

RELEASE TO SPONSOR APPROVED, NOW WHAT?

By Randi Mandelbaum*

Naomi, a fourteen-year-old girl fleeing family violence in her native country of Honduras, spent five months detained by the Office of Refugee Resettlement (ORR), before being released to her cousin. Because the cousin was a distant relative, a home study was required. In addition, upon her release, the cousin and Naomi were referred for post-release services. Unfortunately, these supportive services amounted to nothing more than a phone call from a case manager every other month. There was no assistance to help the cousin when the local school district demanded that she obtain legal custody of Naomi and retrieve her school records from Honduras before the school district would register Naomi for school. Thus, Naomi remained out of school for over fourteen months until she was able to obtain legal representation and the attorney helped get her into school.

Marta, a native of El Salvador, fled to the United States at the age of sixteen to escape gang and community violence. She spent over one year in ORR detention and foster care before being released to her sister when Marta was seventeen years old. While in the custody of ORR, she was diagnosed with a heart condition that required surgery. Upon release to her sister, Marta required follow-up appointments with a cardiologist. However, Marta has been unable to engage in this necessary medical treatment because she does not have any health insurance and neither she nor her sister can afford to pay out of pocket.

Amelia, a native of Honduras, spent four months in ORR detention before being released to her aunt. She fled to the United States at the age of thirteen to escape child abuse. The violence she suffered in Honduras, along with additional victimization on her journey to the United States, left Amelia traumatized and in need of mental health services. At first, everything seemed okay, but within months, Amelia began suffering from nightmares and was afraid to leave home. Without health insurance, Amelia's aunt was unable to locate any therapeutic services. Thus, Amelia's condition worsened to the point that she required emergency in-patient psychiatric care at the hospital.

Rafael, a fourteen-year-old boy from Guatemala, was placed with his uncle after spending one month in ORR detention. Unfortunately, after a few

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months, the uncle's partner and her children moved in, and there was no longer room for Rafael. Thus, the uncle asked Rafael to leave. Rafael thought he could work and stay at a friend's house, but after a few weeks he found himself homeless and living on his own for several months until someone reported his situation to the local child welfare agency, which placed him into foster care.¹

INTRODUCTION

In most instances, it is unquestionably better for minors to be released as expeditiously as possible from the custody of the Office of Refugee Resettlement (ORR), the governmental entity that detains recently arrived migrant minors. This ensures that most minors who have family in the United States, roughly 80 percent,² will be discharged from jail-like settings, received into loving homes, and immediately made to feel part of a family. At times, this will mean that the minor will be placed with a parent or family member for whom the minor has long been yearning or with whom the minor specifically set out to reunite.

Yet, we cannot ignore the narratives above, which are based on true stories and depict the plight of many minors once they are released from immigration detention. These stories highlight a pressing question that is the focus of this Essay: whether minors, and the relative caregivers with whom they are placed, need and should be afforded enhanced supportive services similar to those received by minors who are reunited with family in our domestic foster care systems.³ Although not all minors suffer in situations like those described above, reports from minors and families, social services providers, and attorneys who work with unaccompanied minors tell us that the narratives above are not isolated incidents, far from it.⁴

When ORR approves the release of a minor to a relative sponsor, the sponsor is not provided with any financial assistance, health insurance, or basic necessities for the minor.⁵ The sponsor also does not acquire any legal

1. These narratives represent the experiences of former clients of the author. The names and some identifying information have been changed.

2. Press Release, Dep't Homeland Sec., Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border (Mar. 16, 2021), <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation> [<https://perma.cc/N7N8-W2RL>].

3. See Emily Ryo & Reed Humphrey, *Children in Custody: A Study of Detained Migrant Children in the United States*, 68 UCLA L. REV. 137, 198 (2021) (finding that "there is also an urgent need to better understand what happens to migrant children *before* they enter ORR custody and *after* they are released from ORR custody").

4. See generally EMILY RUEHS-NAVARRO, UNACCOMPANIED: THE PLIGHT OF IMMIGRANT YOUTH AT THE BORDER (2022); Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. TIMES (Feb. 28, 2023), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>? [<https://perma.cc/V2DZ-J9CD>].

5. Before the minor is released from ORR custody, the sponsor must 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." OFF. REFUGEE RESETTLEMENT, SPONSOR CARE AGREEMENT (2023), <https://www.acf.hhs.gov/orr/policy->

authority over the minor, and most sponsors are not offered any case management assistance. It is the sponsor's responsibility to: obtain custody or guardianship of the minor (when the sponsor is not one of the minor's parents); attempt to identify and retain an immigration attorney; enroll the minor in school; ensure that the minor is receiving appropriate bilingual services at school (which often are lacking);⁶ attend to the minor's special needs, including special education services and critical mental health supports if the minor has a disability; and somehow figure out how the minor will access medical and mental health services without any health insurance or means to pay. The situation is even more tenuous when one considers that in some instances, the sponsor is left to care for a minor that they may have no experience caring for, and at times, may have never even met.

In addition, minors often struggle with the traumas that they suffered in their home countries, on their journeys to the United States, and in government custody.⁷ Some also feel tremendous pressure to work to send money to their families back home.⁸ Moreover, many also suffer with increased stress caused by their transition to life in the United States. This process can be scary and challenging, as they are forced to acclimate to new communities where everything is strange—including the food, school, culture, and the dominant language spoken.⁹ One program manager of an ORR-funded, post-release program described the situation to researchers as follows:

We are talking about children who have not been with potentially a mother or a father for an extended period of time and we are not just re-introducing them to their parents, we are also introducing [them] to a new neighborhood, a new community[,] a new world, a new political climate . . . there are all these things that happen at the same time.¹⁰

Moreover, at times, even relationships between parents and their children are strained due to years-long separations and the fact that some parents have

guidance/unaccompanied-children-program [https://perma.cc/4LNG-TERJ] (download "Family Reunification Packet" in desired language; then open "FRP-4 Sponsor Care Agreement").

6. See N.J. CONSORTIUM FOR IMMIGRANT CHILD., ENGLISH LEARNERS IN NEW JERSEY: EXPOSING INEQUITIES AND EXPANDING OPPORTUNITIES IN THE WAKE OF THE PANDEMIC 18, 25–37 (2021), <https://static1.squarespace.com/static/6270343397fdb3056f3ee9f2/t/629a3e35dfe29a1609d23fe6/1654275643839/NJCIC-EL-Report-11.15.pdf> [https://perma.cc/9WDX-BLDH].

7. See Jodi Berger Cardoso, Kalina Brabeck, Dennis Stinchcomb, Lauren Heidbrink, Olga Acosta Price, Oscar F. Gil-García, Thomas M. Crea & Luis H. Zayas, *Integration of Unaccompanied Migrant Youth in the United States: A Call for Research*, 45 J. ETHNIC & MIGRATION STUD. 273, 279–80 (2019).

8. See Dreier, *supra* note 4 (“[M]any of these children are under intense pressure to earn money. They send cash back to their families while often being in debt to their sponsors for smuggling fees, rent and living expenses.”).

9. See Adam Avrushin & Maria Vidal de Haymes, *Well-Being and Permanency: The Relevance of Child Welfare Principles for Children Who Are Unaccompanied Immigrants*, 96 CHILD WELFARE 107, 119 (2019).

10. *Id.*

started new families here in the United States.¹¹ In a recent study, the executive director of a community-based organization noted that “[a] lot of the parents here already have a new family,” and so “when you bring your teenage son who has been separated . . . they miss their friends, they miss the culture, but also, they don’t fit in this new family. They see themselves as an outsider.”¹²

Part I of this Essay begins by explaining what happens when minors arrive in the United States without a parent or guardian and the process that seeks to place minors with family members if possible. Part II then turns to a discussion of the needs of minors and their families, as well as a description of the limited supportive services available. Part III compares the system that serves immigrant children to our domestic foster care systems, highlighting how the needs of minors and families in both systems are quite similar while the support provided to immigrant minors and families is vastly less. And finally, this Essay concludes with a call for the federal government to do more for migrant minors and the families with whom they are placed, advocates for a heightened level of support, and details guiding principles and recommendations for how the system can be improved.

