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# Children in Custody: A Study of Detained Migrant Children in the United States

Emily Ryo & Reed Humphrey


## ABSTRACT

Every year, tens of thousands of migrant children are taken into custody by U.S. immigration authorities. Many of these children are unaccompanied by parents or relatives when they arrive at the U.S. border. Others who are accompanied by parents or relatives are rendered unaccompanied when U.S. immigration authorities separate them upon apprehension. Together, these minors are called unaccompanied alien children (UACs) and transferred to the custody of the Office of Refugee Resettlement (ORR), unless and until their immigration cases are resolved or until the children can be placed with a sponsor in the United States pending the adjudication of their immigration cases. In fiscal year 2019, the ORR held the highest number of UACs in its UAC program history.

This study presents the first systematic empirical investigation of children in ORR custody using original administrative records pertaining to migrant children who were in ORR custody between November 2017 and August 2019. Our analysis reveals an increasing number and proportion of children in U.S. custody who are extremely vulnerable: girls, young children of tender age (260 of whom are U.S. citizens), and children emigrating from countries with high rates of crime and violence. This trend suggests that insofar as punitive immigration enforcement policies may have deterred some children from undertaking the dangerous journey to the United States, those who continue to arrive at the U.S. border are likely children who are most in need of special care and legal protection.

Yet our analysis raises serious questions about the system's capacity to afford such care and protection. We find that most migrant children held in custody were concentrated in a small number of states, which are different from the states in which their sponsors reside. Only about 11 percent of children reunified were discharged from facilities located in the same state as their sponsors' states of residence. In addition, most migrant children were in facilities that are extremely large—for example, shelters with capacities of 100 or more children. We also find deep inequalities in the system that suggest that custodial experiences and outcomes of UACs in ORR custody are closely tied to the particular facility and type of program in which a child happens to be placed. Among other findings, our analysis shows that the median time to reunification varies widely between facilities. For example, one ORR shelter's median time to reunification was nearly eight times as high as that of another ORR shelter. We discuss the policy implications of these findings and consider critical issues that require further investigation—issues that are central to evaluating

how, whether, and to what extent the U.S. government is fulfilling its moral and legal obligation to protect migrant children inside our borders.

## AUTHORS

Emily Ryo is a Professor of Law and Sociology at University of Southern California Gould School of Law. She is currently an ABF/JPB Foundation Access to Justice Scholar.

Reed Humphrey is a Research Associate at University of Southern California Gould School of Law.

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## INTRODUCTION

> B.X. has now spent more than 1/10 of his young life in government institutions. Since being taken from his father and placed in ORR custody, B.X. has been placed in 4 different shelters . . . . In none of these institutions have staff spoken his native, indigenous . . . . These moves have meant that B.X. has had to adapt to new staff, new rules and new children and has not been able to maintain any of the relationships which he may have built, and which may have helped him to counterbalance the terrible losses and isolation he suffers. His father reports that he is limited to 1 brief ten-minute call per week with his family. This may be less frequent, as [B.X.'s father] . . . states that a call which fails to go through is not re-attempted and B.X. must wait another week before the facility attempts to contact his family again . . . . His father reports that B.X. expresses distress and frustration over his protracted confinement and has been chronically upset about and fixated on when he will get out. He expresses feelings of betrayal that so many weeks and months pass without his release. At times, he expresses hopelessness that it will ever happen at all.[1]

Migrant children apprehended by immigration authorities and placed in government custody—like the eight-year-old boy B.X. described above—are canaries in the coal mine. The trauma and violence many of them experience before and during their journey to the United States and the institutionalized setting in which they are detained in the United States,[2] combined with children's inherent dependence and shifting developmental needs, make these children among the most vulnerable populations in the country. Just as the measure of a nation is its treatment of weakest members, a principal gauge of the integrity and legitimacy of the U.S. immigration system is how migrant children fare in government custody. Yet in recent times, migrant children in U.S. custody have been at the center of devastating stories of neglect, abuse, and forced medication.[3]

1. Declaration of Amy Cohen, M.D., Exhibit 1 to Petitioner B.X.'s Emergency Motion for Temporary Restraining Order and Preliminary Injunction and Issuance of a Writ of Habeas Corpus, B.X. v. Hayes, No. 1:19-cv-00017 (S.D. Tex., Mar. 15, 2019).
2. Consistent with the prevailing convention in research in this area, we use the term "in custody" and "detained" interchangeably. *See, e.g.*, SUSAN J. TERRIO, WHOSE CHILD AM I? UNACCOMPANIED, UNDOCUMENTED CHILDREN IN U.S. IMMIGRATION CUSTODY (2015) (using the terms interchangeably); Julie M. Linton, Marsha Griffin, Alan J. Shapiro & Council on Cmty. Pediatrics, *Detention of Immigrant Children*, 139 PEDIATRICS Apr. 2017, at 1 (same).
3. *See, e.g.*, Blake Ellis, Melanie Hicken & Bob Ortega, *Handcuffs, Assaults, and Drugs Called 'Vitamins': Children Allege Grave Abuse at Migrant Detention Facilities*, CNN (June 21,

This Article presents the first systematic empirical analysis of government data pertaining to migrant children in the custody of the Office of Refugee Resettlement (ORR), a federal agency within the U.S. Department of Health and Human Services (HHS) responsible for the processing, care, and placement of unaccompanied alien children (UACs).[4] This is a pressing task particularly in light of the sharp increase in the number of UACs in ORR custody over the past decade. Between fiscal years 2008 and 2019, the annual number of referrals to the ORR increased more than tenfold, rising from 6,658 to 69,488; the total number of referrals in fiscal year 2019 represents the highest number of UACs in ORR custody in its history.[5] Yet in June 2019, the Trump administration announced drastic funding cuts to basic ORR programs.[6] HHS funding for unaccompanied children declined from $1.72 billion in 2018 to $1.3 billion in fiscal year 2019.[7] At the same time, reports have emerged of extraordinary personal enrichment by some of the ORR's nonprofit operators.[8]

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2018, 9:59 PM), https://www.cnn.com/2018/06/21/us/undocumented-migrant-children-detention-facilities-abuse-invs/index.html [https://perma.cc/23B3-76SZ]; Michael Grabell & Topher Sanders, *Immigrant Youth Shelters: "If You're a Predator, It's a Gold Mine,"* PROPUBLICA (July 27, 2018, 12:19 PM), https://www.propublica.org/article/immigrant-youth-shelters-sexual-abuse-fights-missing-children [https://perma.cc/Y5GK-8C8N]; Caitlin Dickerson, *Detention of Migrant Children Has Skyrocketed to Highest Levels Ever*, N.Y. TIMES (Sept. 12, 2018), https://www.nytimes.com/2018/09/12/us/migrant-children-detention.html [https://perma.cc/NF4L-9S2W]; Garance Burke, Juliet Linderman & Martha Mendoza, *Claims: Migrant Children Molested in US-Funded Foster Care*, AP NEWS (Aug. 16, 2019), https://www.apnews.com/b44559a135654616aa0e69a3ec7d2339 [https://perma.cc/K3B8-5TUK].

