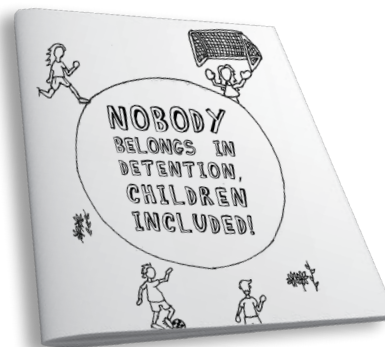




# UNDERSTANDING CHILD DETENTION IN THE U.S.

[Click here for an accompanying zine.](#)

**NOVEMBER 2024**



## EXECUTIVE SUMMARY

While U.S. immigration laws provide certain special protections to children migrating without a parent or legal guardian on account of their vulnerabilities, these laws and policies fall short of both domestic and international child welfare principles. Those impacted by and involved with U.S. systems for responding to child migrants have known for years that they do not meet the needs of most children. Drawing on frameworks and expertise advanced by directly impacted youth, child welfare advocates, immigrant rights groups, and scholars, as well as the examples of other countries, we developed this resource to highlight how the United States can shift its approach to child migration. This resource aims to demonstrate that a different approach to how the United States welcomes migrant children, particularly as relates to their time in government custody/detention, is not just possible but necessary. It is past time for our country to imagine alternatives to our current approach. In this resource, we explore:

- ▶ The inherent risks large-scale congregate facilities pose to unaccompanied migrant children.
- ▶ The need for a normative and legal commitment to a “best interest” framework in matters concerning unaccompanied migrant children.
- ▶ Innovative policies and practices that countries around the world are pursuing to advance the welfare of unaccompanied migrant children and to help end child migrant detention.
- ▶ As relates to care and custody of children, this report recommends:
  - ⇒ *Making changes to border processing policies in order to maintain family and kinship-based unity, thereby decreasing the overall number of children entering government custody.*
  - ⇒ *Improving the release/reunification process for children in government*

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*custody through increased support and aid to sponsors during and after release.*

⇒ *Phasing out large-scale congregate facilities while proactively working with trusted local community organizations to increase family and community-based placements that protect children’s freedom of movement and integrate them into local communities.*

## INTRODUCTION

In fiscal year 2022, over 152,000 migrant children and youth traveled to the United States border.<sup>1</sup>



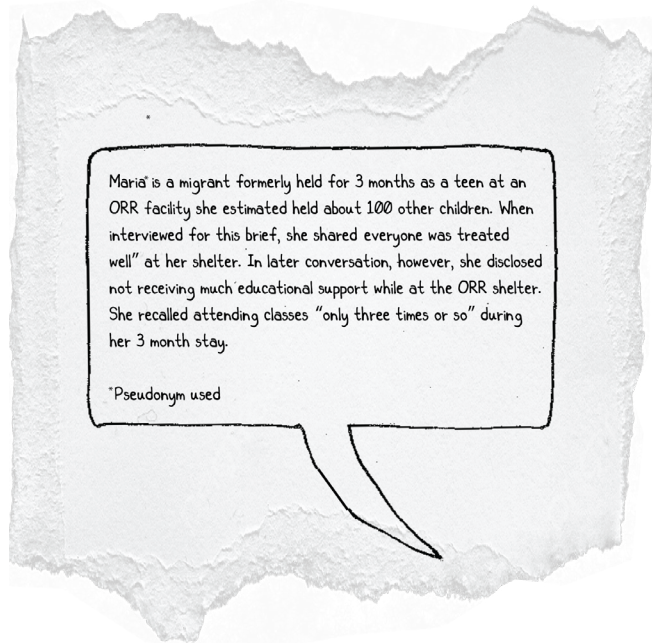
Although child migration is not new, the United States has largely responded to child migrants with policies and practices that often lag behind domestic and international child welfare guidelines. For example, despite widespread expert consensus on the detrimental impact of detention, every year thousands of children are placed in large-scale institutional settings<sup>2</sup> that amount to detention, not protection. This need not be the case; the United States can adopt a best interest approach and implement practices and policies that among other things maintain family and kinship networks, prioritize reunification, and facilitate the phasing out of large-scale, congregate, facilities.