I. HOW DO MINORS GET PLACED WITH SPONSORS?

When children under the age of eighteen arrive at the U.S. southern border without lawful immigration status and without a parent or legal guardian, their initial interactions are often with law enforcement, specifically Customs and Border Protection (CBP),¹³ a law enforcement unit of the Department of Homeland Security (DHS).¹⁴ CBP typically apprehends the minor, designates them as “unaccompanied,”¹⁵ and charges them with entering the country without permission. The minor is then placed into removal proceedings before the Executive Office for Immigration Review (EOIR), the agency within the U.S. Department of Justice that houses the immigration courts.¹⁶ In other words, the federal government begins actively trying to deport the unaccompanied minors as soon as they cross into U.S. borders.

Along with the unlawful admission charge, these minors are detained by CBP, most commonly in small, overcrowded, and often freezing cells or cages.¹⁷ However, pursuant to the Trafficking Victims Protection

11. See generally SONIA NAZARIO, ENRIQUE’S JOURNEY: THE STORY OF A BOY’S DANGEROUS ODYSSEY TO REUNITE WITH HIS MOTHER (2014).

12. Avrushin & Vidal de Haymes, *supra* note 9, at 119.

13. *About CBP*, U.S. CUSTOMS & BORDER PROT. (Mar. 8, 2023), <https://www.cbp.gov/about> [<https://perma.cc/2QSU-SKRX>].

14. *About DHS*, U.S. DEP’T HOMELAND SEC. (Feb. 28, 2023), <https://www.dhs.gov/about-dhs> [<https://perma.cc/2Q5T-NUEA>].

15. Homeland Security Act, 6 U.S.C. § 279(g)(2).

16. *About the Office*, EXEC. OFF. FOR IMMIGR. REV., U.S. DEP’T JUST. (May 18, 2022), <https://www.justice.gov/eoir/about-office> [<https://perma.cc/S8NQ-A29K>].

17. See Teo Armus, *Unaccompanied Migrant Children Suffer ‘Inhumane and Cruel Experience’ in CBP Custody, Report Alleges*, WASH. POST (Oct. 30, 2020, 5:31 AM), <https://www.washingtonpost.com/nation/2020/10/30/migrant-children-border-unaccompanied/> [<https://perma.cc/6M8Q-CT2P>]; see also Geoff Bennett, Julia Ainsley &

Reauthorization Act (TVPRA),¹⁸ unaccompanied minors are only permitted to be held in CBP custody for up to seventy-two hours.¹⁹ Minors must then be transferred to the U.S. Department of Health and Human Services (HHS), specifically, ORR.²⁰ The TVPRA created an exception for unaccompanied minors from contiguous countries (Mexico or Canada), where such minors may be repatriated to their country of origin, but only if: (1) there are no indications of human trafficking, (2) the minor does not indicate a fear of persecution in the home country or express an intent to apply for asylum, and (3) the minor has the capacity to choose to return to their country of origin.²¹ As of March 2023, there are “8,158 children in ORR care.”²²

While in ORR custody, minors are placed in ORR facilities, often referred to by advocates as detention. However, if there is a “sponsor” in the United States (meaning a parent, other family member such as a grandparent, aunt, uncle, older sibling, or cousin, or close family friend), ORR will look to transfer the minor to the care of this sponsor while the minor awaits their immigration hearing.²³ The vast majority of unaccompanied minors are released from ORR custody, typically within two months.²⁴

When making these placement decisions, ORR divides minors into four different “categories.” The first category includes minors that have potential sponsors who are immediate family members, namely parents or legal guardians; the second includes minors having close relatives such as siblings, grandparents, or close relatives; and the third includes minors having distant

Jacob Soboroff, *Record Number of Unaccompanied Migrant Children Held in Facilities Meant for Adults*, NBC NEWS (Mar. 8, 2021, 9:19 PM), <https://www.nbcnews.com/news/investigations/record-number-unaccompanied-migrant-children-held-facilities-meant-adults-n1260097> [<https://perma.cc/5XFF-XBDX>]; Camilo Montoya-Galvez, *“They Never Saw the Sun”: Lawyers Describe Overcrowded Conditions for Children in Border Patrol Custody*, CBS NEWS (Mar. 12, 2021, 7:45 PM), <https://www.cbsnews.com/news/migrant-children-detained-in-overcrowded-conditions/> [<https://perma.cc/PM57-MEYK>].

18. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5045 (codified in scattered sections of the U.S.C.).

19. 8 U.S.C. § 1232(b)(3).

20. *See id.*; *see also* MARK GREENBERG, KYLIE GROW, STEPHANIE HEREDIA, KIRA MONIN & ESSEY WORKIE, MIGRATION POL’Y INST., STRENGTHENING SERVICES FOR UNACCOMPANIED CHILDREN IN U.S. COMMUNITIES 7 (2021), https://www.migrationpolicy.org/sites/default/files/publications/mpi-unaccompanied-children-services_final.pdf [<https://perma.cc/L67Z-CMPA>].

21. 8 U.S.C. § 1232(a)(2)(A).

22. Press Release, Off. Refugee Resettlement, Admin. for Child. & Fams., ORR Influx Care Facilities for Unaccompanied Children Fact Sheet (Mar. 24, 2023), <https://www.acf.hhs.gov/sites/default/files/documents/orr/icf-uc-fact-sheet.pdf> [<https://perma.cc/VF78-NEM9>].

23. *See* GREENBERG ET AL., *supra* note 20, at 6, 9.

24. *Id.* As of November 2022, the average length of time spent in ORR custody by an unaccompanied child was twenty-five days. OFF. REFUGEE RESETTLEMENT, ADMIN. FOR CHILD. & FAMS., FACT SHEET: UNACCOMPANIED CHILDREN (UC) PROGRAM 2 (2023), <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf> [<https://perma.cc/M3QE-6CHM>].

relatives or unrelated adults.²⁵ The fourth category covers minors who do not have sponsors and therefore remain in the custody of ORR.²⁶ In Fiscal Year (FY) 2020, of those minors placed with sponsors, 39 percent were released to a parent, 46 percent to another close relative, and 16 percent to a more distant relative, family friend, or another approved sponsor.²⁷

The number of unaccompanied minors arriving in the United States hit an all-time high in 2022 and continues to increase. In FY 2022 (October 1, 2021 through September 30, 2022), more than 149,000 unaccompanied minors arrived in the United States. This exceeded the previous high (from FY 2021) by approximately 4,000 children.²⁸

II. WHAT POST-RELEASE SERVICES ARE OFFERED TO UNACCOMPANIED MINORS PLACED WITH SPONSORS?

Post-release services offered to minors when they are discharged from ORR detention are minimal, at best.²⁹ Prior to August 2015, ORR closed a minor's file within twenty-four hours of releasing the minor from its custody.³⁰ Since August 2015, all minors are supposed to receive a safety and well-being call within the first thirty days of being placed with a sponsor.³¹ Yet, data obtained by the *New York Times* in early 2023 showed that “over the last two years, the agency could not reach more than 85,000

25. Off. Refugee Resettlement, *ORR Unaccompanied Children Program Policy Guide: Section 2*, OFF. ADMIN. FOR CHILD. & FAMS., <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2> [https://perma.cc/F9FE-4Y5Z] (Apr. 13, 2023). As of March 8, 2022, Category 2 has been divided into two subparts:

Category 2A: A brother; sister; grandparent or other immediate relatives (e.g., aunt, uncle, first cousin) who previously served as the UC's primary caregiver. This includes biological relatives, relatives through legal marriage, and half-siblings.

Category 2B: An immediate relative (e.g., aunt, uncle, first cousin) who was not previously the UC's primary caregiver. This includes biological relatives, relatives through legal marriage.

Id.

26. *Id.*

27. See GREENBERG ET AL., *supra* note 20, at 9; see also BREANNE L. GRACE & BENJAMIN J. ROTH, POST-RELEASE: LINKING UNACCOMPANIED IMMIGRANT CHILDREN TO FAMILY AND COMMUNITY 16 (2015), https://www.lirs.org/assets/2474/usc_postreleasefrprogram_evaluation_fullreport_1.pdf [https://perma.cc/S9P4-EJGZ]. Similar numbers were found in earlier years: according to ORR data from 2012, 48 percent of all sponsors are parents, 15 percent are siblings, and 24 percent are other relatives. GRACE & ROTH, *supra*, at 6.

28. Andrew R. Arthur, *Border Patrol Set New Records for Apprehensions of Children, Families in FY 2022*, CTR. IMMIGR. STUD. (Oct. 28, 2022), <https://cis.org/Arthur/Border-Patrol-Set-New-Records-Apprehensions-Children-Families-FY-2022> [https://perma.cc/XQ8D-9AFX].

