



# **TARGETING FAMILIES**

**HOW ICE ENFORCEMENT AGAINST PARENTS  
AND FAMILY MEMBERS ENDANGERS CHILDREN**

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### ACKNOWLEDGEMENTS

This report was written by Kids in Need of Defense (KIND) in collaboration with students and staff from the Federal Legislative Clinic at Georgetown Law School. The report was researched and written by Cory Shindel (KIND), Kevin Gomez (Georgetown), and Avani Uppalapati (Georgetown). It was reviewed and edited by Jennifer Podkul, Megan McKenna, Cory Smith, and Alex Pender, at KIND, and Leila Abolfazli and Judy Applebaum, at Georgetown Law's Federal Legislative Clinic.

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### Kids in Need of Defense (KIND)

Founded by the Microsoft Corporation and UNHCR Special Envoy Angelina Jolie, KIND is the leading national organization that works to ensure that no refugee or immigrant child faces immigration court alone. We do this in partnership with over 515 law firms, corporate legal departments, law schools, and bar associations, which provide pro bono representation. KIND has been referred more than 15,500 children since 2009, and trained over 25,000 pro bono attorneys. KIND also helps children who are returning to their home countries through deportation or voluntary departure reintegrate into their communities. KIND advocates to improve the protection of unaccompanied children in the U.S., and works to build a stronger regional protection framework throughout Central America and Mexico.

### The Federal Legislation Clinic at Georgetown Law

The Federal Legislation Clinic at Georgetown Law teaches the art of legislative lawyering. It does so mainly through the clinic's representation of non-profit, public interest organizations that are seeking to advance legislative, regulatory and policy proposals in Congress and the Executive Branch. Concurrently, the students attend a seminar and participate in intensive exercises and simulations. The Clinic provides Georgetown law students with the training, supervision, and field experience necessary to become effective in advocacy to, or practice within, the federal Legislative and Executive Branches.

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## EXECUTIVE SUMMARY

With immigration policy at the forefront of national debates, harsh rhetoric has transformed into even crueler realities for the most vulnerable of migrants—children who come alone to the U.S. fleeing grave violence in their home countries. Amid a pronounced shift in immigrant enforcement priorities, the U.S. government in June 2017 began targeting the parents and relatives of unaccompanied immigrant children for deportation and potential prosecution. Announced as an effort to disrupt smuggling networks and protect children, this targeted initiative has instead endangered and re-traumatized children by separating them from loved ones who have stepped forward to care for them as they await proceedings to hear their claims for protection.

This report explains how U.S. Immigration and Customs Enforcement (ICE) has exploited the process for reuniting children with their families to conduct enforcement against undocumented parents and family members—the vast majority of whom have not been charged with smuggling crimes. The report describes the ways in which the disruption of reunification efforts and the separation of families undermines fundamental rights, traumatizes children, and limits access to due process. By stoking fear in communities and destabilizing families, ICE’s enforcement initiative against parents and other sponsors greatly diminishes, not advances, the protection of children, and places children at risk of trafficking or other harm.

The preservation and reunification of families is a cornerstone of domestic and international law, and child welfare practice. Family unity provides important protective benefits to unaccompanied children, many of whom have escaped extreme violence and abuse. Rather than targeting the loved ones on whom these children rely for support, the government should instead prioritize the best interests of children in enforcement decisions and work to ensure children are provided a full and fair opportunity to access legal protections.

**To this end, KIND makes the following recommendations:**

**DHS should halt all initiatives that use information gathered during reunification attempts to target families, sponsors, or unaccompanied children for immigration enforcement.** Respect for the rights and needs of children should be paramount in enforcement actions. Consistent with basic principles of child welfare practice, family relationships should be protected, absent evidence of abuse, neglect, or other danger to the child.

**DHS should not use information provided by the Office of Refugee Resettlement (ORR), which is charged with the custody and care of unaccompanied children, to target parents and other sponsors of children who have been identified as safe placements.** ORR requires that sponsors provide information about themselves and others living with them in order to evaluate the safety of potential homes for unaccompanied children as well as the sponsor’s ability to provide appropriate care and support. The use of this information to conduct enforcement against sponsors frustrates compliance with federal settlement authority and increases the vulnerability of children to trafficking and other harm.

**DHS should conduct training to ensure that enforcement actions do not interfere with the government’s legal obligations related to the custody of children, including the *Flores* settlement agreement and the Trafficking Victims Protection Reauthorization Act of 2008.** Such

training helps to safeguard access to due process for unaccompanied children and should be reinforced through disciplinary policies that hold accountable staff who infringe on these critical protections.

**DHS should coordinate with the U.S. Department of Health and Human Services to ensure that children and sponsors in the family reunification process understand the distinct roles played by the two agencies.**

## Oscar's Story

Oscar<sup>1</sup> was seven years old when he fled Honduras in search of safety after his father was brutally murdered and his mother abandoned him. Following nearly two months in U.S. immigration detention, Oscar was released to the care of his uncle, Lucio, while he awaits immigration proceedings.

One morning, Oscar, who is now eight, was getting ready for school when several agents from U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI) unit arrived at his home. The officers said they were there to check on Oscar and needed to speak with his sponsor. After asking for identification from Oscar's aunt and uncle, the officers said they needed to bring Oscar's uncle, who is undocumented, in with them. The officers watched as Lucio, who has no criminal history, changed out of his pajamas, explaining that they needed to be present because Lucio could have "guns or bombs on him." Oscar looked on as his uncle was handcuffed and placed in a van with two other people who had recently been arrested. Oscar's family urged the agents to be careful with Lucio, who has a heart condition.

During the interview at the HSI office, Lucio began to feel ill: his heart began to race, his chest ached, and he was unable to continue talking. The officers called 911 and sent Lucio to the emergency room. They then called Oscar's aunt to report that her husband was having heart problems and asked her to come into the office. While a relative brought Oscar to school, his aunt rushed to the HSI office. When she arrived, officers handed her a notice directing her to appear for questioning at a future date. Only after they served her with legal papers did the officers tell her that Lucio had already been sent to the hospital.

Later that morning, an officer informed the family's attorney that Lucio would have to return to finish his interview. On doctor's orders, Lucio rested and stayed home from work for a week, after which time he and his wife returned to the HSI office, accompanied by their attorney. During the interview, an officer explained that ICE was investigating potential smugglers and running all sponsors through various metrics. Lucio, who has no criminal history or prior immigration orders, is uncertain why he was targeted for enforcement. He now awaits deportation proceedings as a result of his undocumented status. Oscar fears what will happen to him and his three cousins, who are U.S. citizens, if Lucio is deported to Honduras, given that his aunt is also undocumented.

**-Story provided by private attorney**

### INTRODUCTION

Having fled dangerous, even life-threatening conditions in their home countries, many unaccompanied children such as Oscar have significant protection needs—both physical and psychological—when they arrive in the United States. Recognizing the unique vulnerability of these children, Congress enacted protections nearly a decade ago to ensure they receive appropriate care, tailored to their age and specific needs. Among these critical protections is a requirement that the government place children in the least restrictive setting that is in their best interests while they are in deportation proceedings. In most cases, this means placement with the child's parents or other close family members, who agree to sponsor the child for the duration of the child's immigration case. The sponsors, who can be undocumented, give the government their personal information in good faith that it will be used only for

child sponsorship purposes, in recognition that it is in a child's best interests to be with a family member rather than to remain detained in a government immigration facility.

