#163

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC22-796

FOURTH PRESENTMENT OF THE TWENTY-FIRST STATEWIDE GRAND JURY

In the time since we last published our findings, we have continued to investigate the many questions in our Supreme Court mandate. We intend to report those findings in the near future.

We have also been monitoring the issue described in our Third Presentment of the [mal]treatment of Unaccompanied Alien Children (UAC). These children are transported by federal agencies into our state, where many are effectively abandoned. We have received updates regarding investigations undertaken by the Florida Department of Law Enforcement (FDLE) at our direction; we have also summoned back witnesses who made certain representations to us regarding remedial steps they intended to take. We have continued to review government reports and media accounts of the plight of UAC including, sadly, one who died while in the custody of the Office of Refugee Resettlement (ORR) in our state.

Since ORR recently announced a proposed rule to govern itself, and solicited public comment about the rule within a short timeframe, we felt the need to address this particular issue on an interim basis.

A.

The United States Department of State[1] has announced a position regarding the priority it gives to the best interests of children:

> While the United States strongly supports child protection and takes into account the best interests of the child in certain immigration actions, it is not always a "primary consideration" in the immigration context.

It appears that ORR has taken this position as its own, and far too literally.

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[1] "Revised National Statement of the United States of America on the Adoption of the Global Compact for Safe, Orderly and Regular Migration," (December 17, 2021). https://www.state.gov/wp-content/uploads/2021/12/GCM.pdf

We followed the Congressional testimony of the Director of ORR. Having seen and heard this testimony, we are not surprised that this person declined to appear before us despite invitation to do so. As Congressman LaTurner put it,

> Congress has been attempting to conduct proper oversight of the Office of Refugee Resettlement for years, yet Agency decision-makers have willfully obstructed our constitutional mandate, as detailed by a 2021 Senate Finance Committee report. ORR's behavior has drawn bipartisan condemnation, but it is not just the run-of-the-mill bureaucratic obstruction which I find most concerning. It is that ***Agency decision-makers seem determined to undermine ORR's primary directive of safely relocating at-risk children***. Secretary Becerra has urged HHS employees to process UACs out of this program at assembly line speed, resulting in at-risk children being released to sponsors ***without proper vetting, exploited for illegal child labor, and put at risk for human trafficking***.

Congressman Garcia summed up the success of the Director's testimony, aptly in our view:

> ***I think I speak for probably all Majority Members on the panel, I am very disappointed of all the answers you were unable to give us***. … I am very disappointed that you do not know, percentage-wise, those 128,000 you did DNA testing on. I know the Border Patrol does it occasionally, and it is not unusual for them to find a situation in which they were lying about whether the kid is related or not. You do not know the percent of these kids who you talk to one parent and percent two parents. I would like to know that. I think it is relevant. ... There was a very good question here, the sponsor rejection rate, are any of these sponsors, you know, inadequate. You did not know what the percentage of that rate is. ***The fact that we do not know where 85,000 unaccompanied minors are, according to The New York Times, is kind of scary.*** …. You were unable to ask the question what is being done to prevent whistleblower retaliation and ensure reports are taken seriously. That is something we should know about, and I think we do not have an adequate response as to what we know about other people in these families. I mean, you imply that we found an uncle for this person. There are people who know their uncles like their brother, and there are people who have never met their uncle before in their life. And, you know, sometimes these sponsors are in a

household, maybe the one person we don't have a background check on, or we do a background check on, but other people we do not. So, a lot of people have been asking questions that, presumably, you will get back to us within a week or two with the answers. I am glad we had the hearing. I guess the takeaway on the hearing is, if you go with this open doors policy, part of the open door is going to mean we have a lot of unaccompanied minors detached from their parents coming to the country, and, not surprisingly, ***we have no idea where they are winding up or no idea whether they are safe or not***.

Congressman Garcia inquired as to the rate at which DNA testing was being used to validate familial relationships. As we learned, not only have rapid DNA tests been exceedingly rare, they are now being ***discontinued altogether***. This seems unwise. Rather than resolve questions about relationship and identity quickly, cheaply and with little intrusion or room for human error, HHS/ORR apparently prefer a longer, more expensive, and less reliable process of attempting to interview and obtain documents from foreign-born children and their potential sponsors to get the same information.

After giving the vetting process short shrift, ORR essentially washes its hands of responsibility for these children. ORR's repeatedly-announced position[2] that it "loses all jurisdiction" over UAC thirty days after placing them with a sponsor ***appears to violate both federal law and the Flores Settlement Agreement*** to which ORR professes fealty. Paragraph #16, as well as "Exhibit 2, Section e," of the Flores Agreement, states that [ORR] "may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the [sponsorship] agreement." Yet despite this mandate, if a sponsor violates the agreement by "losing" the child, failing to ensure the child goes to court, failing to abide by federal and state child labor or truancy laws [Section 410.1306], or otherwise putting the child's welfare at risk, ORR's current policy considers this "not our problem."

Since ORR does not and will not "terminate custody arrangements," even in the case of sponsors who have abused and/or trafficked the children given to them, this section of the Flores Agreement appears to be ***violated in a large number of***

[2] We point out that the United States Senate Committee on Homeland Security and Governmental Affairs explained the error of this position in 2018 and again in 2020: "HHS's interpretation of its legal responsibility for unaccompanied alien children, as defined by the Homeland Security Act of 2002, directly contradicts the plain language of the statute. . . HHS's refusal to take responsibility for these children after placement with a sponsor other than a parent or guardian undermines those children's safety, our immigration system, and the rule of law."

cases handled by ORR for years. This ORR policy appears more rooted in a desire to absolve ORR of the consequences of its placement policies than it does in faithful adherence to the actual laws supposedly governing that agency.

