*. Retrieved June 9, 2023 from <https://www.regulations.gov/comment/USCIS-2022-0016-12303>

children entering the labyrinth of the immigration system, do so on their own. Statistically, these same children have experienced trauma in their home country or during their journey to the United States, including robbery, violence, and sexual assault.²⁰ Their history of trauma²¹ and their undocumented status heighten their vulnerability to exploitation and human trafficking.²²

The Congressional Research Service found that immigration judges are 100 times more likely to grant relief to unaccompanied children with legal representation than to those without it.²³ Similarly, analysis of Executive Office of Immigration Review (EOIR) data from 2005 to 2017 shows that 90 percent of unaccompanied children without legal representation were issued an order of removal, while those who received legal representation were more than seven times more likely to obtain legal relief.²⁴ This finding is in line with expert studies²⁵ demonstrating that asylum-seekers with legal counsel are more likely to receive legal protection than those without. LSSNCA recommends robust funding for ORR/DUCO to ensure all unaccompanied children in its custody and released from its custody have access to a pro bono immigration attorney. Children who receive immigration relief are able to work legally in the United States, decreasing their vulnerability to trafficking and exploitation.

d. Develop specialized children's dockets

LSSNCA recommends the use of specialized children's dockets which would ensure that the system reflects the unique vulnerabilities children present and ensure child-appropriate procedures. For instance, LSSNCA would encourage the Executive Office for Immigration Review to revert from its December 2017 EOIR Operating Policies and

20 *Children on the Run*. United Nations Commissioner for Refugees Office for the United States and the Caribbean. (2016). <https://www.unhcr.org/us/media/children-run-full-report>

21 Jaeckl S, Laughon K. Risk Factors and Indicators for Commercial Sexual Exploitation/Domestic Minor Sex Trafficking of Adolescent Girls in the United States in the Context of School Nursing: An Integrative Review of the Literature. *The Journal of School Nursing*. 2021;37(1):6-16. doi:[10.1177/1059840520971806](https://doi.org/10.1177/1059840520971806)

22 David, F., Bryant, K., & Joudo Larsen, J. (2019). (rep.). *International Organization on Migration*. Retrieved June 9, 2023 from https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf.

23 Congressional Research Service, Unaccompanied Alien Children: An Overview, at 17, Sept. 1, 2021. Retrieved June 9, 2023 from [R43599 \(congress.gov\)](https://www.congress.gov/resources/library/publications/20210901/unaccompanied-alien-children-an-overview)

24 Bryant, E., Snider, A., & DiBennardo, B. (2022, January 28). *No child should appear in Immigration Court Alone*. Vera Institute of Justice. Retrieved June 7, 2023 from <https://www.vera.org/news/no-child-should-appear-in-immigration-court-alone#:~:text=While%20the%20U.S.%20government%20may,children%20face%20deportation%20proceedings%20alone>.

25 See e.g., [Refugee Roulette: Disparities in Asylum Adjudication](https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub) 60 Stan. L. Rev. 295 (2007-2008) (<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub>)

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Procedures Memorandum (OPPM) 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children to an OPPM with more elements from its 2007 OPPM which included encouraging more child-friendly practices in the court room, allowing an approach more in line with the “best interest of the child,” and support for considering age, lack of counsel and/or capacity differences in evaluating testimony.²⁶ For further information, I am including as a reference document a memo from May 2023 from Kids in Need of Defense (KIND) which outlines additional elements necessary for a robust and successful children’s docket: training for judges and the Department of Homeland Security (DHS) attorneys representing the government; child focused adjudications; and coordination with legal and social service organizations.²⁷

RECOMMENDATION 2: STRENGTHEN FAMILY REUNIFICATION POLICIES AND PROCEDURES

Children are placed in the custody of ORR/DUCO upon apprehension by DHS and released to the care of sponsors in local communities. Some children receive a home study before being released to sponsors in accordance with the requirements of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.²⁸