With alarming consequences, the U.S. Department of Homeland Security (DHS) is now arresting parents and other family members who come forward as sponsors and who do not have lawful immigration status. Announced as an effort to disrupt smuggling networks, Immigration and Customs Enforcement (ICE), an agency of DHS, has targeted parents and other family members for having allegedly paid smugglers to bring their children into the United States. As part of this initiative, ICE has arrested not only parents and family members of immigrant children, but also hundreds of other individuals who have nothing to do with ICE's purported anti-smuggling efforts. Indeed, the vast majority of those arrested have not been charged with federal smuggling crimes at all.<sup>2</sup>

This report explains how ICE is pushing a false narrative of protection for enforcement purposes, and in the process, making children even more vulnerable and at risk of harm. The report details the ways in which targeted enforcement actions are separating families, traumatizing unaccompanied children, and undermining children's valid claims for legal protection. ICE's actions against sponsors not only significantly harm children and their families in the short- and long-term, but also undermine the stated goal behind the agency's efforts—disrupting smuggling networks. Indeed, as the report shows, ICE's actions are actually putting unaccompanied children at *greater* risk of smuggling and trafficking as loved ones on whom they rely are arrested, detained, and deported.

### **Legal Protections for Unaccompanied Children**

*The legal protections that apply to the treatment of unaccompanied children are found in the Flores Settlement Agreement of 1997, the Homeland Security Act of 2002 (HSA), and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The Flores Agreement requires that unaccompanied children in federal immigration custody be treated “with dignity, respect and special concern for their particular vulnerability as minors.”<sup>3</sup> It also mandates procedures for processing children quickly, ensures access to safe and secure facilities, and requires the federal government to separate children from unrelated adults.<sup>4</sup> To ensure that children do not remain in federal detention for an indefinite period, the Flores Agreement also creates a presumption favoring release of children to their relatives, other guardians, or willing licensed programs for the pendency of their immigration court proceedings.<sup>5</sup>*

*The HSA transferred responsibility for the care, custody, and placement of unaccompanied children from the former Immigration and Naturalization Service (now DHS) to the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS).<sup>6</sup> In this reassignment of responsibilities, Congress recognized that children should not be held in the custody of a federal enforcement agency and that, instead, they should be entrusted to an agency with expertise and experience in caring for children.<sup>7</sup>*

*The TVPRA includes a number of special protections for unaccompanied children, who Congress recognized as uniquely vulnerable owing to their escape from “traumatic situations such as armed conflict, sweatshop labor, human trafficking, forced prostitution and other life threatening circumstances.”<sup>8</sup> Under the TVPRA, Customs and Border Protection (CBP) must determine, within 48 hours, whether a person in its custody is an unaccompanied child, and if*

so, notify ORR.<sup>9</sup> Within 72 hours of detaining an unaccompanied child, CBP must transfer the child to ORR.<sup>10</sup>

Once an unaccompanied child has been transferred to ORR, the agency is responsible for the custody, care, and placement of the child.<sup>11</sup> The TVPRA requires that ORR place an unaccompanied child in the least restrictive setting possible, in accordance with the child's best interests.<sup>12</sup> Pursuant to the Flores Agreement, an unaccompanied child will be placed with a parent or other close relative sponsor, if available, who currently resides in the United States.<sup>13</sup> ORR relies on the information that unaccompanied children provide to find family members who can serve as sponsors.<sup>14</sup> Once a sponsor is identified, ORR conducts a background check to ensure that the placement is in the best interests of the child and to ensure the child's safety.<sup>15</sup> All potential sponsors must also complete a "family reunification packet."<sup>16</sup> While required paperwork requests information about a sponsor's immigration status, among other personal information, lawful immigration status is not a prerequisite for sponsorship.<sup>17</sup> Absent the participation and trust of unaccompanied children and potential sponsors in this process, ORR would be unable to identify placements for unaccompanied children that are the least restrictive and in the children's best interests.

## SECTION I

### **The Trump Administration is using unaccompanied children as bait to target parents and close relatives for arrest in a failed attempt to disrupt smuggling rings and protect children.**

In June 2017, ICE implemented a new initiative targeting parents, relatives, and others suspected of smuggling children into the country, later announced as the "Human Smuggling Disruption Initiative."<sup>18</sup> ICE described the initiative as a humanitarian effort intended to protect children by disrupting and dismantling smuggling organizations and holding accountable those "who have placed children directly into harm's way by entrusting them to violent criminal organizations."<sup>19</sup>

The ICE initiative followed DHS's announcement earlier in the year that it would increase enforcement against those it suspects of smuggling or trafficking unaccompanied children into the country. In a memorandum issued in February 2017, then-DHS Secretary John Kelly directed ICE and U.S. Customs and Border Protection (CBP) to enforce immigration laws against "any individual who—directly or indirectly—facilitates the illegal smuggling or trafficking of an alien child into the United States," to include placement in removal proceedings or referral for criminal prosecution.<sup>20</sup>

In the months that followed, ICE identified individuals as potential enforcement priorities based on their role as the designated or potential caretakers—or "sponsors"—of unaccompanied children awaiting immigration proceedings. ICE arrested more than 400 people in its initiative targeting sponsors.<sup>21</sup> However, news reports suggest that the majority of those arrested have not been charged with federal smuggling crimes and instead are being charged with civil and criminal violations unrelated to smuggling.<sup>22</sup> In fact, many of the individuals arrested are not those whom ICE suspects of smuggling, but instead just happened to be in the home of the potential sponsors at the time ICE arrived.<sup>23</sup>

## **ICE is Exploiting the Family Reunification Process to Arrest Parents and Other Sponsors**

While stories from families affected by the ICE initiative indicate a range of experiences, it appears that ICE generally obtains information about sponsors in one of two ways: either from children at the border, or from paperwork or other records related to the process for sponsoring unaccompanied children in federal immigration custody.<sup>24</sup>

In some cases, ICE obtains information about sponsors from CBP.<sup>25</sup> While it has been common practice for CBP to share with ICE information obtained during its initial screening and apprehension of unaccompanied children at the border, as ICE represents the government in removal proceedings, ICE has not historically used this information for enforcement purposes.<sup>26</sup> In recent months, however, ICE has used information provided by children about relatives in the U.S. to locate, interview, and in many cases, arrest and detain parents and other potential sponsors of unaccompanied children.<sup>27</sup> Importantly, this information is typically provided by children within hours of their arrival at the border, and without the assistance of counsel, while in CBP's holding cells, which are commonly called *hieleras* (Spanish for freezers) for their extremely cold temperatures.

