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# Improving Migrant Child Welfare at the Southwest Border

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## Executive Summary

The movement of migrant children to the United States' southern border is now a recurring and record-producing characteristic of migration in the Western Hemisphere. When they enter the United States, children navigate a complex, uncoordinated, and broken bureaucracy of U.S. government immigration actors.<sup>1</sup>

Children are first met by law enforcement officials who lack the training and skills to properly screen and interview the child in a trauma-informed and developmentally appropriate manner. Children then wait days or longer to move from jail-like holding facilities to shelters operated by licensed childcare providers. During their initial triage, law enforcement personnel ask questions regarding the child's basic background, to include name, age, and country of origin; but they also ask if they fear returning to their country, if they have been a victim of abuse, and family composition (i.e. did they arrive as a family, with siblings, or alone). The children then undergo a basic medical screening, where information on their COVID status, health, and well-being is collected. All of these are appropriate areas of inquiry, but the process of information relay is broken. Shelters that receive

<sup>1</sup> This paper addresses just one of many challenging aspects children face when migrating to the U.S. and crossing the southern border. It aims to provide recommendations on how to balance humanitarian, enforcement, and deterrence considerations. The issues attendant to managing the flows of migrant children should also be considered in the context of the broader migration management enterprise, to include recent border policies announced by the Biden administration.

the children after their border processing report the information given to them is often wrong, lost, or incomplete. This complex set of problems is more than another ineffective border security issue; this is a systemic failure by four successive presidential administrations that have had the authority to address these issues but have lacked the will to act. The consequence of this inaction has been to place migrant children at risk.

Policymakers need to act now and place child welfare professionals, not law enforcement actors, at the border to effectively screen and interview migrant children. Information sharing practices need to be improved, with a movement away from paper documents that can easily get lost to an approach that is digital, secure, and accessible by the child, their guardian, their lawyer, and their doctor. Further, the enforcement processing facilities need to undergo an immediate infrastructural transformation with the addition of new design features that are necessary and sensitive to the majority demographic that are held within facilities—children and families.

These actions are doable and require no legislative action. Migrant children deserve decisive action to ensure that their health, safety, and well-being is not jeopardized as they seek refuge in the United States.

# Background

The profile of an arriving migrant child to the United States is diverse. Migrant children arrive alone or with families, are age 0 months to 17 years, are culturally and geographically diverse (e.g. Central American, South American, and African), have experienced varying degrees of trauma, and, at times, have complex medical and mental health conditions. This paper examines the challenges faced by unaccompanied children. An unaccompanied child is a minor (i.e. under the age of 18) who has arrived in the U.S. or at the border without a parent or guardian and without legal status.

