



Executive Summary

A Vision Forward: Policies Needed to Protect the Best Interests of “Category 4” Unaccompanied Immigrant Children

A REPORT BY THE IMMIGRANT & REFUGEE ADVOCACY CLINIC, COLUMBUS SCHOOL OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA & MIGRATION AND REFUGEE SERVICES, U.S. CONFERENCE OF CATHOLIC BISHOPS

Unaccompanied children (UC) cross the U.S. border to escape violence, trafficking, gang recruitment, extreme poverty, and natural disasters in their home countries.¹ They often endure long, harrowing journeys with little or no opportunity for consistent schooling. Most of these children are between the ages of 15 – 17 and are placed in the custody of the Department of Health and Human Services, Office of Refugee Resettlement (ORR).² Though federal law requires ORR to place children in the least restrictive environment suited to meet their best interests, unaccompanied children without sponsors in the U.S., referred to as Category 4, particularly those over the age of 13, remain in large-scale government shelters for extended periods of time or simply age out of the ORR system and risk homelessness or detention in adult facilities.

With the advent of COVID-19 and closures of the southern border³ fewer unaccompanied children were crossing into the United States during 2020 and those who did were often illegally expelled rather than placed in ORR custody. However, officials are now seeing increasing numbers of unaccompanied children entering the U.S. as immigration restrictions at the U.S. southern border slowly begin to ease and questions about how to safely house and care for these children are again in the headlines.⁴

“Family placements provide the best opportunities for youth to establish permanency and a family connection. When the youth is placed with a family who can meet their needs and open their hearts, the relationship that is formed is most often the reason a youth is able to heal and succeed.”

- Program Director,
Commonwealth Catholic Charities, Richmond, VA

As of May 26, 2021, there were 17,847 children in ORR custody.⁵ The Department of Health and Human

Services has opened influx care facilities and emergency intake sites since February 2021 to accommodate these unaccompanied children, including the previously closed Carrizo Springs influx care facility in Texas.⁶ Advocates and faith leaders, including the U.S. Conference of Catholic Bishops, Migration and Refugee Services (USCCB/MRS), are raising concerns about operations at these unlicensed congregate facilities.⁷ This situation is reminiscent of the migration of unaccompanied children that occurred in 2014 and 2019⁸ and is likely to continue given the ongoing violence, poverty and natural disasters afflicting the Northern Triangle countries of Honduras, Guatemala, and El Salvador. The response to the current increase once again highlights the flaws in the system of care for unaccompanied children, particularly those who do not have family sponsors or other available guardians in the U.S.

This report explores the system for placing and protecting unaccompanied children who do not have sponsors and offers recommendations for ensuring that ORR places these children in small, family-like settings where they can receive nurturing, proper education, and assistance recovering from trauma. The report begins by identifying gaps in publicly available data on the number of children, length of detention, and placements for those who do not have relatives or guardians to whom they can be released pending determination of their immigration claims. Under ORR's system of classification, these children are designated as belonging to "Category 4". It also highlights policy changes over the last four years that have led to an increase in the number of Category 4 children in ORR custody and longer duration of stay in large congregate shelters. This, in turn, has impeded access of Category 4 children to legal representation, putting them at risk of aging out of ORR custody before their legal status is resolved.

The report shares findings from a survey that the USCCB/MRS, in collaboration with The Immigrant & Refugee Advocacy Clinic of The Catholic University of America, conducted of long-term foster care (LTFC) and unaccompanied refugee minor (URM) program providers in the USCCB/MRS network serving Category 4⁹ children. The report highlights ways in which the federal custody system for unaccompanied children without sponsors departs from foundational child welfare principles underlying the U.S. child welfare system. It also includes a comparative look at the way in which countries in the European Union are using family-based foster care and supportive independent living to meet the needs of UC.

The report concludes with recommendations urging policy makers to better protect the best interests of Category 4 children in U.S. government care. These recommendations focus on improving data collection, reducing reliance on large-scale congregate housing, implementing procedures for decreasing the time needed to refer children into family and community-based care, increasing funding to meet the educational, social, and health needs of Category 4 children, and expanding opportunities for unaccompanied youth ages 18-21.