LSSNCA has recommendations for strengthening home studies and post-release services which we believe if enacted would mitigate the risk of abuse, exploitation, and trafficking of unaccompanied children released to communities.

a. Increase criteria for who receives a home study

Home studies assess the protective capacity of a potential sponsor and all members of the household to ensure the safety and well-being of a child released to their care. They take into account the unique vulnerabilities of the child and the skills and the experiences of the prospective caregiver. Home studies include a psychosocial evaluation, assessment of the home and community, and psychoeducation for the sponsor on the child’s unique

²⁶ U.S. Department of Justice, Executive Office for Immigration Review. (2017) Operating Policies and Procedures Memorandum 17-03. Retrieved June 7, 2023 from <https://www.justice.gov/eoir/file/oppm17-03/download>

²⁷ “Specialized Children’s Dockets in Immigration Court”, Kids in Need of Defense. (May, 2023). Retrieved June 7, 2023 from <https://supportkind.org/wp-content/uploads/2023/05/KIND-Childrens-Dockets-Memo-May-2023.pdf>

²⁸ William Wilberforce Trafficking Victims Protection Reauthorization Act, Section 235 (c)3b. P.L. 110-457, Con.110 (2008). Retrieved June 7, 2023 from <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>

needs and identification of skills and resources to meet those needs. Home studies also greatly benefit sponsors as they receive education on community resources, trauma-informed parenting, and the immigration system.

However, despite the value of a home study in ensuring safe placements, they are grossly underutilized. The percentage of unaccompanied children in ORR/DUCO custody over the past few years who were released to sponsors and received a home study varied from 7.41 percent in fiscal year 2018 to 4.46 percent in fiscal year 2021 to 6.69 percent in fiscal year 2022.^{29 30}

Many sponsors participating in LSSNCA’s Safe Release Support program have expressed to our staff that they wish they knew more about the post-release process. LSSNCA’s Safe Release Support program, however, is funded to fingerprint potential sponsors and does not include the post-release support. Accordingly, while our staff currently does not formally participate in home studies or post-release services, they often find themselves explaining to sponsors where the children are being held and how the process works; providing referrals for psychosocial support; and educating sponsors on the importance of enrolling children in school and attending immigration appointments. This information is invaluable to the success of program participants and is generally provided during the home study process – but only to those who are fortunate enough to receive a home study.

Unaccompanied children are particularly vulnerable to exploitation and trafficking due to the following risk factors: undocumented status, history of trauma, and separation from family. LSSNCA believes all unaccompanied children would benefit from a home study prior to release from ORR/DUCO care. At a minimum, LSSNCA recommends that ORR/DUCO review the data of children released from its custody into exploitative, abusive, or neglectful situations and identify additional risk factors that could be explored during a home study and included as mandatory criteria for a home study. Risk factors could include more than a year separation from the proposed sponsor or having never met

29 *Unaccompanied Children Fact sheets and data*. U.S. Department of Health and Human Services, Administration Children and Families Office of Refugee Resettlement. (2023). Retrieved June 9, 2023 from <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>

30 *Unaccompanied children released to sponsors by State*. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement. (2023, June 5). Retrieved June 9, 2023 from <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>

the proposed sponsor; medical or mental health diagnosis; LGBTQIA+ identity; history of substance abuse.³¹

b. Require an evidence-based model for home studies

Not all home studies are created equal, and LSSNCA recommends that ORR/DUCO require its subcontractors to use an evidence-based model. LSSNCA employs the SAFE (Structured Analysis Family Evaluation) Model for home assessments for our domestic adoption and foster care programs. The SAFE Model includes a psychosocial evaluation of the potential caretaker and requires three (3) home visits to complete whereas ORR/DUCO only requires interviews with the caretaker and one (1) home visit. Interviews with other household members and references are not mandatory. The SAFE Model is effective because it utilizes multiple information gathering tools to assist with focused interviewing. When all the information gathered using these tools is analyzed a home study worker can identify strengths of the potential caretaker as well as risk factors that could impact their ability to provide a safe environment for a child. The timeline set forth by ORR/DUCO for home studies to be completed within 10 days of a referral is not adequate to fully assess the potential sponsor household for safety and gather necessary psychosocial information about the sponsor. LSSNCA believes home study timelines should be extended to at least 30 days.

