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# Learning from Youth: Envisioning Freedom for Unaccompanied Children

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# Introduction: Centering the voices of impacted people

Hundreds of thousands of unaccompanied children and youth from around the world have arrived in the United States over the past decade seeking protection from violence, targeted persecution, war, abandonment, abuse, and insecurity.<sup>1</sup> Most have family members already living in the United States with whom they wish to reside. It has been more than a decade since the number of children arriving to the United States unaccompanied significantly increased for the first time, and yet designing a system of reception and family reunification that centers compassion and dignity rather than confinement has eluded the last three presidential administrations. Policymakers in the child welfare and juvenile justice arenas have increasingly recognized the importance of meaningfully integrating youth directly affected by these systems into the process of designing evidence-based, person-centered solutions to complex problems. Immigration policymakers should follow suit and seek the guidance of those with firsthand knowledge of navigating the U.S. immigration system as unaccompanied children. People who have been personally impacted by the U.S. immigration system are uniquely qualified to propose solutions. Moreover, participating in the conceptualization of and advocacy for systemic change can be empowering for people who have had dehumanizing experiences with justice systems.<sup>2</sup> Merely involving young people with lived experience in policy conversations is insufficient; rather than being shallow and tokenistic, participation should be designed to promote meaningful engagement.<sup>3</sup> The U.S. Department of Health and Human Services (HHS) has already invested in mapping participation models for children with experience in government care through the development of a Youth Engagement Blueprint. The Children's Bureau, an office of the Administration of Children and Families under HHS, developed the Youth Engagement Blueprint to guide state child welfare agencies on how to meaningfully engage current and former foster youth in policy and service-delivery decisions.<sup>4</sup> The same principles underpin the need for government agencies and organizations to identify approaches to engage young people currently or formerly detained in the custody of the Office of Refugee Resettlement (ORR): engaging with system-impacted children and youth promotes developmentally appropriate government services, improves cultural responsiveness, reinforces resiliency and autonomy, and supports the well-being of impacted people.<sup>5</sup> In Germany, for example, 130 young immigrants collaborated with other stakeholders to develop minimum protections standards and to generally improve Germany's approach to the reception and integration of youth who immigrate unaccompanied.<sup>6</sup> A similar approach can and should be taken in the United States.

In such a vein, the Vera Institute of Justice (Vera) intentionally engaged with 32 young adults (over the age of 18) who had been detained in U.S. Customs and Border Protection (CBP) and ORR custody after being apprehended as children and youth (under the age of 18) unaccompanied by an adult parent or legal guardian. Vera contacted these young adults (hereinafter "participants") through their former lawyers and through immigrant rights organizations, seeking a diversity of experiences in terms of gender, race, national origin, language, detention facility, detention length, age at the time of detention, participation in

immigrant rights organizations, and whether they were detained in ORR custody with a relative or friend.<sup>7</sup> They shared their stories about navigating the U.S. immigration system in individual interviews and then a subgroup discussed the findings in group conversations. Their stories reveal a process characterized by systematic criminalization, trauma, lack of transparency, and isolation. Their proposals for reform reimagine the system of reception, protection, and care for unaccompanied children and youth into one that centers freedom, safety, and family unity through transparent processes that respect their inherent agency and right to self-determination.

The following 10 sections lift up the proposals, perspectives, and priorities of the 32 participants related to their experience once they arrived in the United States. Their recommendations are then placed into conversation with policy proposals in the immigration space—contextualizing their important ideas within the broader narrative.<sup>8</sup>

## Ten proposals for meaningful change

Former unaccompanied children and youth proposed these ideas to aid in the reception, protection, and release of unaccompanied children into communities in the United States. The sections that follow will address the following proposals in depth:

1. Children and youth arriving in the United States should be welcomed into a reception system that demonstrates respect for their basic human dignity.
  - 1a. Children in CBP custody should be permitted to connect with loved ones.
2. Policymakers should ensure children and youth are released to their family members instead of being detained in CBP, and subsequently, ORR custody.
3. Policymakers should ensure children and youth are not separated from their family members (including parents, guardians, and nonparent relatives) by CBP.
  - 3a. If CBP separates families, there should be due process protections in place so that impacted families can challenge separation and have meaningful recourse.
4. Policymakers should ensure children and youth transferred to ORR custody are afforded a quick, transparent, and fair reunification process.
5. Policymakers should ensure that children and youth who do not have sponsors in the United States (or prefer not to reunify with available sponsors) are given independent living options (if they are older) or placed in a foster home (if they are younger).
6. Children and youth in ORR custody should be treated with respect by facility staff, extended broader visitation privileges, and permitted more freedom of movement and access to their community (including public school enrollment).
7. There should be a robust system that provides independent oversight of transfers to more restrictive ORR placements and detention conditions generally.
  - 7a. Children and youth are better able to effectuate their rights when they have access to independent counsel.
  - 7b. Transfer policies should be transparent, used sparingly, and implemented only after giving the child or youth notice and an opportunity to be heard.
  - 7c. Children detained in ORR custody should have meaningful opportunities to share concerns about detention conditions.
8. The U.S. government should provide unaccompanied children and youth of working age with work authorization as a matter of course to increase safety and financial security.
9. Policymakers should expand post-release services for unaccompanied children and youth.
10. Policymakers should forge stronger pathways for regular, authorized migration so that children and youth can migrate safely to the United States with their families, should they so choose.

Recommendations are ordered by logical sequence of how children and youth move through apprehension, detention, and release rather than by the relative importance participants assigned to the particular topic. Participants were not systematically asked to “rank” their proposals by topic.

## 1. Children and youth arriving in the United States should be welcomed into a reception system that demonstrates respect for their basic human dignity.

Reception should be designed to welcome, house, and support unaccompanied children and youth—not to criminalize and institutionalize them. When children arrive at the U.S./Mexico border or any other port of entry, such as a U.S. airport, they encounter CBP.<sup>9</sup> CBP was created by the Homeland Security Act of 2002 and is tasked with policing access to the U.S. border and ports of entry.<sup>10</sup> The agency does not have any expertise in child welfare and is supposed to transfer children to ORR within 72 hours.<sup>11</sup>

The time of apprehension and CBP processing is pivotal for children and youth who are arriving at the U.S. border experiencing a mix of emotions—anxiety, fear, exhaustion, and relief—after a harrowing journey.<sup>12</sup> For children and youth arriving unaccompanied, these are often the first interactions they have with U.S. authorities, and these interactions quickly demonstrate the confinement, isolation, and racial bias that will characterize their time under federal immigration custody. Youth often described these interactions as aggressive, jarring, scary, and disorienting.

I just remember that a female agent and a male agent assaulted me really badly. . . . They grabbed me and told me [grabs her arms showing how she was restrained], “You have something there. You don’t have the right to speak! And everything you say will be used against you!” Well, I was a young girl and I was very intimidated and was crying. [They demanded,] “Stop crying, what do you have there?” and they grabbed my hair. They did it like this as if they were looking for a microphone, and I told them: “I don’t have anything.” I even remember that the female agent . . . would shine a light [pulls ear with one hand and mimics aiming a flashlight with the other one] to see if she could actually find something, and I would tell her I didn’t have anything. In the midst of that she told me, “Take your clothes off,” and I told her, “Well no, I can’t take my clothes off because I’m a woman,” and I was a young girl. And she said, “Take your clothes off now,” and I told her, “No,” because I saw that there was a male agent right there. . . . After the male agent left and the female agent was alone, that’s when I started taking my clothes off because I was intimidated, shaking, I couldn’t even control my hands or my lips. They even grabbed my shoes and inspected them between each shoelace, asking what I had. . . . They thought that I was a criminal . . . when in fact I come from a low-income background and . . . I came in search of a dream, and they barely treat us better than dogs.

—Evelyn, 14 years old at the time of detention (Interview 1)\*

Participants reported feeling criminalized upon being arrested by CBP agents immediately after crossing the border and being detained in CBP processing centers—also known colloquially as *hieleras* (coolers or refrigerators) or *perreras* (dog pounds).<sup>13</sup> Their stories recount intensive interrogations, accusations of gang membership, abusive searches, physical and psychological attacks, and being “locked up” without adequate food, heat, privacy, or medical care while detained in CBP custody. Participants described a jail-like setting with no windows or natural light, cement floors, limited or no access to showers, limited or no privacy when using toilets, usually being provided only a thin aluminum sheet for bedding, and sometimes even being penned like dogs with several other children inside a chain-link enclosure. They often were not told or were misled about what would happen, generating further fear and anxiety.

[The CBP officers] literally laughed, they laughed at seeing us suffering. . . . [L]ater they took us to the *hielera* and [the CBP officers] were standing on both sides so that we could pass between them and they told us, mockingly, “Oh, here come the ones who leave pregnant women in their countries.” “The ones who killed in their countries.” “Here come the criminals.” And this was like wow, it was really intense, it was really intense.

—Rafael, 14 years old at time of detention (Interview 2)

The participants who shared their accounts with Vera came from eight different countries and included youth who identify as Black/Afro-descendant or Indigenous. Although the feeling of criminalization by CBP was generalized among the participants, there are factors that increase the intensity of the experience for Black and Indigenous youth given the racist notions that are present in the culture of law enforcement in the United States and which gave rise to U.S. immigration policy and the criminal legal system.<sup>14</sup> In addition, youth arriving from countries in the Caribbean and Africa face special challenges. These youth described being in transit for much longer than their peers from Central America due to their country of origin. They had to navigate more dangerous situations across multiple borders for a longer period.

For example, Samuel, who identifies as Black/Afro-descendant, was 15 years old when he fled his home country with his mother. They spent a year in a migrant shelter in South America. His mother notified him that they would soon start the trek north to the U.S. border—a dangerous journey through jungles, rivers, deserts, and borders, where migrants risk attacks by gangs, rape, and detention by immigration authorities. The group Samuel was traveling with was attacked by an armed group and they all scattered, running for their lives.

In the woods, we were attacked. So in there, what they do, they kill, they steal phones, money. So in that place, this is where . . . I run on my way. My mom run on her way. Um and that’s how we split. . . . I was so . . . scared that I was . . . crying really, really loud. . . . [So immigrants] took pity on me, so they had me walk with them. . . . And I was depending on them. They were . . . feeding me, they were . . . paying for . . . transportation for me. . . . I was totally depending on them.

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\* Interviews that were originally conducted in Spanish have been translated and numbered. The original quotes in Spanish can be found in the supplementary Interview Appendix, listed by “(Interview [number]).” Interviews that were originally conducted in English are unnumbered. All names are pseudonyms and ages are approximate with a ±1 year margin to protect anonymity.

—Samuel, 16 years old at time of detention

Samuel lost track of his mother, who was carrying all their documentation, and, at the time of the interview, still did not know her whereabouts. Another group of migrants found him scared and crying and took him in, accompanying him during the remainder of the journey through several countries. He was held by Mexican immigration authorities for weeks until he was released.

Black youth who arrive at the U.S. border from countries outside of Latin America carry a heavier burden of compounding traumas and have little to no access to language interpreters, which impedes their ability to communicate effectively with border officials.<sup>15</sup> They experience increased aggression by CBP officers toward themselves or their family members.<sup>16</sup> Participants from Central America corroborated instances of racial bias that they witnessed in how officers spoke to and treated their peers.