4. The word "alien" is statutory language, but due to an increasing public recognition of its dehumanizing nature, there is a growing government effort to replace it with the word, "noncitizen." Daniel Hernandez, *From "Alien" to "Noncitizen": Why the Biden Word Change Matters in the Immigration Debate*, L.A. TIMES (Feb. 18, 2021, 4:50 PM), https://www.latimes.com/entertainment-arts/story/2021-02-18/immigration-alien-noncitizen-language-politics-undocumented.
5. *See infra* note 42.
6. *See* Maria Sacchetti, *Trump Administration Cancels English Classes, Soccer, Legal Aid for Unaccompanied Child Migrants in U.S. Shelters*, WASH. POST (June 5, 2019, 6:12 PM), https://www.washingtonpost.com/immigration/trump-administration-cancels-english-classes-soccer-legal-aid-for-unaccompanied-child-migrants-in-us-shelters/2019/06/05/df2a0008-8712-11e9-a491-25df61c78dc4_story.html?noredirect=on&utm_term=.e75866b3a7e4 [https://perma.cc/J6YE-2HMU] (reporting on funding cuts to ORR educational, recreational, and legal service programs).
7. U.S. GOV'T PUBL'G OFF., APPENDIX, FISCAL YEAR 2020 BUDGET OF THE U.S. GOVERNMENT 464 (2019), https://www.govinfo.gov/content/pkg/BUDGET-2020-APP/pdf/BUDGET-2020-APP.pdf [https://perma.cc/G3GC-TFYA].
8. *See, e.g.*, Kim Barker, Nicholas Kulish & Rebecca R. Ruiz, *He's Built an Empire, With Detained Migrant Children as the Bricks*, N.Y. TIMES (Dec. 2, 2018), https://www.nytimes.com/2018/12/02/us/southwest-key-migrant-children.html [https://perma.cc/

Obtaining a deeper understanding of children in ORR custody is also more urgent than ever given the evolving political and policy landscape concerning UACs. The Trump administration sought to expand its power to detain and deport migrant children. In August 2019, the Trump administration announced a sweeping new set of regulations for detaining migrant children[9] that would supplant the *Flores* Settlement Agreement,[10] a product of a decades-old landmark litigation to secure the legal protection of migrant children in custody. The Biden administration is facing increasing criticism for its handling of the rising number of migrant children who are seeking protection at the U.S.-Mexico border.[11]

This study is informed by longstanding research on institutionalized care of children.[12] This body of research provides consistent evidence that institutionalized care is associated with significant and enduring delays and deficits in nearly all domains of child development.[13] Institutionalized care facilities across a diverse array of settings, countries, and continents share certain common traits, including "depersonalisation, or a lack of personal possessions, care relationships, or symbols of individuality" and "rigidity of routine, such that all life activities occur in repetitive, fixed daily timetables unresponsive to

62EH-Z6Q4] (reporting on Juan Sanchez, the chief executive of the Southwest Key Programs, an organization that contracts with the federal government to house migrant children).

9. Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44392 (Aug. 23, 2019) (to be codified at 8 C.F.R. pts. 212, 236; 45 C.F.R. pt. 410). *See also* Miriam Jordan, *The History of Migrant Children Protection in America Started With Two Girls in Los Angeles*, N.Y. TIMES (Aug. 20, 2019), https://www.nytimes.com/2019/08/20/us/flores-migrant-children-detention.html [https://perma.cc/6YRC-45FB] (reporting on the new proposed regulations).

10. Stipulated Settlement Agreement, Flores v. Reno, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997), https://www.aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf [https://perma.cc/5P7H-YVRQ].

11. *See* Eileen Sullivan, *For Migrant Children in Federal Care, a "Sense of Desperation,"* N.Y. TIMES (May 18, 2021), https://www.nytimes.com/2021/05/18/us/politics/biden-migrant-children.html [https://perma.cc/4U7A-NJNZ]; Ted Hesson, Mica Rosenberg, Kristina Cooke & Steve Holland, *Tensions Rise Within Biden Administration as Migrant Kids Crowd Shelters*, REUTERS (Apr. 15, 2021, 6:28 PM), https://www.reuters.com/world/us/tensions-rise-within-biden-administration-migrant-kids-crowd-shelters-2021-04-15/ [https://perma.cc/7Q86-RF6U].

12. By one estimate, approximately 2.7 million children under the age of 18 may be living in institutional care worldwide. Nicole Petrowski, Claudia Cappa & Peter Gross, *Estimating the Number of Children in Formal Alternative Care: Challenges and Results*, 70 CHILD ABUSE & NEGLECT 388, 388 (2017).

13. For a review of research findings, see Mary Dozier, Charles H. Zeanah, Allison R. Wallin & Carole Shauffer, *Institutional Care for Young Children: Review of Literature and Policy Implications*, 6 SOC. ISSUES POL'Y REV. 1 (2012); Anne E. Berens & Charles A. Nelson, *The Science of Early Adversity: Is There a Role for Large Institutions in the Care of Vulnerable Children?*, 386 LANCET 388 (2015).

individual needs and preferences."[14] "[B]lock treatment" is also common across these institutions, "with most routine activities performed alongside many children[,]" as is "social distance, or isolation from extra-institutional society."[15] This description generally applies with equal force to many facilities in which unaccompanied migrant children are held by the U.S. government.

This study also builds on research on unaccompanied migrant children, which is characterized by rich multidisciplinary perspectives. For example, sociologists Lilian Chavez and Cecilia Menjívar examine the migration process of unaccompanied children from Mexico and Central America to the United States.[16] Anthropologist Susan Terrio explores the experiences of unaccompanied minors navigating the U.S. legal system, highlighting firsthand accounts of six youths from Mexico and Central America.[17] Legal scholar Lenni Benson analyzes and critiques the law and procedure for adjudicating unaccompanied minors' claims in the United States.[18] Human rights scholar Jacqueline Bhabha examines the treatment of not only unaccompanied children but unprotected children more broadly, and child migration not only in national but also global context.[19]

We contribute to this important body of research by providing a detailed portrait of the changing profile of migrant children in custody, the facilities in which they are placed, and their custodial experiences and outcomes. Using original administrative records pertaining to migrant children who were in ORR custody between November 2017 and August 2019,[20] we constructed and analyzed longitudinal data that contain the complete event history of each child in ORR custody. These longitudinal data are a result of our multistaged ongoing effort to clean and integrate separate referrals, transfers, and discharges data produced by the government on a monthly basis. The process of combining and reconciling the separate data sets, and examining these records over time afforded us a unique opportunity to correct a variety of different types of errors, gaps, and conflicts

14. Berens & Nelson, *supra* note 13, at 389.
15. *Id.* *See also* Marinus H. van IJzendoorn et al., *Children in Institutional Care: Delayed Development and Resilience*, 76 MONOGRAPHS SOC'Y RES. CHILD DEV. 1, 2–3 (2011) (providing a composite description of institutional care).
16. Lilian Chavez & Cecilia Menjívar, *Children Without Borders: A Mapping of the Literature on Unaccompanied Migrant Children to the United States*, 5 MIGRACIONES INTERNACIONALES 71 (2010).
17. TERRIO, *supra* note 2.
18. Lenni B. Benson, *Administrative Chaos: Responding to Child Refugees—U.S. Immigration Process in Crisis*, 75 WASH. & LEE L. REV. 1287 (2018).
19. JACQUELINE BHABHA, CHILD MIGRATION AND HUMAN RIGHTS IN A GLOBAL AGE (2014).
20. As we explain later, the time range for the census data that we analyze is December 2017 to August 2019. The time range for the referrals, transfers, and discharges data that we analyze is November 2017 to July 2019.

present in the government data that are not apparent to analysts when the monthly data are analyzed separately.

