

Key Talking Points Regarding DHS IG Report on Unaccompanied Children

- A whole-of-government approach is necessary to protect unaccompanied children from exploitation and trafficking. The IG report focuses on ICE, which plays a limited role in this protection matrix. The core of the holistic policy framework needed 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. Currently, many if not most unaccompanied children throughout the nation lack attorneys.
- Attorneys are essential to completing appropriate ICE and EOIR address updates and ensuring children's appearances at court hearings. Address updates require submission of online and/or paper forms that *adults* in the immigration system regularly have difficulty navigating. The federal government cannot reasonably expect that an unrepresented six-year-old child will even know their sponsor's address, much less understand and complete legal paperwork upon each change of residence. For similar reasons, it is often impossible for unrepresented children to comprehend and satisfy immigration court appearance requirements. By contrast, evidence demonstrates that children with attorneys overwhelmingly do. From FY 2005 through June FY 2019—the most recent available data—[98 percent of children](#) with lawyers appeared for their hearings.
- 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 Moreover, outdated address information in ICE files does not mean that an unaccompanied child is “missing” or a victim of trafficking or exploitation. Unaccompanied children with outdated addresses routinely reside in safety with loving family members, attend school, and successfully integrate into their local communities.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.
- While ICE attorneys and immigration judges have a role in observing indicia of trafficking and abuse among unaccompanied children appearing before immigration court, it is critical that EOIR facilitate, in coordination with ORR, 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. Children are substantially more likely to disclose sensitive information regarding exploitation 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.
- 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. As earlier filings would necessitate mass changes of venue imposing profound operational burdens and spawning confusion and errors, this policy is vital to responsible stewardship of limited government resources and to comporting with due process. As a matter of law, ICE maintains discretion over whether to ultimately 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). By congressional design, USCIS is generally the most appropriate adjudication venue for unaccompanied children's cases, and enabling those cases to proceed through USCIS rather than EOIR conserves overall government resources.