The ICE [officers] were just roughing my uncle up. I was like, “Oh now just because he Black” . . . because the officer that was roughing him up was white. . . . They’re searching us . . . and when they was searching him, he the one that they was keeping showing his foot, like make it straight, then they kept hitting him hard, searching you know, rough. . . . But only him, they tryin’ to you know, rough him up. Like I don’t know why.

—Simon, 14 years old at the time of detention

Under the status quo, people working for nongovernmental entities with a humanitarian mission do not have access to CBP processing centers, and children are interrogated by CBP agents with a law enforcement orientation without any other adult or advocate for the child present. Rather than being questioned by CBP agents, the intake should be conducted by a trauma-informed child welfare expert working for a nongovernmental entity, an intergovernmental agency, or a government agency that is not tasked with immigration prosecution or policing functions. This proposal is similar to the *Barnahus* approach used in Nordic countries, which the United Nations Children’s Fund (UNICEF) and the Council of Europe have lauded as a best practice.<sup>17</sup> The *Barnahus* (“children’s house” in Icelandic) model provides a center located in a residential neighborhood where a child’s initial assessment can be done by a child specialist—with the support of an interdisciplinary team of professionals—in a child-friendly environment. This approach aims to avoid revictimizing children during the interview process and to provide the spectrum of services (child welfare evaluation, medical attention, and/or mental health support, as applicable) all under one roof that a child who has experienced trauma might need.<sup>18</sup>

## 1a. Children detained in CBP custody should be permitted to connect with loved ones.

Connection with loved ones enhances feelings of safety. Participants reported having little to no access to phones to make calls to their family members while in CBP custody. If children and youth are detained and not able to be immediately released, participants suggested that they should be afforded visitation and generous private telephone and video call contact with their

families and loved ones until released. In-person visitation is consistent with typical child welfare practice throughout the United States.<sup>19</sup> In Texas, for instance, the state child welfare agency acknowledges that best practice is for children and youth in foster care to meet with their parents and siblings once or twice a week.<sup>20</sup> In contrast, CBP policy does not mandate in-person, video, or telephonic contact for children with their families.

## 2. Policymakers should ensure children and youth are released to their family members instead of being detained in CBP, and subsequently, ORR custody.

Participants recommended children and youth be expeditiously released to family members rather than detained in CBP or ORR custody.<sup>21</sup> In considering how to implement this, Vera researchers highlight the U.S. government's approach with Afghan children beginning in September 2021, wherein agencies have avoided separating children from nonparent adult relatives.<sup>22</sup> That approach circumvents the need to place a child or youth who arrived accompanied by a relative or trusted adult in the physical custody of ORR (since ORR is tasked with reunifying children with "sponsors," i.e., a relative or trusted adult) and instead expedites the release of such children or youth and the family members they traveled with.<sup>23</sup>

I do see [the ORR facility] like a prison. On the other hand, here [where she lives post-release], I can leave when I want.

—Carolina, detained at age 17 (Interview 3)

Children who did not travel with relatives could also be expeditiously released to family members and trusted adults already living in the United States, avoiding CBP and ORR detention altogether.<sup>24</sup> One participant, Mario, who was 13 at the time of detention, proposed "a fast process at the border to go where you want to go. Instead of being sent to a shelter or [CBP] office, they should send you quickly to your family" (Interview 4). Mario's recommendation is consistent with UNICEF's position that an unaccompanied child's family relationships can be assessed at the reception stage without detention.<sup>25</sup> The emerging global consensus that detaining children is not only unnecessary, but unlawful, buttresses his proposal.<sup>26</sup> Two other participants, Paula and Victoria, were also in favor of quick release in lieu of detention, but suggested conducting welfare checks after the child's release to a family member to ensure that the sponsor was a family member and that the child was safe and cared for in their new home. Vera recommends that improved processes that allow for swift, safe release be co-created with families and youth who have directly interacted with the current system of sponsor reunification, and child welfare professionals with expertise in safe release.<sup>27</sup>

Furthermore, the consensus in child welfare literature makes clear, and the passage of the Family First Prevention Services Act confirms, that community-based settings are more appropriate to ensuring the well-being of children and youth and enabling them to thrive.<sup>28</sup> Detaining children and youth in congregate care (large, institutional settings) undermines healthy child development, increases the likelihood of sexual abuse and grooming, leads to

feelings of alienation, and poses a risk to the psychological and physical safety of children and youth.<sup>29</sup> Vera supports an immediate departure from the use of congregate care settings in favor of community-based settings, consistent with the advice of people with lived experience, subject matter experts from various disciplines, and national child welfare trends.

### 3. Policymakers should ensure children and youth are not separated from their family members (including parents, guardians, and nonparent relatives) by CBP.

The participants described feeling terrified when CBP separated them from their parents, guardians, relatives, or friends in an environment that was already traumatizing. This practice left unaccompanied children feeling even more unsafe and isolated in CBP custody. Participants proposed not separating children from their family and friends.

They shouldn't separate them because . . . they put you in a place that you don't know and you don't know what's going to happen, they separate you from family, and you feel scared. Really scared for yourself and really scared thinking about the family member that you were separated from.

—Eva, 14 years old when separated from her 12-year-old brother (Interview 5)

#### 3a. If CBP separates families, there should be due process protections in place so that impacted families can challenge separation and have meaningful recourse.

Although some children arrive unaccompanied by a parent, guardian, or nonparent (adult) relative, many are rendered unaccompanied by being separated from an adult relative who accompanied them.<sup>30</sup> Some organizations have suggested measures that preserve family unity and promote safety.<sup>31</sup> Experts in child welfare should meet with the child or youth and the parent, guardian, or nonparent relative, and separation should only occur if there is evidence that the child or youth is at risk of serious harm if they are released with the relative.<sup>32</sup> If there are concerns that remaining in the relative's custody would be contrary to the child's or youth's well-being, a child welfare expert or panel of experts should determine whether separation is in the child's or youth's best interest.<sup>33</sup> When family separation occurs, the government must maintain a record of the relationship.<sup>34</sup> Impacted families should have a mechanism to challenge separations and have their concerns heard by an impartial arbiter in a proceeding that guarantees meaningful due process and the right to counsel.<sup>35</sup> The government would have the burden of showing, by clear and convincing evidence, that the child or youth is at risk of abuse, neglect, or abandonment in the family member's care and that maintaining the child or youth in ORR custody is in their best interest.<sup>36</sup> This presumption of parental fitness would bring the

sponsor release process into parity with child welfare practice and provide better adherence to the family separation provision of the UN Convention on the Rights of the Child.<sup>37</sup> Separated family members in this scenario would be allowed to register their information with the government and proceed to location of settlement after receiving information relevant to their ongoing rights and obligations, as well as mechanisms for engaging in the family separation review process. While the separation proceeding is pending, the child or youth should be considered for placement with another relative sponsor or trusted adult whenever possible. When no such alternative sponsor is available, the child or youth should be placed in the least restrictive setting: a community-based, home-like foster placement in ORR custody.

If a federal court in California accepts the joint settlement agreement filed in *Lucas R.* on May 21, 2022, CBP in the El Paso and Rio Grande Valley sectors in Texas will be forbidden from separating children from family members absent “an articulable operational reason.”<sup>38</sup> If the agreement is adopted, children detained by CBP in these sectors will be held in custody with the parents, legal guardians, and nonparent relatives (including adult siblings, grandparents, cousins, aunts, uncles, great-aunts, and great-uncles) with whom they traveled.<sup>39</sup>

#### 4. Policymakers should ensure children and youth transferred to ORR custody are afforded a quick, transparent, and fair reunification process.

The overwhelming majority of unaccompanied children and youth arriving to the United States have a “sponsor”: a parent, adult relative, or other trusted adult (such as a family friend) that they are planning to live with.<sup>40</sup> ORR’s mandate under the *Flores* settlement is to quickly and safely release children to these sponsors.<sup>41</sup> However, in practice, immigrant families are met with a system that presumes parents are unfit and lacks sufficient transparency and due process protections to safeguard families against racial and socioeconomic bias. In the child welfare context, if a child has been removed from the care of a parent based on allegations of abuse and neglect, there is a presumption in favor of returning children to the other, noncustodial parent. In California, for example, the government *must* release the child to the noncustodial parent (regardless of their immigration status) unless it is established by clear and convincing evidence that such a placement would be detrimental to the child.<sup>42</sup> By contrast, scholars have identified that the cumbersome ORR reunification process pathologizes migration, creates a presumption that sponsors are unfit, and places the burden on the sponsor to overcome this presumption.<sup>43</sup>

As a result of this unnecessarily opaque and biased system, children and youth languish in ORR custody for weeks, months, and even years while awaiting release.<sup>44</sup>

As Paula explained:

It’s like they want to help you, but at the same time it’s like they don’t want to, because they have to ask for so many things to make this a reality, while having the ability to simply say: “Oh, wow, you’re here now, you made such a sacrifice, we confirmed that

your family is here, we are going to give them an opportunity, reunite as soon as possible.” (Interview 6)

Participants interrogated the notion that family members have to prove they are good enough to care for the children and youth, while the children are detained in settings that are deficient by those standards. Some participants expressed that the reunification process should be concluded within a week. They made or endorsed the following suggestions for facilitating swift family reunification:

1. not denying placement because of the economic conditions of the household alone and offering support to family members instead;
2. hiring more case management staff to expedite the process;
3. accepting alternative proof when case managers request documentation that is unduly burdensome for potential sponsors to obtain because it is located overseas, or sponsors fear immigration consequences if they attempt to obtain it;
4. placing children and youth in locations where the potential sponsors are in order to ease the exchange of documentation; and
5. if children and youth are not already placed near the sponsor’s home, paying for travel costs so that reunification is not delayed because sponsors cannot afford or have documentation or funds immediately available for a flight or for a staff companion.<sup>45</sup>

Antonio, who was 13 at the time of detention, illustrated the first point about denying sponsorship for economic reasons and the intersection of race and class bias as follows:

Many of us in the Hispanic community here in the [United States] . . . can’t even compare ourselves to the lower class of this country, because I know families where I live who live in apartments that are actually the basement of a house, so . . . what if that is the only family the child has? And what if . . . they don’t let the child go with his family because his family is considered poor here [by U.S. standards]? I mean, it’s not only about helping the child, but the family as a whole. (Interview 7)

Best practices from child welfare should also be employed to expedite ORR release processes.<sup>46</sup> Some state child welfare practices that could be applied to the ORR sponsorship process include

1. beginning with the presumption that the parents are fit unless there is evidence to the contrary;
2. employing a process for emergency placement with a relative;<sup>47</sup>
3. granting provisional placement to nonparent relatives while time-consuming home studies are underway when there is concern about safety at the parents’ home;<sup>48</sup>
4. paying family members seeking placement of the child the same amount that foster family placements are compensated; and
5. providing additional support services like transportation, in-home clinical services, and support groups to ensure the family placement is practical and sustainable.<sup>49</sup>

Vera recommends that improved processes be created with the guidance and input of child welfare professionals, as well as families and youth who have directly interacted with the current ORR system. This would be consistent with the predominant concern on the part of participants that the process of family tracing and placement be revamped to allow for swift and safe reunifications.