Now is the time to implement policies ensuring that ORR places Category 4 children in individualized, family settings as quickly as possible. These policies must incentivize continuity of care, facilitate expeditious resolution of legal claims, and require that children who age out of ORR custody are not transferred to adult detention but, instead, continue to receive care and supportive independent living assistance as they transition into young adulthood.

Recommendations**

The following recommendations for policy, regulatory, statutory, funding, and programmatic changes are directed to Congress as well as to the Department of Health and Human Services/Office of Refugee Resettlement, Department of Homeland Security, the Department of Justice, and ORR's network of care providers.

A. Reduce Delays in Referrals of Category 4 Children to Foster Care and Small Group Homes

1. Collect data and report publicly, on a quarterly basis, the number of children in Category 4 status, the average length of time between entry into ORR custody and determination of Category 4 status, the level of care for Category 4 youth at the time of determination, the average length of time between eligibility determination and placement in LTFC or SGH, the average number of transfers for Category 4 children from entry into ORR custody through placement in LTFC or SGH, and the number of therapeutic beds available in LTFC and SGH.
2. As stabilization and permanency is vital to ensuring that children feel comfortable sharing information necessary to determine eligibility for legal relief, relax the requirement that determination of a viable legal claim

be made prior to referral and placement in LTFC or SGH.

3. Minimize the number of transfers of unaccompanied children prior to placement in LTFC or SGH. Place children in existing programs that have multiple levels of care (TFC/Shelter, staff-secure, residential treatment center, and/or LTFC) and incentivize development of more multi-tiered programs, so that, when a transfer is needed it can be facilitated within the same agency and community, enhancing continuity of care.

4. Expand the use of Transitional Foster Care (TFC) for youth 14-18.

5. Increase the capacity of available TFC placements to ensure placement in the least restrictive setting in the event of a surge of unaccompanied children. Work with community organizations to further educate the public on the TFC program and encourage local community care options.

B. Prioritize and Expand LTFC and SGH Placements for Category 4 Children

1. Prioritize placement of Category 4 children in family-based foster care or small group (no more than 12) traditional or therapeutic settings.

2. Expand LTFC programming to ensure that sufficient beds are available for Category 4 youth who qualify for LTFC placement. Prioritize the funding and development of therapeutic LTFC placement options for Category 4 children to increase the likelihood that all children will receive placement in an appropriate setting. Work with community organizations to further educate the public on the LTFC program and encourage local community care options.

3. Phase out large-scale congregate shelter care and influx care facilities and eliminate facilities management contracts to for-profit entities.

4. Consider opening LTFC programming to current URM-only foster care providers. This will reduce wait times for URM placements and enable continuity of foster care placements.

5. Conduct research on the impact of long-term foster care placement on unaccompanied minors and the efficacy of having two parallel systems of child welfare in the U.S. – the state-based child welfare system and the federal ORR-administered immigration child welfare system.

C. Address Gaps in Care for Category 4 Children

1. Increase funding to strengthen staffing and resources for LTFC and SGH programs, including but not limited to funding for competitive salaries for specialized staff, higher stipends and specialized training to increase recruitment of foster parents capable of caring for youth with complex needs, professional tutoring, robust mentoring programs, technology for educational needs, enhanced medical and dental options for youth, and post-18 planning services.

2. Ensure access to counsel for all Category 4 children, funded by the government, prioritizing continuity of representation when transferring children into LTFC.

3. Relax restrictions placed on Category 4 children in LTFC to allow and encourage development of independent life skills.

4. Sponsor and implement Supportive Independent Living (SIL) pilot projects for Category 4 adolescents aged 16-18 and engage in thorough program analysis to determine whether to institute such SIL programs on a wider scale.

