
Policy Recommendations to Improve the Protection and Care for Unaccompanied Children

Mario Bruzzone

Thousands of refugee and immigrant children come to the United States alone or with their families each year, many having fled life-threatening dangers in their countries of origin. In fiscal year (FY) 2019, more than 69,000 unaccompanied children entered the custody of the U.S. federal government. Unaccompanied children (UCs) are under 18 years old, have no legal immigration status, and arrive in the United States without a parent or legal guardian to provide care and custody. Typically, children are placed into a network of shelters that span the country. Shelter care providers offer temporary homes and services, including educational, medical, and mental health services and case management to reunite children with their families.

Because unaccompanied children are especially vulnerable to trafficking and criminal predation, the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA) specified how federal agencies must handle situations involving unaccompanied children. Under the TVPRA, most UCs must be referred to HHS within 72 hours. The Office of Refugee Resettlement (ORR), situated within HHS, manages the custody of children while their immigration cases proceed in court. ORR is required to place each child in the least restrictive setting possible until it can reunify the children with a family member or other sponsor. In FY2019, systemwide length of care in ORR custody was 66 days.

The COVID-19 pandemic has presented tremendous challenges to the health and safety of unaccompanied children in the United States—challenges that will

continue in the medium term. Under the previous Administration, the U.S. government expelled unaccompanied children arriving at the U.S. border, until enjoined from doing so by the courts. These border expulsions exacerbated children's vulnerability by sending children into danger of violence, abuse, poor health, and disease. As a matter of public policy and as a matter of public health, the argument was and is a false choice. Public-health experts repeatedly emphasized that border expulsions do not meaningfully arrest the spread of infectious diseases, [including](#) COVID-19. The United States can protect public health and safeguard UCs, even in a crisis.

As the United States proceeds with COVID-19 vaccinations and enters a new phase, an unusual opportunity has emerged to accomplish three key goals at once. First, the United States can respond to a public-health crisis while drawing on the critical lessons of the pandemic, and with the high standards that the United States can afford. Second, the United States can address needs that predate the pandemic by improving coordination, transparency, and UC outcomes across the system of UC care. Finally, the United States can take proactive measures that help ORR prepare for the next UC crisis, whenever it may occur.

USCRI's recommendations for addressing challenges in the care of unaccompanied children follow.

Recommendation 1:

Use lessons learned during the pandemic to improve UC care and ORR procedures

Background

During the summer of 2020, many UCs—particularly those in Category 1 and Category 2, who have identified sponsors—were reunited within two to three weeks, much faster than pre-crisis. USCRI applauds the hard work of the case managers, Federal Field Specialists (FFSs), and other personnel who were able to expedite releases. Beyond hard work and long hours, changes in ORR policy and practice also played a role—both formal and informal changes. Because changes were put in place during an emergency, ORR has an opportunity to both compare with prior practices and to rigorously evaluate which practices merit carrying over to regular operations, which practices are best practices for future emergencies, which practices might be adapted, and which practices did not accomplish intended outcomes.

Recommendation

USCRI recommends that ORR conduct and publicly release a formal analysis of UC care during the pandemic. The focus of the analysis should be on improving UC care, and particularly on speeding releases. ORR should analyze why and how it was able to speed safe reunifications, recognizing that in crises individuals and systems may work harder and faster than what is sustainable long-term. The analysis should identify useful changes to practice and procedures in normal operations as well as those only for use in the next crisis, and include both failures and successes as part of an organizational improvement process. ORR should also consider funding an outside research study on outcomes of UCs who entered ORR care, exited ORR care, or both during the pandemic.

Recommendation 2:

Post-release services for all UCs

Background

Post-release services help UCs, but only approximately 20% of UCs receive them. Post-release services (PRS) provide additional assistance to UCs and sponsors in locating, accessing, or connecting to resources in the community. These resources may include education, health care, mental health services, and identifying legal representation. PRS serve as part of a lattice of child-welfare practices and protections that include home studies, sponsor verification and background checks, assessments, in-custody therapeutic services, and ORR follow-ups.

Section 235(c)(3)(B) of the TVPRA requires HHS to provide post-release services for all children who receive a home study prior to placement: children who are victims of trafficking in persons; special-needs children; children who have suffered physical or sexual abuse under circumstances that indicate that the child's health or welfare was significantly harmed or threatened; and children whose proposed sponsor presents a clear risk of abuse, maltreatment, exploitation, or trafficking. The TVPRA also authorizes ORR to provide post-release services to any child "who could benefit from ongoing assistance from a social welfare agency." During the COVID-19 emergency, ORR significantly broadened the number of UCs who have received post-release services via this power.

Recommendation

USCRI recommends that a new Administration request funding for expanded post-release services in its budget request, and that ORR continue to extend post-release services to all UCs post-pandemic. Follow-up services, particularly those that meet UCs and sponsors in their homes, help ensure that safe releases remain safe. In providing post-release services, case managers go to UCs' homes, allowing them to provide bridging services but also to identify child-welfare concerns, problems with placements and, in some cases, significant threats to children's well-being. PRS case managers also provide continuity, in the form of a trusted adult, that may be part of a healing process after suffering trauma.