Three key research questions guide our analysis. First, what are the characteristics of the migrant children in ORR custody and how have these characteristics changed over time? Second, where and in what types of facilities are the children held in custody? Third, what happens to the children once they are placed in ORR custody? To address the first two questions, we examine the demographics of migrant children, and the type, location, and size of the facilities in which they were held. To address the third question, we examine a number of key custodial experiences and outcomes. These include custody length (how long children were held in custody before being discharged), release from government custody to individual sponsors (discharges that are known as "reunifications"), and placement in and transfer to more restrictive and high-security custodial settings (transfers that are known as security "step-ups").

Our analysis of the records pertaining to the UACs in ORR custody during our study period reveals an increasing number and proportion of extremely vulnerable children in custody: girls, young children of tender age[21] (260 of whom are U.S. citizens), and children who had emigrated from countries with high rates of crime and violence. We find that most migrant children held in custody were concentrated in a small number of states, which are different from the states in which their sponsors reside. Specifically, only about 11 percent of children reunified with individual sponsors were discharged from facilities located in the same state as their sponsors' states of residence. In addition, most children were held in extremely large facilities—for example, shelters with capacities of 100 or more children. Finally, we find deep inequalities in the system that suggest that custodial experiences and outcomes of UACs in ORR custody are closely tied to the particular facility and type of program in which a child happens to be placed. For example, one ORR shelter's median time to reunification was nearly eight times as high as that of another ORR shelter.

21. The federal government has used the term "tender age" to refer to children aged 12 or younger. *See, e.g.*, *Unprecedented Migration at the U.S. Southern Border: Perspectives From the Frontline*, Comm. on Homeland Sec. & Gov't Affs., 116th Cong. (2019) (testimony of Jonathan White, Deputy Director for Children's Programs, Off. of Assistant Secretary for Preparedness and Response, U.S. Dep't of Health & Hum. Serv.) (referring to children 12 or younger as of "tender age"); HOMELAND SECURITY ADVISORY COUNCIL, FINAL EMERGENCY INTERIM REPORT: CBP FAMILIES AND CHILDREN CARE PANEL 6 (2019), https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf [https://perma.cc/59BX-SVRW] (same); 164 CONG. REC. S4253 (daily ed. June 20, 2018) (statement of Sen. Gillibrand) (same).

The remainder of this Article proceeds in four major Parts. Part I provides the legal, political, and research context for understanding the detention and deportation of migrant children. Part II describes the data we analyze in this Article and our analytical methods. Part III presents our key empirical findings. Part IV places these findings in broader research context and discusses the findings' major policy implications. We conclude by considering critical issues that require further investigation—issues that are central to evaluating how, whether, and to what extent the U.S. government is fulfilling its moral and legal obligation to protect migrant children inside our borders.

## I. BACKGROUND

U.S. immigration law defines an "unaccompanied alien child" as an individual who (1) has no lawful immigration status in the United States, (2) is younger than 18 years of age, and (3) has no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody.[22] Under this provision, children who are traveling with adults other than a parent or legal guardian (even if they are adults related to the children such as a grandparent or sibling) are still deemed to be UACs.[23]

Under the Zero Tolerance Policy that the Trump administration implemented at the U.S.–Mexico border in 2018, thousands of immigrant children were separated from their parents when the parents were criminally prosecuted for illegal entry or reentry.[24] This policy was implemented even against families lawfully presenting themselves at the port of entry to request asylum (that is, they had not effected illegal entry).[25] Facing severe public backlash over

22. 6 U.S.C. § 279(g)(2) (2012).

23. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-521, UNACCOMPANIED ALIEN CHILDREN: ACTIONS NEEDED TO ENSURE CHILDREN RECEIVE REQUIRED CARE IN DHS CUSTODY 1 n.1 (2015), https://www.gao.gov/assets/680/671393.pdf [https://perma.cc/3NTA-DGRZ].

24. *See generally* Emily Ryo, *Detention as Deterrence*, 71 STAN. L. REV. ONLINE 237 (2019) (describing the Zero Tolerance Policy). *See also* OFF. OF INSPECTOR GEN., U.S. DEP'T. OF HEALTH & HUM. SERV., OEI-BL-18-00511, HHS OIG ISSUE BRIEF: SEPARATED CHILDREN PLACED IN OFF. OF REFUGEE RESETTLEMENT CARE 1 (2019), https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf [https://perma.cc/7XF5-WT2J] ("Pursuant to a June 2018 Federal District Court order, HHS has thus far identified 2,737 children in its care at that time who were separated from their parents. However, thousands of children may have been separated during an influx that began in 2017, before the accounting required by the Court . . . .").

25. Paloma Esquivel & Brittny Mejia, *The Trump Administration Says It's a 'Myth' That Families That Ask for Asylum at Ports of Entry Are Separated. It Happens Frequently, Records Show*, L.A. TIMES (July 1, 2018, 5:00 AM), https://www.latimes.com/

family separations, former President Trump formally ended the Zero Tolerance Policy on June 20, 2018.[26] On June 26, 2018, the district court in *Ms. L. v. ICE* ordered the government to reunite the families that had been separated within weeks.[27] Since then, reports have emerged that the government has continued to separate children from their parents at the border.[28] What is less known, however, is that family separations were occurring long before the Zero Tolerance Policy.[29]

Confusingly, the federal government has referred to the children who have been separated from their families and placed in ORR care as UACs.[30] The ORR

local/lanow/la-me-ln-port-of-entry-separations-20180701-story.html [https://perma.cc/APB5-LGW3].

26. *See* Exec. Order No. 13,841, 83 Fed. Reg. 29,435 (June 20, 2018). *See also* Michael D. Shear, Abby Goodnough & Maggie Haberman, *Trump Retreats on Separating Families, But Thousands May Remain Apart*, N.Y. TIMES (June 20, 2018), https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-order.html [https://perma.cc/BV5J-3XAS] (President Trump "changed his mind [about the Zero Tolerance Policy] after a barrage of criticism from Democrats, activists, members of his own party and even his wife and eldest daughter . . . .").