29. See Avrushin & Vidal de Haymes, *supra* note 9, at 117; see also U.S. SENATE PERMANENT SUBCOMM. INVESTIGATIONS, COMM. HOMELAND SEC. & GOVERNMENTAL AFFS., PROTECTING UNACCOMPANIED ALIEN CHILDREN FROM TRAFFICKING AND OTHER ABUSES: THE ROLE OF THE OFFICE OF REFUGEE RESETTLEMENT 40–44 (2016), <https://www.hsgac.senate.gov/imo/media/doc/Majority%20&%20Minority%20Staff%20Report%20-%20Protecting%20Unaccompanied%20Alien%20Children%20from%20Trafficking%20and%20Other%20Abuses%202016-01-282.pdf> [https://perma.cc/2US5-R4D9].

30. U.S. SENATE PERMANENT SUBCOMM. INVESTIGATIONS, COMM. HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 29, at 22.

31. Off. Refugee Resettlement, *supra* note 25.

children. Overall, the agency lost immediate contact with a third of migrant children.”³²

When such a call does take place, a contracted care provider, typically from a social services agency funded by ORR, attempts to verify that the minor is safe, that the minor is attending school, and that the sponsor and minor are aware of any upcoming immigration court proceedings.³³ The caller is also supposed to try to speak with the minor separately from the sponsor. If no concerns are noted on the call, this will likely be the last time that anyone connected with ORR will communicate with the minor or sponsor.³⁴

In addition, ORR hosts a national helpline.³⁵ By calling this helpline, minors can report that they are not safe or can inquire about referral services, such as legal assistance, medical care, access to education, or mental health providers.³⁶ However, there is no guarantee the minors will receive the help or support they need.³⁷

Whether a minor receives any further communication after the thirty-day call can vary. Typically, post-release services are only given to minors who qualify for additional services, or when concerns are noted during the thirty-day call in rare circumstances. Historically, very few minors released to sponsors have received post-release services beyond the thirty-day phone call.³⁸ As the aforementioned story of Naomi illustrates,³⁹ even those minors and sponsors who receive some services are not greatly aided by the assistance. In fact, many contracted care providers opine that more minors and families ought to be assisted and that the offered services must be more robust.⁴⁰

ORR must ensure “that the interests of the child[ren] are considered in decisions and actions relating to the[ir] care and custody.”⁴¹ ORR is also charged with “coordinat[ing] and implement[ing] the *care* and placement” of unaccompanied minors.⁴² Yet, despite these directives, the TVPRA and ORR policy only mandates post-release services for select minors. Specifically, TVPRA post-release services are assigned to minors whose sponsor’s home requires a home study, which occurs if (1) the minor is a

32. Dreier, *supra* note 4.

33. See GREENBERG ET AL., *supra* note 20, at 10.

34. *Id.*

35. *Id.*

36. *Id.*

37. Dreier, *supra* note 4.

38. See U.S. SENATE PERMANENT SUBCOMM. INVESTIGATIONS, COMM. HOMELAND SEC. & GOVERNMENTAL AFFS., *supra* note 29, at 42.

39. See *supra* note 1 and accompanying text.

40. See GREENBERG ET AL., *supra* note 20, at 22–25; see also MARIGLYNN EDLINS, JENNICA LARRISON & ASHLEY GAVIN, LUTHERAN IMMIGR. & REFUGEE SERV., A PROFILE OF UNACCOMPANIED CHILDREN IN MARYLAND & VIRGINIA 30–32 (2018), <http://dx.doi.org/10.2139/ssrn.3247921> [<https://perma.cc/F9Q2-Q3Y9>]; GRACE & ROTH, *supra* note 27, at 33–37; Ryo & Humphrey, *supra* note 3, at 199–201.

41. 6 U.S.C. § 279(b)(1)(B).

42. *Id.* § 279(b)(1)(A) (emphasis added).

victim of trafficking, (2) the minor's health or welfare has been significantly harmed by physical or sexual abuse, (3) the minor is disabled, or (4) the proposed sponsor clearly presents a risk.⁴³ Similarly, ORR only designates post-release services in cases in which "[t]he child received a home study; [t]he child was released to a non-relative sponsor; or [t]he release was determined to be safe and appropriate but the unaccompanied alien child and sponsor would benefit from ongoing assistance from a community-based service provider."⁴⁴ In addition, case managers from ORR detention facilities can request that post-release services be implemented based upon their assessment that such services are necessary.⁴⁵ However, "[o]f the 122,484 minors released to sponsors throughout the United States in FYs 2015, 2016, and 2017, only 8,608 had a home study completed."⁴⁶ More recently, in FY 2022, DHS made 128,904 referrals to ORR, but a mere 8,619 home studies were conducted, and 55,960 minors received some post-release services.⁴⁷ This data suggests that home studies were conducted roughly 6 percent of the time, and post-release services were offered to about 43 percent of minors. The number of minors receiving home studies and post-release services jumped in FY 2022, as only 5,468 home studies (4 percent) were conducted in FY 2021, with 21,894 minors (18 percent) receiving post-release services.⁴⁸ It is unclear if this upward trend will continue.

Post-release services typically are provided by nonprofit organizations.⁴⁹ ORR does not specify what services the post-release service agencies must offer, nor does it recommend a model for what constitutes best practice in terms of post-release services. Instead, ORR mandates a list of services that all post-release service providers must offer.⁵⁰ Specifically, and according to ORR policy, the post-release providers are charged with coordinating services in the following areas: "placement and stability; immigration proceedings; guardianship; legal services; education; medical services; individual mental health services; family stabilization and counseling;

43. 8 U.S.C. § 1232(c)(3)(B).

44. Off. Refugee Resettlement, *ORR Unaccompanied Children Program Policy Guide: Section 6*, OFF. ADMIN. FOR CHILD. & FAMS., <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-6> [https://perma.cc/F4GU-LY56] (Jan. 31, 2023).

45. See GREENBERG ET AL., *supra* note 20, at 11.

46. Avrushin & Vidal de Haymes, *supra* note 9, at 113.

47. Off. Refugee Resettlement, *Facts Sheet and Data*, OFF. ADMIN. FOR CHILD. & FAMS., <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data> [https://perma.cc/U7HB-RY2Q] (Feb. 24, 2023).

48. *Id.*

49. See United Nations Refugee Agency, *United States Resettlement Partners*, UNHCR, <https://www.unhcr.org/en-us/us-resettlement-partners.html> [https://perma.cc/BL4T-ABY5] (last visited May 1, 2023). Some of the largest resettlement agencies include the Hebrew Immigrant Aid Society (HIAS), International Rescue Committee (IRC), Lutheran Immigration and Refugee Services (LIRS), and United States Conference of Catholic Bishops (USCCB).

50. See GRACE & ROTH, *supra* note 27, at 6.

substance abuse; and gang prevention, as needed and appropriate for the specific child and/or sponsor.”⁵¹

There also are two levels of post-release services. “Children and their sponsors receive ‘Level One’ services if they need additional assistance connecting to resources in the community or could benefit from ongoing assistance from a social welfare agency to address specific needs, such as mental health.”⁵² “Level Two” services are for those minors and sponsors who previously received Level One services but were found to be in need of more intensive case management, or for those families who were deemed to need a higher level of case management services at discharge.⁵³ Level Two services include: “regularly scheduled home visits (at least once a month), on-going needs assessments of the child, comprehensive case management, and access to therapeutic supports.”⁵⁴

In addition, the length of time that post-release services will be in place varies depending on the circumstances of the minor. If a minor received a home study pursuant to the TVPRA and is now receiving post-release services, the services must continue until the minor turns eighteen years of age, stabilizes their immigration status, receives a removal order, or takes a voluntary departure, whichever occurs first.⁵⁵ For minors receiving post-release services for other reasons, the services will only be in place for ninety days (unless ORR approves a longer period) or until the minor turns eighteen, whichever occurs first.⁵⁶

Referrals for certain services needed by minors often can be challenging to find, particularly in some suburbs and rural areas where there are relatively few providers for necessary medical and mental health services.⁵⁷ A recent and comprehensive study by the Migration Policy Institute revealed that services are severely lacking, and many minors and families, like the ones described above, struggle with financial pressures, lack of health insurance, and food insecurity.⁵⁸ Families also experience difficulty enrolling the minors in school and receiving appropriate services.⁵⁹ And finally, many minors continue to suffer from mental health concerns due to the trauma they previously suffered, transition issues with the sponsor family, and/or cultural differences between their lives in their home countries as compared to their lives in the United States.⁶⁰

51. Off. Refugee Resettlement, *supra* note 44 (see § 6.2.2); *see also id.* (see § 6.2.3).

52. *Id.* (see § 6.2.1).

