

Testimony of Robert Carey,
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Subcommittee on Immigration, Integrity, Security, and Enforcement
House Judiciary Committee

Thank you for the opportunity to appear before you today.

My name is Bob Carey. I was the Director of the Office of Refugee Resettlement (ORR) in the Administration for Children and Families in the Department of Health & Human Services (HHS) from March of 2015 through January of 2017.

ORR, in addition to its work on behalf of refugees, asylees and other vulnerable populations, is responsible for the care and maintenance of unaccompanied children while they are in U.S. government custody and their placement with U.S. based sponsors while they go through immigration proceedings. The placement process includes vetting sponsors to verify their relationship to the child and the suitability of the placement. The overwhelming majority of sponsors are immediate or close family members. During the time that I was at ORR, this cohort accounted for approximately 95 percent of the unaccompanied children population.

The sponsor and family reunification vetting process involves consulting a range of sources, including records obtained from countries of origin through their U.S. consulates and documentation provided by U.S.-based sponsors. There are, however, limitations on ORR's capacity to review information obtained both prior to and after the release of children. The office, and the agency in which it is housed, are not investigative or law enforcement bodies. Beyond the limited role granted to them by Congress and the administration, they do not possess the mandate, resources, expertise or scope of authority to conduct law-enforcement types of investigations either prior to and after the release of a minor (at which point ORR legal authority ends). In fact, one reason Congress in the Homeland Security Act assigned HHS responsibility for the care and custody of children was to ensure that they would be quickly moved out of an agency with a law enforcement mandate and into one concerned with child and family well-being.

Many of the children profiled in recent media coverage were taken into custody at our southern border. They faced physical and sexual violence, human trafficking, forced gang recruitment and the very real possibility of death in their home countries and in flight. Rather than fall prey to these forces, they fled, often to join family in the U.S. They

remain vulnerable even after arriving. It has been alleged that approximately 85,000 children have been “lost by ORR.” In fact, most of these children were released to the care of a parent or close relative. The conclusion that they were “lost” stems in large part from their failure to respond to a follow-up phone call from an unknown phone number; for children who are often fleeing criminal actors seeking money, not answering such a phone call does not constitute being lost.

Recent media and government investigations have documented the use of child labor in dangerous and inappropriate workplaces in the United States; these reports have involved, among others, unaccompanied children admitted to the country pending adjudication of their asylum claims. Unaccompanied children are vulnerable, and the newest investigations demonstrate that some have been exploited by employers, often laboring for staffing agencies or contractors performing work for prominent US companies and brands.

Investigations have also revealed that this exploitation is taking place in businesses across the US and in multiple industries. There are myriad explanations for this: inadequate funding and enforcement of existing child protection and labor laws, outdated statutes that allow large corporations to skirt workplace responsibility by using intermediaries, partisan politics designed to divide and demonize foreign-born people, and insufficient coordination among government agencies, among others.

Our immigration system is broken. Too often, families are separated, making children more vulnerable to exploitation. ORR has taken meaningful steps to improve outcomes for unaccompanied children, bringing more child welfare expertise to ORR, ensuring that children get to family swiftly, and whenever possible, keeping families together. Under this administration, tens of thousands of children have been released to caring family members, minimizing children’s time in congregate care in line with best practice in child welfare. Many of these children are thriving.

Nevertheless, the problem of exploitation is much bigger than ORR and so the solutions must also come from a range of stakeholders. As noted above, ORR has responsibility for care and placement of unaccompanied children, housing them, often in shelters, until parents, family members, or sponsors are located. But it is worth repeating that ORR has limited legal authority or resources to act or provide protection after a child is released from care.

We have to prioritize both children and labor law enforcement, with a whole of government approach that protects children from exploitation. A good model for this is

the Family Reunification Taskforce, which was established in 2021 to reunite families separated by the previous administration. When intervention is necessary, protecting children in these situations requires ongoing communication and coordination among multiple agencies, including ORR and Customs and Border Protection, along with local law enforcement and social service agencies, many of which are already starved for funds. But lines of authority, accountability, and critical information flow between the government agencies charged with caring for the children are in some instances weak or fractured. Children who await legal hearings to determine their right to claim asylum should not be exploited and harmed for doing so. They should have access to legal protection and representation. To prevent such outcomes, it is essential that a government agency, whether ORR or a more appropriate office, be given authority to ensure such children's ongoing wellbeing and provided with appropriated funding to ensure children's safety after they are released from government care.