27. Ms. L v. U.S. Immigr. & Customs Enf't, 310 F. Supp. 3d 1133, 1149 (S.D. Cal. 2018). *See also* SARAH HERMAN PECK, CONG. RSCH. SERV., LSB10180, FAMILY SEPARATION AT THE BORDER AND THE *MS. L.* LITIGATION (2018), https://fas.org/sgp/crs/misc/LSB10180.pdf [https://perma.cc/34W8-A9MF] (discussing the court decision in *Ms. L.* and the events leading up to it).

28. According to a federal lawsuit filed by the American Civil Liberties Union, 911 children were separated from their families and placed in ORR custody between June 26, 2018 and June 29, 2019. Memorandum in Support of Motion to Enforce Preliminary Injunction at 7, Ms. L v. U.S. Immigr. & Customs Enf't, 310 F. Supp. 3d 1133 (2018) (No. 18-cv-00428-DMS-MDD), https://www.aclu.org/sites/default/files/field_document/ms_l_v_ice_memo_iso_mtn_to_enforce_pi.pdf [https://perma.cc/V2D9-VJKW].

29. *See generally* WOMEN'S REFUGEE COMM'N, LUTHERAN IMMIGR. & REFUGEE SERV. & KIDS IN NEED OF DEF., BETRAYING FAMILY VALUES: HOW IMMIGRATION POLICY AT THE UNITED STATES BORDER IS SEPARATING FAMILIES (2017), https://reliefweb.int/sites/reliefweb.int/files/resources/BetrayingFamilyValues-Feb2017.pdf [https://perma.cc/4GAN-C4VF] (describing family separations as part of the Consequence Delivery System, which has been systematically implemented since 2005). According to a CBP estimate, 1,768 families were separated by border agents between October 2016 and February 2018. Mica Rosenberg, *Exclusive: Nearly 1,800 Families Separated at U.S.–Mexico Border in 17 Months Through February*, REUTERS (June 8, 2018), https://www.reuters.com/article/us-usa-immigration-children-exclusive/exclusive-nearly-1800-families-separated-at-us-mexico-border-in-17-months-through-february-idUSKCN1J42UE [https://perma.cc/M92H-28ED]. But these separations were not a standard practice during this period and typically occurred largely for medical reasons or due to security concerns. *Fact Sheet: Family Separation at the U.S.–Mexico Border*, NAT'L IMMIGR. F. (June 20, 2018), https://immigrationforum.org/article/factsheet-family-separation-at-the-u-s-mexico-border [https://perma.cc/439Q-AQ5V].

30. *See* OFF. OF INSPECTOR GEN., U.S. DEPT. OF HEALTH & HUM. SERV., OEI-BL-18-00511, HHS OIG ISSUE BRIEF: SEPARATED CHILDREN PLACED IN OFF. OF REFUGEE RESETTLEMENT CARE (2019), https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf [https://perma.cc/7XF5-

data that we analyze in this study does not include a marker for whether a child was accompanied or unaccompanied at the time of apprehension. For ease of reference, we use the term UAC to refer to any child in ORR custody regardless of whether they were initially unaccompanied or accompanied.

### A. Empirical and Political Context

We begin with a brief discussion of the empirical and political context relating to migrant children in custody.[31] The issue of minors in immigration custody began receiving unprecedented public attention in the United States in mid-2014 when a large number of children—predominantly from the Northern Triangle countries of El Salvador, Guatemala, and Honduras—arrived at the U.S.–Mexico border.[32] At the same time, there was a growing influx of migrant family units arriving at the southwestern border.[33] This surge came to be called the "border crisis" by popular media[34] and an "urgent humanitarian situation" by the U.S. government.[35]

While reasons for the influx are multifold, many experts have cited high rates of poverty and violence in the Northern Triangle as major push factors for the

WT2J] (noting that thousands of children may have been separated and placed in ORR care since 2017). *See also* WOMEN'S REFUGEE COMM'N & ORRICK HERRINGTON & SUTCLIFFE LLP, HALFWAY HOME: UNACCOMPANIED CHILDREN IN IMMIGRATION CUSTODY 6–8 (2009), https://www.womensrefugeecommission.org/wp-content/uploads/2020/04/halfway_home.pdf [https://perma.cc/B3CZ-KZEH] (detailing the problems resulting from how ICE interprets the statutory definition of "unaccompanied").

31. On adult immigration detention, see Emily Ryo, *Fostering Legal Cynicism Through Immigration Detention*, 90 S. CALIF. L. REV. 999 (2017).

32. *United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016: Statement by Secretary Johnson on Southwest Border Security*, U.S. DEP'T OF HOMELAND SEC.: U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016 [https://perma.cc/TE82-5AWV] (last modified June 17, 2019) (showing the increase of UACs apprehended by the Border Patrol as 38,759 in fiscal year 2013, compared to 68,541 in fiscal year 2014).

33. *See id.*

34. *See, e.g.*, David Nakamura, Jerry Markon & Manuel Roig-Franzia, *Obama Aides Were Warned of Brewing Border Crisis*, WASH. POST (July 19, 2014), https://www.washingtonpost.com/politics/obama-aides-were-warned-of-brewing-border-crisis/2014/07/19/8b5d2282-0d1b-11e4-b8e5-d0de80767fc2_story.html [https://perma.cc/AT3U-L23E].

35. Letter From Barack Obama, President, to John Boehner, Speaker of the House of Representatives; Harry Reid, Senate Majority Leader; Mitch McConnell, Senate Minority Leader; & Nancy Pelosi, House Democratic Leader (June 30, 2014), https://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle [https://perma.cc/T3CM-ENL2].

movement.[36] The percentage of population living below the national poverty line was 61.9 percent in Honduras, 59.3 percent in Guatemala, and 29.2 percent in El Salvador.[37] And homicide rates in Honduras, El Salvador, and Guatemala were, respectively, ranked the first, third, and eighth in the world in 2014.[38] Some experts have highlighted the importance of other contributing factors, including U.S. immigration policies, misinformation about U.S. immigration policies in the origin countries, and the desire for family reunification as contributing factors driving the Central American influx.[39]

UACs are most often detained by the U.S. Border Patrol, which is part of U.S. Customs and Border Protection (CBP), a component agency of the Department of Homeland Security (DHS). Two other DHS units may also detain UACs: the Office of Field Operations (OFO), which is responsible for border security at ports of entry; and Immigration and Customs Enforcement (ICE), which is responsible for interior enforcement. But OFO and ICE apprehension data on UACs—which are limited in scope and date range—indicate that the number of OFO and ICE

36. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-362, CENTRAL AMERICA: INFORMATION ON MIGRATION OF UNACCOMPANIED CHILDREN FROM EL SALVADOR, GUATEMALA, AND HONDURAS 4 (2015), https://www.gao.gov/assets/670/668749.pdf [https://perma.cc/CSG7-PGG9]; WILLIAM A. KANDEL, ANDORRA BRUNO, PETER J. MEYER, CLARE RIBANDO SEELKE, MAUREEN TAFT-MORALES & RUTH ELLEN WASEM, CONG. RSCH. SERV., R43628, UNACCOMPANIED ALIEN CHILDREN: POTENTIAL FACTORS CONTRIBUTING TO RECENT IMMIGRATION 3–9 (2014), https://fas.org/sgp/crs/homesec/R43628.pdf [https://perma.cc/T5BK-CNR9]; Faye Hipsman & Muzaffar Chishti, *The Child and Family Migration Surge of Sumer 2014: A Short-Lived Crisis With a Lasting Impact*, 68 J. INT'L AFF. 95 (2015).