*Jennifer—a domestic violence survivor, mother of three, and sponsor of her niece—was on her way to a medical appointment with her 7-year-old child, who has severe health issues, when she received a call from an immigration officer saying she needed to come home. Jennifer explained that she was unable to return at that time and contacted her attorneys, who called the officer at the number provided. The officer explained that he worked for Homeland Security Investigations and that he was aware that Jennifer had previously been ordered removed from the country and was under an order of supervision. The officer stated that he did not intend to interfere with that, but simply wanted to get information about smugglers and “coyotes.” He expressed particular interest in any money transfer receipts. When asked why Jennifer had been contacted, the officer indicated that it was based on “information obtained at the border.”*

*Fearing that armed HSI officers might come to Jennifer's home with her children present, Jennifer's attorneys accompanied her to an interview at the HSI office. There, an officer asked Jennifer several general questions about those living in her home and her family relationships, including about her children who had previously entered the country. When Jennifer explained that she had no knowledge that her children were coming to the U.S. and had no money transfer receipts, the officer slammed his file shut and ended the interview.*

### ***-Story provided by Americans for Immigrant Justice***

As part of enforcement actions, ICE has questioned potential sponsors about their children's journey to the United States as well as the potential sponsor's immigration status. In some cases, agents told potential sponsors that such information was required to release children from custody.<sup>28</sup> These assertions misrepresent ICE's authority with respect to unaccompanied children, as ORR is the agency responsible for approving sponsors and placements.<sup>29</sup>

*While at work, Julian received a call from his wife informing him that two ICE agents had arrived at their house looking for him. Julian rushed out of work and headed home. Once there, the officers showed Julian a file containing information about him and his nephew, Lorenzo, who was in federal immigration custody following his arrival in the United States alone. The officers*



*questioned Julian about how Lorenzo had traveled to the U.S. and asked whether Julian had helped to plan the trip. Julian explained that his nephew had his contact information because he is the boy's only family in the U.S. and that he had come forward to sponsor Lorenzo because the child has no one else to turn to for help. The officers misrepresented their role to Julian and told him that he would be in trouble with the law if he ever volunteered or helped anyone in a shelter again.*

***-Story provided by a nonprofit organization***

In other cases, ICE appears to have identified individuals for potential enforcement through ORR's sponsorship data or paperwork. Information about sponsors is routinely shared with ICE shortly before a child's release from ORR custody to allow the agency to follow up on children's immigration cases and to alert ORR about any information in ICE's possession that might be relevant to the child's placement. However, ICE has not historically used this information for enforcement purposes.

Yet news outlets have recently reported instances in which ICE has exploited the process for reunifying children with their parents and other sponsors to conduct enforcement against undocumented individuals, including through misrepresentations about ICE's role in vetting sponsors. In one example, ICE agents contacted the brother of an unaccompanied child being held in an ORR shelter, and asked him to go to the shelter to be evaluated as a potential sponsor.<sup>30</sup> Upon his arrival, however, ICE interviewed and detained him.<sup>31</sup> ICE has also conducted enforcement at sponsors' homes. During such visits, ICE agents may interrogate individuals, provide a Notice to Appear for future immigration proceedings, or arrest those present and initiate removal proceedings.<sup>32</sup> Although many enforcement actions involved children recently arrived to the U.S., ICE has also contacted sponsors years after being reunified with an unaccompanied child to question the sponsor about smuggling.<sup>33</sup> ICE agents then inquire about the sponsor's immigration status and take enforcement action.<sup>34</sup>

While much information is still unknown about the scope of ICE's enforcement initiative targeting parents and sponsors, stories shared by attorneys and affected families, as well as news reports, illustrate the far-reaching impacts of these actions. The case of Gari is one such example.

*Gari is an undocumented immigrant living in New Mexico with his wife and two young children.<sup>35</sup> Recently, Gari learned that his brother, whom he had not seen in 10 years, had entered the U.S. as an unaccompanied child. Per ORR procedure, his brother identified Gari as a relative in the U.S. with whom he could be placed. Gari had no idea about his brother's plans to leave home, and he was shocked and surprised to learn from ORR that his brother had made the dangerous trek from Guatemala.*

*Before Gari could become his brother's sponsor, ORR asked him for his personal information, in accordance with ORR procedures. ORR assured Gari that the information would not be used against him. However, soon after Gari's brother moved in with him and his family, ICE officials came to Gari's house and arrested him because of his undocumented status. ICE also planned to arrest Gari's wife, who is also undocumented, but she was not home at the time. The family now awaits a hearing on Gari's case to determine whether he will be deported.*

*Gari's children—a baby girl and a seven-year old boy—have been greatly harmed by Gari's absence. They do not sleep well, do not eat properly, and struggle emotionally, as the family*

*does not know if Gari will ever come back.<sup>36</sup> Gari's brother, still a child himself, has also suffered in Gari's absence; he feels guilty for his brother's arrest and is at times overwhelmed to the point of tears.<sup>37</sup>*

KIND has heard many stories similar to Gari's. In these accounts, children and their sponsors have typically provided personal information about a family member, as requested by CBP or ORR, only to have that same information used against them to target their families for deportation, and in some cases, criminal prosecution.<sup>38</sup>

### **ICE's Tactics of Rounding Up Innocent "Collaterals" Does Nothing to Support the Agency's Goal of Breaking Up Dangerous Smuggling Rings**

In targeting parents, relatives, and other sponsors, ICE also has arrested hundreds of immigrants who have nothing to do with ICE's anti-smuggling initiative. These individuals are simply in the wrong place at the wrong time.<sup>39</sup> ICE refers to individuals who are not the original targets of its actions as "collaterals."<sup>40</sup>

The arrest of collaterals in significant numbers reflects a significant shift in ICE's enforcement priorities. In past administrations, priorities for enforcement included those with criminal convictions and individuals who posed threats to national security or public safety, or as stated by President Obama: "[F]elons, not families. Criminals, not children. Gang members, not a Mom who's working hard to provide for her kids."<sup>41</sup> ICE exercised prosecutorial discretion, and declined enforcement, in certain circumstances in recognition of its limited resources and broad responsibilities.<sup>42</sup> A "Parental Interests Directive" outlined procedures for enforcing immigration laws with concern for the rights and responsibilities of parents, legal guardians, and caretakers of children.<sup>43</sup>

Recent executive orders have expanded enforcement priorities to include effectively anyone in the country without lawful immigration status.<sup>44</sup> While agency guidance suggests that those with criminal convictions or who are engaged in activity that would constitute a crime should be prioritized, along with those who have prior removal orders, agents are left with expansive authority to conduct enforcement actions against anyone they suspect of having violated immigration laws.<sup>45</sup> Consequently, enforcement operations may result in the arrest, deportation, and potential prosecution of individuals wholly unrelated to specified targets and may be conducted with little regard for the needs and vulnerabilities of families.