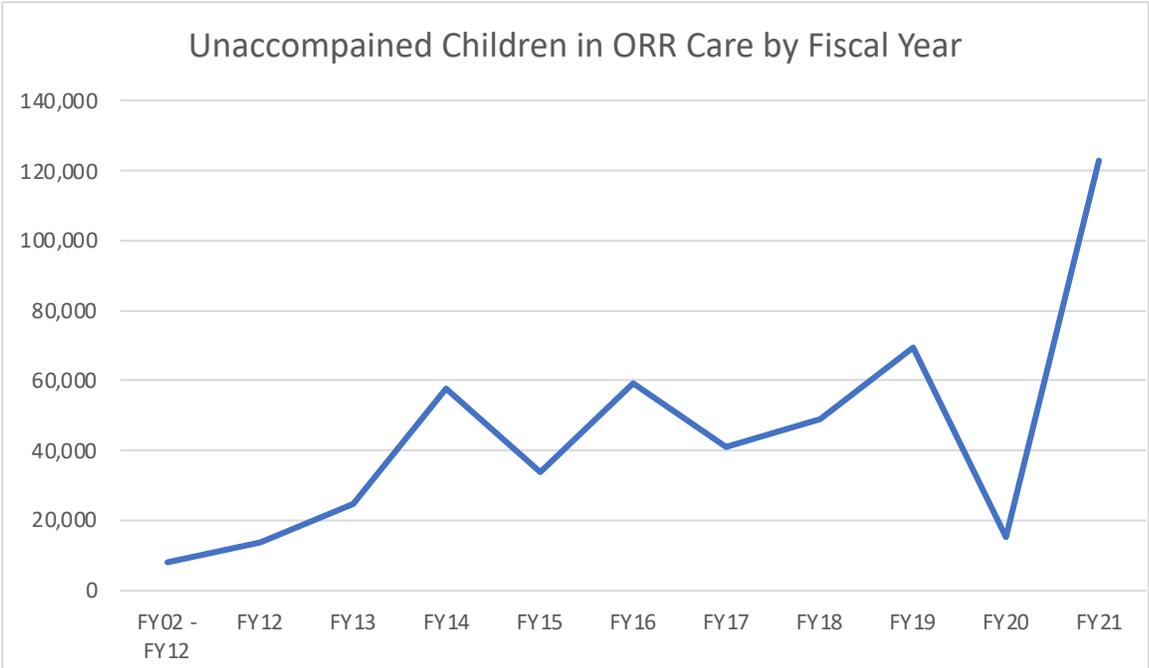
When an unaccompanied child enters the U.S., the federal government responds through a series of interagency actions involving the Departments of Homeland Security (DHS), Health and Human Services (HHS), and Justice (DOJ). The responsibilities of these agencies are as follows:

U.S. Agency	Responsibility
DHS CBP	DHS' Customs and Border Protection (CBP), primarily through the U.S. Border Patrol, is responsible for apprehending unaccompanied children who enter the United States at the border, referring them to HHS, and coordinating their transportation with another DHS agency, Immigration and Customs Enforcement (ICE). An unaccompanied child may remain in CBP custody days, but CBP strives to transition the child out of its care as quickly as possible.
DHS ICE	ICE is responsible for physically transporting unaccompanied children to shelters, group homes, and foster care placements administered by HHS' Office of Refugee Resettlement (ORR).
HHS ORR	ORR is responsible for physical care of the unaccompanied child, working through various for-profit and nonprofit agencies to house the child in a shelter facility or foster care while case managers work to find a safe and vetted sponsor, often a parent or relative. ORR is the agency that will ultimately release the unaccompanied child to a vetted sponsor.
EOIR & USCIS	The Justice Department's Executive Office for Immigration Review (EOIR) and DHS's U.S. Citizenship and Immigration Services (USCIS) conduct immigration proceedings to process requests for immigration relief. <sup>i</sup>

The migration of unaccompanied children to the United States has been steadily on the rise since 2002 with dramatic accelerations in 2014, 2019, and 2022. From years 2002 to 2013, the number of unaccompanied children rose year after year, but followed seasonal trends. FY 2014 saw the first large wave of migrant children from El Salvador, Guatemala, and Honduras arriving in the United States, with the push factors of violence, poverty, and the lack of economic opportunities propelling children north. But increased federal government enforcement practices led to an FY 2015 dip in unaccompanied children encounters, but that was only a temporary reprieve. By end

of 2020, with the effects of the COVID-19 pandemic subsiding, and a belief, credible or not, that the Biden administration would be light on enforcement, pent up migration demand burst onto the hemisphere resulting in unprecedented and record-breaking migration of unaccompanied children in FY 2021 and 2022. As seen in the table below, what was once a few thousand children annually in the early part of the 21st century has ballooned to over 120,000 by 2022, creating a recurring crisis environment along the border.

**Graph 1.** Unaccompanied Children in ORR Care Post Border Apprehension<sup>ii</sup>



***The History of Migrant Child Processing and Care Standards***

Until 1997, there was no coordinated U.S. policy specifically governing the reception and care of unaccompanied children in the U.S. immigration system. This changed in 1997 with the Flores Settlement Agreement.<sup>iii</sup> The settlement agreement arose from a class action lawsuit filed on behalf of migrant children against the legacy Immigration and Naturalization Service (INS). The lawsuit challenged how the U.S. government treated immigrant children in its custody. The government ultimately agreed to a foundational set of principles and protections regarding the care, custody, and release of all migrant children who are in federal custody.

