

Analysis and Recommendations Relating to August 2024 DHS IG Report on Unaccompanied Children

The Department of Homeland Security (DHS) Inspector General (IG)'s [August 2024 report](#) on unaccompanied children prompts key questions. Among them, how can the U.S. federal government:

1. Best protect unaccompanied children from exploitation and trafficking following their release from government custody?
2. Ensure that unaccompanied children's address information remains appropriately updated?
3. Optimally adjudicate unaccompanied children's cases, including by ensuring that children understand and meet immigration court obligations, so that children who qualify for legal protection can safely remain in the United States while other children safely repatriate to their countries of origin?

The answers lie in a vigorous whole-of-government approach spanning the Departments of Health and Human Services, Labor, Justice, Homeland Security, Education, and State—to name only some. The IG report focuses on DHS Immigration Customs and Enforcement (ICE), which plays a limited role in this protection matrix. Even that role, bound up with the functions of other government components, cannot be understood or fulfilled in isolation. The present document expands the scope by examining several interrelated responsibilities of, and making recommendations concerning, ICE and two other agencies—the Department of Health and Human Services Office of Refugee Resettlement (ORR) and the Department of Justice Executive Office for Immigration Review (EOIR). KIND has [elsewhere outlined recommendations](#) involving additional federal entities like the Department of Labor.

As illustrated below, any media narrative that the IG report revealed over 300,000 unaccompanied children to be “missing” is false. And the indispensable action—the throughline of the holistic policy response necessary to uphold the safety of unaccompanied children and ensure compliance with any immigration court and ICE requirements—must be ORR's provision, supported by commensurate congressional funding, of legal services to *all* unaccompanied children released from U.S. government custody.

Office of Refugee Resettlement

ORR is responsible for the shelter and care of unaccompanied children until releasing them to parents, legal guardians, or other vetted sponsors. Congress has further mandated through the bipartisan Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) that ORR ensure counsel “to the greatest extent practicable” for unaccompanied children to “represent them in legal proceedings or matters and *protect them from mistreatment, exploitation, and trafficking*”—a directive that extends beyond the time of children's reunification with sponsors. As part of such representation, ORR-provided attorneys engage closely with EOIR immigration judges and ICE attorneys who represent the government in unaccompanied children's cases.

Recommendation #1: ORR, supported by robust congressional funding, should ensure that all unaccompanied children have attorneys.

- Realizing the TVPRA's vision by guaranteeing all unaccompanied children an end-to-end advocate—a constant navigator of the immigration system's complex requirements—is the single most vital measure the federal government can adopt for safeguarding unaccompanied children from exploitation and trafficking, for facilitating address updates, and for upholding compliance with any immigration court and ICE obligations. Neither ICE nor any other agency can properly carry out its associated functions absent ORR-facilitated representation of this vulnerable population.
- The confidential attorney-client relationship often means that an attorney is the sole adult in whom children feel safe confiding information about exploitation and trafficking. Attorneys can work with the child to identify any needs, help report mistreatment to relevant authorities as appropriate, and facilitate vital support services for the child.
- Without an attorney, it is virtually impossible for unaccompanied children to navigate the U.S. immigration system so as to obtain legal protection, when eligible, against trafficking, labor abuses, and other mistreatment. Such forms of relief include U visas for child victims of certain crimes in the United States, and T visas for child survivors

of trafficking—visas that not only help deliver those children security but also can support the investigation and prosecution of criminal actors.

- Attorneys are essential to ensuring appropriate address updates. These updates generally require completion of online and/or paper forms—from ICE’s “Online Change of Address Form” to EOIR’s Form-33—that *adults* in the immigration system often have difficulty navigating. The federal government cannot reasonably expect that an unrepresented six-year-old child—given their developmental stage and language and comprehension constraints—will even know their sponsor’s address, much less properly understand, complete, and submit legal paperwork upon each change of residence. Immigration judges and ICE attorneys are necessarily reliant on children’s attorneys to meet this need.
- Lawyers are equally vital to ensuring that children meet any additional immigration court and ICE obligations such as required appearances at scheduled immigration court hearings. Again, it is impractical for the federal government to assume that a six-year child is capable of receiving, opening, and comprehending a legal notice to appear in court, then managing the logistics necessary to arrive at the hearing at the proper time and location. Unaccompanied children often don’t understand what immigration court *even is*, much less the necessity to appear before it. By contrast, the evidence demonstrates that children with attorneys overwhelmingly satisfy immigration court hearing requirements. From FY 2005 through June FY 2019—the most recent available data—[98 percent of children](#) with lawyers appeared for their hearings.
- Despite these considerations, many if not most unaccompanied children nationwide lack legal representation, effectively precluding this vulnerable population’s meaningful participation in and compliance with the U.S. immigration system. To its credit, [ORR has set an aim](#) of ensuring legal services for all unaccompanied children by Fiscal Year 2027. It is imperative that ORR achieve this objective and that Congress fund the agency accordingly.