The young people Vera spoke to had divergent perspectives as to whether and how to implement vetting requirements. Further consultation with a diverse group of people with lived experience expertise would be informative in shaping the way the reunification process is recalibrated to meet the needs of youth to be expeditiously placed in the least restrictive settings. Insight can also be gained from successful evidence-based models in the child welfare context, such as kinship navigator programs.<sup>50</sup> These programs have assisted prospective kinship caregivers to understand the best way to quickly navigate complex child welfare systems in order to ensure young relatives are diverted from or spend as short a time as possible in state child welfare custody.<sup>51</sup> Similar programmatic responses have the potential to build trust with relatives whose distrust of federal immigration authorities and confusion about the ORR sponsorship process have created barriers to swift placement of children with relatives who want to provide a home for them as they settle into U.S. communities and undergo immigration proceedings.<sup>52</sup>

[I recommend] that they release [children] faster, that they don't make them await release for such a long time. There are many children who feel truly desperate [to get out], and the desperation can be dangerous for them as well as their relatives.

—Paula (Interview 8)

One of the common complaints that participants expressed was that they did not receive timely, accurate information about the progress of their reunification process, heightening their level of anxiety or despondency.<sup>53</sup> ORR case managers should give children, their families, and their sponsors a clear understanding of the status of reunification. As explained by Carolina, who was approaching her 18<sup>th</sup> birthday and feared being transferred to ICE adult detention: “It’s always a good thing that they explain to us or give us the reason for things, so that we can feel a little calmer” (Interview 9).

As with separation, transparency and speediness in the reunification process could be enhanced by putting the burden on the government to demonstrate why continued family separation and detention is in the child’s or youth’s interest. Advocates have suggested, for instance:

1. A hearing before a neutral factfinder is automatically triggered each time sponsorship is denied or has been pending for 30 days, with legal representation for both the child or youth and their sponsor.
2. At the hearing, ORR needs to establish by clear and convincing evidence that the proposed sponsor is unfit and maintaining the child or youth in ORR custody is in the child’s or youth’s best interest.
3. All evidence supporting the government’s position with respect to #2, including the child’s or youth’s case file, must be disclosed to the child or youth and their counsel prior to the hearing.

4. At the hearing, the child or youth and their counsel must have meaningful opportunity to review, challenge, and offer additional information to rebut the evidence provided.
5. The neutral factfinder must provide a written decision explaining whether the child or youth is being granted release, reviewable in federal court.<sup>54</sup>

A federal court in California recently extended the ability to appeal adverse sponsorship decisions to immediate relatives (like adult siblings, aunts, uncles, and grandparents) in addition to parents and legal guardians.<sup>55</sup> By not granting an automatic right of appeal when sponsorship applications are denied or delayed, this decision falls short of putting the burden on the government to demonstrate by clear and convincing evidence that the child cannot live with their family—something that is required in the child welfare context.

## 5. Policymakers should ensure that children and youth who do not have sponsors in the United States (or prefer not to reunify with available sponsors) are given independent living options (if they are older) or placed in a foster home (if they are younger).

When a child cannot be expeditiously released to a trusted adult, ORR should adhere to its congressional mandate to provide housing in the least restrictive setting possible, consistent with the child’s or youth’s best interests.<sup>56</sup> Participants recommended foster homes for younger children and independent living options for older youth. Although ORR does have transitional foster home placements specifically for young and vulnerable children, these community-based placements are limited and large congregate care settings remain the norm for children awaiting reunification.<sup>57</sup> In September 2021, for instance, only 313 children ages 0–12 were placed in transitional foster homes, representing less than 3 percent of children in ORR custody at that time.<sup>58</sup>

Some participants advocated for alternative housing options for youth who encounter difficulties with their sponsor placements or would otherwise prefer to live independently. As Alexander (who was 16 at the time of detention) described it: “I would’ve liked to not go to the shelter. I don’t know; I felt pretty independent then; just give me a job and an apartment to live in and I would’ve just lived on my own.”

Independent living models have been used for older teen immigrants in Australia.<sup>59</sup> Many states use independent living programs that provide some level of support and supervision for youth under 18 in foster care.<sup>60</sup> HHS also identifies independent living programs as a valuable resource for young people who turn 18 in foster care and need a place to live while they transition to adulthood.<sup>61</sup> Although some independent living options are made available to unaccompanied children through the Unaccompanied Refugee Minor (URM) program, these programs are limited to children who are trafficking survivors and children who have already

won a visa—which can be a time-consuming process.<sup>62</sup> Additional independent living program capacity should be built so that a continuum of independent living options can be made available to older teens under 18 years of age who are under ORR care, as well as for those young people ages 18–21 who have already exited ORR custody.

The domestic child welfare system in the United States has long grappled with a legacy of unnecessary and prolonged family separation that has disproportionately impacted Black, Latinx, and Indigenous youth.<sup>63</sup> The child welfare system in the United States is undergoing a transformation driven by foster youth and impacted families’ advocacy, impact litigation, policy action, and scrutiny from racial justice and child rights activists. Agencies are realigning and redeploying resources to ground the system in the right to family unity and in an understanding that children are safer and more likely to thrive in family settings. The entanglement of a punitive and racist immigration system with the paternalism and legacy of racially disparate practices with respect to children and families in the child welfare sphere amplifies the risks to immigrant children’s well-being. Further interrogation is required of the role systemic racism plays in the treatment of children under the age of 18 who arrive unaccompanied. Systemic bias must be named and addressed head-on in order to make progress and change agency cultures that default to the institutionalization of children and youth.

## 6. Children and youth in ORR custody should be treated with respect by facility staff, extended broader visitation privileges, and permitted more freedom of movement and access to their community (including public school enrollment).

Participants shared feeling a mix of relief of having left the custody of CBP and confusion about arriving at ORR facilities without an understanding of where they were being taken and how long they would remain there. For those who had significant negative experiences in CBP custody, being welcomed into a more child-centered environment by friendly staff made a difference in terms of how accepting they were of their new placement. Nevertheless, as they shared an appreciation of supportive staff who expressed genuine care for them, they remained focused on when and how they would reunify with their family or be released into the community under a different arrangement.

I stopped and looked around and said: “Wow, this is much better.” I immediately saw kids running around, playing; at the entrance, they had a pet . . . like a lizard, but big and coffee colored that you could pet, it was friendly. . . . She was well fed. And well the truth is it seemed pretty comfortable. . . . In that place, the young ladies who [work there] were with us . . . some, not all. Some of those people give you encouragement and hope, and they tell you: “Look, wait, be patient, do not sign an order of deportation, we are going to help your family so that they are with you,” and that’s how they give you hope. But later

when you hear other stories that there are kids here who have been here for about nine months, a year, and they have still not gotten out, your whole world turns upside down and you say to yourself: “Wow, I don’t want to be confined for that long.”

—Paula, 16 years old when detained (Interview 10)

There are qualitative aspects of ORR facilities that contribute to an institutional feel. Three of the most salient recommendations from the participants about the environment for children and youth in ORR placement involved the approaches taken by ORR shelter staff in interacting with children and youth, more contact with family and loved ones, and practices related to freedom of movement and community access.

Some of the participants described ORR custodial staff as taunting and humiliating them for being undocumented or telling children they would never see their families again and threatening them with prolonged detention. Some participants reported racism and discrimination:

They wanted to humiliate you by saying “you’re illegal,” “they can deport you at any time.” So, yes, humiliations and everything, they told us really strange things. So, we had to withstand all that.

—Julián, 17 years old at the time of detention (Interview 11)

People who harass, dehumanize, and mock children and youth for entering the United States without legally required documentation and those who have a pattern or practice of threatening prolonged detention should never be hired, and staff found to have acted in such a way toward children in government custody should be terminated if these actions come to light.<sup>64</sup> ORR hiring and onboarding processes, including for ORR facility staff, should make clear at the outset that ORR’s mission prioritizes the humane care of unaccompanied children and youth in the “least restrictive setting that is in the best interest of the child” or youth and their expeditious release to their families.<sup>65</sup> It is not responsible for immigration enforcement. As described by Lucas, a youth who experienced multiple ORR custody settings, compassionate staff can drastically improve the experience in ORR custody:

They saw that I wasn’t a bad kid. They understood better than any other [facility]. And they saw, I mean, they made me feel good about myself, you know. . . . They were really nice. . . . And someone can really be themselves.

The hiring and recruitment of case managers and ORR facility staff should always prioritize those who have previous experience working with children and youth. A few exceptions can be made in locations where it is particularly difficult to find qualified staff, but providers must commit to develop and implement comprehensive training plans that account for how to support children and youth through the challenging situations that might arise while in their custody. By regularly attending required trainings on trauma-informed care; child and youth development; conditions in unaccompanied children’s countries of origin; and race, equity, and inclusion, staff may be more likely to understand the experiences youth have gone through and the vulnerabilities they are managing. Although ORR does maintain a confidential sexual abuse hotline, it also essential that children and youth have clear options both in the facility and external to it for reporting any harassment and/or emotional or physical abuse they experience while in ORR care.<sup>66</sup> This is particularly important for children and youth who have not been

able to secure counsel, who often fulfill this reporting role in the absence of transparent processes. (See Section 7c for more discussion on reporting mechanisms.)

Children detained in ORR custody should be permitted to have visitation with loved ones. As mentioned under Section 1a, participants suggested that they have in-person or virtual visitation with family members while detained. ORR policy guidance only requires that children have two 10-minute phone calls with their relatives per week, and participants reported that the calls were not always private and that even the minimum was not always offered.<sup>67</sup>

Many of the young people Vera spoke to only received this minimum amount of time to connect with their family members, which they reported was not enough time. As Carolina described it, the calls “help us feel . . . like more free that if we have a problem or something we can talk about it with our family” (Interview 12). Unaccompanied children and youth should have daily access to private phone calls for extended periods of time and as needed. Without privacy, some youth, such as Cecilia, felt “uncomfortable because . . . you want to get something off your chest but you couldn’t” (Interview 13). They should also have the ability to call more than just two “approved” numbers, including friends, as participants proposed. Visitation can be facilitated by informing families of the location of their young relative, diversifying the states where children and youth are placed in home-like settings while in ORR custody, and reforming the placement process so that the child or youth is as close to potential sponsor family members as possible.

Participants expressed that more freedom of movement in ORR custody, regardless of the facility type, would be a qualitative improvement. Regimented rules and constant surveillance made children and youth feel “locked up” even in the formally less restrictive settings.<sup>68</sup> They proposed more time outdoors, more freedom to choose activities on site, as well as the ability to leave facility grounds and go into the community.<sup>69</sup> As articulated by Gastón, unaccompanied children and youth should “be able to coexist with the world, coexist with society . . . like a normal life” (Interview 14).

Participants expressed that they wanted to be able to spend time with their peers in the community outside of the facility. Most children and youth in ORR custody attend school on site at ORR facilities; only children and youth in long-term foster care (LTFC) placements are permitted to attend public school in the community.<sup>70</sup> Those placed in LTFC appreciated the freedom of attending an off-site school to improve their English and experience life in their new communities. Benjamín appreciated attending public school “like normal kids” (Interview 15). Antonio saw public school as “a basic necessity . . . because that is integration, how to live in real life as they live in the United States. . . . You interact with people native to the country, to learn their culture and everything” (Interview 16).

While in general ORR should aim to reunify children and youth within a week with parents or willing kinship caregivers available in the United States, children and youth whose reunification cases hit obstacles and who therefore remain in short-term ORR care for longer than one month should be enrolled in public school to be afforded the same educational opportunities as their peers outside of ORR custody. Furthermore, public schools are better equipped to meet special education needs of children and youth who qualify for an Individualized Education Plan (IEP) or a Section 504 plan.<sup>71</sup> Additionally, making public school

the rule rather than the exception for children and youth in ORR custody for extended periods of time would ensure that unaccompanied children and youth are in the least restrictive educational placement, consistent with federal mandates for free, appropriate public education.<sup>72</sup> It would promote equity for immigrant children by ensuring they receive the same educational setting safeguards afforded to their peers in state foster care.