## WHY ARE UNACCOMPANIED CHILDREN MIGRATING?

Children and youth<sup>3</sup> migrate for a variety of reasons. Some youth migrate alongside their parents or legal guardians but are separated at the border or along earlier parts of their journey.<sup>4</sup> Others travel with older siblings or extended family such as grandparents, aunts, uncles or even chosen family. Finally, some migrate completely alone. Regardless of how youth initiate their journey, if they arrive at the border without a parent or legal guardian they are legally regarded as “unaccompanied.”<sup>5</sup> This includes children who migrate alongside adult family members who are not their biological parents or legal guardian. In these cases, even if children have trusted relationships with the adults they have traveled with, because such adults are not the actual parents or legal guardians, they are separated from them at the border.<sup>6</sup>

Among the pool of children classified as unaccompanied, many seek to reunite with family members already living in the United States.<sup>7</sup> Indeed, in 2021, over 80 percent of unaccompanied migrant children classified as “unaccompanied” had a family member already residing in the United States; of those 40 percent were a parent or legal guardian.<sup>8</sup> Facing threats or the reality of violence and crime at home, many children are forced to migrate.<sup>9</sup> Others attempt to escape poverty and lack of opportunity in their countries of origin, braving tremendous challenges for a chance at a better life.

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The Homeland Security Act of 2002 transferred custody of unaccompanied migrant children from immigration enforcement agencies to the Office of Refugee Resettlement (ORR), an agency housed within the Office of Health and Human Services and with prior experience with refugee resettlement support services.<sup>10</sup> Per the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), children from non-contiguous countries<sup>11</sup> must be transferred to ORR within 72 hours of the determination that the child meets the definition of an unaccompanied migrant child.<sup>12</sup>

While the legal protections for unaccompanied children do help some children, others still spend days in CBP custody because the system treats children differently depending on where, when and with whom they arrive as well as their country of origin. While ORR custody is much preferable to

CBP custody, ORR’s continued reliance on large congregate settings has nonetheless exposed children to harm.<sup>13</sup>

### **WHAT HAPPENS TO UNACCOMPANIED MIGRANT YOUTH WHEN THEY ARRIVE?**

Unaccompanied children transferred to ORR custody remain there until a case manager at the facility where they are placed can find a family member or sponsor to release them to, they age out, or they are deported. To provide physical care and custody, ORR subcontracts with a variety of private and non-profit groups and organizations which, in turn, operate a network of more than 200 sites<sup>14</sup> holding unaccompanied migrant children.

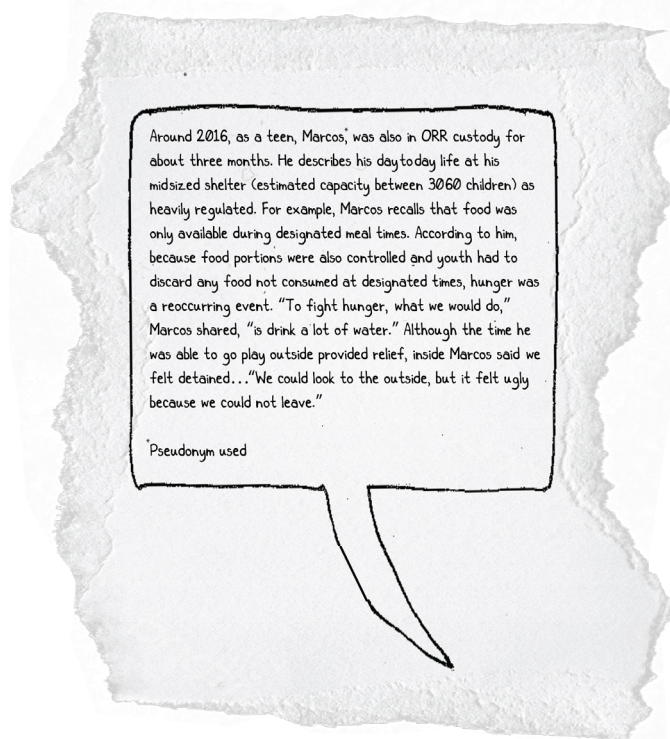
Among the type of facilities ORR subcontracts with are “shelters,” heightened supervision facilities (formerly known as “staff secure”), residential treatment centers, and “influx” facilities.<sup>15</sup>

Previously ORR also maintained “secure” facilities and “emergency intake” sites<sup>16</sup>, though at the time of writing these types of facilities are not in use. Given that advocates have described “secure” facilities as “jail-like,”<sup>17</sup> and the patterns of abuse and neglect which characterized emergency intake sites,<sup>18</sup> ORR’s move away from these models is welcome.