Although ICE has not announced how many "collaterals" it has arrested while pursuing parents and other relatives of unaccompanied children, if results from other enforcement initiatives are any indication, the number is likely quite high. For example, at the end of July 2017, ICE engaged in a multi-day surge, known as Operation Border Guardian/Border Resolve, in which it targeted individuals who had entered the country as unaccompanied children and family units.<sup>46</sup> Upon completing the operation, ICE announced that it had arrested 120 unaccompanied children and 73 members of family units who had final orders of removal. However, ICE stated that it had arrested a total of 650 people in the action. Thus, it appears that the vast majority of those arrested were not, in fact, the original targets of the operation.<sup>47</sup>

Widespread arrests of “collaterals” heighten fear in immigrant communities and may deter potential sponsors from coming forward to care for unaccompanied children.<sup>48</sup> This outcome increases the likelihood that children will remain in custody for longer periods while alternate sponsors are identified.<sup>49</sup>

### **ICE Has Not Offered Evidence That Enforcement Actions Against Sponsors Are Disrupting Smuggling Networks**

In announcing the conclusion of its Human Smuggling Disruption Initiative on August 18, ICE reported that it had arrested more than 400 individuals.<sup>50</sup> ICE offered no information about how many of those arrested were parents or family members of unaccompanied children that ICE suspects of smuggling as opposed to “collaterals.” ICE also did not include a breakdown of how many individuals were charged with smuggling violations, although news reports suggest that very few in fact were.<sup>51</sup> ICE has offered no evidence that its initiative targeting sponsors and parents has disrupted smuggling operations or discouraged parents from using smugglers to bring their children into the U.S. Indeed, despite DHS’s stated intent in targeting parents and relatives of unaccompanied children, ICE’s actions appear to have mostly yielded the arrest of hundreds of undocumented individuals on charges unrelated to smuggling.

The fear stoked by these actions undermines law enforcement efforts to combat crime, and trafficking in particular, as individuals may be reluctant to report crimes out of fear of arrest or immigration enforcement. It was these very concerns, and the interest in enhancing community collaboration in the identification and prosecution of trafficking and other crimes, that led to the creation of special visas to protect immigrant victims of crime from deportation.<sup>52</sup>

ICE has also endangered unaccompanied and U.S. citizen children by arresting and detaining responsible sponsors who can provide children with safe living situations. Under the guise of disrupting smuggling, ICE is actually tearing apart families and harming children.

## **SECTION II**

### **Consequences of Immigration Enforcement against Sponsors of Unaccompanied Children**

ICE’s enforcement actions against parents and other sponsors cause far-reaching harm to children, families, and communities. By disrupting the reunification of children with their parents and forcing the separation of families, these actions undermine fundamental rights, cause grave trauma to children, frustrate access to legal protection, and increase the vulnerability of children to trafficking and other harm.

#### ***Federal law protecting children and families***

The right to live with one’s family—and to care for one’s children—are fundamental human rights protected by the U.S. Constitution, international law, and the child welfare laws of all 50 states. These rights stem from an understanding that loving care by parents offers children important developmental, emotional, and psychological benefits, and that barring evidence of a parent’s abuse or inability to provide such care, the parent-child relationship should be protected. Family unity and preservation are foundational concepts of child welfare practice, and the release of children from institutional care to their families is a common goal of child welfare systems.<sup>53</sup>

Federal law, through the TVPRA and the *Flores* settlement agreement, embraces child welfare principles and directs the government to make “prompt and continuous efforts . . . toward family reunification and the release of” immigrant children from federal custody.<sup>54</sup> Parents and legal guardians are prioritized among potential placements for children leaving ORR custody,<sup>55</sup> and ORR has underscored that it “prefers to release a child to a parent or legal guardian, regardless of [their] immigration status.”<sup>56</sup>

Family reunification provides important protective benefits to unaccompanied children. Children fleeing grave violence and abuse rely on emotional support from their families to process and work through significant psychological trauma. This healing demands trust and consistency, which may be difficult for children to establish with unfamiliar or changing caregivers. Placement with parents also allows children to preserve valuable relationships and cultural connections, including the use of their native language, which may help children feel more secure as they navigate transitions and adapt to their new homes. Safety and emotional support prove especially critical to children seeking legal protection, including asylum and Special Immigrant Juvenile Status, which demand that children provide details about their painful pasts to support their claims. The release of children to safe and appropriate sponsors is also beneficial for the federal government, as costs once borne by federal agencies for food, shelter, and care of a minor are assumed by the sponsor following a child’s release from federal custody.<sup>57</sup>

### ***The Separation of Families***

With factual distinctions, the consequences of ICE’s actions targeting parents and sponsors are in many cases the same—children are deprived of access to parents and other family members who stand ready and able to care for them, despite a lack of evidence indicating abuse, neglect, or other danger to the child. These actions disregard the fundamental right to family unity, and run counter to the spirit and intent of both *Flores* and the TVPRA.

While some parents may remain available to sponsor children following ICE enforcement, others are detained in federal or immigration custody following questioning by ICE, the initiation of removal proceedings, or the enforcement of prior immigration orders. These circumstances—set in motion by an agency bound to facilitate the placement of children in the “least restrictive setting” in their best interests<sup>58</sup>—frustrate ORR’s ability to identify and ultimately release children to appropriate and safe sponsors. Consequently, children may face prolonged detention in immigration custody.

Children in ORR custody are left with difficult and wrenching choices when their parents are detained: to identify alternate caregivers who might be willing to sponsor them, despite the risk of enforcement, or to remain in federal immigration custody indefinitely. Even worse, detention of uncertain length may cause children to relinquish any claims for legal relief and protection, and request return to their home countries. This result risks the return of children to danger, and increases the vulnerability of children to traffickers and smugglers—dual concerns that motivated the enactment of the TVPRA.<sup>59</sup>

Children already reunited with sponsors face other challenges. Children may be present during enforcement actions that divide their families suddenly, and perhaps, permanently. In addition to inflicting trauma, these actions disrupt childcare and living arrangements. Without a parent or sponsor available to care for them, children may be returned to ORR custody, or placed with alternate caregivers or in state child welfare custody.<sup>60</sup> Family members may be placed in different facilities or be deported following enforcement actions, and the government is not always willing to help separated

family members maintain communication with each other.<sup>61</sup> This results in both confusion and a heightened risk that family separation might become permanent.<sup>62</sup>

*Leon, 15, and Jorge, 17, two brothers from El Salvador, fled to the United States after gang members broke into their house and beat them up. Following their apprehension by CBP, the brothers provided the name, address, and phone number of their mother, Iliana, who lives in the United States. Shortly after, ICE officials told Iliana that she needed to appear at an appointment with Homeland Security the next morning regarding reuniting with her children. Iliana, who has a prior deportation order, missed the morning appointment, at which time immigration officials began calling continuously and telling her they were at her home waiting to pick her up.*

*When Iliana eventually returned to the house, several agents in plain clothes with badges were waiting for Iliana and her husband. One agent advised that Iliana should turn herself in, stating, "As a mother I would do anything to get my kids back." Iliana feared that her sons would be harmed and presented herself. The agents advised Iliana's husband, Francisco, that he should accompany her to detention, and they handcuffed Francisco around his stomach and hands. Francisco was detained, fingerprinted, and questioned about his stepsons' journeys to the U.S. and about how the "coyotes" who brought them had been paid. While Iliana and Francisco were detained, an officer returned to their home, claiming to be the couple's attorney, and took several belongings, including important documents. After more than two weeks, Francisco was released from detention on a \$10,000 bond. Iliana was detained for more than two weeks and then deported to El Salvador.*

*Following his wife's deportation, Francisco made arrangements to serve as the sponsor for his two stepsons, who were still in ORR custody. During the reunification process, he was asked several questions, including whether he had any contact with "coyotes" or knew how the money to pay the "coyotes" for his stepsons had been earned. Leon and Jorge were ultimately released to Francisco's care. The brothers greatly miss their mother and feel lonely, sad, and angry in her absence.*

***-Story provided by a nonprofit organization***

ICE's repeated misrepresentations about its role in ORR's family reunification process may also confuse sponsors about the agencies' distinct responsibilities and lead sponsors to avoid interaction with ORR.