B.

We reviewed what appears to be an attempt by ORR to respond to the unflattering coverage that office deservedly received from multiple sources, including our Third Presentment and the New York Times' series of articles exposing the fact that ORR placed hundreds of children who ended up being exploited and harmed in labor trafficking scenarios around the country. In summary, ORR audited itself, checking records for a one-month period. Stunningly, ORR found that ORR complied with ORR's own policies, as interpreted by ORR.

ORR ***still*** had to admit that it had, ***in that one-month period***, released ***344 children to sponsors who each received three or more unrelated children***, yet conducted ***home studies in only four*** of those instances. Further, when ORR attempted its supposed "30-day follow-up phone calls" after divesting itself of the children, someone claiming to be the child was reached in 66% of cases, someone claiming to be the sponsor was reached in 84% of cases, and, within that month, ***calls to 46 of those 344 children failed to reach either a sponsor or a child***. Another disturbing finding of their audit was that:

> of 172 cases[3] reviewed in depth, ***12 children ran away from their sponsor and there were 34 reported caretaker changes***. Of those 34 reports, 12 children were referred to child protective services (CPS) of which 6, including four siblings placed with one sponsor and an additional two children placed with another sponsor, were removed from the home by CPS.

These are abysmal statistics. If ORR's one-month "self-audit" accurately reflects their success rate, ***then every year they completely lose track of more than 500 children within the first month after placement and nearly 150 others flee their placements altogether.*** This should reassure absolutely no one.

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[3] ORR placed nearly 130,000 UAC in the year selected for its "audit." The fact that the agency reviewed ***one-one-thousandth of one percent*** (0.0011%) of them "in depth", yet ***still*** had the problems described herein, says much about the agency and its leaders' actual commitment to protecting these children—none of it good.

C.

These agencies have also claimed, including in Congressional testimony, that most UAC are "placed with a parent, legal guardian, or close family member." This is misleading on several fronts.

First, ORR places ***more than two-thirds of its UAC with persons other than a parent***. Second, the evidence indicates that ORR takes extreme liberties with their definition of "close family member," many of whom are completely unknown to the UAC they are seeking to sponsor. It is not at all uncommon for these sponsors to be ***complicit in funding criminal child-trafficking operations*** by promising and/or paying coyotes or others to smuggle these children to the border in the first place (as some even admitted to the New York Times and other publications).

For reasons unknown, HHS/ORR **intentionally** do not ask these "vetted sponsors" about such activities, and actually discourage case managers from doing so on their own. As a direct result, we and others (the New York Times, Pro Publica, federal employee whistleblowers, CBS News, Congressional committees, and Department of Justice press releases, to name but a few) have documented a litany of instances wherein ORR and their NGO grantees have placed UAC with total strangers, illegal border crossers, MS-13 members, Transnational Criminal Organization (cartel) members, sexual offenders, and persons seeking to use them as sources of income from labor or government benefits.

HHS and ORR officials continue to publicly insist they "do everything we can" to ascertain the identity of sponsors. However, what happens in reality and practice, according to many witnesses who appeared before us, testimony before Congress, and multiple reports from watchdog agencies, including HHS' own Inspector General, is that case managers or others:

-*may* call a phone number in a foreign country to talk to a supposed parent of the child;

-*may* speak that person's language, or may be forced to use a translator;

-*do not* physically meet, or may not even see, whomever they speak to (parent or sponsor);

-to the extent they receive requested documents, they obtain them almost universally via "WhatsApp," their authenticity unverified;

-no longer demand any form of DNA testing, which would resolve any relationship questions very quickly; and

-*do not* subject ***<u>other</u>*** residents of the proposed home to even the minimal level of scrutiny required of sponsor applicants.

As a result of ORR's obfuscations, we had to learn through other sources of the myriad of children trafficked into sexual bondage and indentured servitude. Whether it was

-the Mexican national in Texas who pled guilty to running a house of prostitution featuring underage foreign children;

-multiple graphic accounts of children suffering crippling injuries working in slaughterhouses;

-MS-13 teens discovered posing as parts of a "family" crossing the border;

-the UAC who sodomized and murdered a girl with autism after being placed in her neighborhood;

-five-year-olds discovered by Texas troopers wandering between ports of entry in the desert; or

-the hundreds of UAC who end up in Florida's foster-care and dependency systems after failed sponsorships (just to name a very few of ORR-sponsored tragedies)—

it is time for the general public to know what is being done with taxpayer funds. Yet ORR and its kindred agencies do everything within their power—including retaliating against whistleblowers and ignoring subpoenas from both Congress and this jury—to keep this knowledge hidden, ***<u>not to protect UAC, but to protect themselves from exposure.</u>***

We nonetheless obtained a tranche of information regarding hundreds of UAC placed in Florida approximately 18 months prior to our Third Presentment. The Florida Department of Law Enforcement undertook a massive investigation to ascertain whether, and to what extent, those children were safe and well. We were disheartened, but not surprised, to learn that after less than two years, more than half could not be located at all, and that multiple addresses turned out to be either invalid or not residential locations. These results confirm what witnesses told us, as reflected in our Third Presentment and in multiple reports in other fora:

ORR may be able to say they "place" UAC, but ***ORR certainly cannot make any credible claim that the UAC they "place" are safe, healthy, or even alive a short time later***.