In 2002, in response to events of 9/11, Congress passed the Homeland Security Act. The Act established the Department of Homeland Security (DHS), which included dissolving the INS and incorporating its functions into new agencies within DHS. The act also transferred interim physical

care of unaccompanied children to HHS ORR, while leaving in place the protections established in the Flores Settlement Agreement.

In 2008, Congress added further statutory protections for unaccompanied children with the passage of the Trafficking Victims Protection Reauthorization Act (TVPRA) in 2008. The TVPRA established migrant child care rules for unaccompanied children arriving from Mexico and non-contiguous countries (e.g. Central America), to include a 72-hour deadline for the referral of unaccompanied children from DHS to HHS ORR for screening and care and the requirement to place unaccompanied children in the least restrictive setting, such as an ORR shelter or foster care home, with children handled by child welfare professionals. Together the Flores Settlement Agreement and TVPRA created a basic legal framework for the reception, processing, care, and custody of unaccompanied children.

While in ORR shelters and foster homes, qualified child welfare professionals provide services such as education, socio-emotional support, food, clothing, and housing, while case managers locate and vet child sponsors, usually a parent or a close relative, who will assume custody of the child while in the United States. As of November 2022, ORR maintained 19,000 beds in a variety of child-appropriate settings, which range from small shelters of around 12 to 40 beds, to foster care placements, and larger Influx Care Facilities (ICFs) that have hundreds of beds at the ready to meet a surge of children coming into DHS custody.<sup>iv</sup>

Presently, DHS, through law enforcement personnel with the U.S. Border Patrol and the CBP Office of Field Operations (OFO), is the first federal government actor to encounter unaccompanied children when they enter the United States. Border Patrol agents and OFO officers are not child welfare professionals, and while ORR childcare providers who do employ child welfare professionals ultimately take in the children, their involvement occurs after many hours—sometimes days—after the child’s initial encounter with DHS.

Despite the emergence of a legal and care framework for unaccompanied children from both the TVPRA and the Flores Settlement Agreement, a child-centric approach to operations to ensure children are safely screened, triaged, and processed still does not exist. This is a bipartisan failure that has stretched across four presidential administrations (Bush 43, Obama, Trump, and Biden) and congressional majorities of each major political party. From the moment of apprehension to their release, unaccompanied children need trained child welfare professionals to conduct a triage, screening, and unification process. Delaying access to child welfare professionals who are specifically trained to identify abuse, neglect, and trafficking, combined with lack of reliable information-sharing practices among agencies, is not acceptable.

# Analysis<sup>2</sup>

Creating a more humane border reception process does not need to come at the sacrifice of softening of our immigration laws. Indeed, improving the government’s framework will allow it to improve border security. What is required is a reasonable paradigm shift that accommodates multiple policy priorities: achieving a more humane system, devoting law enforcement personnel to law enforcement priorities and not childcare, and reducing the inherent risks involved in screening and caring for children, especially those who have experienced trauma.

## ***The Right Professionals with the Right Skills Using a Trauma-Informed Approach***

For two decades, migrant and child-welfare experts and advocates have asked the government to deploy a more comprehensive and interdisciplinary approach to the initial reception and care of unaccompanied children,<sup>v</sup> but those calls have gone unanswered.

Under the current approach, Border Patrol agents and OFO officers are bearing the brunt of childcare.<sup>3</sup> DHS law enforcement professionals are needed to secure our borders and prevent threats from crossing into the country (e.g. illicit goods and drugs); they are not, however, the appropriate professionals to screen, triage, and process vulnerable children.

DHS law enforcement personnel did not sign up to screen and care for children, and they were not trained to do it. DHS border personnel are skilled and adept law enforcement experts, drawn in large measure from those with military or other law enforcement backgrounds. They are specially recruited and trained on security. At the Border Patrol Academy, for example, new trainees complete courses that include U.S. immigration law, border logistics and operations, physical training, firearms instruction, driving, law enforcement tactical training, and Spanish. Instruction also includes how to recognize the signs of human trafficking and smuggling. Conspicuously absent from their training is child welfare training.