37. PETER J. MEYER & MAUREEN TAFT-MORALES, CONG. RSCH. SERV., IF11151, CENTRAL AMERICAN MIGRATION: ROOT CAUSES AND U.S. POLICY 1 (2019), https://fas.org/sgp/crs/row/IF11151.pdf [https://perma.cc/P83G-YJQD]. The reported poverty rates correspond to the most recent years available—2018 for Honduras, 2017 for El Salvador, and 2014 for Guatemala. *Id.*

38. *Victims of Intentional Homicide: 2018*, U.N. OFF. ON DRUGS & CRIME, https://dataunodc.un.org/content/homicide-rate-option-2 [https://perma.cc/Q3VD-LH2M] (click "Bulk Data Download"; open the downloaded data file and filter by Indicator = Homicide rate, and Year = 2014; sort and rank the filtered data file by Value). The high levels of crime and violence in the Northern Triangle region have been attributed in part to the prevalence of gangs, drug cartels, and corrupt government and police forces in the region. *See generally* U.N. HIGH COMM'R FOR REFUGEES, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION 6 (2014), https://www.unhcr.org/56fc266f4.html [https://perma.cc/3XBD-4LTH].

39. *See* MARC R. ROSENBLUM, MIGRATION POL'Y INST., UNACCOMPANIED CHILD MIGRATION TO THE UNITED STATES: THE TENSION BETWEEN PROTECTION AND PREVENTION 13 (2015), https://www.migrationpolicy.org/sites/default/files/publications/TCM-Protection-UAC.pdf [https://perma.cc/XCF3-XUCD].

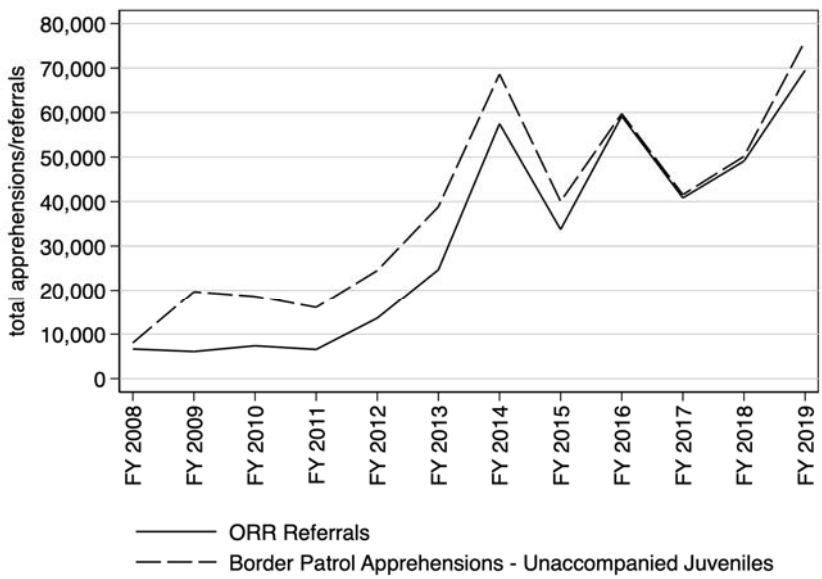
apprehensions of UACs are relatively small compared to Border Patrol apprehensions of UACs.[40]

Next, we offer an overview of historical trends in the apprehension of UACs and the referral of UACs to the ORR. Figure 1 shows the total number of UACs apprehended by the Border Patrol between fiscal years 2008–2019.[41] As shown in Figure 1, the number of UAC apprehensions began to increase starting in fiscal year 2011. Subsequently, there were two major peaks in the apprehension of UACs, in fiscal years 2014 and 2016. The first peak was in fiscal year 2014, with a total of 68,631 apprehended UACs. The second peak was in fiscal year 2016, with a total of 59,757 UACs. Since fiscal year 2017, the number of UAC apprehensions have increased, reaching 76,136 apprehensions in fiscal year 2019 (see Appendix Table 1 for detailed annual border apprehension statistics).

40. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-521, UNACCOMPANIED ALIEN CHILDREN: ACTIONS NEEDED TO ENSURE CHILDREN RECEIVE REQUIRED CARE IN DHS CUSTODY 14 (2015), https://www.gao.gov/assets/680/671393.pdf [https://perma.cc/3NTA-DGRZ]. *See also* WILLIAM A. KANDEL, CONG. RSCH. SERV., R43599, UNACCOMPANIED ALIEN CHILDREN: AN OVERVIEW 1 (2017), https://fas.org/sgp/crs/homesec/R43599.pdf [https://perma.cc/J3XE-M7B8] (noting that most UACs "are apprehended between U.S. ports of entry along the southwestern border with Mexico").

41. Border patrol apprehension statistics are available for unaccompanied juveniles for fiscal years 2008 through 2010, but not for accompanied juveniles.

**Figure 1:** Annual Border Patrol Apprehensions & ORR Referrals, FY 2008–2019[42]




*Note*: A fiscal year begins on October 1st and ends on September 30th.

Figure 1 also shows the total number of UACs referred to the ORR between fiscal years 2008–2019. Between fiscal years 2008 and 2011, the annual number of ORR referrals ranged from 6,089 to 7,383.[43] The annual number of referrals

42. Figure 1 sources: Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44392, 44509 (Aug. 23, 2019) (to be codified at 8 C.F.R. pts. 212, 236 and 45 C.F.R. pt. 410) (2008–2011 ORR referral statistics); Off. of Refugee Resettlement, *Facts and Data*, U.S. DEP'T OF HEALTH & HUM. SERV.: OFF. OF ADMIN. FOR CHILD. & FAM., https://www.acf.hhs.gov/orr/about/ucs/facts-and-data [https://perma.cc/GA2X-C9T3] (2012–2019 ORR referral statistics); U.S. CUSTOMS & BORDER PROT., U.S. BORDER PATROL UNACCOMPANIED CHILDREN (AGE 0–17) APPREHENSIONS FISCAL YEAR 2008 THROUGH FISCAL YEAR 2012 (2013), https:// www.hsdl.org/?view&did=734433 (2008–2009 border patrol apprehension statistics for unaccompanied juveniles); U.S. CUSTOMS & BORDER PROT., U.S. BORDER PATROL TOTAL UNACCOMPANIED ALIEN CHILDREN (0–17 YEARS OLD) APPREHENSIONS BY MONTH (FY 2010–FY 2019) (2020), https://www.cbp.gov/document/stats/us-border-patrol-total-monthly-uac-apprehensions-sector-fy-2010-fy-2019 [https://perma.cc/877U-WJTE] (2010–2019 border patrol apprehension statistics for unaccompanied juveniles).