*Nicolas, a long-time lawful permanent resident, received a call one day from his nephew, Matias, who was traveling to the U.S. alone from El Salvador. Nicolas had repeatedly discouraged Matias from making the journey, fearing the dangers that might befall his nephew. Nicolas did not hear from Matias again for several days until he received a call from a shelter asking if he would be willing to sponsor Matias out of federal immigration custody. Nicolas was reluctant to serve as a sponsor. The shelter connected him with an attorney, who answered his questions about sponsorship, and Nicolas agreed.*

*Days later, Nicolas was contacted by an ICE officer, who aggressively questioned him and accused him of smuggling Matias into the country. The agent explained that smuggling was a*

*federal crime with serious consequences and said that ICE was going to come to Nicolas' home to investigate him. Nicolas had seen reports of ICE at people's homes on television and became worried. The agent explained that he knew Nicolas had been in touch with his nephew during the child's journey to the U.S., leading Nicolas to believe that ICE had also interrogated his nephew while in custody. The agent repeatedly accused Nicolas of having arranged Matias' trip and having paid a "coyote" to smuggle him into the country, despite Nicolas' insistence that he did not plan the trip or know who had brought Matias to the border. The agent then asked for the phone number Nicolas had used to communicate with Matias. After Nicolas hung up to get the number, the agent texted shortly after to ask why it had not been sent sooner.*

*Nicolas felt worried and nervous about having been accused of a federal crime, and lost sleep out of fear that agents might be watching him and come to his home. Despite his legal status, he ultimately decided not to move forward with becoming his nephew's sponsor. He has not had any contact with his nephew since, although he believes another relative may have sponsored Matias.*

***-Story provided by a nonprofit organization***

Fears related to potential enforcement may result in an increase in the number of non-parent relatives or family friends sponsoring children out of ORR custody—arrangements that may make children more vulnerable to trafficking.

***Trauma to Children and Parents***

The separation of families bears significant psychological and emotional consequences for unaccompanied children.<sup>63</sup> For most unaccompanied children, arrival at the U.S. border comes after a difficult journey alone through dangerous terrain in which they are vulnerable to violence and abuse. The prospect of reunification with family serves as a lifeline during their escape from danger. When reunification efforts fail—or as here, are disrupted—children experience significant trauma and distress, including depression, anxiety, and hopelessness.

Developmentally, young children often attribute the experiences and emotions of others to their own thoughts and actions.<sup>64</sup> Studies have found that children of undocumented parents generally experience anxiety, fear, and guilt related to their parent's potential or actual deportation, and suffer negative impacts to their emotional and physical health, as well as their academic and social performance.<sup>65</sup> ICE's use of information provided by children and sponsors in the interest of reunification for enforcement purposes increases the likelihood that children will interpret their own search for protection as the cause of their parent's vulnerability to deportation or prosecution.

Custody and confinement add to the mental health burdens on unaccompanied children, and particularly, child survivors of trauma.<sup>66</sup> Without the emotional support of family members—or hope of it in the near future—children may make the decision to abandon their legal claims for protection to return home, even despite grave risks to their safety.

Children already reunified with their parents experience distinct and enduring trauma when present during enforcement actions.<sup>67</sup> The sight of armed law enforcement officers is frightening for children, and many sponsors have reported the use of aggressive tactics by ICE agents during enforcement

actions. Children present during these actions experience great anxiety and distress, and are at an increased risk of lasting psychological impacts, including post-traumatic stress disorder (PTSD), depression, and attention deficit disorder.<sup>68</sup> Child survivors of abuse and violence may be especially vulnerable to trauma and lasting aftereffects from witnessing enforcement actions, given the challenges they face in feeling safe and trusting others on account of their past harm. These concerns are amplified when children are removed from the home and placed with alternate caregivers, or in federal or state custody.

Enforcement actions against parents and sponsors affect not only unaccompanied children, but also other children living in the home, including many who are U.S. citizens.<sup>69</sup> The possibility of a parent's deportation looms large in the minds and lives of children from mixed-status households, who must navigate a society that affords them many privileges denied to the parents on whom they rely for love and support.<sup>70</sup> These children experience heightened psychological distress when widespread immigration enforcement increases the likelihood of a parent's deportation.<sup>71</sup>

### ***Impact on Due Process and Claims for Protection***

In addition to emotional and psychological burdens, enforcement actions present significant challenges for the legal claims of unaccompanied children. Many unaccompanied children have valid claims for humanitarian legal protection, most often for asylum or Special Immigrant Juvenile Status. These forms of relief are available to children who have experienced or fear persecution in their home countries and to those who have been abused, neglected, or abandoned by a parent. To support their claims, children must provide detailed accounts of their experiences as well as testimony before a state or immigration court, or asylum office.

Parents and sponsors offer critical emotional support and encouragement to children sharing their painful pasts and navigating the immigration system. In addition to facilitating meetings with counsel and their child's appearance at immigration proceedings, parents frequently provide valuable information and documentation for children's cases that may be otherwise unavailable, especially to children of tender age. Many parents and children share similar claims for relief, as in the case of asylum, and the success of a child's claim may depend on facts and documentation from his or her parent.<sup>72</sup>

The detention and deportation of parents frustrates access to this critical information, as children and attorneys must frequently communicate with sponsors while in facilities with limited access or at great distance. Owing to these difficulties, children may be unable to fully substantiate their valid claims for relief and be deported to danger. Children may also choose to give up their claims for protection in hopes of accelerating their release from custody.

By erecting barriers to due process and legal protection, enforcement actions against parents hinder the ability of children to have their cases fully and fairly heard, and undermine the fundamental fairness of immigration proceedings. These hurdles cruelly disadvantage children seeking safety in the United States and run counter to established refugee law directing that countries must not impose penalties on those fleeing threats to their lives or freedom.<sup>73</sup>

## **CONCLUSION AND RECOMMENDATIONS**

U.S. law and policy have long acknowledged the unique needs and vulnerabilities of children, especially those who arrive in our country alone after fleeing violence and grave harm. The ability of these children to share their experiences, and to receive appropriate care while they seek legal protection, is fundamental to basic notions of child welfare, and to the fairness and integrity of our immigration system. Immigration actions targeting parents and other sponsors cruelly exploit the vulnerabilities of unaccompanied children and the bonds between families for enforcement purposes that do nothing to make our communities safer. They use family reunification, the fundamental principle of child welfare law, as a weapon against children.

Moreover, the government's actions may intimidate sponsors from coming forward to care for children and lead to longer stays in federal immigration custody for unaccompanied children. Prolonged detention, in addition to causing significant trauma, creates significant financial burdens for the federal government.<sup>74</sup>

Although the government announced actions against sponsors as part of efforts to combat smuggling and to protect children, it has not demonstrated that its enforcement initiative has dismantled dangerous smuggling rings. Instead, ICE's actions have separated families, frustrated access to legal protection, caused lasting trauma to children, families, and communities—and in fact increased children's vulnerability to smugglers and human traffickers. Rather than targeting supportive parents and sponsors accompanying children through our legal system, the federal government should instead focus on ways to ensure that each child's claim is adjudicated promptly and fairly, and with respect for the best interests of children and the preservation of families.