The results also, unfortunately, mirror those obtained by the Department of Homeland Security's Inspector General, which reported on September 6, 2023, that "DHS Does Not Have Assurance That All Migrants Can be Located Once Released into the United States." Just as we learned was the case with ORR routinely "placing" UAC with phony people at phantom addresses, DHS-OIG learned that for the period between March 2021-August 2022, "addresses for more than 177,000 [migrants] were either missing, invalid for delivery, or not legitimate residential locations" and:

> **Based on our analysis, 80 percent (790,090 of 981,671) of addresses were recorded at least twice during an 18- month period, some of which were provided by families upon release. More than 780 of these addresses were used more than 20 times. These families provided addresses that may be unsafe or have overcrowded living conditions based on multiple migrants using the same address. For example, DHS released 7 families, comprising 12 adults and 17 children, to a single-family 3- bedroom New Jersey home in a 70-day period. ... some ERO deportation officers identified addresses of parks and commercial retail stores migrants listed as the location at which they would reside. ... We also identified 7 addresses that were recorded more than 500 times, some of which were other Federal agency locations and charities. USBP agents may input charity addresses. However, charities only serve as temporary residences, not migrants' final destinations. Based on our analysis of USBP release data from March 2021 through August 2022, we identified at least 8,600 migrant release addresses associated with 25 charities.... Using additional analysis, one ICE deportation officer identified more than 100 migrants who used one individual's contact information as their point of contact in the United States.**
>
> **[Thus] "DHS may unknowingly release migrants, including children, to potentially unsafe conditions or smuggling operations."**

In summary, we have witnessed officials of our own government make facially presentable claims without being required to answer basic follow-up

questions. We have asked those questions of witnesses before us who made similar claims. The evidence and answers we received prove those claims to be either half-truths or utterly false.

II.

HHS/ORR have also published a Notice of Intent (RIN #0970-AC93, https://www.govinfo.gov/content/pkg/FR-2023-10-04/pdf/2023-21168.pdf) that the agencies are seeking to pass an administrative Rule which essentially codifies many of the abominable policies (such as lax vetting and waiver of background checks) we have documented here and elsewhere:

A.

ORR wants to punish contractors / grantees and employees for calling the police.

Section 420.1304(b) reflects a particularly obtuse philosophy: Keep police away at all costs.

> Under proposed § 410.1304(b), involvement of law enforcement would be a last resort and ***a call by a care provider facility to law enforcement may trigger an evaluation of staff involved regarding their qualifications and training*** in trauma-informed, de-escalation techniques. ORR notes that calls to law enforcement are not considered a behavior management strategy, and care provider facilities are expected to apply other means to de-escalate concerning behavior. But in some cases, such as emergencies or where the safety of unaccompanied children or staff are at issue, care provider facilities may need to call 9-1-1. ORR also notes that proposed § 410.1302(f) describes requirements for care provider facilities regarding the sharing of information about unaccompanied children. Additionally, because ORR would like to ensure law enforcement is called in response to an unaccompanied child's behavior only as a last resort in emergencies or where the safety of unaccompanied children or staff are at issue, ***ORR is requesting comment*** on the process ORR should require care provider facilities to follow before engaging law enforcement, such as the de-escalation strategies that must first be attempted and the specific sets of behaviors exhibited by unaccompanied children that warrant intervention from law enforcement.

To the extent ORR is sincerely requesting comment, we would say: police should not be called "only as a last resort in emergencies." They should be called to

prevent children from being involved in emergencies in the first place. No caregiver should be disincentivized from summoning police when they feel circumstances warrant such a call. Police are far better equipped for such situations than any ORR employee.

B.

ORR wants to give itself complete and unfettered discretion as to what constitutes basic vetting procedure for sponsors and children alike, which, as discussed in our Third Presentment, is wholly inadequate.

According to ORR's Executive Summary, "The proposed provisions of this part would, in many cases, codify existing ORR policies and practices" when it comes to "Sponsor Suitability." To summarize ORR's request: All vetting measures are now ***optional***.

Under proposal 410.1202, desire to be a sponsor

> may require a positive result in a suitability assessment of an individual or program prior to releasing an unaccompanied child to that entity, which may include an investigation of the living conditions in which the unaccompanied child would be placed and the standard of care the child would receive, verification of the identity and employment of the individuals offering support, interviews of members of the household, and a home visit.... ORR may consult with the issuing agency (e.g., consulate or embassy) of the sponsor's identity documentation to verify the validity of the sponsor identity document presented and may also conduct a background check on the proposed sponsor.... discretion to evaluate the overall living conditions into which the unaccompanied child would be placed upon release to the potential sponsor. Proposed paragraph (c) therefore provides that ORR may interview members of the potential sponsor's household, conduct a home visit or home study pursuant to proposed § 410.1204, and conduct background and criminal records checks, which may include biometric checks such as fingerprint-based criminal record checks on a potential sponsor and on adult household members, ... permits ORR to verify the employment, income, or other information provided by the individuals offering support....ORR will not automatically deny an otherwise qualified sponsor solely on the basis of low income or employment status (either formal or informal). 410.1204 indicates that "as part of the sponsor suitability assessment, it may require a home study[.]"... "ORR proposes it would consider the potential sponsor's

strengths and resources in conjunction with any risks or concerns including: (1) the potential sponsor's criminal background; (2) the potential sponsor's current illegal drug use or history of abuse or neglect; (3) the physical environment of the home; and/or (4) other child welfare concerns.