53. *Id.* (see § 6.2.1).

54. *Id.*

55. *See* U.S. CONF. CATH. BISHOPS MIGRATION & REFUGEE SERVS. & LUTHERAN IMMIGR. REFUGEE SERVS., POST-RELEASE SERVICES: FAMILY PRESERVATION SERVICES FOR IMMIGRANT CHILDREN RELEASED FROM FEDERAL CUSTODY, FREQUENTLY ASKED QUESTIONS (FAQ)s 3 (2012), <https://www.usccb.org/about/children-and-migration/upload/LIRS-and-USCCB-Post-Release-Services-FAQs-Final.pdf> [<https://perma.cc/EBT2-5JU9>].

56. GREENBERG ET AL., *supra* note 20, at 12.

57. Off. Refugee Resettlement, *supra* note 44 (see § 6.2.2).

58. GREENBERG ET AL., *supra* note 20, at 20–22.

59. *Id.*

60. *Id.* at 20. *See generally* Cardoso et al., *supra* note 7.

III. HOW DO POST-RELEASE SERVICES COMPARE WITH SERVICES PROVIDED BY CHILD WELFARE AGENCIES?

Most child welfare systems, more aptly called family regulation systems by many reform advocates,⁶¹ are broken, operate in a racist manner, and disproportionately impact minors and families of color.⁶² However, the services these agencies are required to provide far exceed what is offered to migrant minors released to sponsors by ORR. Although the context for providing services to families enmeshed in our child welfare systems is different as compared to minors involved with ORR and immigration detention—the former being initiated after an instance of child abuse and neglect—one must ask why so much less support is offered to migrant minors placed with families.

This question is especially pertinent when one considers that many unaccompanied minors are equally as vulnerable as those minors who need the protection and support of our domestic child welfare programs. Both groups of minors are in the custody of a public agency. Both cohorts of minors have lived through traumatic experiences, including while in state care, whether in a foster home⁶³ or an ORR shelter.⁶⁴ And both sets of minors need stability, safety, and therapeutic services to help them heal.

61. See Ava Cilia, *The Family Regulation System: Why Those Committed to Racial Justice Must Interrogate It*, HARV. C.R.-C.L. L. REV. (Feb. 17, 2021), <https://harvardcrcl.org/the-family-regulation-system-why-those-committed-to-racial-justice-must-interrogate-it/> [<https://perma.cc/WR4U-2CE6>]; see also Emma Williams, 'Family Regulation,' Not 'Child Welfare': Abolition Starts with Changing Our Language, IMPRINT (July 28, 2020, 11:45 PM), <https://imprintnews.org/opinion/family-regulation-not-child-welfare-abolition-starts-changing-language/45586> [<https://perma.cc/4ENF-MMNC>].

62. See *Disproportionality and Race Equity in Child Welfare*, NAT'L CONF. STATE LEGISLATURES (Jan. 26, 2021), <https://www.ncsl.org/human-services/disproportionality-and-race-equity-in-child-welfare> [<https://perma.cc/6VX4-7QBF>]; see also DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD (2022); Dorothy Roberts, *Race and Class in the Child Welfare System*, PBS FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/caseworker/roberts.html> [<https://perma.cc/2VU4-22U8>] (last visited May 1, 2023); Alan J. Dettlaff, Kristen Weber, Maya Pendleton, Reiko Boyd, Bill Bettencourt & Leonard Burton, *It Is Not a Broken System, It Is a System that Needs to Be Broken: The upEND Movement to Abolish the Child Welfare System*, 14 J. PUB. CHILD WELFARE 500, 508–09 (2020); Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 534–41 (2019).

63. See Jonah E. Bromwich & Andy Newman, *Couple Accused of Using Foster Care System for Sex Trafficking Scheme*, N.Y. TIMES (Feb. 9, 2022), <https://www.nytimes.com/2022/02/09/nyregion/sex-trafficking-foster-care.html#:~:text=The%20authorities%20said%20the%20couple,Mitchell's%20foster%20children> [<https://perma.cc/3P9W-CZSV>]; see also Ashley L. Landers, Sharon M. Danes, Avery R. Campbell & Sandy White Hawk, *Abuse After Abuse: The Recurrent Maltreatment of American Indian Children in Foster Care and Adoption*, CHILD ABUSE & NEGLECT: INT'L J., Jan. 2021, at 1, 7–8; Nina Biehal, *Maltreatment in Foster Care: A Review of the Evidence*, 23 CHILD ABUSE REV. 48, 52 (2013).

64. See Richard Gonzales, *Sexual Assault of Detained Migrant Children Reported in the Thousands Since 2015*, NPR (Feb. 26, 2019, 7:40 PM), <https://www.npr.org/2019/02/26/698397631/sexual-assault-of-detained-migrant-children-reported-in-the-thousands-since-2015> [<https://perma.cc/8UB4-LP55>].

In the child welfare context, if a minor is found to be at imminent risk of harm or is otherwise unsafe with their parent, the minor will be temporarily and suddenly removed from the family home.⁶⁵ This triggers a court process in which, pursuant to federal law, the minor will be assigned a representative that in most states is an attorney.⁶⁶

Federal and state laws also mandate that kin be considered immediately as prospective, emergent caregivers and that placement with kin be supported in whatever way is necessary.⁶⁷ Recent reform efforts emphasize the importance of placing minors with kin if they cannot remain with one or both parents as a way to decrease the racist and traumatic effects of foster care and ensure that minors remain within their communities and cultures.⁶⁸ In fact, in the child welfare arena, relatives are strongly encouraged to care for minors through the provision of financial stipends; necessities, such as beds, linens, and clothing; and referrals to necessary community services.⁶⁹

In addition, caseworkers and other staff from the child welfare agency remain involved, in part, to ensure that the minor's transition from state custody to a relative's home goes smoothly and is in the child's best interest.⁷⁰ Child welfare case managers assist the relative with enrolling the minor in school, arranging for medical, dental, and mental health services, facilitating visitation between the minor and parents or siblings, and generally ensuring that the minor's needs are being met.⁷¹ Similarly, when

65. See CHILD.'S BUREAU, OFF. ADMIN. FOR CHILD. & FAMS., *HOW THE CHILD WELFARE SYSTEM WORKS* 5–6 (2020), <https://www.childwelfare.gov/pubpdfs/cpswork.pdf> [<https://perma.cc/6ZKF-Q6S8>].

66. Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified as amended at 42 U.S.C. §§ 5101–5116) (CAPTA). For a history of CAPTA, see CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUM. SERVS., *ABOUT CAPTA: A LEGISLATIVE HISTORY* (2019), <https://www.childwelfare.gov/pubPDFs/about.pdf> [<https://perma.cc/E3TH-QLUM>]. CAPTA requires all states to appoint a “guardian ad litem” (GAL) to represent the minor and the child's best interest in a case of abuse or neglect. 42 U.S.C. § 5106a(b)(2)(B)(xiii). The GAL can be either a lawyer or a “court-appointed special advocate” (CASA) or both. *Id.*

67. See Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.); see also Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949; Family First Prevention Services Act, Bipartisan Budget Act of 2018, Pub. L. No. 115-123, 132 Stat. 64, 232–69 (codified as amended in scattered sections of 42 U.S.C.).

68. See *About Kinship Care*, U.S. DEP'T HEALTH & HUM. SERVS., <https://www.childwelfare.gov/topics/outofhome/kinship/about/> [<https://perma.cc/A7X3-5CKV>] (last visited May 1, 2023); see also Heidi Redlich Epstein, *Kinship Care is Better for Children and Families*, AM. BAR ASS'N (July 1, 2017), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/ [<https://perma.cc/UFH4-GW72>].

69. See 42 U.S.C. § 671.

70. See GRANDFAMILIES, *FAMILY FIRST PREVENTION SERVICES ACT: IMPLEMENTING THE PROVISIONS THAT SUPPORT KINSHIP FAMILIES* 8 (2021), <https://www.grandfamilies.org/Portals/0/Documents/FFPSA/FFPSA%20kinship%20checklist.pdf> [<https://perma.cc/3XJQ-VZVY>].