## 7. There should be a robust system that provides independent oversight of transfers to more restrictive ORR placements and detention conditions generally.

Participants recommended more oversight of ORR facilities, including foster placements and ORR facility staff.<sup>73</sup> They proposed that oversight be strengthened through access to counsel and more fair, transparent transfer policies.

### 7a. Children and youth are better able to effectuate their rights when they have access to independent counsel.

Participants reported that having access to a lawyer better equips them to effectuate their rights while detained. For example, Evelyn shared that she did not know that being mistreated by her LTFC foster family was grounds for her to be placed elsewhere until her lawyer inquired about how things were going in the foster home. After she shared with her lawyer how poorly she and the other children in the home were being treated, all children were removed from that home. Having an independent person whom they can confide in who is also a legal expert helps ensure that detained children and youth are able to access legal protections they may not have been aware of.

### 7b. Transfer practices should be transparent, used sparingly, and implemented only after giving the child or youth notice and an opportunity to be heard.

Participants who were transferred to more restrictive settings often reported that (1) they were not informed about the reason for the transfer, (2) the reason seemed arbitrary, (3) they did not have a chance to challenge the decision, or (4) some combination of the three. Advocates have suggested other recommendations that would increase the oversight of transfers to more restrictive settings. Children who are “stepped up” into more restrictive settings such as secure, staff-secure, residential treatment centers (RTCs), and therapeutic facilities spend far longer awaiting reunification than children in typical ORR shelter settings. While all four types of

facilities involve more supervision and less freedom, RTCs and therapeutic settings seek to meet the children and youth’s psychological needs and are similar to inpatient mental health institutions.<sup>74</sup> Secure and staff-secure facilities take more of a law enforcement approach, prioritizing close surveillance and preventing escape. Secure facilities are described by ORR’s own policies as having “procedures typically associated with correctional facilities.”<sup>75</sup> A better approach would be to

1. automatically schedule a hearing when ORR is proposing a transfer to a restrictive facility;
2. place the burden on the government to prove by clear and convincing evidence that such transfer is necessary; and
3. provide legal representation for the child or youth and afford the opportunity to review, challenge, and offer evidence to rebut ORR’s transfer recommendation.<sup>76</sup>

## 7c. Children detained in ORR custody should have meaningful opportunities to share concerns about detention conditions.

Robust, continued oversight of detention conditions requires mechanisms for hearing directly from children. Although *Flores* counsel is empowered to monitor detention conditions pursuant to the *Flores* settlement, including visiting facilities and talking to children and youth detained in federal immigration custody, additional and more long-lasting systems of input and accountability should be put in place.<sup>77</sup> One approach would be to employ town hall–style meetings and student government bodies for unaccompanied children and youth to share concerns with facility staff.<sup>78</sup> While this can be an effective approach to opening the lines of communication on issues like food quality, it is also important for detained children and youth to have anonymous mechanisms to share larger systemic concerns, to mitigate the threat of retaliation. An independent ombudsperson or other oversight office at the federal and state levels should be established to independently monitor the conditions of ORR detention, and children should be provided direct access to the applicable office to share concerns. The child’s or youth’s identity should be kept confidential from ORR shelter staff and from ICE, including the child’s or youth’s case manager and clinician. The child’s identity may be revealed, however, when a child in ORR custody discloses abuse and/or neglect that triggers mandatory reporting under applicable state law, and child protection services investigates the particular child’s care at the shelter.<sup>79</sup>

## 8. The U.S. government should provide unaccompanied children and youth of working age with work

## authorization as a matter of course to increase safety and financial security.

Participants indicated how important expansive access to work authorization is to their autonomy and their lived realities. They shared the need to finance several responsibilities immediately upon release and a reluctance to feel like a burden to their sponsors. Some youth are young parents and need to provide for their children. Many were accustomed to working in their home countries and even supported their families.<sup>80</sup> In recognition of this fact, U.S. Citizenship and Immigration Services recently authorized children and youth with approved Special Immigrant Juvenile Status applications to be issued work permits while they await residency.<sup>81</sup> Work permits should be provided to unaccompanied children and youth as a matter of course, and immigrant youth should be free to work in the same manner as their U.S. national peers under applicable state law.

Additionally, work permits are a form of government identification that is helpful for unaccompanied children and youth who have not yet won residency status. For children who are too young to work according to state law, USCIS should issue an alternative form of government identification.

Work permits promote safety, because not having work authorization can make young people vulnerable to trafficking and other exploitation.<sup>82</sup> Risk of trafficking post-release has dominated the U.S. government's suspicion of potential sponsors and cemented a system in which children and youth's family members must overcome presumptions of family unfitness before a child or youth is released from ORR custody. Although the government has not released data on the prevalence of trafficking as an outcome for children and youth released from ORR custody, anecdotal scenarios about trafficking that seem to be statistical outliers have played an outsized role in the shaping of reunification policy.<sup>83</sup> Meanwhile, a clear method of mitigating children and youth's risk of falling victim to traffickers is to ensure that all children released from ORR custody with pending immigration proceedings have permission to work. Many children and youth must wait years for USCIS to adjudicate their visas (and, by extension, grant them permission to work) even after securing necessary findings that affirm their right to remain in the United States. This extended period of limbo with no work authorization poses a danger to the well-being of youth whose teen peers have the ability to work in the formal economy.

For example, María took an informal housekeeping job at age 18 to support herself and her daughter, and to contribute financially to her mother's household. Her employer became her trafficker, using the fact that she didn't have a work permit to threaten her into working for free (Interview 17).<sup>84</sup> If María had been able to obtain a work permit, she would not have been as vulnerable to this type of coercion.

Securing work permits also affords young women greater independence by reducing the risk that they fall into and/or remain in intimate partner violence situations or make relationship decisions primarily based on financial need. Laura shared how she agreed to get married before she felt ready due to her inability to be financially independent and secure legal status, despite

working hard to balance school and part-time work: “Believe me, I don’t think I wanted to. . . . I did not want to get married in that moment, but sometimes your circumstances. . . . I didn’t have a Social [Security number], and I didn’t earn enough to sustain myself” (Interview 18).

## 9. Policymakers should expand post-release services for unaccompanied children and youth.

Participants shared feelings of both hope and disillusionment with the challenges they confronted after their release from ORR. Most were told that they would be contacted by a social worker who would support them in their community integration until they turned 18. However, participants reported an absence of support leading to missed opportunities for stability. Some received one or two calls from a social worker who asked limited transactional questions and did not take the time to build trust and foster deeper conversations.

Consistent with calls made by many immigrants’ and children’s rights organizations, participants proposed that additional supportive services be provided to all unaccompanied children and youth after being released from ORR custody.<sup>85</sup> Mental health counseling, medical care, education, assistance with housing, food stamps, COVID-19 relief, and legal representation were among the services requested by participants. Participants also identified that connections between youth who had experienced detention in the same ORR facilities could be better facilitated post-release to reduce feelings of isolation.

A number of young people suggested free access to mental health counseling to help address the trauma experienced throughout their migration and detention experience. As Emilia said, “[W]e needed a lot of things. For example, [we needed] a counselor after leaving [ORR detention because] we were very affected, and when we remembered [our time there], it made us very sad” (Interview 19).

Access to free medical care was also recommended. Antonio indicated that “I haven’t been to the doctor since I left the facility, which was almost a year ago, and well, I’m not able to go to a doctor because I can’t pay” (Interview 20). The most sustainable solution would be to extend some of the rights of citizenship to immigrant children and youth expeditiously so that they can qualify for public health benefits. Another approach would be to identify a way that unaccompanied children can be deemed “lawfully present” in the United States in an expedited manner so that they can access state- and federal government–funded medical care.<sup>86</sup> As a short-term solution, simply facilitating referrals to wrap-around service providers would be beneficial.<sup>87</sup>

Housing stability was another primary concern for those who had been released to sponsors after being detained in ORR custody. Many children and youth were placed with families that needed financial support to care for the child. To ensure that children and youth can be placed with family, funding should be provided to relative sponsors so that economic need doesn’t undermine family unity. A number of state foster care systems have used this approach.<sup>88</sup> Applying this model for unaccompanied immigrant children and youth would also mitigate financial pressure, so that young people can work if they choose to, not because they must in

order to cover their costs.<sup>89</sup> This, in turn, can minimize labor trafficking risks. Participants also recommended housing benefits (like low-income, Section 8 housing) be extended to unaccompanied children and youth and their families, as well as food stamps and COVID-19 relief.<sup>90</sup>

The young people Vera spoke to also emphasized the importance of guaranteeing access to free legal representation upon release, since it can be difficult to locate pro bono attorneys or have sufficient funds to pay for private counsel. Vera partners with nonprofit legal providers across the country to provide government-funded attorneys to children and youth in ORR custody and some children and youth released from ORR custody. At this time, Congress and HHS have not provided sufficient funding to appoint every child and youth released from ORR custody an attorney to represent them in their legal proceedings, and legal capacity in the field must be funded to help meet the need.<sup>91</sup> The Biden administration's Fiscal Year 2023 budget proposes funding universal representation for all unaccompanied children by 2027.<sup>92</sup>

Connections made between children and youth who met while in ORR custody should be nurtured post-release. Rather than facilitating contact, the government prohibits it. María indicated that, upon her release, she was forbidden from talking with the friends in the facility who remained detained: "They wouldn't let us continue communicating with each other because of security reasons; we couldn't have communication with anybody from the shelter anymore" (Interview 21). In this manner, feelings of isolation exist even post-release, because those released from ORR detention aren't able to connect with the friends they made, with whom they have a shared experience. ORR should permit contact between children in ORR custody and their friends who have already been released to their sponsors. When youth released to their communities are unable to establish contact with their friends from ORR custody using traditional means (such as Facebook or Instagram), post-release service providers should facilitate that connection when both youth assent.<sup>93</sup>

## 10. Policymakers should forge stronger pathways for regular, authorized migration so that children and youth can migrate safely to the United States with their families, should they so choose.

U.S. immigration policies should reflect respect for unaccompanied children's agency and self-determination by acknowledging that they are often motivated to migrate to the United States for multiple reasons, including fleeing unsafe conditions, targeted violence, abuse, or abandonment in the home country; reunifying with family; and seeking a better life in the United States. The young people that Vera spoke to recommended expanding visa options for young people seeking to migrate, including through student visas.<sup>94</sup> Additionally, they shared how the limitations on authorized migration paths often result in a young person leaving loved

ones or being forcibly separated from family members by organized crime and abusive security agencies in Mexico and Central America, therefore taking a dangerous journey by themselves.

If I have the power, I would open the road for people to—to be able to—to get here in way, in the U.S. in a better way. Because going through what we went through was very difficult.

—Samuel, who lost his mother at age 16 running away from a gang when walking to the United States

Some could not arrive in their first attempt because they were deported en route. They also spoke about the need for options to travel safely *quickly*. Waiting months for a visa or for the rather onerous process in place through the reinstated Central American Minors program was not an option for those who faced exigent circumstances that forced them to flee threats and violence.<sup>95</sup> Without safe and swift resettlement options, participants talked about having to risk a dangerous trip on their own or with smugglers who charge thousands of dollars and who sometimes extort their families.