The only mandatory requirement is completion and submission of the sponsorship application. No other vetting measure is mandated. ***No finding during the vetting process is automatically disqualifying, a truly disturbing commentary on ORR priorities.***

ORR is similarly lax when it comes to identifying whether UAC are, in fact, children or are actually related to their sponsors. One witness stated: "It is more difficult to adopt a pet from a local animal shelter, than it is to become the sponsor of an unaccompanied alien child." ORR knows this; in fact, ORR encounters the same difficulties when trying to determine whether UAC are in fact children or 24-year-old Hondurans who promptly murder their sponsors [as documented in our Third Presentment]. In sections 410.1702 and 1703, "***ORR acknowledges*** the challenges in determining the age of individuals who are in Federal care and custody. These challenges include but are not limited to: ***lack of available documentation; contradictory or fraudulent identity documentation and/or statements***; ambiguous physical appearance of the individual; and diminished capacity of the individual."

Their solution: more of the same,

> including but not limited to: (1) birth certificate, including a certified copy, photocopy, or facsimile copy if there is no acceptable original birth certificate ...; (2) authentic government-issued documents issued to the bearer; (3) other documentation, such as baptismal certificates, school records, and medical records, which indicate an individual's date of birth; (4) sworn affidavits from parents or other relatives as to the individual's age or birth date; (5) statements provided by the individual regarding the individual's age or birth date; (6) statements from parents or legal guardians; (7) statements from other persons apprehended with the individual; and (8) medical age assessments, which should not be used as a sole determining factor but only in concert with other factors.

This strikes us as absurd. ORR would credit the "statement of another person apprehended [read: *committing the crime of illegal entry*, 8 U.S.C. 1325] with the individual" but is reluctant to take a DNA sample. ORR would trust a "facsimile copy" or a "baptismal certificate" sent via "WhatsApp" but restrict the use of

medical age assessments--evidence which is used every day in our nation's courts—to a diminished role, "only in concert with other evidence." There is no legitimate reason for these proposals.

C.

ORR wants to continue concealing information and deliberately ignoring the legal status of sponsors.

Even when ORR does possess information about UAC and their sponsors, ORR refuses to let other agencies access that information.

> ORR restricts sharing certain case-specific information with the Executive Office for Immigration Review (EOIR) and DHS that may dissuade a child from seeking legal relief, or that may bias the court's length of continuances." Further (410.1201(b)), "consistent with existing policy, ***ORR would not disqualify potential sponsors based solely on their immigration status***. In addition, ORR proposes that it shall not collect information on immigration status of potential sponsors for law enforcement or immigration enforcement related purposes. ***ORR will not share any immigration status information relating to potential sponsors with any law enforcement or immigration related entity at any time.*** To the extent ORR does collect information on the immigration status of a potential sponsor, it would be only for the purposes of evaluating the potential sponsor's ability to provide care for the child (e.g., whether there is a plan in place to care for the child if the potential sponsor is undocumented and detained).

ORR would, then, apparently be content placing a child with a person currently under a deportation order from our courts. Yet the agency would not communicate to law enforcement that someone trying to obtain one or more children had been ordered removed due to being convicted of molesting children in their country of origin, or someone who committed multiple federal crimes by illegally re-entering after being deported four previous times.

D.

ORR wants to change its rules to permit NGO "UAC care facilities" to operate in states which refuse to grant them a license, or in which they cannot get one, as well as in facilities which do not meet even current standards of care under the Flores Agreement.

Florida is among the states that have declined to grant licenses to operate a placement facility that elects only to follow ORR policies rather than also complying with state laws regarding the care of these children. ORR has refused to permit its contracted facilities to comply with the requirements of Florida law. The agencies do not have valid licenses to operate in Florida if they accept ORR's contractual terms.

ORR has issued policy it now wants to actually codify to allow these places to continue taking ORR contract money to care for and place UAC, regardless of state law, and more concerningly, regardless of consideration for the safety of children which licensing is designed to enhance. ***At least one child has already died in an unlicensed ORR facility in Florida this year***.[4]

According to 410.1302,

> The proposed definition of 'standard program' reflects and updates the term 'licensed program' at paragraph 6 of the Flores Settlement Agreement. The FSA does not discuss situations where states discontinue licensing, or exempt from licensing, child care facilities that contract with the Federal Government to care for unaccompanied children, as has happened recently in some states. ***ORR has included this proposed definition of 'standard program' that is broader in scope*** to account for circumstances wherein licensure is unavailable in the state to programs that provide residential, group, or home care services for dependent children when those programs are serving unaccompanied children.

This also meshes with the proposed new definition in section 410.1001:

> Standard program means any program, agency, or organization that is licensed by an appropriate State agency, ***or that meets other requirements specified by ORR*** if licensure is unavailable in the State to programs providing services to unaccompanied children, to provide residential, group, or transitional or long-term home care services for dependent children, including a program operating family or group homes, or facilities for special needs unaccompanied children.

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[4] https://www.tampabay.com/news/pinellas/2023/08/11/migrant-teen-died-after-seizure-safety-harbor-shelter-autopsy-shows/

ORR wants to redefine acceptable placement facilities for UAC, and to enable this seeks to introduce a newly-minted definition of "influx" and "emergency" and new authority these definitions grant to ORR, as well as substitution of "standard programs" for "licensed programs."