Meanwhile, insufficient funding means that our labor agencies lack the capacity to be proactive in a way that would allow ready detection of these cases. The U.S. Department of Labor's Wage and Hour Division (which enforces child labor, minimum wage, and other laws) and Occupational Safety and Health Administration have absurdly scant resources relative to the need. In 2019, the number of private sector workers per OSHA investigator was over 198,000. The ratio for Wage and Hour investigators wasn't much better: more than 189,000 private sector workers per investigator.

Prevention is equally important. Since I left ORR, Congress has repeatedly directed ORR to enhance protections for children. In response, ORR has dramatically increased the number of children who receive post-release services, from 15,160 in Fiscal Year (FY) 17 to 21,894 in FY21 to more than 54,000 in FY22. Properly implemented, post-release social services—often referred to as “PRS” and programmatically distinct from legal services—are essential to ensuring the safety, stability, and transition to permanency of unaccompanied children released from government custody to sponsors in the United States. I am pleased to see ORR's involvement in this area grow, as I believe these services are vital tools to ensure a child's safety while they go through the immigration court process. Further, ORR has stated that it plans to provide legal representation to 100 percent of unaccompanied children by the end of FY27—an essential objective.

No less crucial for protecting children is access to an attorney. I would continue to emphasize that these are vulnerable children in a new environment where they do not speak the language. Currently, many, if not most, unaccompanied children lack an attorney. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)

requires that, “to the maximum extent practicable,” HHS ensure legal counsel for unaccompanied children “to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.” This includes mistreatment and exploitation in the workplace. Providing unaccompanied children with attorneys for the duration of their cases is one of the best ways to intervene early when children are working in illegal and dangerous conditions, and thus to protect them from such abuses.

Many children have difficulty reporting harms that they experience in the workplace and beyond, due to fear and prior trauma. Attorneys play a critical role in identifying risks to children, not only those risks that children have fled in their home country but also those confronting them after they arrive to the U.S. Lawyers often become the only authority figure to whom a child feels safe disclosing protection needs such as exploitative working conditions, trafficking, and abuse. In such instances, attorneys can inform the child about their rights and legal options, provide referrals to specialized providers who may be necessary, and with the child’s consent, can report labor exploitation or other dangers to authorities to help extricate their clients from harm.

Attorneys also help evaluate children’s eligibility for legal protections and supportive services specifically designed for survivors of trafficking, severe crimes, and abuse. This includes work authorization where eligible, which helps teenagers who can legally work access safe, lawful, and appropriate employment, and serves as a bulwark against dangerous working conditions, wage theft, and other labor abuses in the unregulated workforce. Work authorization also serves as an essential form of government-issued photo identification for accessing daily activities and services for many children, even where not used for employment. Without legal representation, unaccompanied children have no virtually no meaningful chance of navigating the opaque and broken U.S. immigration system.

Over the years, ORR has also increased the number of children provided independent Child Advocates. Child Advocates are appointed to child trafficking survivors and other particularly vulnerable unaccompanied children and provide best interests determinations to any agency—state or federal—and any adult (including attorneys) working with a child. Child advocates—who meet children in custody and continue working with them after release—are well positioned to identify when children are in danger, but currently serve only a tiny fraction of children in ORR custody.

Let me conclude by reiterating that unaccompanied children are, by and large, children in need. When the exploitation of underage, unaccompanied children occurs, it indicates multiple failures. Bad actors must be present – traffickers or children’s direct employers –

as well as others who are willing to look the other way in order to profit. We might also see curtailed access to the social services that play a preventive role. Similarly, the government agencies who are meant to intervene may be underfunded, lack appropriate staff, or lack a mandate to intervene when exploitation does occur. And lack of agency coordination is recognized as an ongoing and longstanding concern.

The solutions require addressing all of these factors:

- 1) Accountability for those who exploit children.
- 2) Accountability for those that profit from child-labor exploitation.
- 3) Expanded and enhanced access to post-release social and legal services and child advocates.
- 4) Expanded legal authority and resources to act affirmatively to investigate possible child-labor exploitation and to provide protection to affected children.
- 5) Better communication across federal agencies
- 6) Better work by ORR to connect children to community-level services including local charities, non-profits and other social groups that assist children and their families to meet outstanding and everyday needs.

Thank you. I am happy to take your questions.