Contrast this with the requirements for an entry-level social worker in, for example, Maryland.<sup>vi</sup> Maryland requires social workers to obtain a four-year degree with specialization in behavioral science, such as child development, sociology, social work, psychology, counseling, nursing, criminology, juvenile justice, human growth and development, human services, mental health, or

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2 This analysis is informed by my first-hand work addressing the care needs of migrant children, which has spanned work in the federal government, in the non-profit sector, and as a licensed child welfare lawyer.

3 CBP statistics and press reports show that, from 2017 to 2021, one out of three persons cared for by the Border Patrol was a child (under 18 years old). The total number of children in Border Patrol custody for this period is staggering: more than 650,000, of whom 220,000 or 34% are in Border Patrol care for more than 3 days.

human resources. The social worker then must pass state exams; have at least one, preferably two, years of experience working with children; and must commit to on-going continuing education courses to remain informed about the latest trends in child welfare.

Deploying specifically trained child welfare professionals to the border for child initial screenings, triage, and processing is critical. Unaccompanied children crossing into the United States have faced traumatic situations in their home countries, such as extreme poverty, violence, torture, gang recruitment and exploitation, human trafficking, domestic violence, abuse, and/or neglect. Moreover, some children are also very young, have little or no formal education, and are primarily non-English speaking. It is therefore essential that those first encountering the children are trained child welfare professionals who are attuned to the varied and individual needs of the children, including being developmentally appropriate, culturally responsive, and trauma informed.

The government has two options to ensure unaccompanied children encountered along the border are handled by qualified staff. Option one is to train law enforcement personnel to be social workers so they can appropriately screen and process children. Option two is to deploy child welfare professionals to conduct the triage, screening, and processing of children.

In FY 2022 Congress chose option two and appropriated funding to provide child welfare professionals at CBP facilities.<sup>vii</sup> But this funding has not yielded sufficient personnel to make a meaningful impact. In February 2022, CBP reported the hiring of only 252 contract child welfare specialists.<sup>viii</sup> What's more, as CBP itself has implicitly acknowledged,<sup>ix</sup> these child welfare professionals are not "front-line" field deployed but instead work in offices or stations far from the front lines of unaccompanied child border encounters. Instead of the proactive deployment of child welfare professionals along the border, Border Patrol agents are told they can call a specialist for help if an agent feels they need the assistance. Both the number of specialists and the "phone-a-expert" framework that has been deployed are plainly inadequate given the scope of the problem. In March of 2021, for example, Border Patrol encountered nearly 20,000 accompanied and unaccompanied children along the border.<sup>x</sup> Setting aside that the recently hired child welfare specialists are not physically present, assuming all 252 of them were working throughout the month that would be a ratio of one specialist to 79 children. Best practices in the child welfare field, however, would reduce this ratio to be 1:15.<sup>xi</sup> The current staffing numbers are simply insufficient to have a meaningful impact for children who are arriving by the hundreds daily.

Providing significantly higher staffing levels of these professionals at the border will not only improve child welfare, but it could also help speed up the unification process between an unaccompanied child and a sponsor. Most unaccompanied children arrive with contact information (name, address, and phone number) for their intended sponsor, which could be a parent, relative, or

other designated guardian. If DHS used child welfare professionals at the first encounter, and these professionals conducted their interviews using proven trauma-informed techniques, the odds of the child divulging sensitive information on their health, past abuses or trauma, and the location of sponsor increases. Reliable and timely data collection could reduce the overall length of stay a child has in ORR care and place the child faster with an appropriate sponsor.<sup>4</sup>

### ***Immediate and Complete Information Gathering and Sharing***

ORR migrant care providers are seeing an emerging pattern of incomplete, lost, or blank documentation regarding the child's processing at the border. It must be acknowledged that the Border Patrol is extremely stretched. In FY 2022, CBP had a staggering 2.4 million encounters, including both apprehensions and returns, with tens of thousands being unaccompanied children.<sup>xii</sup> Each of these encounters generates a substantial amount of paperwork: immigration charging documents, processing documents, health and screening documents, property receipts, and so on. Information and data on these are not just part of a sterile bureaucratic process; they contain critical health and vulnerability information, as well as information regarding the composition of a child's family (e.g. did they arrive with a parent, sibling, other relative).