43. *See, e.g.*, Press Release, Dep't of Health & Hum. Serv., Fact Sheet: Unaccompanied Alien Children (UAC) Program (Sept. 30, 2019), https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Program-Fact-Sheet.pdf [https://perma.cc/324N-4KHV] (noting that less than 8,000 children were referred annually between 2003 and 2011).

increased to 13,625 in fiscal year 2012, reaching a peak at 69,488 in fiscal year 2019 (see Appendix Table 1 for detailed annual ORR referral statistics).

The Obama administration responded to the influx of minors arriving at the U.S.–Mexico border with a variety of measures. These included the development of new interagency task forces within the DHS focused on the Southwest border, the expansion of border enforcement and detention, the creation of new fast-track removal proceedings for arriving UACs, and an information campaign in Northern Triangle countries to discourage migration.[44] In addition, the Obama administration launched a new in-country refugee processing program called the Central American Minors Refugee/Parole Program (CAM) in December 2014. To provide a safe alternative to the dangerous journey to the United States, the CAM program allowed certain children in Central American countries to apply for refugee status from inside their home countries.[45] But the program was limited in scope since only those children with parents lawfully present in the United States were eligible to apply.[46] The Trump administration ended the program entirely in January 2018.[47]

### B. Legal and Policy Framework

In this Subpart, we focus on the contemporary[48] legal framework that governs the treatment of migrant children in custody as they move through the U.S. immigration system.[49] For some migrant children, their journey to the

44. *See generally* ROSENBLUM, *supra* note 39, at 16–19 (describing the various strategies used by the Obama Administration).

45. FAYE HIPSMAN & DORIS MEISSNER, MIGRATION POL'Y INST., IN-COUNTRY REFUGEE PROCESSING IN CENTRAL AMERICA: A PIECE OF THE PUZZLE 1 (2015), https://www.migrationpolicy.org/research/country-processing-central-america-piece-puzzle [https://perma.cc/H4WM-ESN5].

46. *Id.*

47. SARAH PIERCE, MIGRATION POL'Y INST., IMMIGRATION-RELATED POLICY CHANGES IN THE FIRST TWO YEARS OF THE TRUMP ADMINISTRATION 17 (2019), https://www.migrationpolicy.org/research/immigration-policy-changes-two-years-trump-administration [https://perma.cc/68L3-4TLX]. The Trump Administration agreed to allow approximately 2,700 Central American children to reunite with their parents in the United States to settle the litigation that was filed after the CAM program's termination. *Id.*

48. For an earlier history of legal treatment of UACs, see Sarah Rogerson, *The Politics of Fear: Unaccompanied Immigrant Children and the Case of the Southern Border*, 61 VILL. L. REV. 843, 854–75 (2016); Daniel J. Steinbock, *The Admission of Unaccompanied Children Into the United States*, 7 YALE L. & POL'Y REV. 137, 140–69 (1989).

49. For a helpful visualization of the flow of migrant children through the immigration system, see OLGA BYRNE & ELISE MILLER, VERA INST. OF JUST., CTR. ON IMMIGR. & JUST., THE FLOW OF UNACCOMPANIED CHILDREN THROUGH THE IMMIGRATION SYSTEM: A RESOURCE FOR PRACTITIONERS, POLICY MAKERS, AND RESEARCHERS 9 (2012), https://www.vera.org/

United States ends with voluntary return to their origin countries, while others are granted permission to remain in the United States.[50] Some of the most common forms of legal relief from removal for UACs include asylum, special immigrant juvenile status (available to abused, neglected, or abandoned children who are declared dependent by state juvenile courts) and T visas (available to trafficking victims).[51] Children pursuing legal relief from removal must navigate a complex maze of procedures and paperwork, and they can be in immigration proceedings for years due to backlogs in immigration court.[52]

The three primary sources of law that currently govern the treatment and administrative processing of migrant children are the *Flores* Settlement Agreement, the Homeland Security Act (HSA) of 2002, and the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.

We begin our discussion with *Flores v. Meese*, a case that led to the establishment of a "nationwide policy for the detention, release, and treatment" of migrant children in federal immigration custody.[53] In 1985, migrant children detained by the Immigration and Naturalization Service (INS), a predecessor agency to the DHS, filed a lawsuit to challenge procedures regarding their detention, treatment, and release. Judge Betty Fletcher described the dire situation facing migrant children at the time in this way:

> The facts of this case are among the most disturbing I have confronted in my years on the court. Children are being held in detention by the

downloads/Publications/the-flow-of-unaccompanied-children-through-the-immigration-system-a-resource-for-practitioners-policy-makers-and-researchers/legacy_downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf [https://perma.cc/VYZ3-KYE3].

50. For a helpful overview of legal outcomes for UACs, see SARAH PIERCE, MIGRATION POL'Y INST., UNACCOMPANIED CHILD MIGRANTS IN U.S. COMMUNITIES, IMMIGRATION COURT, AND SCHOOLS (2015), https://www.migrationpolicy.org/sites/default/files/publications/UAC-Integration-FINAL.pdf [https://perma.cc/7TWY-QKDD].

51. WILLIAM A. KANDEL, CONG. RSCH. SERV., R43599, UNACCOMPANIED ALIEN CHILDREN: AN OVERVIEW 15–16 (2017), https://fas.org/sgp/crs/homesec/R43599.pdf [https://perma.cc/J3XE-M7B8]; CTR. FOR GENDER & REFUGEE STUD. & KIDS IN NEED OF DEF., A TREACHEROUS JOURNEY: CHILD MIGRANTS NAVIGATING THE U.S. IMMIGRATION SYSTEM 8–60 (2014), https://supportkind.org/wp-content/uploads/2015/04/macArthur-report-A-Treacherous-Journey.pdf [https://perma.cc/8TPW-SLCX].

52. PIERCE, *supra* note 50, at 5–6.

53. Flores v. Lynch, 828 F.3d 898, 901 (9th Cir. 2016). For the original complaint filed, see Complaint for Injunctive & Declaratory Relief, & Relief in the Nature of Mandamus, Flores v. Meese, No. 85-cv-4544-RJK(Px) (C.D. Cal. July 11, 1985). For all related case materials and decisions, see *Case Profile:* Flores v. Reno [*later Meese, Johnson, Kelly, Sessions]*, C.R. LITIG. CLEARINGHOUSE, http://www.clearinghouse.net/detail.php?id=9493 [https://perma.cc/L3AW-ZLE4].