Broadening legal pathways would allow for families to travel to the United States together. This should start with ending Title 42, a health code provision invoked in March 2020 to restrict migrants—including asylum seekers—from entering the United States due to COVID-19.<sup>96</sup> The border should reopen to families and adult migrants currently expelled under Title 42.<sup>97</sup> (The U.S. Centers for Disease Control and Prevention announced its plans to terminate Title 42 on May 23, 2022.<sup>98</sup> At the time of writing, several states have filed suit, and the federal government has been enjoined from ending Title 42.<sup>99</sup>) Broadening access to authorized immigration also requires terminating the Migrant Protection Protocols (MPP), a program that forces asylum seekers to “remain in Mexico”—oftentimes facing dangerous conditions—and wait for U.S. immigration authorities to determine if they can seek safety in the United States.<sup>100</sup>

Trump locked the border after we came. . . . A lot of people trying to come, fighting for their life, but they get sent back, they get killed. Just like us.

—Brandon (migrated at age 16, escaping killings and attacks on his family)

## Conclusion: Designing transformative, accountable processes

The perspectives shared by these 32 young people represent a call to action to remove the barriers that exclude them from the larger policy conversation and to build systems that hold the government accountable to the children and youth—and their families—most impacted by its policies. Involving current and former unaccompanied children is not just a best practice for informing good policy: it is a matter of operationalizing the UN Convention on the Rights of the Child’s mandate that children and youth be permitted to express their views freely in all matters affecting them.<sup>101</sup> Vera’s research has shown that young people with firsthand experience have perspectives that would inform appropriate changes, lending weight to some policy recommendations while changing others.

We are, like, someone who can explain in first person how [things] really are, or how we believe they could be . . . our perspective can make a difference. . . . The simple fact of knowing we can raise our voices for those to come will make a very strong change.

—Antonio (Interview 22)

Policymakers must honor the views and perspectives of the young people who have been directly impacted by the immigration system. Respecting immigrant children and youth’s right to be heard is a worthy goal unto itself; it is also a critical step in achieving meaningful policy change.<sup>102</sup> Centering these voices will ensure that new approaches to the reception and treatment of unaccompanied children and youth are driven by their right to freedom, safety, and basic human dignity.

## Interview Appendix: Original Quotes in Spanish

**Interview 1:** “Solo recuerdo que la oficial y el oficial me agredieron bien feo. Porque como le digo, yo le hacía así a mi cabello [pulls hair]. Y pues me agarraron y me dijeron así [grabs her arms showing how she was restrained]: ‘¡Tú tienes algo allí, no tienes derecho de hablar! ¡Y todo lo que dices será en tu contra!’ Pues yo era una niña y luego estaba bien intimidada, y lloraba, ‘Para de llorar, ¿qué traes ahí?’, y me agarraron el pelo, me lo hicieron así que buscando si hay un micrófono, y le digo: ‘No traigo nada.’ Incluso, me acuerdo que me hacía así la oficial y le ponía como la lámpara, una luz [pulls ear with one hand and mimics aiming a flashlight with the other one], que para ver si lograba encontrar algo, y yo le decía que no tenía nada. Ya en eso me dice: ‘Sácate la ropa,’ y le digo: ‘Pues no, yo no me puedo sacar la ropa porque soy mujer,’ y era una niña. Y dice: ‘Sácate la ropa ahorita,’ le digo: ‘No,’ porque vi que había un oficial ahí. Ya este . . . digo: ‘Okay.’ Ya cuando el oficial salió y se quedó sola la oficial, es donde me empecé a sacar la ropa intimidadamente, temblando, con las manos que no las podía ni controlar, ni los labios; y incluso los zapatos los agarraron y los supervisaron entre agujeta y agujeta, que qué tenía. Pues no tenía ningún micrófono, nada por el estilo. Pero ellos pensaron que yo era una criminal, una persona que . . . que en verdad uno viene de bajos recursos y viene en busca de un sueño, cuando lo cual nos tratan como más que un perro. Incluso los perros aquí los educan, los cuidan; pero a uno lo tratan peor que a un perro, en verdad, injustamente.”

**Interview 2:** “[E]llos [CBP officers] se reían literalmente, ellos se reían de que nos veían sufrir. . . [L]uego nos entraban a la hielera y ellos se ponían a los costados para que nosotros pasáramos en el medio y nos decían burlándose ‘oh, aquí están pasando los que dejaron a mujeres embarazadas en sus países.’ ‘Los que mataron en sus países.’ ‘Aquí vienen los criminales.’ Y eso fue como que wow, fue bastante fuerte, fue bastante fuerte.”

**Interview 3:** “Yo sí lo veo como una prisión. En cambio acá yo puedo salir a la hora que yo quiera, yo puedo abrir la puerta y decir ‘si quiero regreso o si no, no.’”

**Interview 4:** “Que nos atiendan rápido, y que haya un proceso rápido para ir a donde quiera ir. En vez, de ser mandado a un albergue o oficina que le mande rápido a la familia.”

**Interview 5:** “No los deberían separar porque . . . lo meten a uno en un lugar que uno no conoce y uno no sabe qué es lo que va a pasar, lo separan de la familia, uno se siente con miedo. Más miedo por uno y más miedo pensando en el otro familiar que lo separaron.”

**Interview 6:** “Es como que ellos quieren ayudarte, pero al mismo tiempo como que no quieren porque tienen que pedir tantas cosas para que eso se haga realidad, teniendo las facilidades del simple hecho de que: ‘Oh, wow, ya estás aquí, hiciste tanto sacrificio, comprobamos que tu familia está aquí, vamos a darle una oportunidad, reúnanse lo más pronto posible.’”

**Interview 7:** “Muchos de nuestra comunidad hispana aquí en los Estados Unidos no tenemos . . . no nos podemos comparar ni siquiera a la clase baja del país, porque yo conozco familias aquí en donde yo vivo que sus apartamentos prácticamente son el *basement* de una casa y pues ¿qué tal si el niño simplemente tiene esa familia? ¿Y qué tal si el niño, que el niño esté . . . no le dejan ir con su familia porque su familia es pobre aquí? . . . O sea, yo creo que no es tanto el ayudarle al niño, sino que a la familia, como el todo.”

**Interview 8:** “[Q]ue los entreguen como más rápido, que no hagan esperarlos como tanto tiempo. Porque hay muchas personas que sí en verdad se desesperan y es como puede ser peligroso para ellos como para sus familiares por la desesperación.”

**Interview 9:** “Siempre es bueno que a nosotros nos expliquen o nos digan el por qué de las cosas, para nosotros estar un poco más tranquilos.”

**Interview 10:** “Yo me quedé viendo así, yo dije: ‘Wow, esto está mucho mejor.’

Inmediatamente fue como vi niños corriendo ahí, jugando; de entrada, tenían como una mascota así . . . como una lagartija pero grande y café que se deja tocar así, cariñosa. . . . La tenían bien alimentada. Y pues la verdad fue bastante cómodo. . . . En el lugar ahí, las muchachas que están con nosotras, con las personas que están detenidas ahí, ellas—algunas, no todas. Algunas de esas personas te dan como ánimo y esperanza, y te dicen: ‘Mira, espérate, ten paciencia, no firmes como una orden de deportación, nosotros te vamos a ayudar a tu familia para que estén contigo,’ y eso es como te dan una esperanza. Pero después cuando tú escuchas otras historias de que hay niños ahí que tienen como nueve meses, un año y todavía no salen, a ti como que se te viene todo el mundo arriba y dice: ‘Wow, no quiero estar tanto tiempo encerrada.’”

**Interview 11:** “Querían como humillarlo a uno como, ‘tú eres ilegal,’ ‘te pueden deportar en cualquier momento y a nosotros no.’ Entonces, sí, humillaciones y todo, nos decían cosas bien raras. Entonces, tuvimos que aguantar todo eso.”

**Interview 12:** “Nos ayuda a sentirnos . . . como más libres de si tenemos algún problema o algo poderlo expresar con la familia de nosotros . . . diez minutos no son suficientes.”

**Interview 13:** “Incómoda porque . . . uno quiere hablar como desahogadamente y no podía. . . .”

**Interview 14:** “Poder convivir al mundo, convivir con la sociedad . . . así como una vida normal.”

**Interview 15:** “Como los niños normales.”

**Interview 16:** “Eso lo miro meramente necesario . . . porque eso es tema de integración, porque ya es como vivir en vida real lo que se vive en Estados Unidos, . . . usted convive con personas que son nativas del país, conoce de su cultura y todo.”

**Interview 17:** “¿A quién le van a creer más a ti o a mí? ¿Quién vale más aquí? ¿Quién tiene un permiso de trabajo aquí?”

**Interview 18:** “Créeme que, al menos no quería casarme, no estaba en mi momento; pero a veces, las condiciones de uno, sinceramente, no tenía ahí social, no ganaba lo suficiente para yo mantenerme.”

**Interview 19:** “No nos dieron nada de lo que menciona [trabajador social, vivienda, terapia, salud], pero sí necesitábamos muchas cosas; por ejemplo un consejero, porque cuando salíamos de allá veníamos muy afectadas cuando nos recordábamos nos daba mucha tristeza.”

**Interview 20:** “Yo no voy a un doctor desde hace—desde que salí yo del programa, que es casi un año y pues no me puedo ir a hacer un médico, porque no lo puedo pagar.”

**Interview 21:** “No nos permitieron seguir comunicándonos con ellas porque dijeron que era por seguridad que no podíamos, no podíamos tener comunicación con nadie del albergue ya.”

**Interview 22:** “Uno como es el que puede explicarles en primera persona cómo verdaderamente son [las cosas] o cómo cree uno que podrían ser . . . la perspectiva de uno pueda hacer la diferencia . . . el simplemente hecho de saber que nosotros pudimos alzar la voz para esos venideros va a hacer un cambio muy fuerte.”

## Credits

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The Vera Institute of Justice is powered by hundreds of advocates, researchers, and policy experts working to transform the criminal legal and immigration systems until they're fair for all. Founded in 1961 to advocate for alternatives to money bail in New York City, Vera is now a national organization that partners with impacted communities and government leaders for change. We develop just, antiracist solutions so that money doesn't determine freedom; fewer people are in jails, prisons, and immigration detention; and everyone is treated with dignity. Vera's headquarters is in Brooklyn, New York, with offices in Washington, DC, New Orleans, and Los Angeles.

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## Endnotes

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<sup>1</sup> Unaccompanied children are defined as those who (1) have no legal status in the United States; (2) are under the age of 18; and (3) have no parent or guardian in the United States who can provide care and custody. 6 U.S.C. § 279(g)(2). This report uses the term “children and youth” because although they were all legally children, some youth in that category involved in this report felt that it would be infantilizing to treat them as children. Furthermore, the label “child” denies the agency that they showed and wanted validated. See also Luis H. Zayas et al., “Charting Directions for Research on Immigrant Children Affected by Undocumented Status,” *Hispanic Journal of Behavioral Sciences* 39, no. 4 (2017), 412-435, 418-419, <https://perma.cc/RT65-VE55>.

<sup>2</sup> There can be therapeutic benefits for youth when people listen to their experience and provide them with forums to engage in thinking through changes. Theresa Nguyen, “Working with Children with Mental Health Concerns,” webinar presented to Vera's network of legal service providers for unaccompanied children, August 18, 2020 (on file with the author).