In recent years, influx sites elicited significant pushback due to being unlicensed, large-scale sites subject to fewer requirements than “shelter” facilities.<sup>19</sup> For example, the now closed Ft. Bliss site reportedly once had the capacity to detain 10,000 children.<sup>20</sup> Though shelter facilities are

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frequently juxtaposed against influx sites, many shelters themselves are also significant in size.<sup>21</sup> Indeed, a “majority” of shelter sites exceed a capacity of twenty-five children and a “significant number” hold hundreds of children.<sup>22</sup> Casa Padre, a Southwest Key shelter operated at a converted Walmart, for example, has a reported capacity of 1,200 children.<sup>23</sup>



Outside of the congregate facilities in ORR’s network, ORR also oversees transitional foster care (TFC) and long-term foster care placements (LTFC).<sup>24</sup> In long-term foster care children are placed with a family and enjoy increased freedom, including the ability to attend local schools.<sup>25</sup> Unfortunately, far fewer LTFC placements exist than are needed to meet the needs of children.<sup>26</sup> With TFC placements children also receive clinical and

case management support, as well as educational services.<sup>27</sup> However, these services are rendered through a facility run by ORR contracted staff.<sup>28</sup> TFC placements are prioritized for children under thirteen, pregnant or parenting youth, and children with disabilities.<sup>29</sup>

### **WHAT’S WRONG WITH LARGE-SCALE CONGREGATE FACILITIES FOR CHILDREN?**

For years child welfare advocates, doctors and mental health practitioners, and immigrant rights advocates have warned that any amount of time in detention can be harmful to children.<sup>30</sup> While detrimental effects can occur whenever children are separated from family and held in institutional care, the risk for harm is particularly high in large congregate facilities.<sup>31</sup>

Indeed, over the last four years, multiple outlets and whistleblowers have documented unacceptable conditions and a trend towards neglect and abuse at various large-scale sites, particularly past intake and influx sites.<sup>32</sup> The now closed Ft. Bliss influx site, for example, was the subject of at least three whistleblower reports.<sup>33</sup> Media reports also captured allegations of overcrowding, COVID-19 and lice outbreaks, severe medical neglect, undercooked meals, sexual abuse, and rape.<sup>34</sup> Although children were supposed to have short stays in facilities like Ft. Bliss, in practice many children endured long stays;<sup>35</sup> at Ft. Bliss at least 100 hundred children reportedly endured stays surpassing 60 days.<sup>36</sup>

Issues, however, are not strictly limited to

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influx sites; over the last decade, reports of inadequate conditions, abuse, and neglect have also surfaced at other types of facilities. In July 2024, for example, the Department of Justice (DOJ) sued Southwest Key, which is the single largest nonprofit organization operating shelter facilities for UCs in ORR custody.<sup>37</sup> The lawsuit alleges that Southwest Key has “engaged in a pattern or practice of severe or pervasive sexual harassment of children in its care.”<sup>38</sup> Incidents like these demonstrate that children are not necessarily safe when they are in government custody. The risk of harm is pronounced at large-scale facilities, which advocates say increase “the likelihood of sexual abuse and grooming, lea[d] to feelings of alienation, and pos[e] a risk to the psychological and physical safety of children and youth.”<sup>39</sup>

### **GETTING STARTED WITH CHANGE: ADOPTING A “BEST INTEREST” FRAMEWORK TO END CHILD DETENTION**

U.S. policy towards migrant children has been largely grounded in apprehensiveness towards migrants, deterrence, and efficiency. Under the Biden administration, ORR has taken important steps in the right direction, including closing emergency intake sites, not renewing the last remaining contract with a “secure” facility, closing Ft. Bliss,<sup>40</sup> and shortening overall release times.<sup>41</sup> Still, more is needed; indeed, the United States can and must build on recent positive actions.

First, to achieve systemic changes, the U.S. must make an intentional political, legal, and

normative values shift from the criminalization and dehumanization of migrant children and their families toward a framework that centers the welfare and perspectives of migrant children first.