Recommendation 3:

Appoint child advocates for the most vulnerable children

Background

In some unaccompanied children's cases, an expeditious release may not be possible. They may remain in ORR care for a longer time. For example, UCs without parents or other close family members in the United States may have sponsors that require more vetting (e.g., Category #3 children, defined by ORR as having other sponsors, "such as distant relatives or unrelated adults"). Some children may not have any viable sponsors (i.e., Category #4 children).

Recommendation

USCRI recommends that ORR appoint child advocates for the most vulnerable UCs. USCRI recommends that UCs who are expected to remain in ORR custody for an extended time (e.g., Category #3 and #4 children) have a child advocate assigned at their 60th day in care. The child advocate would be mandated to search for long-term solutions for these children. Using the TVPRA as a guide, USCRI further recommends that ORR be required to appoint a child advocate for children meeting the current requirements for a home study. As with post-release services, the key to providing child advocates for certain children and mandating specific responsibilities for those advocates is that it must be written into the law, and Congress must provide funding.

Recommendation 4:

Prioritize better UC case management

Background

ORR's mandate is to place children in safe, familial settings where they can thrive. Effective case management is arguably the single most important determinant of whether children are reunited quickly with sponsors. Case managers, who are staff at care providers, assess UCs' needs in care, locate and vet UCs' sponsors, and facilitate the safe release of UCs. FFSs, who liaise between ORR and care providers, serve as ORR's regional approval authorities for transfer and release decisions. ORR is in the process of revising and centralizing its case-management system, which should be an opportunity for process improvements across ORR operations with UCs.

Recommendation

In public-health emergencies, ORR must prioritize better training for case managers, faster decision-making from FFSs, eliminating third-party delays in the process, and improved oversight. More broadly, ORR must expedite sponsor search and vetting procedures, minimize administrative barriers to reunification, ensure that home studies happen quickly, and minimize transfers between ORR facilities for UCs. Under no circumstance should expediting release compromise the rigor of sponsor vetting to ensure children are released to safe and appropriate placement.

Recommendation 5:

Expand the Unaccompanied Refugee Minor program

Background

The Refugee Act of 1980 provided child-welfare services for refugee children. Among the services created was the Unaccompanied Refugee Minors (URM) program, which allowed refugee children unaccompanied by a parent or other close relative to receive services through states' foster-care programs. Some UCs receive an immigration status that makes them eligible for the URM program, but there are not sufficient placements. In some cases, these youth, often receiving Special Immigrant Juvenile (SIJ) status or a trafficking eligibility letter, have had particularly traumatic backgrounds and present behavioral problems while in ORR custody. Their unique circumstances make them difficult to place in regular URM programs. Their lack of family in the United States puts them at risk for remaining long-term in ORR custody. Although ORR has foster care programs for UCs, it would be more beneficial for the children to enter a URM program specifically designed for their special behavioral and developmental needs, and it would allow them to exit federal custody, transfer to a long-term placement, and benefit from the state-funded programs available for foster youth.

Recommendation

USCRI recommends that ORR expand the URM program to create additional placements and more appropriate services for UCs without family in the United States who receive an immigration status making them eligible for URM care. This recommendation does not need a legislative change. 8 U.S.C. § 1522(d)(2)(A) authorizes the ORR Director "to provide assistance, reimbursement to States, and grants to and contracts with public and private nonprofit agencies, for the provision of child welfare services . . ."

Recommendation 6:

Send the Convention on the Rights of the Child to the Senate for ratification

Background

The Convention on the Rights of the Child emphasizes the rights of children to survival; to develop to their full potential; to protection from abuse, neglect, discrimination, and exploitation; and to participate in family, cultural, and social life. Although the United States signed the Convention in 1995, no U.S. President has sent it to the Senate for ratification. Opponents to the Convention suggest that it takes away American sovereignty.

Recommendation

USCRI recommends that the President send the Convention on the Rights of the Child to the Senate for ratification. As a leader in human rights around the world, the United States needs to be a leader in the rights and protections for children. The United States cannot remain the only country that has not signed the most ratified human rights treaty in history, one that is designed to ensure protection, assistance, and care for children.

Recommendation 7:

ORR reaches marginalized and immigrant communities. Develop an outreach plan to build vaccine trust

Background

ORR has a respected public-health team, the Department of Health for Unaccompanied Alien Children (DHUC). UCs' sponsors are disproportionately individuals at greater risk of COVID-19 infection and at greater risk of suffering adverse health consequences when they do. The ORR sponsor system presents an important opportunity and venue for accessing members of hard-to-reach populations for immunization. Similarly, staff at UC care providers may be more likely to come from families with a recent history of immigration and/or socially marginalized communities. Both present important outreach opportunities.

Recommendation

The ORR sponsor system presents an important opportunity and venue for accessing members of hard-to-reach populations for immunization. USCRI recommends that ORR build a vaccine communications plan with culturally appropriate materials that can be disseminated by case managers and home study specialists. The materials should explain what a vaccine is, how vaccines work, how the particular vaccine works, why vaccinations are important for individuals, and why vaccinations are important for populations, and be produced in languages that UCs and members of their household understand. For care-provider staff, ORR should encourage vaccination and prepare materials that can address vaccine hesitancy, along with clear channels for two-way communication between staff and experts at DHUC.