<sup>3</sup> A helpful metaphor for measuring meaningful participation is identifying which “rung” the approach occupies on Roger Hart's ladder of children's participation. The eight rungs of Hart's ladder identify a hierarchy from the least meaningful (rung 1) to the most meaningful (rung 8) level of participation: (1) manipulation; (2) decoration; (3) tokenism; (4) assigned but informed; (5) consulted and informed; (6) adult-initiated, shared decisions with children; (7) child-initiated and directed; and finally, (8) child-initiated, shared decisions with adults. Roger Hart, *Children's Participation: The Theory and Practice of Involving Young Citizens in Community Development and Environmental Care* (London: Earthscan Publications Ltd., 1997), 40-41.

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<sup>4</sup> Capacity Building Center for States, Children’s Bureau, Administration for Children and Families, “Youth Engagement Blueprint,” HHS, <https://capacity.childwelfare.gov/states/topics/youth-development/blueprint-series>. See also National Association of Counsel for Children, *So You Want to Include a Lived Experience Expert* (Denver, CO: National Association of Counsel for Children, 2021), <https://perma.cc/5CLU-FKXH>.

<sup>5</sup> Capacity Building Center for States, *Youth Engagement Blueprint Series: Viewing Young People as Organizational Assets* (Washington, DC: HHS, 2017), 1-2, <https://perma.cc/7G62-6UF9>. See also UNICEF, *Building Bridges for Every Child: Reception, Care and Services to Support Unaccompanied Children in the United States* (New York: UNICEF, 2021), 29, <https://perma.cc/RR66-KKVT>.

<sup>6</sup> UNICEF, *Building Bridges for Every Child*, 2021, 29-30.

<sup>7</sup> The team sought at least five participants belonging to different groups but did not achieve recruitment targets for all categories. Please note that the numbers across categories may not always add up to 32 because some of the participants span more than one category. The sample categories were the following—final numbers achieved in parentheses: identifies as cisgender man (17); identifies as cisgender woman (15); identifies as transgender or nonbinary (0); identifies as Black or as an Afro-descendant (5); identifies as another race (27); Mexican national origin (3); other national origin (29); spoke little or no Spanish nor English (6); spoke Spanish or English well or somewhat well (26); primary language was an Indigenous language of Latin America (5); detained in Texas (18); detained in California (5); detained in any other state (14); detained in long-term foster care or transitional foster care facility (11); detained in residential treatment center, staff-secure, or secure facility (6); detained only in other type of facility (17); detained less than two months (11); detained two months or more (21); 14 years old or younger when apprehended (8); 15-17 years old when apprehended (24); detained in ORR custody with someone previously known (15); detained in ORR custody without someone previously known (17); member of or cooperates with an immigrant rights organization (3); not a member of nor cooperates with an immigrant rights organization (29). While the team did not seek national origin diversity beyond Mexican origin due to the different regulations for Mexican children and youth, 24 participants were from either Guatemala, El Salvador, or Honduras, the countries where most unaccompanied children come from other than Mexico. Some participants were detained in multiple states and types of facilities, including ICE facilities, while still under 18.

<sup>8</sup> A follow-up report will provide a more in-depth exploration of youths’ experiences in detention and post-release.

<sup>9</sup> U.S. Customs and Border Protection, *CBP Through the Years* (Washington, DC: U.S. Customs and Border Protection), <https://www.cbp.gov/about/history>.

<sup>10</sup> 6 U.S.C. § 211.

<sup>11</sup> 8 U.S.C. § 1232(b)(3); *Flores v. Reno*, No. CV-85-4544-RJK(Px) (C.D. Cal., January 17, 1997) (settlement agreement), <https://perma.cc/5A6Y-TE89>. A caveat to this rule is that children from contiguous countries, including Mexico and Canada, are not entitled to be transferred to ORR custody if certain conditions are met. 8 U.S.C. § 1232(2). In practice, many Mexican children are repatriated when they should be transferred to ORR custody because of trafficking concerns, asylum flags, and/or they do not wish to return to Mexico. Kiera Coulter, Samantha Sabo, Daniel Martinez, et al., “A Study and Analysis of the Treatment of Mexican Unaccompanied Minors by Customs and Border Protection,” *Journal on Migration and Human Security* 8, no. 2 (2020), 104-105, <https://doi.org/10.1177/2331502420915898>.

<sup>12</sup> Susan Terrio, “Dispelling the Myths: Unaccompanied, Undocumented Minors in US Immigration Custody (Respond to This Article at [Http://www.Therai.Org.Uk/at/Debate](http://www.Therai.Org.Uk/at/Debate)),” *Anthropology Today* 31, no. 1 (February 2015), 16-17, <https://doi.org/10.1111/1467-8322.12154>.

<sup>13</sup> Participants used the term *perreras* to describe makeshift CBP processing centers located in tents, as well as chain-link enclosures constructed inside permanent buildings. The term *hieleras* was used to describe cold, windowless cells, as well as fenced-in enclosures inside permanent facilities.

<sup>14</sup> See for example Walter Ewing, “The Legacy of Racism within the U.S. Border Patrol,” American Immigration Council, February 10, 2021, <https://perma.cc/K4YF-NVDL>.

<sup>15</sup> Nancy Adossi, Tadios Belay, Carl Lipscombe, et al., *Black Lives at the Border* (New York: Black Alliance for Just Immigration, 2018), 9, 13, <https://perma.cc/TS88-RHJ6>.

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<sup>16</sup> See Eileen Sullivan, “After Del Rio, Calls for Fairer Treatment of Black Migrants,” *New York Times*, October 21, 2021, <https://www.nytimes.com/2021/10/19/us/politics/black-migrants-biden-border.html>; and Ewing, “The Legacy of Racism,” 2021.

<sup>17</sup> The *Barnahus* model is used in Denmark, Iceland, Norway, and Sweden. UNICEF, *Building Bridges for Every Child*, 2021, 20; and UNICEF Office of Research–Innocenti, *Protected on Paper? An Analysis of Nordic Country Responses to Asylum-Seeking Children* (Florence: UNICEF Office of Research–Innocenti, 2018), 24, <https://perma.cc/9S3E-TPAD>.

<sup>18</sup> Naomi Pereda, Laura Andreu, Marta Codina, et al., *Training and Education in the Barnahus Model: State of the Art* (STEPS Project, European Commission, 2021), 4-6, <https://perma.cc/2GDC-35VB>.

<sup>19</sup> “[P]roviding children and youth in out-of-home care safe, meaningful, and high frequency family time . . . strengthens the family, expedites reunification and improves parent and child well-being outcomes.” Administration for Children and Families (ACF), *Family Time and Visitation for Children and Youth in Out-of-Home Care* (Washington, DC: ACF, 2020) 1, <https://perma.cc/7DAP-Q6TQ>.

<sup>20</sup> “The primary purpose of visitation is to maintain the parent-child attachment, reduce a child’s sense of abandonment, and preserve their sense of belonging as part of a family and community. A child needs to see and have regular contact with their parent(s) and siblings, as these relationships are the foundation of child development.” Texas Department of Family and Protective Services, *Child and Family Visitation Best Practices Guide* (Austin, TX: Texas Department of Family and Protective Services, 2015), 1, <https://perma.cc/4BC9-7VVT>.

<sup>21</sup> There was consensus that children being released from government custody to their families was preferable over any detention, whether in CBP or ORR custody.

<sup>22</sup> Priscilla Alvarez, “Biden Administration Adjusts Processing Guidance for Afghan Children Arriving Without a Parent,” CNN, September 8, 2021, <https://perma.cc/U3BY-5WUT>.

<sup>23</sup> ORR, “Children Entering the United States Unaccompanied,” HHS, April 20, 2015, § 2.1 & 2.2, <https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-2#2.1>.

<sup>24</sup> Reunification at the reception stage presupposes that children and youth would not be detained in CBP custody while awaiting release and would instead be housed in a house-like setting as described in Proposal 1.

<sup>25</sup> UNICEF recognizes that although some administrative matters like verifying family relationships need to be attended to when children cross borders, there are models of addressing administrative needs at reception without detaining immigrant children. “Processing unaccompanied migrant and asylum-seeking children at the border is necessary to determine age and familial relationships, conduct trafficking and credible fear screenings, and attend to immediate humanitarian needs. This can be done in a child-sensitive manner without detaining children.” UNICEF, *Building Bridges for Every Child*, 2021, 21.

<sup>26</sup> Detaining immigrant children is unlawful according to UN bodies, regional human rights courts, and other sources of international law. “The past decade has seen an emerging global consensus on the need to end the practice of child immigration detention, which has been recognized as unlawful by the United Nations Committee on the Rights of the Child. This position has been reinforced by international and regional jurisprudence, including the Inter-American Court of Human Rights.” UNICEF, *Building Bridges for Every Child*, 2021, 21. See also United Nations Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration* (United Nations, September 28, 2012), 18-19, <https://perma.cc/MSN7-WFWK>; Joint General Comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, CMW/C/GC/4-CRC/C/GC/23, United Nations, Geneva, 16 November 2017; Joint General Comment No. 23 of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, paragraph 5: “[Children] should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice”; and Inter-American Court on Human Rights, Advisory Opinion OC-21/14 of 19 August 2014: “Rights and Guarantees of Children in the

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Context of Migration and/or in Need of International Protection,” InterAmerican Court on Human Rights, August 19, 2014, paragraphs 157-160.

<sup>27</sup> Because participants felt differently about the degree of vetting that is appropriate before children or youth are released to family members and other trusted adults living in the United States, Vera recommends further consultation with people with immigration system-impacted lived experience and child welfare experts. This is also recommended in Section 4 with respect to speeding up the ORR reunification process.

<sup>28</sup> The Children's Bureau (which, like ORR, is housed in HHS) has acknowledged “there is consensus across multiple stakeholders that most children and youth, but especially young children, are best served in a family setting.” Children’s Bureau, *A National Look at the Use of Congregate Care in Child Welfare* (Washington, DC: HHS, 2015), 1, <https://perma.cc/EV7E-WQ4W>. The Family First Prevention Services Act of 2018, in fact, was adopted in recognition of the fact that congregate care is harmful to children in state foster care systems. H.R. 253, Pub. L. 115-123, 115th Cong. (2018).

<sup>29</sup> Sarah A. MacLean, Patricia O. Agyeman, Joshua Walther, et al., “Mental Health of Children Held at a United States Immigration Detention Center,” *Social Science & Medicine* 230 (2019), 303-308, <https://perma.cc/BR2B-37JZ>; Julie M. Linton, Marsha Griffin, Alan J. Shapiro, et al., “Detention of Immigrant Children,” *Pediatrics* 139, no. 5 (2017), <https://perma.cc/U5WF-N9QC>; and Mark Stone, *AB 403: Foster Youth: A Continuum of Reform* (Sacramento, CA: Office of Assemblyman Mark Stone, 2015), 1, <https://perma.cc/8GF4-2CS2>.

<sup>30</sup> The project is about children who are given the unaccompanied legal status because they arrive at the border without a parent or legal guardian. Some, however, are not “unaccompanied” in the literal sense of the word because they are migrating with other family members from whom they are separated if CBP determines that, in the absence of documentation to prove legal guardianship, there is insufficient evidence of a familial connection. This sets off a whole chain of events in which a child is then placed in ORR detention despite them arriving with adult relatives who can care for them. See U.S. Department of Homeland Security, *Family Reunification Task Force* (Washington, DC: U.S. Department of Homeland Security), <https://perma.cc/V52R-LLKM>.