As unaccompanied children are triaged and screened, the government starts compiling the data profile of the child. This includes biographical information such as the child's age, sex, date of birth, country of origin, and language spoken. It also includes results from the child's health screening, COVID 19 vaccination status, the identification of a disability, or any indicia of neglect, abuse, abandonment, trafficking, or smuggling.

ORR care providers have continued to report that children arriving from DHS into their care come without a complete biographical, vulnerability, and health profile that should have been gathered during their initial encounter and DHS processing. This is creating a preventable risk for the government and is detrimental to the child's continued care. Should physical and mental health problems be identified during screening, but they are not properly recorded and relayed, then those receiving the child must redo the process, and critical time is wasted; time that could have been used to immediately attend to the child's medical or mental health needs.

ORR care providers also want to know about the child's family, such as siblings, with whom the child may have arrived. But here too the DHS data collection is breaking down. Immigration advocacy groups and ORR care providers continue to point out instances where children that were initially encountered by DHS as families, or as sibling sets, were needlessly separated, each going

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4 In January 2021, ORR reported the length of care a child in their care was 42 days, not including the hours or days spent in DHS care. ORR has reduced the time in care to 14 days with case management process improvements. This time could be further reduced if ORR had better information on potential child sponsors.

down a different immigration processing route.<sup>xiii</sup> This is likely not the intention of DHS, Border Patrol agents, ORR contracted staff, and all those involved who have learned the lessons from past mistakes and strive to keep families intact. Nevertheless, the lack of effective family composition documentation continues to put children at risk of family separation.

If step one is the thorough collection of information by DHS, then step two should be a reliable and electronic form of data sharing between DHS and HHS ORR. But this does not exist, and it is having serious implications for the child's welfare. Often the only reliable information is the data contained on the documents the child arrived with or what is discovered upon a second screening and triage process. The information collected by DHS at their initial encounter and subsequent screenings must be relayed to HHS ORR in reliable and consistent manner.

The government has the capacity to build such a data bridge. DHS created the Unified Immigration Portal (UIP) allowing ICE and CBP to share data, but this digital bridge needs one more segment—a link from DHS to HHS ORR. This additional bridge will ensure critical child welfare information is exchanged in a timely manner and may even speed up the time it takes to unify a child with a vetted sponsor.

Creating reliable and nimble data-sharing practices should not end with ORR. Another failure in the process is the child's inability to navigate the mountain of physical paperwork they are given upon release. This mountain contains official DHS and HHS paperwork, their complete in-care medical file (vaccination dates, doctor appointment summaries, off-site medical appointments, etc.), immigration legal assistance procedures, results from educational assessments, cultural orientation materials, and the list goes on. Currently ORR care providers are placing this voluminous set of printed documents into folders or binders, fulfilling a policy requirement for sure, but not making the information accessible. The data must be in a form that is manageable and easy for the child and their sponsor to access for later use (e.g. with the child's attorney, with their doctor, or their new teacher).

### ***Ensuring DHS Facilities are Trauma-Informed and Appropriate for Children***

The physical environment is crucial when working with children exposed to trauma. Visit any child shelter or children's hospital and you will see purposely designed spaces that take into account the child's physical, cognitive, social, and emotional development. This is not what an unaccompanied child encounters in DHS processing facilities.

Historically, DHS border facilities were designed to contain and control migrants, of whom the majority were single adult males. Since the 1990s, the demographics have changed, with families

and children now constituting a significant portion of the migrants arriving at the border. DHS facilities along the U.S. southern border, however, have not been renovated to serve the new population of families and children. They are antiquated, jail-like, and constructed for single adults.