> ORR may place an unaccompanied child in a care provider facility as defined at proposed § 410.1001, including but not limited to shelters, group homes, individual family homes, heightened supervision facilities, or secure facilities, including RTCs. ORR proposes that it may also place unaccompanied children in out-of-network (OON) placements under certain, limited circumstances, ... In addition, ***ORR proposes that in times of influx or emergency***, as further discussed in proposed subpart I (Emergency and Influx Operations), ***ORR may place unaccompanied children in facilities that may not meet the standards of a standard program***[.]

Continuing the theme of wishing to expand the types of places it can send these children, ORR seeks to

> ***replace its current long-term and transitional home care placement approach*** with a community-based care model that would expand upon the current types of care provider facilities that may care for unaccompanied children in community-based settings ...ORR would define 'community-based care' in § 410.1001 as an ORR-funded and administered family or group home placement in a community-based setting, whether for a short-term or a long-term placement. The proposed definition of 'community-based care' encompasses the term 'traditional foster care' that is codified at existing § 411.5. 'Community-based care' would be a continuum of care that would include basic and therapeutic foster family settings as well as supervised independent living group home settings for unaccompanied children, which are funded and administered by ORR.

ORR cannot adequately meet the requirements the agency is currently subject to; it therefore seeks radical redefinition of both the goals it is mandated to achieve and the processes whereby it is mandated to do so. ***ORR should not be rewarded for chronic failure by a relaxation of the standards***. These are the lives of children we are discussing, not some depersonalized set of numerical values.

E.

ORR wants to redefine words and phrases, including multiple terms from the Flores Settlement Agreement, in a way that gives ORR the ability to waive even more protocols and background checks.

In section 410.1001, ORR seeks to change the definition of "influx" because

> The FSA defines influx as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program. ... The 1997 standard of 130 minors awaiting placement does not reflect the realities of unaccompanied children referrals in the past decade, in which the number of unaccompanied children referrals each day typically exceeds, and sometimes greatly exceeds, 130. To leave this standard as the definition of influx would mean, in effect, that the program was always in influx status.

This becomes evident when examining 410.1800, where ORR seeks leave to use an influx as an "exceptional circumstance" to relieve it of the duty to receive a child from other federal agencies within 72 hours. In other words, ORR wants to keep select parts of the Flores Agreement without setting it entirely aside, while at the same time, claiming that current realities make the strictures of the Flores Agreement impossible to fulfill.

ORR knows its facilities are overwhelmed with UAC and is unable to adequately run placement operations, so ORR proposes a Rule to allow for ***less*** scrutiny and care because of an influx environment. As ORR admits in Section 410.1801(d), it seeks to add language that

> ORR may grant waivers for an emergency or influx facility operator, either a contractor or grantee, from the standards proposed under § 410.1801(b). Specifically, waivers may be granted for one or all of the services identified under § 410.1801(b) if the facility is activated for a period of six consecutive months or less and ORR determines that such standards are operationally infeasible.

We presume this particular request is directly related to the publishing of a report on May 2, 2023 by the HHS Office of Inspector General entitled ***"The Office of Refugee Resettlement Needs to Improve its Practices for Background Checks During Influxes."*** This report documented a litany of extremely concerning failures on the part of ORR including (as we describe in a future section) the failure to run

background, fingerprint, Sex Offender Registry and Child Abuse/Neglect checks on hundreds of its own employees. ORR would rather change their own rules than fix the problems cataloged in that report. This puts children at greater risk, and is unacceptable.

As indicated in the Proposed Rule,

> ORR proposes that it would ***consider additional factors that may be relevant to the unaccompanied child's placement***, to the extent such information is available, including but not limited to the following: danger to self and the community/others, runaway risk, trafficking in persons or other safety concerns, age, gender, LGBTQI+ status, disability, any specialized services or treatment required or requested by the unaccompanied child, criminal background, location of potential sponsor and safe and timely release options, behavior, siblings in ORR custody, language access, whether the unaccompanied child is pregnant or parenting, location of the unaccompanied child's apprehension, and length of stay in ORR custody. ***ORR believes that this information, to the extent available, is necessary for a comprehensive review of an unaccompanied child's background and needs, and for appropriate and safe placement*** of an unaccompanied child.

The current Rules give ORR the authority to consider these factors; to the extent ORR is requesting a new Rule to authorize such consideration, ORR should be directed to explain ***why it is not already being done***.

F.

ORR attempts to perpetuate its overstated claim of provision of services to UAC post-placement and conceal any records that might prove otherwise.

ORR defines "provision" as follows (88C.F.R. 68933): "ORR provides PRS by ***funding providers to facilitate access*** to relevant services"— in other words, by cutting a check to someone and ***not by directly providing the services or ensuring their provision.*** The HHS Secretary and ORR repeatedly tout their supposed provision of "post-release services" to UAC. We investigated this particular claim thoroughly and found that although many case managers reported they made "recommendations" or "referrals" for such services (medical, psychological, educational, or other) in somewhere around one-half of their cases, ***none*** of them could name or identify any person or agency ***actually providing*** such services here in Florida. We even learned that a number of companies advertising the provision

of services, when asked, admitted to us that they do not actually provide such services here. Nor do the case managers know whether children in fact receive services after placement, or for how long, since only the sponsor can ensure the child is given whatever is recommended. Also on page 68933, ORR admits that it "would not delay the release of a UAC if PRS are not immediately available."

To the extent that HHS/ORR officials claim children are ***in fact*** receiving the recommended services, we are unwilling to simply take them at their word, since ***they also disclaim any authority and responsibility one month after placement***. Further, they are unwilling or unable to provide actual data, names, or any other detail they may have, in the supposed service of privacy.