> INS for as long as two years in highly inappropriate conditions out of a professed concern for their welfare. When the case first came before the district court, the only requirement for institutionalizing a child was a determination by an INS agent—not a judge—that there was prima facie evidence of the child's deportability. Upon such a slender showing, children were put into "detention centers" for indeterminate periods of time, deprived of education, recreation, and visitation, commingled with adults of both sexes and subjected to strip searches with no showing of cause. In the INS's Western Region, a child could escape such confinement only if a parent or legal guardian, or "in unusual and extraordinary cases" a responsible adult, came forward to seek release.[54]

After years of litigation, including a trip to the U.S. Supreme Court,[55] the parties reached a settlement agreement that was approved by the district court in 1997.[56] The *Flores* Settlement Agreement requires the government to maintain custody of children in the "least restrictive setting" that meets certain standards of care for minors.[57] For example, migrant children in ORR custody must be placed in state-licensed programs that provide education, healthcare, and case management services.[58] The Agreement also requires the government to release the children "without unnecessary delay" by placing them with sponsors pursuant to an order of preference that begins with parents and includes other adult relatives and individuals.[59] In 2016, the Ninth Circuit Court of Appeals ruled that the *Flores* Settlement Agreement applied equally to all migrant children in government custody regardless of whether they were unaccompanied or accompanied—including migrant children held in family detention facilities.[60]

After the implementation of the *Flores* Settlement Agreement, the U.S. Congress passed two statutes concerning the care and custody of UACs. In 2002,

54. Flores v. Meese, 934 F.2d 991, 1014 (9th Cir. 1990) (Fletcher, J., dissenting), *opinion vacated and superseded on reh'g*, 942 F.2d 1352 (9th Cir. 1991), *rev'd sub. nom.* Reno v. Flores, 507 U.S. 292 (1993).
55. Reno v. Flores, 507 U.S. 292 (1993). For a detailed procedural history of the *Flores* litigation, see Natalie Lakosil, Note, *The* Flores *Settlement: Ripping Families Apart Under the Law*, 48 GOLDEN GATE U. L. REV. 31, 34–38 (2018); Rebeca M. López, *Codifying the* Flores *Settlement Agreement: Seeking to Protect Immigrant Children in U.S. Custody*, 95 MARQ. L. REV. 1635, 1648–54 (2012).
56. Stipulated Settlement Agreement, Flores v. Reno, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997).
57. *Id.* at para. 11.
58. *Id.* at paras. 6, 19, Ex. 1.
59. *Id.* at para. 14.
60. Flores v. Lynch, 828 F.3d 898, 910 (9th Cir. 2016).

Congress enacted the Homeland Security Act (HSA) in response to the September 11, 2001 attacks.[61] Under the HSA, the INS was dissolved and its responsibilities distributed across three agencies: U.S. Citizenship and Immigration Services, ICE, and CBP. Because CBP and ICE assumed the INS's enforcement and removal responsibilities, the *Flores* Settlement Agreement became binding on ICE and CBP as successor organizations to the INS.[62] The HSA established the legal definition of UAC[63] and transferred authority over the care and placement of unaccompanied minors from the INS to the ORR.[64] Under the HSA, the ORR has responsibility for "coordinating and implementing the care and placement of unaccompanied alien children"[65] and for "ensuring that the interests of the child are considered in decisions and actions" relating to their care and custody.[66]

In 2008, Congress enacted the Trafficking Victims Protection Reauthorization Act (TVPRA).[67] TVPRA incorporated certain provisions of the *Flores* Settlement and affirmed the ORR's responsibility for the care and custody of UACs. The TVPRA generally creates two processing paths for UACs depending on their countries of origin. For UACs from noncontiguous countries (those not sharing a border with the United States) such as the Northern Triangle countries, the TVPRA requires that barring "exceptional circumstances," CBP must transfer the children to the ORR within 72 hours of determining that the child is a UAC.[68] By contrast, for UACs from contiguous countries (Canada and Mexico), CBP must conduct screening within 48 hours of apprehension to determine whether the child is a trafficking victim, has a potential claim for asylum, or is unable to make an independent decision regarding whether to return home voluntarily.[69] CBP can immediately repatriate UACs from contiguous countries who do not meet these criteria.[70] The UACs who pass the screening and those for whom CBP cannot complete the screening process within 48 hours must be transferred to ORR custody.[71]

61. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.
62. Bunikyte *ex rel.* Bunikiene v. Chertoff, No. A-07-CA-164-SS, No. A-07-CA-165-SS, No. A-07-CA-166-SS, 2007 U.S. Dist. LEXIS 26166, at *8 (W.D. Tex. Apr. 9, 2007).
63. 6 U.S.C. § 279(g)(2) (2012).
64. 6 U.S.C. § 279(b)(1) (2012).
65. 6 U.S.C. § 279(b)(1)(A) (2012).
66. 6 U.S.C. § 279(b)(1)(B) (2012).
67. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110–457, 122 Stat. 5044.
68. 8 U.S.C. § 1232(a)(3) & (b) (2018).
69. 8 U.S.C. § 1232(a)(2)(A) & (a)(4) (2018).
70. 8 U.S.C. § 1232(a)(2)(B) (2018).
71. 8 U.S.C. § 1232(a)(4) (2018).

Notwithstanding these formal legal protections in place, scholars and watchdog organizations have documented mistreatment of migrant children in custody, and legal advocates have filed lawsuits alleging legal violations of UACs' rights. These reports and litigation relate to wide-ranging issues concerning migrant children in custody.[72] For example, one recent complaint filed by migrant children held in ORR custody in the Central District of California "challenged the government for unlawfully detaining them in jail-like conditions for prolonged periods, drugging them with powerful psychotropic medication without consent, arbitrarily denying release to their family, and denying access to legal counsel."[73]

## II. THE CURRENT STUDY

The current study addresses the three key questions we raised earlier about migrant children in ORR custody; in brief, who are the children, where were they held, and what were their custodial outcomes? We begin by providing an overview of the original datasets produced monthly by the ORR on referrals, transfers, and discharges. We then describe how we constructed the longitudinal data using the monthly data. Finally, we present the major findings from our analyses of the longitudinal data.

To our knowledge, this is the first longitudinal study of migrant children in ORR custody. As a general matter, the unique advantage of longitudinal data is that they provide repeated observations on same individuals over time rather than only at a single moment in time. In this case, our longitudinal data allow us to observe a given migrant child from the moment of their ORR referral to their discharge from ORR custody, including all interfacility transfers that took place, if any, in between. In addition, as we describe below, by combining the monthly datasets, we identified several types of errors present in the monthly data and reconciled contradictory records. The resulting longitudinal data

72. *See, e.g.*, INTER-AM. COMM'N ON HUMAN RTS., REFUGEES AND MIGRANTS IN THE UNITED STATES: FAMILIES AND UNACCOMPANIED CHILDREN ¶ 202–07, at 93–95 (2015), https://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf [https://perma.cc/2RQ9-BJQS] (documenting the lack of "most basic necessities" at CBP facilities that detained migrant children); U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-521, UNACCOMPANIED ALIEN CHILDREN: ACTIONS NEEDED TO ENSURE CHILDREN RECEIVE REQUIRED CARE IN DHS CUSTODY (2015), https://www.gao.gov/assets/680/671393.pdf [https://perma.cc/3NTA-DGRZ] (documenting a host of problems with CBP processing of migrant children); Rogerson, *supra* note 48, at 893–95 (discussing UAC detention litigation against the DHS).