One way to begin this shift is by explicitly adopting a “best interest” approach. “Best interest” describes a standard or concept long recognized and accepted within the broader child welfare and policy world. Although valid critiques exist around implementation (particularly as relates to discrimination against families of color in child welfare systems<sup>42</sup>), every state in the United States has laws requiring the consideration of a child’s best interest in custody determinations.<sup>43</sup> Unfortunately, there is no federal mandate to prioritize children’s best interests in regard to immigrant youth.

Best interests will vary, as needs can differ between children given their circumstances. However, a best interest approach aims to consider various factors that are individualized to the particular child, including children’s safety and well-being, their expressed interest, health, family integrity, liberty, development, and identity considerations.<sup>44</sup> Although a true best interest approach will require flexibility and adaptation, many countries around the world have at least made a normative and legal commitment to uphold migrant children’s best interests through the ratification of international treaties like the Convention on the Rights of the Child and through the passage of domestic laws explicitly upholding

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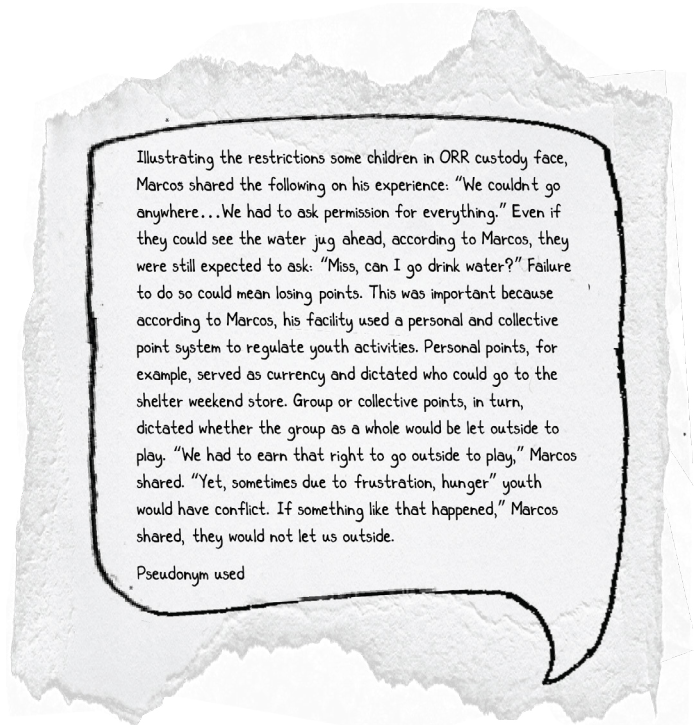
migrant children’s rights.<sup>45</sup> If the United States is serious about upholding child welfare values, it must make an affirmative commitment to children’s best interests, regardless of immigration status. Putting this commitment at the forefront will allow the United States to pursue new efforts and policies that center migrant children’s wellbeing.

**What could a values shift toward prioritizing children’s best interests look like?**

► **Prioritizing family and kinship preservation:**

One way to minimize the number of children detained in large-scale settings is to minimize the overall number that enter ORR custody to begin with. Currently, children who arrive at the border with family members or family friends who are not their biological parents or legal guardians are separated by CBP from the individuals they are traveling with and channeled into ORR custody. This means, for example, that children traveling with a trusted, known, adult such as an older sibling, a grandparent, a cousin, or even adults who have informally acted as a guardian in the child’s life are unnecessarily ripped away from their support networks. Instead of doing this, U.S. officials could prioritize maintaining family and kinship-based relationships.<sup>46</sup> Different proposals exist for how to do this. Some advocate groups, for example, have supported using trauma-informed child specialists (instead

of CBP agents) to screen children arriving at the border to assess their needs as well as the nature of their relationship with the adult with whom they are traveling.<sup>47</sup> Where the validity of the relationship can be confirmed, absent evidence of child safety and wellbeing issues, the child and the adult would remain together.



► **POLICY RECOMENDATIONS:**

- ⇒ Support policies that avoid unnecessary separation, including by keeping children with trusted family/ kinship units even if the adult(s) are not the biological parent or legal guardian.
  - ◆ To confirm the nature of the relationship between children and the non-parental/legal

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guardian adult with whom they are migrating, trauma-informed child specialists (independent of CBP and other enforcement agencies) can be used at the border. Absent an indication of safety issues, children should be kept within the family/kinship network they are traveling in.

⇒ Support policies that ensure release, not detention, of family and kinship-based units, including children.