ORR wants to redefine "Post-Release Services" (410.1001) to include

> assistance linking families to educational resources [which] may include but is not limited to, in appropriate circumstances, assisting with school enrollment; requesting an English language proficiency assessment; seeking an evaluation to determine whether the child is eligible for a free appropriate public education[.]

ORR wants to be able to say they have given post-release services merely by having a child's English-speaking capacity tested. Further, ORR is going to make Post-Release Services mandatory **ONLY "during the pendency of removal proceedings for unaccompanied children for whom a home study was conducted."** ORR performs home studies in fewer than one percent of cases; accordingly, ORR could claim to be extraordinarily successful in the provision of PRS when in fact they do so only in a tiny fraction of cases. ORR already has the ***authority*** to perform more home studies but appears to lack the actual willingness to do so.

In 410.1210

> ORR also proposes other circumstances in which it would require a home study. The second circumstance in which a home study is proposed to be required is before releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or who has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children. The third circumstance in which a home study is proposed to be required is before releasing any child who is 12 years old or younger to a non-relative sponsor.

Again, we identified in our Third Presentment that ORR was absolutely failing to do this despite currently having authority to do so (***a claim acknowledged in the Proposed Rule***, Subpart C, 410.1200 (88 C.F.R. 191 page 68927)). While we think these home studies should be mandated, ORR should be required to explain this dereliction in failing to do them diligently thus far.

Even though ORR still insists it has no legal custody over UAC after release to a sponsor, it seeks to prohibit anyone from ever seeing any records a UAC generates following release, including in the event post-release services are provided. The UAC are supposedly long gone from its control, yet ORR still wants to be exclusively in charge of all their data.

> Under this proposed rule, ORR would consider all unaccompanied children's records, including those produced for PRS, to be included in the individual case file records of unaccompanied children, whether generated while the child is in ORR custody or after release to their sponsor. ORR also proposes in § 410.1303(g)(2) that the records in unaccompanied children's case files are the property of ORR, whether in the possession of ORR a care provider 108 See 8 FR 46682 (July 18, 2016) (stating that "[t]he case file contains information that is pertinent to the care and placement of unaccompanied children, including . . . post-release service records[.]"), facility, or PRS provider, including those entities that receive funding from ORR through cooperative agreements, and care provider facilities and PRS providers may not release unaccompanied children's case file records or information contained in the case files for purposes other than program administration without prior approval from ORR.

Hypothetically, if a UAC dies in a sponsor's care, ORR could prohibit release of any services or treatment records to the investigating agencies. ORR could easily conceal information in cases where it reflected poorly on ORR.

Finally, we note that although ORR is seeking to impose upon providers a slew of requirements for contracted agencies (410.1210), there is absolutely no mention of any penalty whatsoever for failing to do so—especially since ORR will not reassume custody under any circumstances. ORR is consistent in this regard; long on bureaucratic doublespeak, short on accountability.

G.

ORR wants to put the UAC in limited geographic areas—near the Southwest Border—but does not want to consider whether UAC might require greater care.

In 410.1103, "ORR proposes to codify its existing policy that ORR make reasonable efforts to provide [group facility] placements in those geographical areas where DHS encounters the majority of unaccompanied children." Between 150,000 and 200,000 UAC entered our country this past year. We must ask why ORR would want to confine them to a small number of facilities in one section of the country, forcing ORR to construct new facilities to support them.

Another change to the language of the Flores Settlement Agreement proposed by ORR is the specification of circumstances that would result in a UAC being assigned to more restrictive placement. ORR wants to mandate that

> the existence of a report of a significant incident [an SIR, or a report of sexual abuse, rape, physical attack, etc.] may not be used by ORR as a basis for… restrictive placement" [Section 410.1303 and 1304, 88 CFR 191 page 68940].

Additionally the proposed Rule [88 CFR 191 page 68915, Sections 410.1103] would alter the Flores Agreement definition of "escape risk." The FSA requires that a prior escape from custody lead to a more restrictive placement. The proposed Rule allows ORR to disregard that factor in determining whether a UAC is a runaway risk, even though ORR acknowledges that this factor "overlaps with a concern that a UAC may not appear for immigration proceedings… and may also relate to potential danger to self or others."

H.

ORR is seeking significant, and expensive, expansion of a federal bureaucracy which has thus far failed miserably in its mission.

The requests in 410.1308 and 1309, and 1901 and 1902, seek to create a brand new administrative process (complete with legal advice and "child advocates") for UACs unhappy with their group facility placement and sponsors who are DENIED custody to appeal ORR's decision. These appeals go to ACF (ORR's parent agency); this does not strike us as comforting.

Beginning with 410.2001, ORR states it wants to have created an "Ombuds Office" purportedly for "oversight," but it turns out to be utterly toothless. The Ombudsman would be created "with authority and responsibility to receive,

investigate and ***informally address*** complaints about government actions, make findings and recommendations and publicize them when appropriate, and publish reports on its activities… although an ombud's office ***would not have authority to compel ORR to take certain actions***" and "will report directly to the ACF Assistant Secretary[,]" (***not*** to Congress or anyone else). With this proposal, ORR is intentionally creating a convenient memory-hole for when something else inevitably goes wrong.