71. See *The Role of Foster Care Social Workers in Promoting Child Welfare*, VA. COMMONWEALTH UNIV. SCH. SOC. WORK (Oct. 21, 2022), <https://onlinesocialwork.vcu.edu/blog/foster-care-social-worker/> [<https://perma.cc/QA96-T4D9>].

a minor is reunified with one or both parents after spending time in foster care, the child welfare agency is tasked with supporting the minor's transition back into the family home, providing whatever supportive services are necessary.⁷²

This comparison is not intended to idealize or ignore the serious failings of the child welfare systems. The concerns and critiques of these systems are warranted,⁷³ and there remains a great need to reimagine how we assist minors in remaining with parents or other family members. Yet, the fact that the U.S. government has created an obligation, cemented in law and policy, to assist caregivers who take in relative minors is an important principle.

IV. ORR MUST DO MORE FOR MINORS RELEASED FROM ITS CUSTODY

It can be quite challenging for relative sponsors to take in minors for whom they have never cared, or for whom they have not cared in a long time. In the case of a minor placed by ORR with a sponsor, these new relationships are taxed even further. The caregiver is rarely provided with any support or assistance to care for the minor and is not automatically afforded any legal authority to act in the child's best interest.

Given the exceedingly high number of unaccompanied minors being placed with sponsors, the time is ripe to thoughtfully augment post-release services. Such modifications must not only increase the number of minors who are able to receive these services but must also enhance the quality and intensity of the services offered, as well as how they are delivered. Providing assistance to minors and sponsors increases the likelihood that these family placements will be successful and improves minors' lives. Ideally, this assistance will lead to fewer minors needing the services of child welfare agencies, like Rafael,⁷⁴ whose needs became too much for his new family to handle.

Although many child advocates have consistently pushed for increased post-release assistance, very little has been offered, and the proposals have been overly rigid and misaligned with what families and minors need and are seeking. For example, in the 2021 to 2022 legislative session, Senators Rob Portman, Richard Blumenthal, James Lankford, and Tom Carper introduced the Responsibility for Unaccompanied Minors Act.⁷⁵ This bill specifically charges HHS with the responsibility of caring for certain unaccompanied minors even after their release to sponsors.⁷⁶ In addition, the act: (1) requires that post-release services be offered to all unaccompanied minors placed with sponsors until the minor's immigration court case is resolved or the minor

72. *See generally* CHILD.'S BUREAU, OFF. ADMIN. FOR CHILD. & FAMS., REUNIFICATION: BRINGING YOUR CHILDREN HOME FROM FOSTER CARE (2016), <https://www.childwelfare.gov/pubPDFs/reunification.pdf> [<https://perma.cc/9MJN-8VTC>].

73. *See supra* note 62 and accompanying text.

74. *See supra* note 1 and accompanying text.

75. Responsibility for Unaccompanied Minors Act, S. 772, 117th Cong. (2021).

76. *Id.* § 2(2).

turns eighteen;⁷⁷ (2) instructs that sponsors cannot refuse post-release services;⁷⁸ (3) mandates background checks of all proposed sponsors, even parents;⁷⁹ and (4) sets up a system whereby the local child welfare agency in the region where the sponsor resides is informed of the placement of the unaccompanied minor with the sponsor.⁸⁰

Clarity concerning HHS's ongoing responsibility and an increase in post-release services are necessary and must be consistent with current law (namely the TVPRA). However, many of these proposed legislative reforms go too far, especially when one considers that the majority of minors are being placed with parents or immediate relatives.⁸¹ Rather than insisting on rigid mandates, the needs and best interests of the minors must be balanced against the important constitutional tenets of family integrity and privacy that should, and in some instances must, be afforded to families. The U.S. Supreme Court has long recognized family integrity as a core interest protected by the U.S. Constitution.⁸² And at the state level, statutory provisions and rules restrict state intervention in the family unless there is imminent risk of harm to a minor.⁸³

It also is critical to consider that many of the families with whom the minors have been placed may be undocumented, and thus, may have an understandable trepidation of any involvement with the U.S. government, especially if it involves ongoing intervention into the family sphere. At times, this fear is so strong that family members are even unwilling to come forward to take in a minor who is in ORR custody. Additionally, many of the minors and families view ORR and other governmental entities in an adversarial posture. After all, it was these agencies who may have separated them from each other when they first arrived or kept siblings apart during their time in ORR custody. Many minors also find their time in ORR custody to be difficult, if not harrowing, contributing to their vulnerability and trauma. Accordingly, it is understandable that minors and families may view even the most well-intentioned post-release services, and even the thirty-day phone call, with distrust and reluctance, if not fear.

Based on all the above, when restructuring post-release services, it is best to consider what the important guiding principles are, rather than imposing

77. *Id.* § 3.

78. *Id.* § 4.

79. *Id.* § 5.

80. *Id.* § 4.

81. In FY 2015, 60 percent of minors were released from ORR to a parent living in the United States. U.S. GOV'T ACCOUNTABILITY OFF., GAO 20-609, UNACCOMPANIED CHILDREN: ACTIONS NEEDED TO IMPROVE GRANT APPLICATION REVIEWS AND OVERSIGHT OF CARE FACILITIES (2020).

82. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *see also Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Moore v. City of E. Cleveland*, 431 U.S. 494 (1977); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (concluding that there is a "fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion).

83. *See* CHILD.'S BUREAU, OFF. ADMIN. FOR CHILD. & FAMS., *supra* note 65, at 5-7.

inflexible decrees and rigid mandates. Anecdotal evidence, along with recent studies, sheds light on what some of these standards should be, highlighting the need to employ evidence-based strategies.⁸⁴

A. Post-Release Services Must Be Funded by the Federal Government

Post-release services must continue to be funded by the federal government, and such funding should increase. If left up to the states and local municipalities, there will be great differences between what migrant minors can receive in one state as compared to another. In addition, because a few states serve as home to the majority of unaccompanied minors,⁸⁵ if services are not federally funded, it will place an unfair burden on those states and localities.

There is precedent for such federal funding of state and local services. Through a funding scheme that was originally set forth in the Social Security Act,⁸⁶ much of the funding for our domestic foster care programs derives from the federal government, specifically HHS, despite the fact that minors are initially placed into the custody of a state- or county-based child welfare agency.⁸⁷ Yet, with regard to unaccompanied minors who are actually placed into the custody of HHS, specifically ORR, HHS does not accept any financial responsibility for the vast majority of minors once they are placed with a sponsor.

B. Post-Release Services Should Be Offered to All Unaccompanied Minors Without Time Restrictions⁸⁸

Services must be offered to all minors and families, regardless of who the sponsor is. Whether the sponsor is a parent, close relative, distant relative,

84. See GREENBERG ET AL., *supra* note 20; see also GRACE & ROTH, *supra* note 27; Ryo & Humphrey, *supra* note 3; LUTHERAN IMMIGR. & REFUGEE SERV., FOLLOW-UP SERVICES RECOMMENDATIONS: FINAL RECOMMENDATIONS FROM ASSESSING NEED AND UTILIZATION OF COMMUNITY SERVICES AMONG UNACCOMPANIED MIGRANT YOUTH RELEASED WITHOUT FOLLOW-UP SERVICES (2016), <https://www.lirs.org/assets/2474/lirs-recommendations.pdf> [<https://perma.cc/XAK2-5H67>].

85. See GREENBERG ET AL., *supra* note 20, at 9; see also Off. Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, OFF. ADMIN. FOR CHILD. & FAMS. (Mar. 9, 2023), <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state> [<https://perma.cc/6RDY-KD8H>]. Historically, since FY 2014, *half* of all minors released from ORR custody are released to parents or other sponsors in five states: Texas, California, Florida, New York, and Maryland. See *id.* However, since FY 2019, New Jersey has outnumbered Maryland. See *id.* In FY 2022, of the total 127,447 unaccompanied minors who were released, 19,071 were released to sponsors in Texas, 13,730 in California, 13,195 in Florida, 8,534 in New York, and 6,648 in New Jersey. *Id.*

86. Ch. 531, 49 Stat. 620 (codified as amended in scattered sections of 42 U.S.C.).

87. See 42 U.S.C. §§ 621–624.

88. See GREENBERG ET AL., *supra* note 20, at 42 (recommending that “ORR should extend case management to all children for the first 90 days after they are released from federal custody and identify circumstances in which it should be provided beyond that”); see also GRACE & ROTH, *supra* note 27, at 33. Dr. Breanne L. Grace and Dr. Benjamin J. Roth also recommend more flexible post-release services with the option to extend beyond six months. *Id.* at 35.

or nonrelative, the family should receive aid in caring for minors, including helping them to heal from past traumas and easing their transitions to life in the United States.⁸⁹ If any criterion should be implemented to limit or lengthen the provision of services, it should be based upon the needs of the minor and the past trauma that they suffered, not the relationship between the sponsor and the minor.