- **Supporting Reunification:** As previously discussed, children sometimes endure extended stays in ORR custody. For some children, this may at least be in part attributable to ORR's release process and its requirements for sponsors. To begin, sponsors must undergo a paperwork process that includes, among other things, "proof of the sponsor's identity (birth certificate, passport, national identity document, or driver's license), the child's identity (birth certificate), relationship to the child (such as court records, guardianship records, marriage certificate, or birth certificates), and address if the sponsor is not a biological parent of the child (such as current lease, mortgage statement, utility bills)."<sup>48</sup> Sponsors (and potentially others living in the sponsor's home) must also submit to fingerprinting.<sup>49</sup>

While these and other reunification policies can be straightforward for some parents or family members, for others they can amount to a bureaucratically challenging process, requiring time and resources.<sup>50</sup> Although intended to safeguard children, without additional support for the sponsors, ORR policies can build on cultural, racial, linguistic, financial, and educational differences, challenging reunification.<sup>51</sup> They can further overlook the legitimate fear and concern that sponsors who are themselves migrants face when interacting with any governmental agencies and authorities, particularly agencies that have shared information with enforcement agencies in the past.<sup>52</sup> Indeed, in a recent survey of 135 stakeholders "working within the ORR system," 54% identified ORR's document requirements as the primary reason for reunification delays. 59% identified immigration enforcement fears, and 46% identified language and cultural barriers.<sup>53</sup>

Unfortunately, a sponsor's difficulty overcoming these structural barriers can in some cases be misinterpreted as "condemnatory evidence of...deficiency as a parental provider."<sup>54</sup> In these cases, the end result is release delays even though capable and loving sponsors are available.<sup>55</sup> While the safety of children and youth is indisputably critical, there

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needs to be nuanced consideration of the challenges and threats parents and other potential sponsors currently face. To prevent delays where children are not released to sponsors simply because of non-safety considerations, ORR and the federal government should increase efforts and investment in aid programs, including programs that provide aid to sponsors through the release verification process. This can include, for example, programs that support with the identification, gathering, and requesting of key documents or that grant limited financial assistance so that children and their families can meet release requirements like adequate housing or continuity of medical services where children have specific medical needs.<sup>56</sup>

Post-release, caseworker support programs can also be used to support children and their families to access legal aid services, navigate school enrollment, and more.<sup>57</sup> By sharing resources and keeping a line of communication open, holistic, wrap-around, post-release support programs serve not just to ensure smooth integration into communities but also as a key preventative measure against the abuse of migrant children and their families. ORR already provides post-release services for certain categories of children.<sup>58</sup> There is also precedent for additional intentional post-release support. Indeed, similar

efforts were implemented with Ukrainian children who are eligible for support programs like Temporary Assistance for Needy Families and Medicaid.<sup>59</sup>

While scaling up post-release support would require a financial commitment, this could be achieved through a redirection of a small portion of the millions currently spent on child custody weekly (reportedly \$60 million weekly in April 2021<sup>60</sup>). Rather than expecting parents and family sponsors to “prove” their suitability to an agency that itself has dealt with child neglect and abuse issues—an irony previously detained children have pointed out<sup>61</sup>—there should be a “presumption of suitability” (absent accusations or issues raised by children in ORR custody)<sup>62</sup> coupled with a redirection of resources to support children and their sponsors in the release process. Further, decisions regarding the child’s wellbeing should take serious note of the potential risks and harms children may face while in custody.

As with sponsor support, there is also a deeper need to re-evaluate reunification policies and practices generally. To achieve this, scholars Lauren Heidbrink and Sarah J. Diaz have proposed that ORR “partner with external child welfare experts within and outside of the U.S. Department of Health and Human Services to review its family