c. Increase education requirements for home study caseworkers

Conducting a home study, or home assessment, is a honed professional skill set. The qualifications for home study workers as outlined in the Funding Opportunity Announcement released by ORR/DUCO on March 16, 2023, require that the worker “have a Bachelor of Social Work (BSW) degree or an equivalent degree in education, psychology, sociology, or other behavioral science equivalent. HS [Home study] caseworkers must be bilingual in English and Spanish or have access to professional interpretation services.”

This language is too flexible and would allow for the hiring of individuals without the necessary practical and professional skills to conduct a home assessment. Undergraduate

31 ” Kinnish, K., Barba, A., Blacker, D., Dierkhising, C., Garrett, R., Grady, J.B., Greenbaum, V.J., Griffin, D., Rubiales, R., Spring, G., Wozniak, J., and Child Sex Trafficking Collaborative Group. (2021). Child sex trafficking: Who is vulnerable to being trafficked. Los Angeles, CA, and Durham, NC: National Center for Child Traumatic Stress. Retrieved June 7, 2023 from https://www.nctsn.org/sites/default/files/resources/fact-sheet/child_sex_trafficking_who_is_vulnerable_to_being_trafficked.pdf

degrees in education, psychology, and sociology do not prepare professionals for work in child welfare and/or clinical safety assessments. LSSNCA recommends language from the National Association of Social Workers Standards for Social Work Practice in Child Welfare, “the knowledge requirements considered fundamental to all social work practice, which are met by the completion of BSW and MSW programs within colleges and universities accredited by CSWE, must include knowledge about the history and development of social work, including child welfare. Social workers in child welfare shall also possess working knowledge related to child and adult development, impact of trauma, parenting and family dynamics, and in communities where child and family reside.”³²

d. Prioritize safe release over quick release

One of the concerns noted by caseworkers interviewed by *The New York Times* was pressure to release children quickly. “But as more and more children have arrived, the Biden White House has ramped up demands on staffers to move the children quickly out of shelters and release them to adults. Caseworkers say they rush through vetting sponsors.”³³

We understand ORR/DUCO’s interest in limiting time children spend in congregate care as evidence supports that children do best when placed in the least restrictive, most family-like setting.³⁴ However, we also know that conducting a home assessment takes time. A home assessment that adequately assesses safety and the ability of the sponsor to protect the child requires multiple in-person visits with all household members, interviews with references outside the household, a psychosocial assessment, coaching sponsor on understanding trauma, identifying their own trauma and coping mechanisms and sharing of community resources. Expectations for a meaningful home assessment and decision about release in less than 30 days are unrealistic.

Furthermore, thorough background checks are an essential component of assessing the safety and suitability of a prospective sponsor and placement. This is a tool utilized in

32 National Association of Social Workers. (n.d.). NASW standards for Social Work Practice in Child Welfare.

Retrieved June 7, 2023 from: https://www.socialworkers.org/LinkClick.aspx?fileticket=zV1G_96nWol%3d&portalid=0

33 Dreier, H., & Luce, K. (2023, February 25).

34 Barth, R. (2002). (rep.). Jordan Institute for Families, School of Social Work, University of North Carolina at Chapel Hill. Retrieved June 9, 2023 from <https://resourcecentre.savethechildren.net/pdf/2344.pdf>.