D. Address Needs of Older Youth at Risk of Aging Out of ORR Custody and Eliminate Placement of Category 4 Youth in Adult Detention

1. Prohibit the placement of Category 4 youth who age out of ORR custody into adult immigration detention.
2. Prioritize USCIS resources to allow for streamlined processing of SIJS and asylum applications for Category 4 youth. Consider implementing a special allocation for child U visa recipients to allow more UC to benefit from these legal relief options.
3. Permit Category 4 youth to obtain work authorization upon filing an application for SIJS or asylum (as is currently permitted for Trafficking Visas) or, in the case of SIJS, once USCIS grants the I-360 petition. Require expeditious processing of such applications.
4. Require ORR care providers to develop comprehensive post-18 plans for Category 4 youth who are aging out of ORR custody.
5. Make long-term foster care placement and supportive services available for Category 4 youth who age out of ORR custody while awaiting resolution of their legal claims.

Endnotes

- 1 Amelia Cheatham, U.S. Detention of Child Migrants (Oct. 20, 2020), <https://www.cfr.org/backgrounders/us-detention-child-migrants>; See Off. of Inspector Gen. Dep't of Health & Hum. Servs., OEI-09-18-00431, Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody (Sep. 2019), <https://www.oig.hhs.gov/oei/reports/oei-09-18-00431.pdf>.
 - 2 Latest UC Data – FY 2021, U.S. Dep't of Health & Hum. Servs., <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2021/index.html> site last visited 5/27/2021.
 - 3 Pursuant to invocation of the Public Health Service Act, 42 U.S.C. §§ 265, 268.
 - 4 Camilo Montoya-Galvez, U.S. races to find bed spaces for migrant children as number of unaccompanied minors in government custody hits 15,500, CBS News (March 21, 2021), <https://www.cbsnews.com/news/immigration-migrant-children-in-border-patrol-custody-hits-15500/>.
 - 5 U.S. Dep't of Health & Hum. Servs., Fact Sheet, updated May 5, 2021, <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.
 - 6 Press release, U.S. Dep't of Health & Hum. Servs., Carrizo Springs Influx Care Facility (May 17, 2021), <https://www.hhs.gov/programs/social-services/unaccompanied-children/carrizo-springs-temporary-influx-facility-update.html>. See also , Emergency Intake Sites for Unaccompanied Children: Recommended Standards and Broader Solutions, Kids in Need of Defense [KIND], April 27, 2021 available at <https://supportkind.org/resources/emergency-intake-sites-for-unaccompanied-children/>.
 - 7 Influx Facilities for Unaccompanied Immigrant Children: Why They're Needed & How They Can Be Improved, U.S. Conference of Catholic Bishops/Migration and Refugee Services, available at <https://justiceforimmigrants.org/what-we-are-working-on/unaccompanied-children/influx-facilities-for-unaccompanied-immigrant-children-why-they-re-needed-how-they-can-be-improved/>. See also Silvia Foster-Frau, First migrant facility for children opens under Biden, The Washington Post (Feb. 22, 2021), https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05dfd58c-7533-11eb-8115-9ad5e9c02117_story.html.
 - 8 Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border, U.S. Dep't of Homeland Sec. (March 16, 2021), <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.
 - 9 Office of Refugee Resettlement, U.S. Dep't of Health & Hum. Servs., Children Entering the United States: Safe and Timely Release from ORR Care, Sec. 2.2.1, <https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-2#2.1>.
- ** As this report was being published ORR issued new Field Guidance announcing it would expand eligibility for long-term foster care for certain Category 4 UC using an existing exception under ORR Policy Guide Section 1.2.6. This new guidance aligns with this Report's recommendations to relax the viable legal relief eligibility requirement for placement of Category 4 children into LTFC and to prioritize expeditious placement of Category 4 children in LTFC and SGH. ORR will review this new field guidance in 60 days and we urge permanent changes in ORR policy to expand eligibility for TFC and LTFC for Category 4 children as well as additional funding to ensure sufficient TFC and LTFC placements are available to meet the need. See Off. Of Refugee Resettlement, U.S. Dep't of Health & Hum. Servs., Field Guidance #18 – Expansion of Long-Term Foster Care Eligibility, June 21, 2021.