Recommendation #2: ORR, supported by congressional funding, should facilitate linguistically and culturally appropriate social services for all unaccompanied children following their release from ORR custody.

- ORR-facilitated post-release social services complement its legal programming. Licensed social workers and other post-release professionals may provide in-home visitation, support children’s educational enrollment and progress, and facilitate connection to medical and mental health providers, and other assistance. Properly administered, these services help uphold the safety of sponsorship settings, promote children’s integration into local communities, and deliver tools for building secure and prosperous lives in the United States.

Additional Considerations

- Congress has not vested, nor could it meaningfully vest, ORR or any other agency with *legal custody of or jurisdiction over* unaccompanied children placed with parents and other sponsors. Such authority over children already reunified with and under the care of family members would prove fundamentally unworkable as a practical matter, demand a massive, unprecedented infusion of congressional funding into ORR, and interfere with parental rights protected under the Constitution. The most appropriate course, rather, to promote unaccompanied children’s end-to-end safety and participation in the immigration system is through comprehensive provision of legal and social services.

Executive Office for Immigration Review

The Executive Office for Immigration Review is responsible for administering fair and efficient adjudications of the cases of unaccompanied children placed into immigration court proceedings. In discharging this duty, EOIR immigration judges engage with ORR-provided attorneys who represent unaccompanied children, as well as with ICE attorneys who represent the federal government, in these matters.

Recommendation #3: EOIR, guided by appropriate congressional oversight, should ensure that all relevant immigration courts have implemented “juvenile dockets” that are fully consistent with recent agency guidance.

- In December 2023, EOIR [issued a memorandum](#) affirming the establishment at immigration courts nationwide of “juvenile dockets” largely dedicated to unaccompanied children’s cases. The guidance requires adherence to

procedures reflective of these children’s particular vulnerabilities. Properly implemented, these consolidated dockets will not only improve due process and efficiency but also help identify and mitigate child exploitation and trafficking.

- EOIR must ensure that all relevant immigration courts are robustly implementing the December 2023 memorandum. Congress should exercise oversight over EOIR compliance with this guidance, including by adopting in its final FY 25 appropriations package the language included in the [bipartisan FY 25 Senate DHS appropriations report](#), which directed EOIR to publicly issue a report on memorandum implementation.

Recommendation #4: EOIR should take every available measure, in coordination with ORR, to ensure the on-site presence at juvenile dockets of attorneys available to confer confidentially with unrepresented unaccompanied children.

- While immigration judges themselves serve a role in upholding child safety, EOIR should facilitate the presence of legal services providers at juvenile dockets so that unrepresented children have an opportunity for confidential engagement with a lawyer in the court building. This is the most important step EOIR can take to promote identification and appropriate response to indicators that unaccompanied children appearing before the court are facing exploitation or trafficking. Children are substantially more likely to disclose sensitive information during a confidential conversation with an attorney in a dedicated, private space within a court building than in open court, where children may fear that it is unsafe to speak freely.
- Through these juvenile docket touchpoints, attorneys on site can also identify any address updates and help explain to children the importance of, and process for, submitting new address information to EOIR and ICE now and in the future. Additionally, attorneys can flag other EOIR and ICE requirements. Resulting improvements in address accuracy would lead to enhanced notice receipt rates and associated court appearances.
- To ensure consistent availability of on-site attorneys during juvenile dockets, EOIR should closely coordinate with ORR as well as local legal services providers and pro bono attorneys. Congress should support these efforts through appropriate funding.

Immigration and Customs Enforcement

ICE is responsible for enforcement of immigration laws in the U.S. interior. ICE attorneys assigned to represent the government in unaccompanied children’s immigration court proceedings engage with ORR-provided attorneys representing those children, as well as with the EOIR immigration judges who administer the proceedings. There is an important role for ICE attorneys to play in promoting the fair administration of justice, observing juvenile respondents for indicia of human trafficking or abuse, and coordinating with children’s attorneys to seek fair and efficient resolution of children’s proceedings, including through the use of prosecutorial discretion; however, ICE attorneys are ultimately tasked with representing the government in children’s removal proceedings, and as such, their ability to ensure children’s well-being will necessarily be limited. Under the Homeland Security Act of 2002, Congress carefully separated ICE’s law enforcement duties from ORR’s child welfare functions.

Recommendation #5: ICE should ensure consistent implementation of and training for “juvenile points of contact” for all EOIR juvenile dockets.