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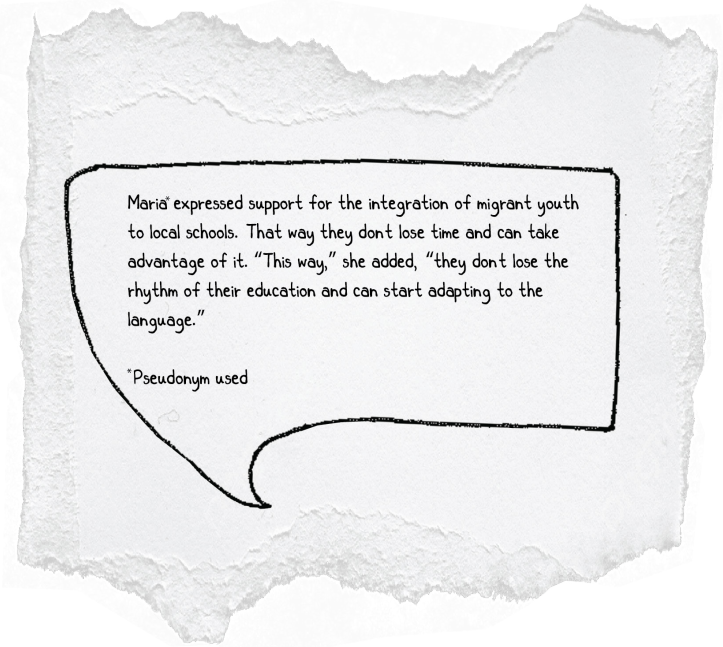
reunification processes to ensure alignment with research-informed, child welfare best practices.”<sup>63</sup>

► **POLICY RECOMENDATIONS:**

⇒ Support policies that acknowledge the systemic obstacles some sponsors face and redirect resources and aid to help sponsors achieve reunification. This can include, for example, programs that provide technical and/or material assistance to help parents and other potential sponsors meet requirements for release.

► **Phasing out congregate settings, investing in children and youth’s wellbeing and freedom of movement:** According to the Women’s Refugee Commission, ORR has overly relied on institutional or congregate facilities from the “inception” of its custody responsibilities.<sup>64</sup> As a result nearly 90 percent of unaccompanied children have been detained in facilities with “more than 50 beds.”<sup>65</sup> As discussed before, large-scale facilities pose inherent risks to children.

If the federal government advances practices and policies that prevent separation to begin with and revamps reunification policies as discussed above, ORR should experience an overall decrease in the number of children in its custody.



In remaining instances where a child must enter ORR custody and a sponsor cannot quickly and safely be identified, however, ORR should rely on other options besides large-scale institutional facilities. ORR, for example, can rely on existing community-based placements, including foster home placements where children are placed in family-like settings with vetted adults. Notably, although ORR already oversees foster placements, these tend to be “limited.”<sup>66</sup> In September 2021, for instance, less than 3 percent of children under twelve were placed in transitional foster care.<sup>67</sup> However, by decreasing the overall number of children requiring custodial support, resources should be freed up to increase both the availability and quality of community-based placements like transitional and long-term foster care.

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ORR could also take into consideration the recommendation of previously detained children who have advocated for independent living arrangements for some children.<sup>68</sup> For older children,<sup>69</sup> particularly children who were already leading independent lives in their country of origin, this option paired with post-release support services may be appropriate. Although this might challenge some American values or concepts of childhood and childcare, it is important to take note of the fact that cultural and class differences mean youth experience childhood and the transition period to adulthood and its associated independence and responsibilities in different ways.<sup>70</sup> Further, this arrangement is actually not novel, even in the United States. Indeed, it is an approach already utilized by some states in domestic settings.<sup>71</sup>

Where community-based placements are unavailable and independent living is not suitable, short-term, small-scale facilities located in residential areas with 25 or fewer children could be used as a matter of last resort. ORR must work with community-based organizations to increase these types of small-scale placements. Given that community-based organizations typically do not possess the same resources as large institutions or companies accustomed to navigating the federal contracting

process, any meaningful attempt to increase community-based placements will require ORR to take a proactive approach in outreach, trust-building, and technical assistance with child welfare and immigrant rights organizations.<sup>72</sup> For such organizations to preserve community trust, ORR must allow them to maintain independence from any immigration enforcement related activities.

Whatever custodial setting a child is in, their freedom of movement should not be restricted. Children report that they feel “locked up” when they are constrained within facilities characterized by “regimented rules and constant surveillance.”<sup>73</sup> Protecting children’s freedom is possible by prioritizing practices and policies that preserve normalcy like placing children with families, incorporating children into public schools rather than confining them to closed centers, and integrating children into local community activities.<sup>74</sup> Bottomline, if the United States pursues changes so that fewer children enter custody and focuses its investments in community-based placements, ORR can begin to phase out and permanently close large-scale, institutional, settings. As fewer children enter ORR custody and time in custody declines, this will allow ORR to ensure that it can provide quality care for the reduced number of children in its

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custody.