Additionally, post-release services must not have any strict time restrictions. As explained above, some post-release services are time limited, while others continue until the minor turns eighteen or their immigration court case concludes. If the provision of services is intended to be child- and family-centered, then any decision to limit services should be solely based on the needs of the minor and/or sponsor. Although some mandates regarding the length of time that services are offered may be warranted, flexibility based on individual circumstances must be the guiding principle.

C. Post-Release Services Must Be Comprehensive and Include Legal Services

Additionally, post-release services must be comprehensive and must encompass not only enhanced case management and referral services but also the appointment of an immigration attorney at public expense,⁹⁰ publicly funded health insurance, and the ability for low-income sponsors to receive financial assistance if needed. Greater case management services will help ensure that minors are safe, enrolled in school, and connected to services. Yet, without the actual provision of legal assistance, health insurance, and

89. See EDLINS ET AL., *supra* note 40, at 30.

90. See GREENBERG ET AL., *supra* note 20, at 41–42; see also Shaina Aber, Megan Mack & Erica Bryant, *End the Cycle of Crises for Unaccompanied Immigrant Children*, IMPRINT (May 4, 2021), <https://imprintnews.org/child-welfare-2/end-cycle-crises-unaccompanied-immigrant-children/54095> [<https://perma.cc/HK9R-M2L9>]. Shaina Aber, Megan Mack, and Erica Bryant discuss the recommendation of the Vera Institute of Justice to provide representation to unaccompanied minors, remarking that:

Children cannot be expected to navigate complex and confusing immigration proceedings alone, so it is imperative that every child facing deportation have access to legal representation. The government should work to increase the number of attorneys who can work with unaccompanied children by adding federal funding for programs that provide direct representation.

Aber et al., *supra*; see also Erica Bryant, *Immigrants Facing Deportation Do Not Have the Right to a Publicly Funded Attorney. Here's How to Change That.*, VERA INST. JUST. (Feb. 9, 2021), <https://www.vera.org/news/immigrants-facing-deportation-do-not-have-the-right-to-a-publicly-funded-attorney-heres-how-to-change-that> [<https://perma.cc/26BF-B38Z>]; KIDS IN NEED OF DEF., KIND BLUEPRINT: CONCRETE STEPS TO PROTECT UNACCOMPANIED CHILDREN ON THE MOVE 6–8 (2020), <https://supportkind.org/wp-content/uploads/2020/11/KIND-Blueprint-Concrete-Steps-to-Protect-Unaccompanied-Children-on-the-Move-FINAL-2.pdf> [<https://perma.cc/9JL-NSX9>]. Kids in Need of Defense (KIND) recommends that “[t]he U.S. Government should ensure that all unaccompanied children in immigration proceedings have attorneys.” KIDS IN NEED OF DEF., *supra*, at 2; see also Shani M. King, *Alone and Unrepresented: A Call to Congress to Provide Counsel for Unaccompanied Minors*, 50 HARV. J. LEGIS. 331, 332–35 (2013) (recommending that human rights standards apply to the plight of unaccompanied minors and arguing that all unaccompanied minors should have attorneys).

basic necessities, these minors and families will continue to struggle and live in the shadows.

For example, publicly supported health insurance will guarantee that minors receive necessary medical and mental health services. Although a few states provide health insurance to low-income minors, regardless of immigration status, most do not.⁹¹ Thus, minors and their sponsors are left to try and access the limited number of free or low-cost providers on their own. This often leads to minors, like Marta and Amelia,⁹² failing to receive necessary and critical care. In addition, there are times when sponsors need financial remuneration for the cost of caring for the minor(s) in their charge. Many sponsors find themselves in marginal financial situations and the cost of raising a minor, especially a vulnerable and traumatized minor, may be more than they can afford. This adds strain to an already stressful situation.

Post-release providers also consistently state that referrals for legal services are the most important, yet most difficult to obtain, services due to limited resources.⁹³ While in ORR custody, the minors receive a “Know Your Rights” presentation and legal screening.⁹⁴ The TVPRA directs HHS to “ensure to the greatest extent practicable,” and consistent with provisions of the Immigration and Nationality Act,⁹⁵ that all unaccompanied minors in the custody of HHS or DHS “have counsel to represent them in legal proceedings or matters and to protect them from mistreatment, exploitation, and trafficking.”⁹⁶ Yet, ORR views its obligation to provide counsel as nullified when minors are released to sponsors, despite the fact that most minors are unable to have their immigration cases adjudicated while they are in ORR custody. Consequently, “[r]ecent estimates indicate that almost 70 percent of immigrant children in removal proceedings in fiscal year 2019 lacked legal representation.”⁹⁷

91. See *Health Coverage and Care of Immigrants*, KAISER FAM. FOUND. (Dec. 20, 2022), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants/> [<https://perma.cc/F2M6-Z98B>]. As of January 2023, ten states (California, Illinois, Maine, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, and Connecticut) and the District of Columbia “provide comprehensive state-funded coverage to all income-eligible children, regardless of immigration status.” *Id.*; see, e.g., *NJ FamilyCare to Cover All Kids*, LEG. SERV. N.J., <https://www.lsnjlaw.org/legal-topics/Health-Care/New-Jersey-FamilyCare/Pages/Cover-All-Kids-January.aspx> [<https://perma.cc/E5UG-ULTG>] (last visited May 1, 2023); N.J. Dep’t of Hum. Servs., *Cover All Kids*, STATE OF N.J., <https://nj.gov/coverallkids/> [<https://perma.cc/EE59-KYB2>] (last visited May 1, 2023).

92. See *supra* note 1 and accompanying text.

93. See GRACE & ROTH, *supra* note 27, at 3; see also JAYSHREE JANI, UNIV. MD. BALT. COLL. & LUTHERAN IMMIGR. & REFUGEE SERVS., FOLLOW-UP SERVICES REPORT: ASSESSING NEED AND UTILIZATION OF COMMUNITY SERVICES AMONG UNACCOMPANIED MIGRANT YOUTH RELEASED WITHOUT FOLLOW-UP SERVICES 2 (2016), <https://www.lirs.org/assets/2474/lirs-umb-reseach.pdf> [<https://perma.cc/M5JJ-YHHF>].

94. See GREENBERG ET AL., *supra* note 20, at 11; see also 8 U.S.C. § 1232(c)(5).

95. 8 U.S.C. § 1362.

96. 8 U.S.C. § 1232(c)(5).

97. Ryo & Humphrey, *supra* note 3, at 200 (citing *Unaccompanied Juveniles—Immigration Court Deportation Proceedings*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE, <https://trac.syr.edu/phptools/immigration/juvenile/> [<https://perma.cc/M6JE->

The importance of an attorney cannot be overstated.⁹⁸ At least one study has shown that 73 percent of unaccompanied minors who were represented in court were granted permission to stay in the United States, compared to only 15 percent of unrepresented unaccompanied minors.⁹⁹ Lawful permanent residence status not only stabilizes the minor's immigration status, it also enables the minor to be a more active member of our society, to achieve self-sufficiency, and to successfully transition into adulthood. Once a minor has lawful permanent resident status, the minor will be able to work lawfully, receive aid for college and vocational programs, obtain a professional license, if applicable, and live a life without fear of deportation.¹⁰⁰

D. Post-Release Services Must Be Disconnected from DHS and HHS and Combined with Legal Services¹⁰¹

As previously alluded to, even if comprehensive services are offered, many sponsors may not avail themselves of such assistance because they are concerned about the impact on their own lives, particularly their own immigration status. Many sponsors are themselves undocumented or in the process of stabilizing their immigration status. Justifiably, they will avoid doing anything that makes them seem dependent upon the government or that will initiate or deepen contact with DHS. Thus, although post-release services should be funded by the federal government, the actual provision of services and any reporting functions between the contracted providers and DHS or HHS must be severed. It is essential that the post-release service providers assure the minors and families that involvement in such services will never connect them with DHS or HHS. Even with the guarantee of confidentiality, many families will refuse or still be reluctant to participate. Yet, hopefully over time such trust can be developed between the community and service providers. The more services that are targeted at the needs of the families and that are delivered by organizations grounded and based in the community in which the families live, the more likely this trust will develop.