- Beginning in December 2023, in tandem with EOIR’s establishment of juvenile dockets, ICE has taken steps [to establish a cohort of specially trained attorneys](#)—“juvenile points of contact”—to represent the government before those dockets as part of a larger ICE framework governing its approach to unaccompanied children’s cases. ICE recently provided these attorneys with special training on identification and response to evidence of trafficking and exploitation. ICE should conduct such trainings annually in order to further develop expertise.
- These points of contact help promote optimal engagement with unaccompanied children’s attorneys who constitute the most reliable means of ensuring appropriate address updates with ICE and EOIR as well as compliance with any other relevant requirements.
- ICE should ensure assignment and maintenance of these points of contact at all relevant dockets and ensure that appropriate contact information is available to local legal services providers and pro bono attorneys.

Recommendation #6: ICE should maintain its policy of deferring any filings with immigration court of unaccompanied children's NTAs until after those children have reunified with sponsors.

- ICE rightfully maintains a policy of deferring filings with immigration court of unaccompanied children's Notices to Appear—the documents that formally initiate court proceedings—until those children's placement with sponsors. This policy is vital to responsible stewardship of limited government resources and to comporting with due process.
- Filing NTAs prior to sponsor reunification, when children are still in ORR custody, would mean initiating proceedings at immigration courts whose jurisdictions children would promptly transition out of upon release to sponsors hundreds or thousands of miles away. This would necessitate mass changes of venue imposing profound operational burdens on already overstretched ICE, EOIR, and ORR personnel. Those changes, in turn, would spawn widespread confusion among children and associated paperwork errors leading to *more*, not fewer, outdated addresses and court nonappearances—exacerbating some of the very concerns the IG report sought to highlight.
- Initiating immigration court proceedings while children remain in ORR custody would also preclude many of those children from an opportunity to pursue legal relief by leaving them with insufficient time to properly secure and build rapport with attorneys, obtain evidence, and otherwise prepare cases.

Recommendation #7: ICE policies and practices, including with regard to NTAs, should optimally enable eligible unaccompanied children to seek legal relief through USCIS.

- In cases involving unaccompanied children and adults alike, ICE's capacity to file NTAs with immigration courts is in part a function of resource levels influenced by congressional appropriations. As a matter of law, ICE maintains discretion over whether to file NTAs in individual unaccompanied children's cases. There are a range of reasons why it may be appropriate for ICE to not have filed NTAs with immigration courts, including to allow case adjudications to transpire before U.S. Citizenship and Immigration Services (USCIS).
- As indicated in ICE's response to the IG, by congressional design the appropriate adjudication venue for most unaccompanied children's claims for legal relief is USCIS rather than EOIR. For example, the TVPRA requires that USCIS maintain initial jurisdiction over unaccompanied children's asylum applications, which allows those children to undergo non-adversarial asylum interviews rather than adversarial court proceedings.
- Enabling unaccompanied children's claims to proceed through USCIS serves this congressional intent, prevents adjudication redundancies, and conserves overall government resources—helping combat the 3.7 million-plus immigration court case backlog.
- Consistent with the above considerations, ICE's juvenile docket framework supports the identification of USCIS forms of relief for which unaccompanied children may be eligible. ORR-provided attorneys are essential to discerning and applying for those forms of relief, as well as to maintaining appropriate address updates with USCIS. As a matter of government efficiency and due process, ICE should ensure that its framework and all associated policies and practices optimally facilitate unaccompanied children's pursuit of legal protection through USCIS when appropriate.

Additional Considerations

- Media narratives suggesting that the IG report revealed that over 300,000 unaccompanied children are "missing" are fundamentally misleading. Address information is often updated with ICE independent of whether the agency filed NTAs with immigration courts. Moreover, outdated address information in ICE files does not mean that an unaccompanied child is "missing" or a victim of trafficking or exploitation. Unaccompanied children with outdated addresses routinely reside in safety with loving parents, attend school, and successfully integrate into their local communities. While appropriate address updates constitute an important objective—one that the provision of

attorneys to all unaccompanied children is critical to achieving— they are not a meaningful measure of child safety or well-being.

- The Departments of Homeland Security and Health and Human Services must maintain appropriate restrictions on information-sharing consistent with Congress's deliberate separation of DHS law enforcement functions and ORR child welfare duties. Firewalls, for example, against ORR information-sharing with DHS regarding content disclosed during unaccompanied children's counseling sessions while in ORR custody, or concerning the immigration status of children's sponsors, are vital. The absence of such restrictions would severely chill children's and sponsors' provision of information as well as their participation in the immigration system as a whole, weakening rather than strengthening transparency and accountability.