domestic child welfare and under federal law in Title IV-E of the Social Security Act.³⁵ Title IV-E requires states to include provisions for criminal records checks, including fingerprinting in FBI national crime databases; checks for child abuse and neglect history in the state in which the prospective caregiver resides and where the caregiver has lived in the preceding five years; and criminal records checks, including fingerprinting based checks of the national crime databases of any other adults living in the home of the prospective caretaker. ORR/DUCO has identical background check requirements except for the FBI national criminal history check, which is only mandated under certain circumstances. In addition, *The New York Times* reported that the Biden Administration “began paring back protections that had been in place for years, including some background checks and reviews of children’s files, according to memos reviewed by *The New York Times* and interviews with more than a dozen current and former employees.”³⁶

LSSNCA recommends Congress sufficiently resource ORR/DUCO to prioritize thorough home assessments over arbitrary benchmarks for release; increase its placement continuum to include more least restrictive, family-like settings, like Transitional Foster Care over large-scale congregate care facilities; and that ORR/DUCO be held to the same standard as domestic child welfare entities assessing the safety and suitability of placements, to include requiring FBI national criminal history checks of all sponsors and household members.

e. Ensure release decisions are made by a multidisciplinary team (MDT)

Multidisciplinary reviews are used as best practice in child welfare because they are a holistic approach bringing together professionals with unique expertise from multiple, diverse disciplines, as well as family members and other stakeholders leading to more informed decision-making. This collaborative approach allows for coordination of services and development of an effective plan to address the unique needs of the child.

LSSNCA recommends that the MDT include representatives from Safe Release Support who develop rapport with sponsors during the safe release process and have valuable information to contribute. During the fingerprinting process, LSSNCA staff, who speak the same language as the potential sponsor, are generally the potential sponsor’s first encounter with someone in the release process. Often, the potential sponsors explain their own situation and how well they know the child. It is not unusual for a sponsor to be a

³⁵ Title 42 U.S. Code § 671 (a)(20). State plan for foster care and adoption assistance. Retrieved June 8, 2023 from <https://www.law.cornell.edu/uscode/text/42/671>

³⁶ Dreier, H., & Luce, K. (2023, February 25).

distant aunt or uncle who was not given notice that the child was arriving. Given the Safe Release Support staff's deep experience meeting and assisting hundreds of sponsors through this initial step, Safe Release Support workers are often able to observe a potential trafficker or an ill-equipped sponsor and act as a first line of defense against an unsafe placement for the child.

f. Ensure all unaccompanied children receive a minimum of monthly in-person post-release services

Post-release services are a critical component of unaccompanied children's safety net. Post-release services provide ongoing safety assessments and comprehensive needs assessments for the child and family; monitor progress toward goals; and connect families to culturally competent service providers in the community. Post-release services strengthen reunifying families by addressing immediate needs such as school enrollment, connections to pro bono immigration services, and access to healthcare. For decades, advocates have recommended that post-release services be provided to all children released from ORR/DUCO custody recognizing the fragility of the reunification period and urgency of ensuring resources are in place to support the family. LSSNCA is thrilled that ORR/DUCO is on track with support from Congress to achieve its goal of "providing all children with PRS [post-release services] by the end of FY2024."³⁷ However, LSSNCA is concerned that ORR/DUCO's Level 1 Post-Release Services allows flexibility for virtual visits. Knowing the high vulnerability of unaccompanied children to exploitation and trafficking, virtual visits do not allow for a comprehensive safety assessment. Virtual visits allow for manipulation of the home environment and cannot guarantee a child/youth is being interviewed outside the presence of the caretaker, as is best practice. Children must be given the opportunity to make any necessary disclosures in a safe and confidential space. Therefore, LSSNCA supports ORR/DUCO's goal to ensure post-release services for all children but opposes virtual visits.

g. Ensure accountability of ORR/DUCO over safe releases

In the domestic child welfare system, the federal government establishes benchmarks to measure child safety and well-being. States are held accountable for these benchmarks by the federal government, and states that chronically underperform are often required to

³⁷ Testimony of Robin Dunn Marcos. Committee on Oversight and Accountability U.S. House of Representatives Subcommittee on National Security, the Border, and Foreign Affairs. (April 18, 2023). Retrieved June 8, 2023 from [Robin-Dunn-Marcos-Testimony-4.18.23.pdf \(house.gov\)](#)

reform their system. System overhauls often include improved and increased capacity for data collection and continuous quality improvement so safety and well-being can be assessed in real-time, and proactive decisions about new policy directives or practice changes can be made to better protect children.