A promising approach to ensure the independence of post-release services is to center them at legal services offices or organizations. Not only will minors and families be more likely to approach an attorney than a social

5XMH] (last visited May 1, 2023)). In FY 2019 (through September 2019), 128,286 minors out of 181,200 minors were unrepresented by an attorney. *Id.* at 200 n.154.

98. See Erica Bryant, Alyssa Snider & Becca DiBennardo, *No Child Should Appear in Immigration Court Alone*, VERA INST. JUST. (Jan. 28, 2022), <https://www.vera.org/news/no-child-should-appear-in-immigration-court-alone> [<https://perma.cc/NT2V-DTSX>]; see also King, *supra* note 90, at 332–35.

99. See GREENBERG ET AL., *supra* note 20, at 13.

100. See ANGIE JUNCK, ALISON KAMHI & RACHEL PRANDINI WITH KRISTEN JACKSON, SPECIAL IMMIGRANT JUVENILE STATUS AND OTHER IMMIGRATION OPTIONS FOR CHILDREN AND YOUTH 57–58 (5th ed. 2018).

101. See GREENBERG ET AL., *supra* note 20, at 42. The authors recommend that “HHS should ensure that post-release services have no connection to immigration enforcement.” *Id.* at 5, 42.

service agency, but the confidential nature of the attorney-client relationship will also afford the case management services added protections of privacy. Under the Rules of Professional Responsibility that bind attorneys, anyone who is considered an “agent” of the attorney must adhere to the attorneys’ code of confidentiality, with some exceptions.¹⁰² Collaborative or integrative models that include lawyers and social workers have long been recognized as an effective practice of providing legal and other services to vulnerable minors.¹⁰³

New Jersey has recently developed a model of such a practice concerning immigrant minors. In June 2021, New Jersey’s legislature appropriated \$3 million to the legal representation and case management of unaccompanied and similarly situated minors.¹⁰⁴ An increase to \$4.5 million was provided in June 2022.¹⁰⁵ Legal service organizations not only provide legal representation but also hire social workers to work with the attorneys and provide case management services.¹⁰⁶

Other optimal approaches might look to medical-legal partnerships, such as Terra Firma in New York,¹⁰⁷ or school-based initiatives, where schools, either through staff or through partnerships with community organizations, offer medical, social, and/or mental health services to unaccompanied minors.¹⁰⁸ For example, Oakland Unified School District (OUSD) in Alameda County, California (home to the second-largest population of unaccompanied minors in California) has hired social workers and created

102. See MODEL RULES OF PRO. CONDUCT r. 1.6, 5.3 (AM. BAR. ASS’N 2020).

103. See Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123, 2131 (1999); ANUSHIA ANDREWS & LAUREN TARVER, REVIEW OF THE LITERATURE ON INTEGRATED SOCIAL WORK AND LEGAL PRACTICE 3–4 (2020), <https://cij.org.au/cms/wp-content/uploads/2020/12/literature-review-on-integrated-practice-november-2020.pdf> [<https://perma.cc/N4G4-V9G6>]; ANDREA MATEI, JEANETTE HUSSEMAN & JONAH SIEGEL, ASSESSING A SOCIAL WORKER MODEL OF PUBLIC DEFENSE: FINDINGS AND LESSON LEARNED FROM GENESEE COUNTY, MICHIGAN 2 (2021), https://www.urban.org/sites/default/files/publication/103811/assessing-a-social-work-model-of-public-defense_1.pdf [<https://perma.cc/DGP7-GM5G>]; THEA ZAJAC, SOCIAL WORKERS AND LEGAL SERVICES INTEGRATING DISCIPLINES: LESSONS FROM THE FIELD 1 (2011), <https://www.laaonline.org/wp-content/uploads/Social-Work-and-Legal-Services-Integrating-Disciplines-Lessons-from-the-Field-1-1.pdf> [<https://perma.cc/A29P-BKHJ>].

104. See Hannan Adely, *Immigrant Children Often Face Deportation Hearings Without a Lawyer. NJ Wants to Change That*, NORTHJERSEY.COM (June 29, 2021, 3:54 PM), <https://www.northjersey.com/story/news/new-jersey/2021/06/29/nj-budget-includes-legal-aid-unaccompanied-minors-immigration/5345936001/> [<https://perma.cc/T8ZJ-YCWX>]. Further information regarding the appropriation is on file with the author.

105. S. 2023 at 132, 2022 Sen., 2022–23 Sess. (N.J. 2022), https://pub.njleg.state.nj.us/Bills/2022/S2500/2023_11.PDF [<https://perma.cc/JCT4-UPL2>].

106. Press Release, N.J. Dep’t of Hum. Servs., Human Services Partners with KIND to Provide Free Legal Counsel & Social Services Support to Migrant Children & Youth (Mar. 22, 2022), <https://www.nj.gov/humanservices/news/pressreleases/2022/approved/20220322.html> [<https://perma.cc/Y2XC-WPGN>].

107. See *About Us*, TERRA FIRMA, <https://www.terrafirma.nyc/about-us> [<https://perma.cc/P2XR-FFD9>] (last visited May 1, 2023).

108. See GREENBERG ET AL., *supra* note 20, at 25–28; see also Cardoso et al., *supra* note 7, at 285–86.

fifteen “‘newcomer’ centers” at schools with a high number of migrant minors.¹⁰⁹ OUSD also hosts a small alternative school, Oakland International High School, solely focused on recently arrived immigrant teens.¹¹⁰ This school, which is part of the Internationals Network for Public Schools,¹¹¹ enrolls students who hail from all over the world and together they “learn English and math as they also learn to navigate new lives far from where they were born.”¹¹²

E. Child Advocate Programs Should Be Expanded

In examining how post-release services can be improved and enhanced, consideration should also be given to expanding the Child Advocate program so that more minors can benefit from this important advocacy resource. The TVPRA mandates that a “Child Advocate” be appointed for minor trafficking victims and other vulnerable unaccompanied minors.¹¹³ Their charge is to advocate for the best interest of the minor.¹¹⁴ The Young Center for Immigrant Children’s Rights is the agency currently appointed to serve as Child Advocates.¹¹⁵ However, not all minors are afforded Child Advocates. Typically, only those found to be victims of trafficking or otherwise “especially vulnerable” are assigned a Child Advocate.¹¹⁶ ORR also tends to limit their appointment to minors who remain in ORR custody.¹¹⁷

Importantly, Child Advocates are not necessarily attorneys, and even if they are, they do not directly represent minors in immigration proceedings.¹¹⁸ Instead, the “purpose of appointing a Child Advocate is to ensure that the [b]est [i]nterests of the [c]hild are identified and communicated.”¹¹⁹

109. See Carolyn Jones, *Far from Home and Alone: Unaccompanied Immigrant Youth Find Refuge in Oakland Unified*, EdSOURCE (July 18, 2018), <https://edsources.org/2018/far-from-home-and-alone-unaccompanied-immigrant-youth-find-refuge-in-oakland-unified/600280> [<https://perma.cc/D8PY-J6ZC>].

110. See Theresa Harrington, *Innovative Oakland High School for New Immigrant Students a Model in California*, E. BAY TIMES (May 28, 2018, 7:08 PM), <https://www.eastbaytimes.com/2018/05/27/innovative-oakland-high-school-for-new-immigrant-students-a-model-in-california/> [<https://perma.cc/YZ3J-Y9DA>].

111. INT’LS NETWORK, www.internationalsnetwork.org [<https://perma.cc/QS96-CYLW>] (last visited May 1, 2023).

112. Harrington, *supra* note 110.

113. 8 U.S.C. § 1232(c)(6).