Massive expansion of this bureaucracy, including funding for more lawyers, "appeals personnel," and "child advocates" on top of already-existing case managers and staff, reveals the true nature of ORR's request: to erect even greater and more expensive bureaucratic walls between citizens and the information about how ***public monies*** are expended. Though ORR claims to fund 52 separate grantees, it (incredibly) insists the rule will not cost more for any of these new layers (except $1.7M for an Ombudsman). However, examination of the rest of the proposal discloses that ORR would absolutely disburse additional taxpayer funds to support this project: grantees who incur "additional costs associated with the policies discussed in this proposed rule that were not budgeted, and cannot be absorbed within existing budgets, would be allowable for the grant recipient to submit a request for supplemental funds to cover the costs." In addition to being expensive, this bureaucracy is likely to be ineffective, since it would first require a child to be identified as having been "trafficked or especially vulnerable" for a child advocate to be assigned. This is a status ORR historically has gone to great lengths ***not*** to identify when vetting potential sponsors.

I.

When a nation accepts the presence of unaccompanied children, whether they arrive by legitimate methods or not, it also as a matter of simple justice must accept the responsibility for their care and well-being. The set of rules proposed by ORR seems designed to smooth the path for entry and distribution of vulnerable children while absolving ORR of that responsibility.

If ORR were truly interested in rules to promote its claimed and statutorily-mandated mission—rules by which it might justify its budget— we believe it would instead prioritize the safety of UAC who enter our borders, by enacting the following provisions, at a bare minimum:

1) All sponsors claiming any familial relationship with a child ***must***, without exception, submit to a DNA test, as must the UAC seeking sponsorship, to

determine whether such relationship actually exists. Sponsors who refuse shall not be granted custody under any circumstances; UAC who refuse shall remain in the physical custody of ORR. If the DNA results show the relationship not to exist, the sponsor shall not receive custody of the UAC and shall not be permitted to apply to sponsor any UAC in the future.

2) Any fraudulent representations by the sponsor applicant regarding this relationship shall be recognized as a possible crime and reported as such to both ICE and the state law enforcement agency having jurisdiction over the sponsor's residence.
3) ORR shall require every sponsor who is awarded physical custody of a UAC to notify ORR of any change of address by the sponsor or change in the whereabouts of the UAC within 72 hours. In cases where the UAC is placed with a non-related sponsor, ORR shall maintain at least verbal contact with each sponsor in intervals not exceeding sixty days, and failure to make contact with a sponsor shall require ORR to physically visit the UAC's address and verify the UAC's safety. Inability to contact both sponsor and UAC during such a visit shall require a report to both ICE and the state law enforcement agency having jurisdiction over the sponsor's residence. This shall continue until the UAC reaches the age of 18, is removed from the country, or is found to have fled placement.
4) ORR shall be required to report, biannually and in writing, to the Chair and Ranking Member of the House of Representatives Committee on Homeland Security, the rate of successful UAC contact during the above intervals, as well as the rate of unsuccessful contact.

We acknowledge that such rules would implicitly impose costs upon us and our fellow taxpayers (unlike ORR, we recognize and admit this fact). These are costs that decency requires a society to bear when it permits children to enter its borders who lack a legitimate caregiver. We also will discuss, in a forthcoming report, possible methods of defraying these costs.

III.

ORR has been given more than ***two billion*** taxpayer dollars every year since 2019 to serve the 150,000 children they have, however briefly, in their custody annually. Of course, ORR keeps children for as short a time as possible, sending

them through the sponsorship assembly line[5] within 3-4 weeks in most cases. Many of their daily reports indicate around 8,000 UAC in custody on any given day nationwide, a number which increased in the past three months to more than 10,000.

Despite spending an average of ***more than $13,000 per child for this brief period***, however, HHS and ORR have demonstrated neither the willingness nor the ability to protect the UAC or our fellow citizens. Indeed, the HHS Office of Inspector General wrote in a May 2023 report that ***ORR failed to even properly vet its own employees, let alone sponsors***. The OIG concluded that of a cohort sample of 229 employees, HHS failed to conduct FBI fingerprint checks at all on 191, failed to conduct Child Abuse and Neglect checks on 200 (***and that ORR had actually waived this requirement*** for 51 of them), and failed to conduct Sex Offender Registry checks for 42 more.

Despite repeated reports from the HHS Office of Inspector General, Senate and House Committees, and even media—***for over a decade***—this agency has failed to remedy its pathetic performance or justify the billions allocated to it, which at this point appear to be doing little more than a building a pyre upon which the safety of children is sacrificed. This agency should not be given a new Rule that enshrines its ineptitude in official practice. Those who continue to fail these children have much to answer for.

We ask that this Presentment, and our Third Presentment, be submitted as comments to HHS/ORR's Proposed Rule.

We renew our recommendation to our state leaders, referenced in our Third Presentment, that all persons taking such custody of children in Florida be required to submit themselves to formal court adjudication to establish legal guardianship:

> Florida has a robust system for addressing custody of children, both temporary and permanent. When someone other than a Florida-born child's natural parent is obtaining custody, they are required to comply with Chapter 63 (adoption) and/or Chapter 751 (Temporary Custody, including by Extended Family members). These statutes involve the courts and other professionals in the process, and ***we see no reason to require less legal protection for children born elsewhere.***

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[5] HHS Secretary Becerra used precisely this language about UAC in a video interview we reviewed, stating that "If Henry Ford had seen this in his plants, he would have never become famous and rich. This is not the way you do an **assembly line[.]**"