One of the core competencies of the domestic child welfare system is protecting children from further maltreatment, and when children placed in settings the system deemed to be safe and appropriate are abused or neglected in such placements that counts as maltreatment in care. However, children released to the community by ORR/DUCO are no longer in the care and custody of a regulatory body. If a placement breaks down or a child is determined to be in a situation of abuse, neglect, exploitation, or trafficking, it is the role of the local child welfare system to investigate and determine if there are immediate safety concerns and/or whether or not those concerns warrant the child being separated from the caregiver or if in-home supports can be put in place to avoid further maltreatment. At times, these local responses do not account for the situations that children who have been in ORR/DUCO custody find themselves. Many states are unable to intervene if the abuser is not a parent. If maltreatment or exploitation occurs in the ORR/DUCO approved placement, this information is not necessarily reported back to ORR/DUCO. Therefore, unless the child is receiving post-release services through ORR/DUCO, there is a jurisdictional gap in which no entity has authority over the placement nor is either entity collecting data to inform practice and policy changes if the placement breaks down.

On June 2, 2023, HHS released the findings from an internal audit conducted by ORR/DUCO on compliance with its own processes.³⁸ As it related to vetting and release processes, this audit found that ORR/DUCO got a *gold star* – it was either fully compliant or its lowest metric was 98.3 percent compliant. This underscores the flaw in ORR/DUCO’s performance and quality improvement process – clearly, given what we have learned about unaccompanied children released from ORR/DUCO custody, ORR/DUCO’s vetting and release processes are not achieving the intended outcome of safe placements.

38 In Newly Released Audit Report, HHS Announces New Accountability Team, Additional Efforts to Protect the Safety and Well-being of Unaccompanied Children. (2023, June 2). *HHS.Gov*. Retrieved June 8, 2023 from <https://www.hhs.gov/about/news/2023/06/02/in-newly-released-audit-report-hhs-announces-new-accountability-team-additional-efforts-protect-safety-well-being-unaccompanied-children.html>

LSSNCA believes that the Program Accountability Team referenced in the HHS Internal Audit released on June 2, 2023 is a step in the right direction. The Audit states that the Program Accountability Team “will be responsible for assessing and addressing potential child exploitation risks associated with the unaccompanied children program. The new team will play a key role in working with an outside entity to conduct an in-depth review of vetting and placement processes across all sponsor categories.”³⁹ The next step is for an outside accountability body to hold ORR/DUCO accountable for performance outcomes, rather than compliance with processes, and that those outcomes include a specific focus on the safety of children released from its care.

RECOMMENDATION 3: DEVELOP AND DEPLOY A SCREENING PROCESS FOR SPONSORS THAT INCLUDES INTELLIGENCE FROM OTIP, DOL, THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN (NCMEC), AND FEDERAL LAW ENFORCEMENT

ORR director, Dunn Marcos, indicates in her testimony⁴⁰ multiple avenues for ORR/DUCO staff and care providers to report safety concerns to local law enforcement, local child welfare, ORR/DUCO, OTIP, the DHS Homeland Security Investigations Division, and DHS’s Center for Countering Human Trafficking. Categories of incidents requiring a report include “any suspicion that the child has run away, is at risk of or posing a danger to themselves or others, or is at risk of human exploitation, trafficking, or other abuse.”