114. *Id.*

115. See *About the Young Center*, YOUNG CTR. FOR IMMIGRANT CHILD.’S RTS., <https://www.theyoungcenter.org/about-the-young-center> [<https://perma.cc/44H5-JP7K>] (last visited May 1, 2023). The Young Center views its role as an “advocate for [the child’s] best interests—from custody and release to the ultimate decision about whether the child will be allowed to remain in the U.S.” *Id.*

116. *Child Advocate Program*, YOUNG CTR. FOR IMMIGRANT CHILD.’S RTS., <https://www.theyoungcenter.org/child-advocate-program> [<https://perma.cc/4RZ6-NWX8>] (last visited May 1, 2023) (“The children served by the Young Center [Child Advocates] are those considered the most vulnerable . . .”).

117. Off. Refugee Resettlement, *supra* note 25 (“In most cases, ORR appoints Child Advocates while children are in its custody.”).

118. *Child Advocate Program*, *supra* note 116.

119. AM. BAR ASS’N COMM’N ON IMMIGR., STANDARDS FOR THE CUSTODY, PLACEMENT AND CARE; LEGAL REPRESENTATION; AND ADJUDICATION OF UNACCOMPANIED ALIEN CHILDREN IN

Therefore, Child Advocates help to ensure that minors are connected with attorneys; that they have the medical, mental health, and educational services they need for their wellbeing; and that decision-makers, including state court judges, immigration judges, and asylum officers, consider the minor's best interests when making decisions.¹²⁰ Accordingly, both a Child Advocate and an attorney will be necessary for many minors. This will be especially important for young children, minors with special needs, and minors who do not have a parent or legal guardian in this country or whose parents or legal guardians have acted contrary to the child's best interest.¹²¹

F. ORR Must Specify What Is Expected of Post-Release Contracted Providers¹²²

As explained above, ORR does not set forth any policies or models for how the contracted post-release service agencies should deliver assistance and services to minors and families. Although this flexibility gives the agencies considerable latitude to provide services based on community resources and needs, as well as the unique needs of a given minor or family, it places a great burden on the contracted agencies to develop an effective service-delivery model.¹²³ “The ambiguity of ORR’s expectations, the variance in resources by geographical local, individual case manager priorities, and a spectrum of [unaccompanied alien children’s] needs all complicate an open-ended model.”¹²⁴ Without any standards or guidance, there is almost no accountability on the part of the service providers to ORR or the minors and families, and little understanding of what is expected from post-release agencies and their staff. It also means that there is great variance between what is offered by one contracted provider and another.

Looking forward, HHS should develop standards and models for what is expected of the post-release agencies with whom it contracts. Specifically, it should provide guidance on the scope of services that should be offered, the competency and experience level of the staff, how and by whom the assistance should be performed, and the frequency and manner with which home visits and other services should be conducted. To inform this work, HHS can look to policies and best practices from child welfare institutions around the country. These agencies are working with and striving to support

THE UNITED STATES 24 (2018), https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/standards_for_children_2018.pdf [https://perma.cc/7294-8RV6].

120. *Child Advocate Program*, *supra* note 116.

121. YOUNG CTR. FOR IMMIGRANT CHILD’S RIGHTS, REIMAGINING CHILDREN’S IMMIGRATION PROCEEDINGS: A ROADMAP FOR AN ENTIRELY NEW SYSTEM CENTERED AROUND CHILDREN 5, 14 (2020), <https://static1.squarespace.com/static/597ab5f3beba60a625aaf45/t/5f9acdc38fc5b520e882eb1/1603980749320/Reimagining+Children%E2%80%99s+Immigration+Proceedings+Young+Center+for+Immigrant+Children%27s+Rights.pdf> [https://perma.cc/ZCE2-MCMS].

122. *See* GRACE & ROTH, *supra* note 27, at 4.

123. *Id.* at 6.

124. *Id.*

families daily. Further, there is a wealth of evidence-based practices concerning family-centered preservation services, as well as an abundance of literature and guidance on how to effectively deliver in-home services to families, especially when cultural differences, language, and fear may cause families to be reluctant to accept and access services.¹²⁵ HHS itself also has issued some guidance on how to work with families that may be instructive.¹²⁶

G. Post-Release Services Must Be Provided in the Communities Where the Sponsor and Minors Reside

In addition to the creation of standards, HHS and ORR must mandate that post-release service agencies are located in the communities where the minors and sponsors reside. Too often, the post-release organization is in another state and hundreds of miles from the minor and sponsor, forcing any contact to occur by phone.¹²⁷ This provides little protection for the minor should there be a safety issue. Further, it does not allow for the case manager to conduct in-person assessments of how the minor is doing to determine what services and assistance may be needed. Additionally, it does not enable the case manager and the minor and family to build trust and rapport, which is critical in the delivery of social services.¹²⁸ The opening story concerning Naomi is a good example of what can occur if the post-release case manager and the minor and sponsor are miles apart, when the only contact is an occasional phone call.¹²⁹ Moreover, if post-release agencies are situated in the communities where the families reside, the agencies will be better able to develop a knowledge base of what services are available, learn the processes concerning school enrollment, and make connections that will aid the minors and families.¹³⁰

CONCLUSION

Without question, minors should be released from HHS and DHS detention as expeditiously as possible. Moreover, all policies that disincentivize family and close friends from welcoming minors into their homes, such as the sharing of information between HHS and DHS and/or arresting and detaining undocumented relatives that take in a minor,¹³¹

125. *See id.* at 27; GREENBERG ET AL., *supra* note 20, at 14; *Health Coverage of Immigrants*, KAISER FAM. FOUND., <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/> [<https://perma.cc/5EWT-VWZE>] (last visited May 1, 2023).

126. *See* Off. Refugee Resettlement, *supra* note 44 (detailing the post-release services offered by ORR in § 6.2).

127. *See* GREENBERG ET AL., *supra* note 20, at 39–40.

128. *See* JANI, *supra* note 93, at 4.

129. *See supra* note 1 and accompanying text.

130. *See* JANI, *supra* note 93, at 5.

131. *See* Laila Hlass, *The Adultification of Immigrant Children*, 34 GEO. IMMIGR. L.J. 199, 231–32 (2020); Tal Kopan, *ICE Arrested Undocumented Immigrants Who Came Forward to Take in Undocumented Children*, CNN (Sept. 20, 2018, 4:09 PM), <https://www.cnn.com/2018/09/20/politics/ice-arrested-immigrants-sponsor-children> [<https://perma.cc/N373-E5V6>].

should be abolished. Yet, for these reunions and family placements to be successful, ORR must maintain responsibility for safeguarding the well-being of unaccompanied minors when they are discharged to family members and friends in the community. As explained above, ORR must ensure “that the interests of the child[ren] are considered in decisions and actions relating to [their] care and custody.”¹³² ORR also is charged with “coordinat[ing] and implement[ing] the *care* and placement of unaccompanied minors.”¹³³ Accordingly, although minors may no longer be in ORR’s legal custody once placed with a sponsor, the obligation to ensure that the minors are safe, that their transitions are smooth, and that their needs—including for legal representation and health insurance—are being met, must continue after release.

An exact prescription of how post-release services should be restructured and improved requires significant thought and careful consideration, keeping in mind the principles described above and the genuine fears, needs, and sensitivities of the minors and families. Yet, what is clear is that the current provision of post-release support and assistance is severely lacking, leaving many minors, like Naomi, Marta, Amelia, and Rafael, in desperate situations.¹³⁴

Providing enhanced and timely post-release services will not only help avoid these crisis situations and ensure that already traumatized minors do not suffer further, but may also allow minors to leave ORR custody sooner by alleviating any concerns about the minors’ post-discharge wellbeing. Thus, Amelia may have avoided hospitalization if her aunt had been able to secure outpatient therapeutic services; Naomi might not have missed so much school if there had been earlier and more effective intervention; Rafael may have been able to remain with his uncle if the family had received some financial assistance; and Marta would not have remained in detention for more than one year simply because she needed heart surgery that she could not receive outside of ORR custody.¹³⁵

ORR has an obligation to do better. It is time the agency accepted its duty to ensure that the needs of unaccompanied minors are met even when they leave ORR custody. All families and minors deserve such support and protection, especially when at least some of the trauma may be the result of the way the minors were cared for and treated while in governmental custody.

132. 6 U.S.C. § 279(b)(1)(B).

133. *Id.* § 279(b)(1)(A) (emphasis added).

134. *See* GREENBERG ET AL., *supra* note 20, at 12–19; *see also supra* note 1 and accompanying text.

135. *See supra* note 1 and accompanying text.