### **KIND offers the following recommendations:**

**DHS should halt all initiatives that use information gathered during reunification attempts to target families, sponsors, or unaccompanied children for immigration enforcement.** Respect for the rights and needs of children should be paramount in enforcement actions. Consistent with basic principles of child welfare practice, family relationships should be protected, absent evidence of abuse, neglect, or other danger to the child.

**DHS should not use information provided by HHS to target sponsors of unaccompanied children who have been identified as safe placements.** ORR requires that sponsors provide information about themselves and others living with them in order to evaluate the safety of potential homes for unaccompanied children as well as the sponsor's ability to provide appropriate care and support. The use of this information to conduct enforcement against sponsors frustrates compliance with the *Flores* settlement and increases the vulnerability of children to trafficking and other harm.

**DHS should conduct training to ensure that enforcement actions do not interfere with the government's legal obligations related to the custody of children, including the *Flores* settlement agreement and the TVPRA of 2008.** Such training helps to safeguard access to due process for unaccompanied children and should be reinforced through disciplinary policies that hold accountable staff who infringe on these critical protections.

**DHS should coordinate with HHS to ensure that children and sponsors in the family reunification process understand the distinct roles played by the two agencies.**



## ENDNOTES

- <sup>1</sup> All names in the report have been changed to protect the identities of the individuals mentioned.
- <sup>2</sup> Hannah Dreier, *Relatives of Undocumented Children Caught Up in ICE Dragnet*, ProPublica, Sept. 11, 2017, <https://www.propublica.org/article/relatives-of-undocumented-children-caught-up-in-ice-dragnet>.
- <sup>3</sup> See *Flores v. Reno*—Stipulated Settlement Agreement (U.S. District Court, Central District of California, 1997), codified in part at 8 C.F.R. §§236.3; 1236.3, at ¶ 11; see also Kate M. Manuel and Michael John Garcia, *Unaccompanied Alien Children – Legal Issues: Answers to Frequently Asked Questions*, Congressional Research Service, 2016, at 5 [hereinafter “CRS Report FAQ”].
- <sup>4</sup> *Flores Agreement*, *supra* note 3, at ¶ 12A.
- <sup>5</sup> *Id.* ¶ 14; see also William A. Kandel, *Unaccompanied Alien Children: An Overview*, Congressional Research Service, 2017, at p.8-9 [hereinafter “CRS Report”].
- <sup>6</sup> Homeland Security Act of 2002, P.L. 107-296.
- <sup>7</sup> See, e.g., 148 Cong. Rec. S8180 (2002) (letter from Sen. Lieberman & Sen. Thompson) (“Currently, INS has responsibility for the care and custody of these children. It would not be appropriate to transfer this responsibility to Department of Homeland Security. This legislation transfers responsibility for the care and custody of unaccompanied alien children who are in Federal custody . . . to the Office of Refugee Resettlement . . . ORR has decades of experience working with foreign-born children, and ORR administers a specialized resettlement program for unaccompanied refugee children.”).
- <sup>8</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), Pub. L. No. 110–457, 122 Stat. 5044 (2008); 154 Cong. Rec. S.10886 (daily ed. Dec. 10, 2008) (statement of Sen. Feinstein).
- <sup>9</sup> 8 U.S.C. §§1232(a)(4), (b)(2).
- <sup>10</sup> 8 U.S.C. §1232(b)(3).
- <sup>11</sup> CRS Report, *supra* note 5, at p.8.
- <sup>12</sup> TVPRA, § 235(c)(2); 8 U.S.C. §1232(c)(2). The HSA requires that the child’s interests be considered throughout decisions relating to his or her care and custody. 6 U.S.C. § 279(b)(1)(B).
- <sup>13</sup> *Flores Agreement*, *supra* note 3.
- <sup>14</sup> See Children Entering the United States Unaccompanied: Section 2, Safe and Timely Release from ORR Care, §2.2.1, OFFICE OF REFUGEE RESETTLEMENT (Jan. 30, 2015), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.2.1>.
- <sup>15</sup> *Id.*
- <sup>16</sup> See Office of Refugee Resettlement, Family Reunification Packet Cover Letter, <https://www.acf.hhs.gov/orr/resource/unaccompanied-childrens-services>.
- <sup>17</sup> See Children Entering the United States Unaccompanied, *supra* note 14; see also ORR, Family Reunification Packet Cover Letter, *supra* note 16.
- <sup>18</sup> John Burnett, *ICE Has Arrested More Than 400 in Operation Targeting Parents Who Pay Smugglers*, NPR, Aug. 18, 2017, <http://www.npr.org/2017/08/18/544523231/arrests-of-undocumented-parents-sparks-debate-between-federal-officials-and-immi>.
- <sup>19</sup> Jenny Jarvie, *Immigrant Rights Groups Denounce New ICE Policy That Targets Parents of Child Migrants*, L.A. TIMES, June 30, 2017, <http://www.latimes.com/nation/la-na-immigration-daca-20170630-story.html>.
- <sup>20</sup> Memorandum from John Kelly, Secretary of Homeland Security, to Kevin McAleenan, Acting Commissioner, U.S. Customs and Border Protection, Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement, et al., *Implementing the President’s Border Security and Immigration Enforcement Improvements Policies*, § M, p.11 (Feb. 20, 2017).
- <sup>21</sup> Burnett, *ICE Has Arrested More Than 400 in Operation Targeting Parents Who Pay Smugglers*, *supra* note 18.
- <sup>22</sup> *Id.*; Dreier, *Relatives of Undocumented Children Caught Up in ICE Dragnet*, *supra* note 2.
- <sup>23</sup> Uriel J. Garcia, *ICE Arrests Young Immigrant’s Sponsor Months After Feds Assured Him He’d Be Safe*, THE NEW MEXICAN, Sept. 9, 2017, [http://www.santafenewmexican.com/news/local\\_news/ice-arrests-young-immigrant-s-sponsor-months-after-feds-assured/article\\_428366f5-6d03-552c-a277-93b83d3005e2.html](http://www.santafenewmexican.com/news/local_news/ice-arrests-young-immigrant-s-sponsor-months-after-feds-assured/article_428366f5-6d03-552c-a277-93b83d3005e2.html).
- <sup>24</sup> See, e.g., Lomi Kriel, *ICE Targeting Relatives who Pay to Illegally Bring Children into U.S.*, HOUSTON CHRONICLE, June 30, 2017, <http://www.houstonchronicle.com/news/houston-texas/houston/article/ICE-targeting-relatives-who-pay-to-illegally-11260232.php>; Nat’l Immigrant Justice Center, et al., Complaint to DHS Acting Inspector General and DHS Office of Civil Rights and Civil Liberties Re: ICE and CBP Coercive Enforcement Actions against Sponsors of Unaccompanied Children Conducted in Violation of Family Unity, Protection, and Due Process Rights, at 3 (Dec. 6, 2017) [hereinafter “CRCL complaint”], [http://www.immigrantjustice.org/sites/default/files/content-type/press-release/documents/2017-12/Sponsor%20Enforcement-OIG\\_CRCL\\_Complaint\\_Cover\\_Letter-FINAL\\_PUBLIC.pdf](http://www.immigrantjustice.org/sites/default/files/content-type/press-release/documents/2017-12/Sponsor%20Enforcement-OIG_CRCL_Complaint_Cover_Letter-FINAL_PUBLIC.pdf).