► POLICY RECOMENDATIONS:

⇒ Support policies aimed at decreasing reliance on large-scale facilities and increase instead the quality and availability of community or family-based placements. This aligns with ILRC's calls in the adult context to reduce detention center contracts as a path to phasing out immigration detention entirely.

⇒ To achieve this, support efforts to redirect resources for outreach and technical support to smaller, trusted, community groups and organizations that could apply for funding to help facilitate small, community-based placements.

► **Welcome Children:** The arrival of unaccompanied children at the border does not occur in a vacuum. It is a direct byproduct of decades of xenophobic efforts designed to make migration not just difficult but dangerous, as well as punitive policies aimed at criminalizing those who migrate. As migration becomes increasingly difficult, more youth and children fatally lose or become separated from parents and caregivers in their perilous journey. For families who can stay together, daunting challenges often await

at the U.S.-Mexico border. In 2019, for example, the Trump administration rolled out the Migrant Protection Protocols (MPP) or Remain in Mexico, a dangerous border program that forced asylum seekers to wait in Mexico while their asylum claims were adjudicated.<sup>75</sup> The program forced thousands to reside in limbo for months and even years in dangerous Mexican border cities where organized crime was rampant and notorious for targeting migrants.<sup>76</sup> Unaccompanied children, however, were exempt.<sup>77</sup> Believing their children would be safer in the United States, many parents were forced to make the impossible "choice" of sending their children to the United States alone.<sup>78</sup> As policies like MPP show, addressing the wellbeing of migrant children requires us to recognize the harm and impact of our broader immigration and border policies and shift to a framework that sees children as children, welcoming them in their time of need.

► POLICY RECOMENDATIONS:

⇒ Reject policies like MPP and Title 42, and more recent policies like the Circumvention of Lawful Pathways Rule,<sup>79</sup> that circumvent or roll back asylum protections.

⇒ Reject laws like 8 U.S.C. §§ 1325 and 1326 (unauthorized entry and re-entry) that criminalize caretakers and can

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result in separation of children from their adult companions.<sup>80</sup> Support legislation like the New Way Forward Act,<sup>81</sup> which would repeal these provisions.

- ⇒ Create pathways for family and kin-based groups to safely seek asylum and migrate as a unit, without the use of family detention.

## **SIDEBAR - THE INTERESTING CASE**

### **ABROAD:**

The complex case of Mexico shows that adopting a best interests approach even amidst growing migration numbers is not just possible, but necessary. Although Mexico has historically been a transit country, the number of migrants staying in Mexico is increasing.<sup>82</sup> In recent years, Mexico has also faced growing pressure from the United States to enlarge its detention and deportation apparatus to block migrants from arriving at the US-Mexico border.<sup>83</sup> As a result, Mexico has had to contend with increasing numbers of undocumented migrants, unaccompanied minors included, within its borders.

Even so, in 2014 Mexico passed the Children's Law "establishing a National Child Protection system that covers all children irrespective of their migration situation."<sup>84</sup> Significantly, this law for the "first time shift[ed] some responsibility for [migrant] and refugee children to national,

state and local child protection officers." In 2020, these laws were reformed to "clearly prohibi[t] the detention of all children for reasons of their migration status."<sup>85</sup> Together, these changes represent an important values or paradigm shift for Mexico's approach to migrant children.

These laws, however, are not purely aspirational. On their foundation, groups like International Detention Coalition (IDC) and their local partners were able to pilot an open-door alternative child care program in 2015-2016 and subsequently support other local alternative care initiatives in both the public and private shelter systems. According to the IDC, these programs have been characterized by "robust management and care models ensur[ing]...freedom of movement, access to education and healthcare, focus on building a life plan for a stay or eventual return, and communication with family."<sup>86</sup> Although Mexico must grapple with serious systemic humanitarian and implementation issues before it can realize the true spirit of the 2014 and 2020 laws, by adopting these laws and piloting open-door programs Mexico is making meaningful strides towards a better approach. Although Mexico will certainly deal with challenges that will force it to adapt and readapt to achieve a Mexico where there is no child detention, it has taken a step in the right direction.