LSSNCA applauds ORR/DUCO’s efforts in February 2023, as outlined in Director Dunn Marcos’ testimony, “to enter into a data sharing Memorandum of Agreement (MOA) with OTIP and the National Center for Missing and Exploited Children (NCMEC) to increase information-sharing and visibility on unaccompanied children who are referred to NCMEC and who may be at risk of trafficking or exploitation.”⁴¹

LSSNCA recommends one-way information sharing of data and trends from the entities named in Director Dunn Marcos’ testimony, the DOL, and any other entity responsible for investigating human trafficking and child labor, to ORR/DUCO to fortify ORR/DUCO’s screening process for sponsors of with the goal of preventing the exploitation, abuse, and human trafficking of unaccompanied children.

39 Ibid

40 Testimony of Robin Dunn Marcos. (April 18, 2023)

41 Ibid

RECOMMENDATION 4: ENFORCE LOCAL CHILD LABOR LAWS

Since 2021, approximately 250,000 unaccompanied migrant children have entered the United States.⁴² Many of these children are now a part of the American supply chain,⁴³ working in manufacturing, construction, and service industries across the country in violation of applicable laws. A low U.S. unemployment rate, the desire of children to send money home, the expectation that children will contribute money to their sponsor’s household as well as rank exploitation are all contributing factors to this unlawful trend. As has been documented by the recent *The New York Times* piece as well as the DOL, many of these children are working in dangerous and difficult jobs, sometimes overnight, and often in violation of federal labor laws in place to protect children. Instances of unlawful employment of minors have risen 69 percent since 2018, and the volume of workplace labor law violations outstrips the federal government’s investigatory resources.⁴⁴

Despite these shocking facts, a number of states have recently passed legislation weakening their own child labor protections. Arkansas, for example, has enacted the “Youth Hiring Act of 2023,” which purports to “restore decision-making to parents concerning their children” by removing the requirement that children under 16 prove their age through the state’s Division of Labor.⁴⁵ This change assists businesses in accessing underage workers who may not know their rights in the workplace and makes it easier for employers to claim they were unaware of the child’s age. On May 26, 2023, Governor Kim Reynolds of Iowa signed into law⁴⁶ a bill that would loosen child labor restrictions and expand working hours during the school year for children past what is

42 Dreier, H., & Luce, K. (2023, February 25). *Alone and exploited, migrant children work brutal jobs across the U.S.* The New York Times. <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>

43 Harvard Law Review. (2023, March 21). What the Child Labor Crackdown is Missing [web log]. Retrieved June 7, 2023 from <https://harvardlawreview.org/blog/2023/03/what-the-child-labor-crackdown-is-missing/>

44 Departments of Labor, Health and Human Services Announce New Efforts to Combat Exploitative Child Labor (2023, February 27). *Dol.Gov*. Retrieved June 7, 2023 from <https://www.dol.gov/newsroom/releases/osec/osec20230227>.

45 Youth Hiring Act of 2023, A. 195 (Arkansas 2023). <https://www.arkleg.state.ar.us/Bills/Detail?id=HB1410&ddBienniumSession=2023%2F2023R>

46 Oladipo, G. (2023, May 27). Republican Iowa governor rolls back state’s child labor law protections. *The Guardian*. Retrieved June 7, 2023 from <https://www.theguardian.com/us-news/2023/may/27/republican-iowa-governor-rolls-back-child-labor-law-protections>

allowable under federal labor law.⁴⁷ The law also allows children to apply for exemptions to work in fields that currently exclude children under the age of 16.⁴⁸

It should be noted that state legislators introducing these measures do so in the knowledge that they conflict with federal law. Indeed, lawmakers in Ohio called on Congress to “change the Fair Labor Standards Act re: minors”.^{49 50} In this time of low unemployment and stubborn inflation, prominent economic thinkers and leaders continue to advance the axiom that the suppression of wages is a necessary component of efforts to curb inflation. LSSNCA urges Congress and the Administration to view a solution to the current labor shortages in low-wage, invisible jobs, a shortage that is in part fueling the desire for child labor, by increasing wages and benefits to attract more workers to fill the positions.⁵¹ Migrant children are especially vulnerable when corporations seek to fill undesirable, low-wage, dangerous jobs quickly and quietly. While the DOL, Health and Human Services, DHS, the United States Department of Agriculture, and other agencies are working together to investigate unlawful child labor, much more needs to be done to stop this immoral practice.