While DHS has improved its infrastructure, replacing temporary warehouses used for processing with more permanent structures, their design remains inadequate for the care of children and families. For example, in March of 2022, CBP unveiled the newly renovated CBP Central Processing Center in McAllen, TX. This new center replaced the temporary elements of the former processing center with permanent medical, screening, laundry, and legal consultation infrastructure. While the new facility was structurally and physically adequate, its design philosophy remains the same as before: contain and control. It is a sterile and exposed environment that maximizes the control of the migrants yet does not provide comfort or peaceful setting to the children exposed to trauma. The result is, therefore, substantively deficient.

A complete tear down of these newly renovated sites may not be needed. ORR care providers, both for-profit and nonprofit, have been able to reimagine buildings and space that were never intended to be used by children. For example, a nonprofit ORR contractor turned a former man-camp for oil workers in western Texas into a facility with design and renovation elements that were child-centric. Other ORR grantees have turned former nursing homes, schools, and industrial buildings into spaces that are appropriate for children. These entities enlisted support from child welfare, education, horticultural, and numerous therapy disciplines (e.g. art, music, and pet) to redesign spaces through a child-welfare lens.

DHS must reexamine its design and building approach to take into account the perspective and needs of the hundreds of thousands of children they are screening, triaging, and processing. They also need to view the physical structure of their facilities as a way to glean more reliable and actionable information about children and their vulnerabilities. The use of a trauma-informed design approach would ensure children feel welcomed, respected, and comfortable sharing sensitive information. This could be done by creating therapeutic spaces that give children a sense of control and privacy; re-working the process steps to create a sense of flow and order for stress-reduction; incorporating nature into the current stark and sterile environment to act as a positive healing distraction; and mitigating re-traumatization by creating a sense of safety.

# Recommendations

## **Recommendation 1: DHS Needs to Fully Deploy the Child Welfare Professionals Funded by Congress.**

Policy and government leaders need to act now and raise child welfare professional staffing levels to ensure that every child encountered is screened, triaged, and processed by a child welfare professional. These professionals should be recruited from culturally diverse backgrounds, have adequate foreign language capabilities, be equipped with the expertise to conduct screening and interviews in a child-sensitive and culturally appropriate manner, and be able to coordinate immediately with on-site medical professionals when health concerns are flagged. DHS has already started hiring and using child welfare professionals, but their numbers must dramatically increase, and they need to be deployed to work alongside Border Patrol agents and CBP officers. Furthermore, these child welfare professionals should be complemented with ORR federal staff working within Border Patrol facilities. ORR federal employees are those charged with the eventual care and family unification responsibilities. Trained child welfare professionals should be engaging with and interviewing the child, while ORR representatives should be present to ensure the continuity of process and adherence to policy. The 2021 bi-partisan Border Solutions Act is a meaningful step in the right direction, as it would create several large border processing centers with all federal agencies involved in the migration process present and conducting their responsibilities contemporaneously, not consecutively.<sup>xiv</sup> This could speed up the process and ensure vulnerabilities are sufficiently addressed. Once these staffing recommendations are met, Border Patrol can then focus its full attention on their legitimate law enforcement responsibilities.

## **Recommendation 2: DHS Needs to Develop and Deploy Reliable Data Sharing Mechanisms so Vital Information about Child Welfare, Health, and Safety Is Relayed to ORR and Ultimately Accessible by the Child and Their Sponsor.**

Child welfare professionals, working physically on the border, must collect and record information regarding the unaccompanied child's health, vulnerabilities, and family connections in an electronic database. This information should then be electronically accessible by HHS ORR and its contractors. Reliable information sharing between government agencies and contractors will result in children receiving prompt medical and mental health care, siblings and families staying together, and reduced lengths of stay for unaccompanied children in federal custody.

Federal government decision-makers must also create a means for the child and their sponsor to access appropriate data that was collected while in government care. One novel solution that would transform how a child and their sponsor can access their information and records would be through the creation of a digital information wallet. This wallet would store information in a secure, cloud-based, system that can be read by all appropriate actors in the process.