Other countries have also made important efforts. Ecuador, for example, legally prohibits child detention.<sup>87</sup> In Sweden, municipalities are "responsible for the housing, health care, and

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education” of migrant children, as well as “the appointment of a guardian to look after the child’s interests.”<sup>88</sup> Universal representation (for children seeking asylum)<sup>89</sup> and equal access to education are also extended to children.<sup>90</sup> Similarly, Italy’s Zampa Law granted unaccompanied children representation at no cost and access to the same national public education and healthcare system as Italian citizens.<sup>91</sup> The Zampa law also introduced “an absolute prohibition on the return or removal of any unaccompanied child from Italy, unless ordered by a court in exceptional circumstances-and only where no serious harm would befall the child.” Finland has opted to care for unaccompanied children in group home settings with fewer than twenty-one children.<sup>92</sup> Like Sweden, it assigns each child a guardian or representative whose “task is to ensure that the child’s best interests are taken into account.”<sup>93</sup> Canada, for its part, permits child detention but only as a matter of “last resort,” detaining only two minors during the first four months of 2022.<sup>94</sup>

Serious critiques and gaps exist around all of these countries’ overall approaches to implementation of stated non-detention goals. Even so, important lessons can be gleaned from efforts to center children’s best interests, integration into society, and freedom of movement.

For decades, the United States’ approach to migrant children has been rooted in policies and practices that are not just outdated but

that simply do not work and that cause harm to children. A better approach to migrant children is not just possible, it is necessary. Divesting from our current detention centered approach will require time and adaptability, but it is possible. The United States has the financial and intellectual resources, expertise, and creativity to protect the dignity and wellbeing of children, many of whom will be eligible for immigration relief and will permanently integrate into the United States. It is a matter of will and commitment to migrant youth’s welfare, integrity, dignity, and future.

## ACKNOWLEDGEMENTS

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## ENDNOTES

- 1 Council on Foreign Relationships, “U.S. Detention of Child Migrants,” <https://www.cfr.org/backgrounder/us-detention-child-migrants> (listing number of unaccompanied children encountered by immigration officials at the border in FY 2022) [hereinafter “CFR, “Unaccompanied Children Backgrounder””].
- 2 Women’s Refugee Commission, *Decreasing ORR’s Dependence on Congregate Care: Four Recommendations for Progress*, 1, (August 9, 2023), <https://www.womensrefugeecommission.org/research-resources/decreasing-orr-dependence-on-congregate-care-four-recommendations-for-progress/> (describing large facilities as those with a capacity of 50 or more beds) [hereinafter “WRC, *Congregate Care Reliance*”].
- 3 In this resource, we refer to children and youth as those under the age of eighteen, given their differential treatment at the border when they are classified as “unaccompanied” by U.S. law. However, we recognize that childhood development extends far past the age of eighteen.
- 4 UNICEF, “Child migration through the Darien Gap up 40 percent so far this year,” <https://www.unicef.org/press-releases/child-migration-through-darien-gap-40-cent-so-far-year>.
- 5 6 U.S.C. § 279 (g)(2). Designation as an unaccompanied child comes with certain legal rights – placement in ORR custody with its related rights and services, TVPRA § 235(b)(1); the right to be placed in removal proceedings under INA § 240, 8 U.S.C. § 1232(a)(5)(D)(i); the right to apply for asylum initially with the asylum office, INA § 208(b)(3)(C); and eligibility for voluntary departure at no cost to the child, TVPRA § 235(a)(5)(E)(ii).
- 6 Vera Institute of Justice, *Learning from Youth: Envisioning Freedom for Unaccompanied Children*, 29, (September 2022), <https://www.vera.org/downloads/publications/learning-from-youth-envisioning-freedom-for-unaccompanied-children.pdf> (describing in endnote 30 how children arriving at the border with family or trusted adults that are not biological parents or legal guardians are regarded as unaccompanied and separated) [hereinafter “Vera, *Learning from Youth Report*”].
- 7 CFR, “Unaccompanied Children Backgrounder.”
- 8 Department of Homeland Security, “Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border,” <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.
- 9 See CFR, “Unaccompanied Children Backgrounder.”
- 10 See Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135 (2002) (codified in pertinent part in scattered sections of 6 and 8 U.S.C.)
- 11 Mexican (and Canadian) children are treated differently under the TVPRA and unfortunately regularly returned at the border by Customs and Border Protection (CBP).
- 12 CFR, “Unaccompanied Children Backgrounder.”
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