<sup>31</sup> See for example Jennifer Nagda, Kelly Albinak Kribs, Xiaorong (Jajah) Wu, et al., *Reimagining Children’s Immigration Proceedings* (Chicago: Young Center for Immigrant Rights, 2020), 49, <https://www.theyoungcenter.org/reimagining-childrens-immigration-proceedings>; Kids in Need of Defense (KIND), *KIND Blueprint: Concrete Steps to Protect Unaccompanied Children on the Move* (Washington, DC: KIND, 2020), 3, <https://perma.cc/582A-AXTR>; and United Nations High Commissioner for Refugees (UNHCR) and International Rescue Committee, *Field Handbook for the Implementation of UNHCR Best Interests Determination (BID) Guidelines* (Geneva, Switzerland: UNHCR, 2011), <https://perma.cc/VE77-XKU7>.

<sup>32</sup> Nagda, Kribs, Wu, et al., *Reimagining Children’s Immigration Proceedings*, 2020, 49.

<sup>33</sup> KIND, *KIND Blueprint*, 2020, 3. On BID panels, see UNHCR and International Rescue Committee, *Field Handbook for the Implementation of UNHCR Best Interests Determination (BID) Guidelines*, 2011, 8-10.

<sup>34</sup> Some families separated by CBP, including during the Trump administration’s 2017–2021 zero tolerance policy, have remained separated for years, due in part to the government’s failure to properly record familial relationships. The Biden administration set up a Family Reunification Task Force on February 2, 2021, to begin attempting to reunite families that remain separated. Executive Order 14011, “Executive Order on the Establishment of Interagency Task Force on the Reunification of Families,” 86 Fed. Reg. 8273, February 2, 2021, <https://perma.cc/F968-6BDD>.

<sup>35</sup> KIND, *KIND Blueprint*, 2020, 26.

<sup>36</sup> Neha Desai, Melissa Adamson, Lewis Cohen, et al., *A New Way Forward: What Congress Must Do to Protect the Dignity, Health and Safety of Children in Immigration Custody* (Oakland, CA: National Center for Youth Law, 2021, 17-18), <https://perma.cc/5HL2-CTWK>.

<sup>37</sup> Under the Indian Child Welfare Act and California’s statutory scheme, for example, a child can’t be removed from a custodial parent or precluded from placement with a noncustodial parent unless it is established by clear and convincing evidence that such placement would be detrimental to the child. 25 U.S.C. §1911 D.3(a); Cal. Welf. & Inst. Code §§ 361(c), 361.2(a). The UN Convention on the Rights of the Child provides that “a child shall not be

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separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures.” UN Convention on the Rights of the Child, art. 9, 1577 U.N.T.S. 3 (November 20, 1989).

<sup>38</sup> Joint Motion for Preliminary Approval of Settlement and Approval of Class Notice of Settlement, *Flores v. Garland*, 28-CV-4555 (C.D. Cal.),

<https://storage.courtlistener.com/recap/gov.uscourts.cacd.45170/gov.uscourts.cacd.45170.1254.0.pdf>; and

Proposed Settlement, *Flores v. Garland*, 28-CV-4555 (C.D. Cal.), 14,

<https://storage.courtlistener.com/recap/gov.uscourts.cacd.45170/gov.uscourts.cacd.45170.1254.1.pdf>. At the

time of writing, it was still pending acceptance by Judge Gee, who is presiding over the matter.

<sup>39</sup> Proposed Settlement, *Flores v. Garland*, 28-CV-4555 (C.D. Cal.), 14,

<https://storage.courtlistener.com/recap/gov.uscourts.cacd.45170/gov.uscourts.cacd.45170.1254.1.pdf>. If adopted,

the settlement will also obligate CBP to facilitate family visitation, provide safe and sanitary conditions, and give access to medical care for children detained in CBP custody.

<sup>40</sup> California Department of Education, “Unaccompanied Minors Frequently Asked Questions,”

<https://perma.cc/7ZEM-7T7R>.

<sup>41</sup> Desai, Adamson, Cohen, et al., *A New Way Forward*, 2021, 20.

<sup>42</sup> Cal. Welf. & Inst. Code § 361.2(a).

<sup>43</sup> Lauren Heidbrink, “Assessing Parental Fitness and Care for Unaccompanied Children,” *Russell Sage Foundation Journal of the Social Sciences* 3, no. 4 (2017), 37-52, 38, 43, <https://doi.org/10.7758/RSF.2017.3.4.03>.

<sup>44</sup> See generally Neha Desai, Melissa Adamson, Lewis Cohen, et al., *Child Welfare & Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policy Makers* (Oakland, CA: National Center for Youth Law, 2019), <https://perma.cc/NH3X-MQ9F>. For children and youth made unaccompanied by forced separation from an adult family member at the border from April 2018 through December 2021, the average length of stay in ORR custody was 80 days. HHS, *Monthly Report to Congress on Separated Children: December 2021* (Washington, DC: HHS, 2021), 8, <https://perma.cc/WY83-BTX8>.

<sup>45</sup> Those concerned about the expenses should consider that it is not only detrimental to the child or youth to stay in custody waiting for the sponsor to arrange travel plans, but it is also often more expensive to pay for one or more additional days of custody than to transport the child or youth to their sponsor. See Nomaan Merchant, “Amid Surge, U.S. Tries to Expedite Release of Migrant Children,” *AP News*, February 24, 2021, <https://apnews.com/article/health-us-news-coronavirus-pandemic-immigration-86f189f3c444d816ae0f8b704442203f>.

<sup>46</sup> Desai, Adamson, Cohen, et al., *A New Way Forward*, 2021, 13; and Shaina Aber, Lauren Esterle, and Derek Loh, *Immigration Brief: Eight Ways to Ease the Child Detention Crisis* (New York: Vera Institute of Justice, 2021), <https://perma.cc/U6FB-DUTU>.

<sup>47</sup> Casey Family Programs, “How Can We Prioritize Kin in the Home Study and Licensure Process, and Make Placement with Relatives the Norm?” (Washington, DC: Casey Family Programs, July 2020), 4, <https://perma.cc/8ECS-VHUY>.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> The sponsorship process can be daunting for immigrant families to navigate; kinship navigator programs can help. See for example Ana Beltran and Cristina Ritchie Cooper, “Promising Practices and Policies to Support Grandfamilies that Include Immigrants,” *Child Welfare* 96, no. 5 (2019), 103-125.

<sup>51</sup> *Ibid.*

<sup>52</sup> Extending deferred action to children and youth with approved Special Immigrant Juvenile Status (SIJS) applications is one way to promote trust in immigrant communities. Through deferred action, children and youth have relief from imminent deportation while they wait (sometimes for years) for legal permanent residency after winning SIJS. See USCIS, *Policy Alert: Special Immigrant Juvenile Classification and Deferred Action* (Camp Springs,

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MD: U.S. Department of Homeland Security, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf>.

<sup>53</sup> In fact, participants reported being given the false impression that they had to have good behavior to “earn” the right to reunify and were even discouraged from reporting mistreatment because they believed that doing so could delay their release. Still others identified receiving an ambiguous or no explanation about why reunification with an identified sponsor was rejected.

<sup>54</sup> Desai, Adamson, Cohen, et al., *A New Way Forward*, 2021, 17-18.

<sup>55</sup> *Lucas R. v. Azar*, No. 18-CV-05741-DMG-PLA (C.D. Cal., Mar. 11, 2022) (Order re: Cross-Motions for Summary Judgment), 39, <https://perma.cc/6GT2-GT8A>.

<sup>56</sup> 8 U.S.C. § 1232(c)(2).

<sup>57</sup> As of December 31, 2021, only 313 children ages 0–12 were in transitional foster homes, while 921 children ages 0–12 were in typical shelter settings. HHS, “Latest [Unaccompanied Child] Data FY2022,” retrieved June 3, 2022, <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2022/index.html>.

<sup>58</sup> As of December 31, 2021, only 313 children ages 0–12 were in transitional foster homes, representing 2.5 percent of the average overall number of children in care (12,511). HHS, “Latest [Unaccompanied Child] Data FY2022,” retrieved May 22, 2022, <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2022/index.html>. As of December 31, 2021, only 41 children ages 0–12 were in long-term foster care homes, representing 0.3 percent of the average overall number of children in care (12,511). HHS, “Latest [Unaccompanied Child] Data FY2022,” retrieved June 3, 2022, <https://perma.cc/H9P7-DKHY>. Long-term foster care placements are available to children who are without viable reunification options. ORR, “Children Entering the United States Unaccompanied: Section 1,” HHS, July 14, 2021, § 1.2.6, <https://perma.cc/42FF-N7UR>.

<sup>59</sup> Mary Bosworth, “Alternatives to Immigration Detention: A Literature Review,” *Political Behavior: Race* (2018), 20-22, <https://perma.cc/73RM-7S93>.

<sup>60</sup> California and Nevada, for instance, provide independent living options for foster youth beginning at age 16. See for example California Department of Social Services (CDSS), *Independent Living Program (ILP)* (Sacramento, CA: CDSS, 2022), retrieved May 31, 2022, <https://www.cdss.ca.gov/inforesources/foster-care/independent-living-program>; and Nevada Department of Health & Human Services, Division of Child & Family Services (DCFS), *Independent Living (IL) Program* (Carson City, NV: DCFS), retrieved May 31, 2022, <https://perma.cc/WYR4-WHMY>.

<sup>61</sup> HHS Children’s Bureau, “What Available Supports and Resources are in Place for Youth Transitioning from Foster Care?” July 15, 2021, <https://perma.cc/66S2-JCRG>.

<sup>62</sup> The URM program, while initially designed to resettle refugee children with American foster families, has expanded to cover trafficking survivors, as well as children and youth granted asylum, Special Immigrant Juvenile Status (referred to as “SIJS” for short, this is for children and youth who have been abused, neglected, or abandoned and are unable to reunify with one or both parents), and U visas (for children who are victims of crime in the United States) up to the age of 21. ORR, “ORR Guide to Eligibility, Placement, and Services for Unaccompanied Refugee Minors (URM),” (Washington, DC: ORR, 2016), <https://perma.cc/XNQ8-CJEK>.

<sup>63</sup> National Conference of State Legislatures, “Disproportionality and Equity in Child Welfare,” January 26, 2021, <https://perma.cc/JY3U-ECYX>.

<sup>64</sup> One significant criticism of ORR facilities is that they hire staff with law enforcement backgrounds. Lauren Heidbrink, *Migrant Youth, Transnational Families, and the State: Care and Contested Interests* (Philadelphia: University of Pennsylvania Press, 2016), 117.

<sup>65</sup> 8 U.S. Code § 1232(c)(2)(A).

<sup>66</sup> ORR, *UAC Sexual Abuse Hotline (1-855-232-5393)* (Washington, DC: ORR, 2019), <https://perma.cc/7NWF-3826>.

<sup>67</sup> ORR, “Children Entering the United States Unaccompanied,” HHS, April 20, 2015, § 3.3.10, <https://perma.cc/9XEA-GR4F>.

<sup>68</sup> As described by Omar, who experienced a number of ORR placement settings: “In the [LTFC] foster unit it’s just like the same rules [as the shelter] but in a different, different, uh, different aspect of the locked up. You can go to school, come back, and stay home for the whole day. It’s just the same as locked up.”