<sup>25</sup> CRCL Complaint, *supra*, at 4.

<sup>26</sup> Kriel, *ICE Targeting Relatives who Pay to Illegally Bring Children into U.S.*, *supra* note 24.

<sup>27</sup> *Id.*

<sup>28</sup> CRCL Complaint, *supra* note 24, at 6.

<sup>29</sup> 6 U.S.C. § 279(b)(1)(A)-(F) (“[T]he Director of the Office of Refugee Resettlement shall be responsible for . . . making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status; implementing the placement determinations; implementing policies with respect to the care and placement of unaccompanied alien children; identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children. . . .”); 8 U.S.C. 1232(c)(3).

<sup>30</sup> Kriel, *ICE Targeting Relatives who Pay to Illegally Bring Children into U.S.*, *supra* note 24.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*; Burnett, *ICE Has Arrested More Than 400 in Operation Targeting Parents Who Pay Smugglers*, *supra* note 18.

<sup>33</sup> CRCL Complaint, *supra* note 24, at 4.

<sup>34</sup> *Id.*

<sup>35</sup> Uriel J. Garcia, *ICE Arrests Young Immigrant’s Sponsor Months After Feds Assured Him He’d Be Safe*, *supra* note 23.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See Jarvie, *Immigrant Rights Groups Denounce New ICE Policy That Targets Parents of Child Migrants*, L.A. TIMES, June 30, 2017.

<sup>39</sup> See Garcia, *ICE Arrests Young Immigrant’s Sponsor Months After Feds Assured Him He’d Be Safe*, *supra* note 23; Burnett, *ICE Has Arrested More Than 400 in Operation Targeting Parents Who Pay Smugglers*, *supra* note 18.

<sup>40</sup> *Id.* For example, in discussing results of a different raid, Operation Border Guardian/Border Resolve, ICE explained that “[d]uring such enforcement operations ICE officers frequently encounter additional suspects who may be in the United States in violation of federal immigration laws. Those persons will be evaluated on a case-by-case basis and, when appropriate, arrested by ICE.” <https://www.ice.gov/news/releases/ice-announces-results-operation-border-guardianborder-resolve>

<sup>41</sup> Jim Acosta and Stephen Collinson, *Obama: ‘You Can Come Out of the Shadows,’* CNN, Nov. 21, 2014, <http://www.cnn.com/2014/11/20/politics/obama-immigration-speech/index.html>.

<sup>42</sup> See, e.g., U.S. Immigration and Customs Enforcement, Memorandum dated June 17, 2011 from John Morton, Director, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* [“Morton memo”], at 1-2, <https://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf> (citing earlier prosecutorial discretion memoranda from prior administrations); U.S. Immigration and Customs Enforcement, Memorandum dated Nov. 20, 2014 from Secretary Jeh Johnson, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* [“Johnson memo”], [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf). The Johnson memo stated in relevant part:

Due to limited resources, DHS and its Components cannot respond to all immigration violations or remove all persons illegally in the United States. As is true of virtually every other law enforcement agency, DHS must exercise prosecutorial discretion in the enforcement of the law. And, in the exercise of that discretion, DHS can and should develop smart enforcement priorities, and ensure that use of its limited resources is devoted to the pursuit of those priorities. DHS’s enforcement priorities are, have been, and will continue to be national security, border security, and public safety.

*Id.* at 2.

<sup>43</sup> See ICE, Parental Interests Directive, <https://www.ice.gov/parental-interest> (last visited Dec. 18, 2017). Further, Jeh Johnson, the Secretary of DHS under President Obama, stated specifically that “[a]bsent extraordinary circumstances or the requirement of mandatory detention, field office directors should not expend detention resources on aliens . . . who demonstrate that they are primary caretakers of children . . . or whose detention is otherwise not in the public interest.” See Johnson Memo, *supra* note 42, at 5.

<sup>44</sup> Executive Order: Enhancing Public Safety in the Interior of the United States (Jan. 25, 2017) (“We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies . . . to employ all lawful means to enforce the immigration laws of the United States.”); Memorandum from DHS Secretary John Kelly, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017), at 4 [hereinafter “Kelly Memo”] (“Department personnel have full authority to arrest or apprehend an alien whom an

immigration officer has probable cause to believe is in violation of the immigration laws. They also have full authority to initiate removal proceedings against any alien who is subject to removal under any provision of the INA, and to refer appropriate cases for criminal prosecution.”). See generally Lazaro Zamora, Bipartisan Policy Center, *Comparing Obama and Trump’s Deportation Priorities* (Feb. 27, 2017).

<sup>45</sup> See Kelly Memo, *supra* note 43, at 2.

<sup>46</sup> Immigration and Customs Enforcement, *ICE announces results of Operation Border Guardian/Border Resolve* (Aug. 1, 2017), <https://www.ice.gov/news/releases/ice-announces-results-operation-border-guardianborder-resolve>

<sup>47</sup> *Id.* Of the 650 arrested in the program, only 30% were individuals ICE actually targeted for enforcement – the rest were simply “encountered” during the operation. Additionally, 520 out of the 650 detained during the “initiative” had no criminal convictions. Thus, a vast majority of those swept up in the raids were not the smuggling network associates that ICE intended to target as part of the action.

<sup>48</sup> Research points to similar fears of undocumented parents interacting with the child welfare system during times of heightened immigration enforcement. See Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* (Nov. 2011), at 55-56.

<sup>49</sup> See Jonathan Blitzer, *After an Immigration Raid, A City’s Students Vanish*, *The New Yorker* (Mar. 23 2017) (discussing widespread fear in New Mexico immigrant communities following an ICE raid).

<sup>50</sup> Burnett, *ICE Has Arrested More Than 400 in Operation Targeting Parents Who Pay Smugglers*, NPR (Aug. 18, 2017), <http://www.npr.org/2017/08/18/544523231/arrests-of-undocumented-parents-sparks-debate-between-federal-officials-and-immi>.

<sup>51</sup> *Id.*; Dreier, *Relatives of Undocumented Children Caught Up in ICE Dragnet*, *supra* note 2.

<sup>52</sup> See, e.g. Victims of Trafficking and Violence Protection Act of 2000, P. Law 106-386, 114 Stat. 1464, (“Creating a new nonimmigrant visa classification [U visas] will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions.”).

<sup>53</sup> See, e.g. ACF, Child Welfare Information Gateway, *Best Interests of the Child* (2016), [https://www.childwelfare.gov/pubPDFs/best\\_interest.pdf](https://www.childwelfare.gov/pubPDFs/best_interest.pdf) (noting “[t]he importance of family integrity and preference for avoiding removal of the child from his/her home” as a principle guiding best interest determinations for children in 28 states). “All States . . . have statutes requiring that the child’s best interests be considered whenever specified types of decisions are made regarding a child’s custody, placement, or other critical life issues.” *Id.*; see also U.S. Dep’t of Health and Human Services, Administration for Children & Families, *Reunifying Families*, <https://www.childwelfare.gov/topics/permanency/reunification/> (“When children must be removed from their families to ensure their safety, the first goal is to reunite them with their families as soon as possible.”).