a. Increase fines against employers who violate child labor laws

At a minimum, the per-instance fines against employers who unlawfully hire child laborers must be substantially increased. This year, the fines for child labor did increase, but only very modestly. The fine for a single infraction of child labor standards increased from \$14,050 to \$15,138; even a repeated, willful infraction that causes serious injury or death to a minor child is capped at \$137,602.⁵² The current fines are not nearly enough to function as a deterrent to multi-billion dollar industries that engage in this practice.

b. Fully fund Department of Labor to investigate child labor

47 Nanda, S., & Looman, J. (2023, May 10). *senate.iowa.gov*. Retrieved June 9, 2023 from <https://www.senate.iowa.gov/democrats/wp-content/uploads/2023/05/DOL-Child-Labor-Law-Response.pdf>.

48 S.F. 542, an Act relating to youth employment, providing for a minor driver’s license interim study committee, and making penalties applicable (Iowa 2023). Retrieved June 7, 2023 from <https://www.legis.iowa.gov/legislation/BillBook?ga=90&ba=sf542>

49 Sherer, J., & Mast, N. (2023). (rep.). *Economic Policy Institute*. Retrieved June 7, 2023 from <https://www.epi.org/publication/child-labor-laws-under-attack/>.

50 SCR 14, Urge Congress to change Fair Labor Standards Act re: minors, 1134th GA. (Ohio 2022). Retrieved June 7, 2023 from <https://www.ohiohouse.gov/legislation/134/scr14>

51 Cass, O. (2023, June 2). The labor-shortage myth. *The Atlantic*. Retrieved June 8, 2023 from <https://www.theatlantic.com/ideas/archive/2023/06/labor-shortage-low-unemployment-inflation/674263/>.

52 USDOL, Wages and the Fair Labor Standard Act website, dol.gov/agencies/whd/flsa

Written Testimony by Kristyn Peck, LSSNCA, U.S. Senate Committee on the Judiciary,
“Ensuring the Safety and Well-Being of Unaccompanied Children,” 6/14/23

Congress must fully fund and support the DOL's capacity to investigate and inspect work sites that are known or suspected to have hired children unlawfully. Corporations must operate in the knowledge that unannounced inspections are a certainty, rather than just another operational risk.

c. Require minimum standards for state child labor laws

The Department of Justice must, in partnership with other agencies, seek to enjoin states that are knowingly passing legislation regarding child labor that directly conflicts with federal standards. These laws are introduced and passed in response to pressure from business interests eager to employ cheaper workers who are less willing to enforce their rights in the workplace. Too often, desperate migrant children are caught in this illegal and immoral trap. The federal government must lend its regulatory and enforcement powers to the urgent effort to end this abuse.

CONCLUSION

Chairman Durbin, Ranking Member Graham, members of the Senate Judiciary Committee, protecting unaccompanied children from exploitation, trafficking, and abuse should be a non-partisan issue. Regardless of immigration status, all children deserve to be protected. It is our responsibility as leaders, as parents, aunts, uncles, siblings, and grandparents, and as people of faith to rise above political agendas and prioritize the safety and well-being of vulnerable children.

The solutions are at our disposal, and by not acting upon them, we are all complicit in the continued harm that these children experience. With the right policies, oversight, and resources, we can help ensure that all children, regardless of their background or immigration status are protected from exploitation.

Let this be the example where Congress comes together, across party lines, to afford unaccompanied children the protection and support they need and deserve to lead dignified and fulfilling lives.

Thank you for your attention to this timely and critical issue.