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<sup>69</sup> ORR facilities range from highly restrictive facilities, like secure, staff-secure, and residential treatment centers, to foster home placement in transitional (short-term) foster care and long-term foster care settings. Most children find themselves in a typical ORR shelter, a congregate care setting that has anywhere from a dozen beds to more than a thousand. ORR, “Children Entering the United States Unaccompanied: Section 1,” HHS, July 14, 2021, § 1.2, <https://perma.cc/42FF-N7UR>.

<sup>70</sup> Children and youth detained in short-term ORR custody for extended periods of time continue to attend class when the curriculum repeats, experiencing an educational “Groundhog Day” that exacerbates feelings of being left behind when their cohorts are released to families and moving on to the next stage of life. Omar, who spent several months in short-term ORR custody, described feeling bored when the same topics were being repeated and frustrated that ORR shelter educational instructors were not teaching him beyond the basics of English.

<sup>71</sup> IEPs and Section 504 plans are both plans for implementation of educational supports and services for children with disabilities. 20 U.S.C. § 1400; 29 U.S.C. § 794.

<sup>72</sup> See 20 U.S.C. § 1400(c). In California, for instance, a child with special education needs may not be placed at a nonpublic school housed within a congregate care facility unless their IEP specifies that this educational program is more appropriate for the particular child than a program at a public school. Cal. Educ. Code §§ 56157(b), 56342.1.

<sup>73</sup> This is consistent with a report from HHS’s Office of the Inspector General that found that ORR’s incident reporting system does not adequately protect children from abuse. See Christi Grimm, *The Office of Refugee Resettlement’s Incident Reporting System Is Not Effectively Capturing Data to Assist Its Efforts to Ensure the Safety of Minors in HHS Custody* (Washington, DC: Office of Inspector General, HHS, 2020), <https://perma.cc/R24M-3X25>.

<sup>74</sup> Desai, Adamson, Cohen, et al., *A New Way Forward*, 2021, 20; ORR, “Children Entering the United States Unaccompanied: Section 1,” HHS, July 14, 2021, § 1.4.6, <https://perma.cc/42FF-N7UR>.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Flores v. Reno*, No. CV-85-4544-RJK(Px) (C.D. Cal., January 17, 1997) (settlement agreement).

<sup>78</sup> Student bodies nominate and elect their peers to student government positions to represent their interests in school. The Council of Europe has identified that establishing formal student government bodies like pupil parliaments effectuates their right to participate in all matters affecting them, consistent with UN Convention on the Rights of the Child, art. 12, 1577 U.N.T.S. 3 (November 20, 1989); Council of Europe, “Making Children’s and Students’ Voices Heard,” <https://perma.cc/COG6-VNV7>. The Council of Europe further identifies that ensuring student voices are heard fosters a sense of belonging and improves the classroom atmospheres. *Ibid.* In a similar fashion, children and youth detained in ORR facilities could nominate and elect their peers to represent their views in matters impacting their care and custody at the facility. This could include—but is not limited to—the education services unaccompanied children and youth receive.

<sup>79</sup> For more information on mandatory reporting, see HHS Children’s Bureau, *Mandatory Reporters of Child Abuse and Neglect: State Statutes Current through April 2019* (Washington, DC: HHS Children’s Bureau, 2019), <https://perma.cc/8EC8-4CD8>. It bears noting that ORR has its own policies for responding to allegations of abuse and neglect. See ORR, “Children Entering the United States Unaccompanied,” HHS, April 20, 2015, §§ 4, 5.5 & 5.8, 45 CFR § 411 et seq.

<sup>80</sup> Stephanie L. Canizales, “Work Primacy and the Social Incorporation of Unaccompanied, Undocumented Latinx Youth in the United States,” *Social Forces*, (2021), 1-24, 5. <https://doi.org/10.1093/sf/soab152>.

<sup>81</sup> USCIS, “Memorandum re: Policy Alert: Special Immigrant Juvenile Classification and Deferred Action,” March 7, 2022, <https://perma.cc/Q65W-3X56>.

<sup>82</sup> Colleen Owens, Meredith Dank, Justin Breaux, et al., *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States* (Washington, DC: Urban Institute, 2014), 10, 26, 110, 199, <https://www.urban.org/sites/default/files/publication/33821/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

<sup>83</sup> See United States Senate, Permanent Subcommittee on Investigations, Report: Oversight of the Care of Unaccompanied Children (2018), 2, <https://perma.cc/CX7T-UE2Q>.

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<sup>84</sup> Maria’s trafficker convinced her not to say anything to the police by threatening her with the fact that she didn’t have a work permit. “Who are they going to believe more, you or me? Who is worth more here [in the U.S.]? Who has a work permit here?” (Original quote: “¿a quién le van a creer más a ti o a mí? ¿Quién vale más aquí? ¿Quién tiene un permiso de trabajo aquí?”)

<sup>85</sup> See for example UNICEF, *Building Bridges for Every Child*, 2021, 33-37.

<sup>86</sup> Vera has recommended that President Biden confer lawful presence through granting unaccompanied children deferred enforced departure (DED) or “parole in place.” Aber, Esterle, and Loh, *Eight Ways to Ease the Child Detention Crisis*, 2021, 4. DED is a designation that protects a person from deportation from the United States, usually for a designated period. DED is in the president’s discretion to authorize as part of his constitutional power to conduct foreign relations. USCIS, “Deferred Enforced Departure,” <https://perma.cc/YH3G-V6MU>. See also David Bier, “Immediate Solutions for Migrant Children,” Cato Institute, March 17, 2021, <https://perma.cc/8FFK-ZC3T>. For more information about parole in place, see USCIS, “Discretionary Options for Military Members, Enlistees, and their Families,” <https://perma.cc/3YAB-P83G>.

A handful of states, including New York, provide health insurance to children who qualify based on income regardless of immigration status. Marielos Ramos, Geraldine Marrero, Laura Simich, et al., *Unaccompanied Immigrant Youth in New York: Struggle for Identity and Inclusion—A Participatory Action Research Study* (New York: Vera Institute of Justice and Fordham University, 2015), 10, <https://perma.cc/ZXU5-CHNU>.

<sup>87</sup> U.S. Committee for Refugees and Immigrants (USCRI), “Ensuring Unaccompanied Children’s Well-Being After Release,” (Arlington, VA: USCRI, 2021), 5, <https://perma.cc/L5UW-GHWC>.

<sup>88</sup> See for example Casey Family Programs, “How Can We Prioritize Kin in the Home Study and Licensure Process, and Make Placement with Relatives the Norm?” (Washington, DC: Casey Family Programs, July 2020), <https://perma.cc/8ECS-VHUY>.

<sup>89</sup> In Chile, asylum seekers receive immediate work authorization, as well as assistance to provide for their basic needs such as food, housing, and transportation. UNHCR, “Options Paper 2: Options for Governments on Open Reception and Alternatives to Detention,” (UNHCR, 2015), 6, <https://www.unhcr.org/en-us/protection/detention/5538e53d9/unhcr-options-paper-2-options-governments-open-reception-alternatives-detention.html>.

<sup>90</sup> For Chile’s approach, see UNHR, “Options Paper 2,” 2015, 6. Exemptions would also need to be applied to the public charge rule so that obtaining public benefits does not prejudice unaccompanied children and youth’s legal interests. See Immigration and Nationality Act § 212(a)(4)(A) (the public charge rule) codified at 8 U.S.C. § 1182(a)(4); and USCIS, Letter to Interagency Partners (updating April 12, 2021, letter), November 16, 2021, <https://perma.cc/B7HC-FTJ6>.

<sup>91</sup> Vera partners with legal providers across the country to provide government-funded attorneys to children in ORR custody and children who have been released from ORR custody. At this time, ORR has not provided sufficient funding to appoint every child released from ORR custody an attorney to represent them in their legal proceedings. Vera Institute of Justice, “Legal Services for Unaccompanied Children,” <https://www.vera.org/projects/legal-services-for-unaccompanied-children>.

<sup>92</sup> Office of Management and Budget, *Budget of the U.S. Government Fiscal Year 2023* (Washington, DC: Office of Management and Budget, 2022), 68-69, <https://perma.cc/2F5L-AFMB>; and HHS, *Fiscal Year 2023: Budget in Brief* (Washington, DC: HHS, 2022), 92, 126, <https://perma.cc/6HA4-NNEM>.

<sup>93</sup> For further discussion of the value of fostering connection between unaccompanied children, see Canizales, “Work Primacy,” 2021.

<sup>94</sup> The Young Center has recommended the creation of a new form of relief, Best Interests Protective Status, which would award such status to children until the age of 21 in circumstances when the government cannot meet its burden to prove that the child can safely repatriate to their home country. Nagda, Kribs, Wu, et al., *Reimagining Children’s Immigration Proceedings*, 2020, 7-8.

<sup>95</sup> USCIS, “Central American Minors (CAM) Refugee and Parole Program,” <https://perma.cc/QGU2-H6D2>.

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<sup>96</sup> Leonardo Castañeda and Katie Hoepfner, “Five Things to Know About the Title 42 Immigrant Expulsion Policy” American Civil Liberties Union, March 22, 2022, <https://perma.cc/RPU5-CKWH>.<https://perma.cc/RPU5-CKWH>

<sup>97</sup> See Vera Institute of Justice, “Vera Institute of Justice Responds to Court Decision to Keep Title 42 in Place,” May 24, 2022, <https://www.vera.org/newsroom/vera-institute-of-justice-responds-to-court-decision-to-keep-title-42-in-place>.

<sup>98</sup> Centers for Disease Control, “CDC Public Health Determination and Termination of Title 42 Order,” April 1, 2022, <https://www.cdc.gov/media/releases/2022/s0401-title-42.html>.

<sup>99</sup> On May 20, 2022, a federal court in Louisiana granted the request of 24 states to block the Biden administration from terminating Title 42. *State of Louisiana et. al v. Centers for Disease Control et al.*, 6:22-CV-00885 (W.D. La.), <https://perma.cc/SZW2-ETSS>.

<sup>100</sup> Vera has recommended ending the use of Title 42 to expel families. Aber, Esterle, and Loh, *Eight Ways to Ease the Child Detention Crisis*, 2021, 2. Vera has also stated that MPP is fundamentally problematic, dangerous, and contrary to due process. Kica Matos, “No Amount of Time, Resources, or Lawyers Can Make MPP Work,” Vera Institute of Justice, October 20, 2021, <https://perma.cc/R2PS-GZUR>.

<sup>101</sup> UN Convention on the Rights of the Child, art. 12, 1577 U.N.T.S. 3 (November 20, 1989). As one of the four fundamental principles of the convention, it must be read in tandem with every right contained therein. Although the United States is the only country that has not ratified this treaty, as a signatory to the convention the United States “is obliged under international treaty law to refrain from acts that would defeat the object and purpose of the convention.” Memorandum from Jeff Weiss, Acting Director, U.S. Department of Justice Immigration and Naturalization Service Office of International Affairs, to Asylum Officers, Immigration Officers, and Headquarters Coordinators, “Guidelines for Children’s Asylum Claims,” December 10, 1998, 2 n.2, <https://perma.cc/ZKU8-XFSX>.

<sup>102</sup> See UN Convention on the Rights of the Child, art. 12, 1577 U.N.T.S. 3 (November 20, 1989).