How this happens can take many forms. It could start with border child welfare professionals issuing a QR coded bracelet (a simple tool frequently used in hospitals and in emergency response settings) that allows the tracking of the results obtained from the child's biographical, health, and humanitarian screening assessments. Once captured, that information would travel with the child and be used by the receiving ORR care providers to provide tailored services (in physical health, behavioral health, disability accommodation, interpretation, etc.). Upon release the appropriate data and information accumulated throughout the process would be placed in a cloud-based environment to be accessed later by a mobile device or imprinted on a secure card that the child leaves with.

This digital wallet could be further enhanced by categorizing the forms and documents, key word search capabilities, and community guides for post-release services. These technological solutions for a secure digital information wallet for migrant children are likely already commercially available, it just has not been pursued. Any new approach in handling a child's sensitive personal information should be met with a rigorous privacy assessment, but the potential benefits to the child are numerous.

### **Recommendation 3: DHS Needs to Enhance Their Processing Infrastructure to Provide an Environment that Is Designed to Further the Child's Health, Welfare, and Wellbeing.**

DHS must adopt a child-welfare informed approach to the design and features of their processing centers. Intentional design improvements must be made so children and families feel welcomed, respected, and comfortable sharing sensitive information in response to probing questions regarding their journey, health issues, and other vulnerabilities. Best practices taken by ORR care providers demonstrate that purpose-built environments are not necessarily expensive. It may require assessing the features of the current space and adapting them so that they are welcoming to children and families with histories of trauma. DHS should consider incorporating the following:

- Living, colorful, and beautiful items such as fish tanks and plants. The use of plants as a natural barrier to break up small spaces and provide private places. Make the space

non-institutional and cheerful by using murals, paintings, and drawings.

- Provide comfortable chairs rather than steel stools or hardback chairs. Set up chairs in a semicircle in the corners of a room rather than lining them up against a wall.
- Provide a separate “child space” that allows children to have access to developmentally appropriate toys, low tables and chairs, books, videos, and television.
- Rooms should be well lit inside and out, as dark places can remind people of places where assaults or trauma may have occurred.
- Bathrooms need to be well-lit, accessible to people in the shelter, clean, and have plenty of paper supplies and soap. Women who need to change their young children will need a place to dispose of diapers and, ideally, have access to a changing table. If there is only one bathroom for men and women, make sure that a sign on the door indicates when the bathroom is being used.
- Choose furniture that is colorful, soft, washable, and durable.
- Adding features such as a library, and sensory rooms for those children with socio/emotional needs.
- Considering security, create private retreat spaces, quiet rooms or meditation gardens.
- And lastly, all design elements should be accessible for children and families with hearing, visual, or mobility impairments.

## **Recommendation 4: Policymakers Should Explore the Creation of a DHS Office of Child Protection or Similar Child-Welfare Dedicated Entity.**

A migrant child will be seen and cared for by countless government agencies and contractors. To bind all these actors together with one child-centric purpose—which is to protect a child’s rights and promote their best interests—the federal government needs an organizational entity to protect their interests. Congress should, therefore, establish, fund, and staff such an entity. This could take many forms, but one approach could be the creation of a DHS Office of Child Protection, which would be a headquarters-level office reporting to either the Deputy Secretary or Secretary to convey the importance of these issues. This new office would have personnel assigned to work with CBP and ICE. The office should have the authority to provide meaningful oversight functions and offer recommendations to ensure the best-interests of the child remain paramount in DHS immigration responsibilities. To ensure effective coordination with HHS ORR is maintained, including information-sharing, a principal liaison of the new office should be assigned to the unaccompanied child operations division within ORR.

# Closing

The U.S. government has the resources and the ability to provide practical, efficient, and cost-saving solutions that are vital to a migrant child's care and wellbeing. Action by decision-makers should begin today so unaccompanied children encountered at the border are met by the right professionals, using the right data-sharing tools, and in the right setting.

# About the Author

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# Endnotes

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