Floridians cannot exercise direct control over immigration policy, nor over ORR's treatment of UAC. However, Floridians most certainly can and should exercise control over those living among us who seek out (for whatever reason) the responsibility of raising a child not their own. Indeed, for children born here, we already do. If, as Nelson Mandela said, "the true character of a society is revealed in how it treats its children," we implore our leaders to rescue the character of Floridians from the peril in which the behavior of ORR and its operatives have placed it—along with the children. Hopefully we can encourage safe and lawful transfer of UAC while deterring those who have less savory motives. Accordingly, we urge our legislature to do the following:

1) Mandate that any person residing (either temporarily or permanently) in this State, who obtains continuing physical custody of a minor child of whom the individual is not the biological parent or court-appointed legal guardian, including where that custody is conferred by an agency of any government, a Child Placement Agency as defined in Chapter 409.175, or any other company or organization, **must within thirty (30) days report that custody to the Department of Children and Families *and* initiate proceedings under Chapter 63 or Chapter 751 of the Florida Statutes to determine legal custody of the minor child.**

2) ***Failure to do so should be a felony***, at least of the third degree, and could be easily incorporated as an additional section of Chapter 787.06 (Human Trafficking), 827.03 (Child Neglect), or as a standalone statute. DCF should be required to notify the Department of Law Enforcement upon becoming aware of such a situation. Repeat offenses on multiple occasions or involving multiple children should result in increased penalties. This statute should apply retroactively, to protect those already here. These crimes should also be authorized for investigation by the Department of Law Enforcement and prosecution by the Office of Statewide Prosecution since bringing children into the state affects every circuit.

   We understand and appreciate that at current rates, this may add to the docket of civil cases statewide requiring a basic determination of UAC custody by Florida courts. We consider this a worthwhile use of resources if it can put a dent in the scourge of child-trafficking plaguing our state. We consider it our duty to protect children, regardless of where they might be from.

We have also been discussing ways and mechanisms to provide funding for such a project.

IV.

We say to those among us, particularly our fellow Floridians who generously donate to organizations (perhaps with names connoting religious affiliation, but in reality, absolutely corporate) which participate in this process, accepting ORR's grants of public funds and the entangling strings attached thereto:[6]

> Your actions come with a price. That price, as we and others have documented exhaustively in this and other reports, is the continued maltreatment and subjugation of foreign-born children to great risk of neglect, harm, labor and sex trafficking, and even death.
>
> We believe most who work in this industry are well-intentioned. We have met quite a few of them. We began this jury service as naïve as they appear to be. But just as we have come to question and understand the horrifying reality of this assembly-line approach to child custody (which would never withstand legal scrutiny if subjected to the requirements of traditional state-level child custody systems), employees and volunteers who continue to participate in this enterprise can no longer claim they do so without knowing exactly what it is they are facilitating.
>
> Let the publication of this Presentment serve as notice. There are many ways to assist these and other children which do not require becoming complicit in the current situation. We believe that we have done our part to help illuminate this travesty. What readers do with this information is up to them.

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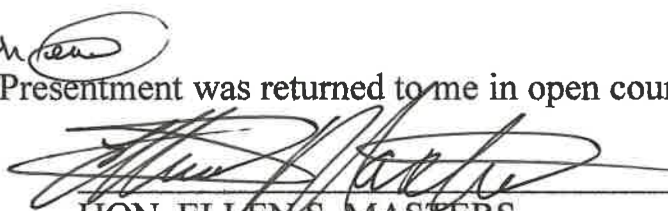
[6] ORR's collaborators include the CEO of one "non-government organization" who admitted to us that his corporation could not operate without federal funding; another who promised to consider information we gave him and suggest changes, only to report back to us six months later that he made no proposals and no changes were implemented; one who stated "it is bad policy, but [we] will continue to follow it;" and another who testified that he would follow ORR policies even in the face of contrary Florida laws.

Respectfully submitted to the Honorable Ellen S. Masters, Presiding Judge of the Twenty-First Statewide Grand Jury, this 20th day of October, 2023.

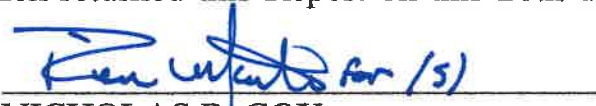
Foreperson Juror #18
Twenty-First Statewide Grand Jury



THE FOREGOING ~~Third~~ Presentment was returned to me in open court this this 20th day of October, 2023.

HON. ELLEN S. MASTERS,
Presiding Judge
Twenty-First Statewide Grand Jury

I, Nicholas B. Cox, Statewide Prosecutor and Legal Advisor, Twenty-First Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this Report on this 20th day of October, 2023.

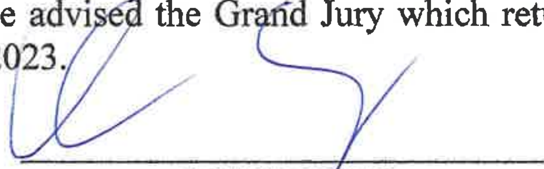


NICHOLAS B. COX
Statewide Prosecutor
Twenty-First Statewide Grand Jury

I, Richard Mantei, Assistant Statewide Prosecutor and Assistant Legal Advisor, Twenty-First Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this Report on this 20th day of October, 2023.

RICHARD MANTEI
Assistant Statewide Prosecutor
Florida Bar #119296
Twenty-First Statewide Grand Jury

I, Robert Finkbeiner, Assistant Statewide Prosecutor and Assistant Legal Advisor, Twenty-First Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this Report on this 20th day of October, 2023.



ROBERT FINKBEINER
Assistant Statewide Prosecutor
Twenty-First Statewide Grand Jury