<sup>54</sup> See Flores Settlement Agreement, Case No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997), ¶ 18 & 14.

<sup>55</sup> *Id.* ¶ 14; 8 U.S.C. § 1232(c); ORR, <https://www.acf.hhs.gov/orr/about/ucs/sponsors>; U.S. Dep’t of Health and Human Services, Office of Inspector General, *HHS’s Office of Refugee Resettlement Improved Coordination and Outreach to Promote the Safety and Well-Being of Unaccompanied Alien Children* (July 2017) (“ORR releases most children to their parents or an immediate relative.”).

<sup>56</sup> ORR, *Family Reunification Packet Cover Letter*, <https://www.acf.hhs.gov/orr/resource/unaccompanied-childrens-services>.

<sup>57</sup> See ORR, *Sponsor Care Agreement*, <https://www.acf.hhs.gov/orr/resource/unaccompanied-childrens-services> (advising potential sponsors that, on approval, they “will receive an ORR Verification of Release form and will enter into a custodial arrangement with the Federal Government in which [they] agree to . . . [p]rovide for the physical and mental well-being of the minor, including but not limited to, food, shelter, clothing, education, medical care and other services as needed.”).

<sup>58</sup> TVPRA, § 235(c), 8 U.S.C. § 1232(c)(2)(a).

<sup>59</sup> See Cong. Record (House), William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Dec. 10, 2008, at H10902, Statement of Rep. Smith (NJ) (“By protecting the victims and not sending them back to their home country where they are often exploited in a vicious cycle of exploitation, we say to the victims we will make every effort to make you safe and secure.”); *id.* at 10903, Statement of Rep. Loretta Sanchez (CA) (The TVPRA “provides additional protections for trafficking survivors who are threatened by trafficking perpetrators, and for children who are at risk of being repatriated into the hands of traffickers or abusers.”).

<sup>60</sup> See, e.g. Wendy Cervantes & Christina Walker, *Five Reasons Trump’s Immigration Orders Harm Children*, Center for Law and Social Policy (Apr. 2017), at 3, <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Five-Reasons-Immigration-Enforcement-Orders-Harm-Children.pdf>.

<sup>61</sup> Women’s Refugee Commission, Lutheran Immigration and Refugee Service and Kids in Need of Defense, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families* (Jan. 2017), at 3-4, [https://supportkind.org/wp-content/uploads/2017/03/BetrayingFamilyValues\\_Feb2017.pdf](https://supportkind.org/wp-content/uploads/2017/03/BetrayingFamilyValues_Feb2017.pdf).

<sup>62</sup> Migration Policy Institute, Urban Institute, et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families* (Sept. 2015), at 2, <https://www.urban.org/sites/default/files/alfresco/publication-exhibits/2000405/2000405-Implications-of-Immigration-Enforcement-Activities-for-the-Well-Being-of-Children-in-Immigrant-Families.pdf> (“[D]eported parents may find it difficult to retain custody of their children, who may wind up in foster care for extended periods and eventually be adopted by other families.”).

<sup>63</sup> See, e.g., Am. Academy of Pediatrics, *AAP Statement Opposing Continued Federal Efforts to Tear Apart Immigrant Families* (June 30, 2017), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAPStatementOpposingContinuedEffortstoTearImmigrantFamiliesApart.aspx>; see also Am. Academy of Pediatrics, *Detention of Immigrant Children*, *Pediatrics* (Apr. 2017), at 6-7, <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf> (discussing research finding “high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems” among unaccompanied immigrant children who are detained and noting the vulnerability of children who have experienced trauma and violence to additional trauma and fear).

<sup>64</sup> See Barbara Milrod, *Why Children Bear the Brunt of Trump’s America: The Stress Test*, *Newsweek* (May 19, 2017), <http://www.newsweek.com/why-child-anxiety-rise-trumps-america-612205> (“Elementary school children lack a fully developed ability to solve problems on their own, making it difficult for them to separate other people’s worries (especially adults’) from their own frightening fantasies.”).

<sup>65</sup> Migration Policy Institute, *supra* note 62, at 9 (“Family separation in unauthorized Hispanic immigrant populations has complex psychological ramifications, including anxiety, depression, substance abuse, and general emotional and family instability.”); see also Sarah Elizabeth Richards, *How Fear of Deportation Puts Stress on Families*, *The Atlantic*, Mar. 22, 2017, <https://www.theatlantic.com/health/archive/2017/03/deportation-stress/520008/>; Leila Schochet, *Trump’s Immigration Policies are Harming American Children*, *Center for American Progress* (July 31, 2017), <https://www.americanprogress.org/issues/early-childhood/reports/2017/07/31/436377/trumps-immigration-policies-harming-american-children/>; Luis H. Zayas and Laurie Cook Heffron, PhD, Am. Psychological Ass’n, *Disrupting Young Lives: How Detention and Deportation Affect US-born Children of Immigrants*, *CFY News* (Nov. 2016), <http://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation.aspx> (“Rules often govern the lives of citizen-children: ‘be silent about your family, tell no one about us’ and ‘be still, don’t draw attention by anything you do’ . . . Breaching these rules could result in a parent’s deportation, and with that comes guilt and shame.”).

<sup>66</sup> Am. Academy of Pediatrics, *Detention of Immigrant Children*, *supra* note 63, at 6-7; see *Disrupting Young Lives*, *supra* note 65 (noting that immigrant detention “is related to persistent negative mental health outcomes, including depression, PTSD and anxiety” and “creates disruptions to the family unit, which may include role reversal of parents and children and undermined attachment relationships.”).

<sup>67</sup> See Anthony Advincula, *Children Who Witness Parent’s Immigration Arrest May Suffer Lifetime Health Consequences* (2014; republished thereafter), <https://www.centerforhealthjournalism.org/children-who-witness-parents-immigration-arrest-may-suffer-lifetime-health-consequences>.

<sup>68</sup> *Id.*

<sup>69</sup> Nearly 5.3 million children in the United States have parents without authorized immigration status. Of these, nearly 4.5 million are U.S. citizen children. Migration Policy Institute, *supra* note 62, at 7.

<sup>70</sup> See *Disrupting Young Lives*, *supra* note 65 (discussing the effects of a parent’s deportability on children’s sense of identity and belonging in the United States and noting that “[t]he lingering possibility of deportation of parents leaves children with constant anxiety and vigilance about the potential becoming real.”).

<sup>71</sup> See *id.*

<sup>72</sup> See *Betraying Family Values*, *supra* note 61, at 8, 13-14.

<sup>73</sup> Convention Relating to the Status of Refugees (July 28, 1951), art. 31, 189 U.N.T.S. 137 (“The Contracting States shall not impose penalties . . . on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization. . . .”).

<sup>74</sup> See Sharita Gruberg, Jennifer Podkul & Philip E. Wolgin, *Separating Mothers from their Children at the Border Is Wrong and Costly*, Mar. 13, 2017, *Center for American Progress*, <https://www.americanprogress.org/issues/immigration/news/2017/03/13/427970/separating-mothers-children-border-wrong-costly/>, *citing* GAO, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody* (July 2015), at 66 (noting that, on average, a child’s care in an ORR shelter care can cost the federal government up to \$248 per day).