73. *Strategies: Lucas R. v. Azar*, NAT'L CTR. FOR YOUTH L., https://youthlaw.org/case/lucas-r-v-azar/ [https://perma.cc/T2KW-XHZR]; Lucas R. v. Azar, No. CV 18-5741-DMG (PLAx), 2018 WL 7200716, at *2 (C.D. Cal. Dec. 27, 2018).

contain the most accurate set of records available on children in ORR custody during our study period.

### A. Data

The monthly data come from the ORR and contain information on all migrant children in ORR custody between November 2017 and August 2019. The government produced these data on a monthly basis starting in December 2017 and ending in August 2019. Each monthly production contains the following four distinct datasets: Census Data, Referrals Data, Transfers Data, and Discharges Data. These datasets contain various individual-level variables that capture such information as the characteristics of the child in custody and information relating to the child's detention.

The Census Data is a snapshot of the ORR population on one day each month. The snapshot date is usually mid-month, between the twelfth and the twentieth day of the month. To be included in the Census Data, the child must be present in one of the ORR facilities on the snapshot date. The inclusion criteria are different for Referrals, Transfers, and Discharges Data. The Referrals Data include all children referred from the DHS to the ORR at some point during the month. The Transfers Data include all children transferred at least once from one ORR facility to another at some point during the month. The Discharges Data include all children discharged from ORR custody during the month.

In addition, the data structure is different between the Census Data, Referrals Data, and Discharges Data on the one hand, and the Transfers Data on the other. Each monthly Census, Referrals, and Discharges dataset contains only one row of record per child. By contrast, the Transfers Data contain multiple rows of record per child, because the ORR generated a new record each time a child was admitted into a new ORR facility. When a child is transferred during a given month, all transfer records preceding that month's transfer are also included in that month's Transfers Data.

Rather than analyzing the Referrals, Transfers, and Discharges Data separately, we combined these datasets across all monthly productions (November 2017–July 2019) to construct a comprehensive event history for each child. We refer to this combined data as Longitudinal Data. Each row of record in the Longitudinal Data for any given child relates to their admission into a distinct ORR facility. We treat each record as a new "stint" in ORR custody. If a child had been admitted into only one facility during the course of their custody, that child would have only one record pertaining to that custody stint. On the other hand, if a child had been admitted into a facility and subsequently transferred to

another facility, that child would have a total of two records pertaining to two custody stints. We treat the records of a given child that share the same referral date as constituting a single "custody period" (referral date is the date that a child is referred to the ORR). A custody period may end with a final discharge from ORR custody or it may be "right censored," which means the child was still in custody at the time of the data extraction.

Combining the Referrals, Transfers, and Discharges Data across all available monthly productions made apparent a variety of gaps and erroneous or conflicting data entries present in the monthly records of any given child. For example, the Transfers Data from January 2019 include a child who was transferred from BCFS Chavaneaux to BCFS San Antonio on January 1, 2019. But the same child appears in the Discharges Data from March 2019 as being present at BCFS San Antonio from December 6th through March 14th. In the Methods Appendix, we describe in detail the steps that we took to address all of these types of discrepancies and other problems with the monthly data to generate the Longitudinal Data.

To address our research question pertaining to where the children were held, we collected location information on each facility appearing in the Longitudinal Data. Because the Longitudinal Data contain only facility names and not their location, we relied on a number of sources to locate them, including the following: a bed capacity report from the federal government (dated May 29, 2015), a request filed under the Freedom of Information Act (FOIA) by the Center for Investigative Reporting, ProPublica map, and our own Google web searches.[74] We were able to locate city and state information for 180 facilities (97 percent), and state information for an additional 2 facilities (1 percent). We then generated geocoordinates for each of the facilities for which we had the city/state or state information.[75] For the facilities that we could not locate, we filed a Freedom of

74. Bed capacity report is available upon request from the authors. Aura Bogado, *Here's a Map of Shelters Where Immigrant Children Have Been Housed*, REVEAL: FROM THE CTR. OF INVESTIGATIVE REPORTING (June 26, 2018), https://www.revealnews.org/article/heres-a-map-of-shelters-where-immigrant-children-have-been-housed [https://perma.cc/92C8-VHZW]; Decca Muldowney, Alex Mierjeski, Glaire Perlman, Lilia Chang, Ken Schwencke, Adriana Gallardo & Derek Kravitz, *The Immigrant Children's Shelters Near You*, PROPUBLICA (June 27, 2018), https://projects.propublica.org/ graphics/migrant-shelters-near-you [https://perma.cc/5Y95-KR4E].

75. We rely on the Google Maps Geocoding API to determine the location of facilities. For facilities where both city and state are known, we use the coordinates returned by the API for queries in the form "City, State." For facilities where only the state is known, we use the coordinates returned in response to a query for the state name.

Information Act request with the ORR in September of 2019, but the ORR has yet to produce any responsive records.

### B. Analytical Approach

To address our three key research questions, we carried out different types of analyses using the Longitudinal Data and Census Data. Our analyses involving the census population span from December 2017 to August 2019, which are all of the available months in the Census Data. For the analyses involving referrals, we subset the Longitudinal Data to all records with referral dates on or after November 1, 2017.[76] For the analyses involving discharges, we included all records with discharge dates on or after November 1, 2017 (some of these records pertain to children who were referred to the ORR before November 1, 2017).

For our survival analyses and logistic regression analyses (discussed below), we included all records relating to custody periods that began on or after November 1, 2017. Survival analyses require the full event history for each child. The Longitudinal Data may not contain the full event history of children whose custody periods began before November 1, 2017. For example, assume that a child was referred to the ORR on October 1, 2017 and was admitted to an ORR facility on October 1, 2017, but transferred to another ORR facility on October 15, 2017, and then discharged on November 1, 2017. The Longitudinal Data in such a case would contain only the discharge record from the Discharges Data because November 2017 is the earliest monthly production available for analysis. Since the Discharges Data contain information only about the most recent custody stint, the Longitudinal Data would contain no record of the first stint of the custody period. Thus, our survival analyses are restricted to only those custody periods starting on or after November 1, 2017 (as indicated by the earliest admission date within a given custody period; admission date refers to the date that a child actually entered an ORR facility).

To address our first research question (who are the children?), we carried out a series of descriptive analyses focused on the UACs' key demographic characteristics. To address our second research question (where were the children held?), we carried out a series of descriptive analyses focused on the ORR facility

76. For these analyses, we included children without records in the Referrals Data but for whom we found referral dates in the Discharges or Transfers Data. Conversely, we excluded children with records in the Referrals Data for whom UAC status was "canceled" or presumably canceled. Children whose UAC status was presumably canceled are those designated as "en route" in the Referrals Data but never appear again in subsequent monthly datasets, including in the Census Data.

characteristics. Lastly, to address our third research question (what were the children's custodial outcomes?), we carried out both descriptive and regression analyses. More specifically, we examined how long children typically are detained by the ORR by calculating their average custodial length. We then conducted descriptive and survival analyses to examine whether and to what extent the children's probability of reunification and time to reunification differ based on their ORR placement. Finally, we used logistic regression analysis to examine the predictors of initial placement in restrictive settings, and we used survival analysis to examine the predictors of being stepped up to more restrictive settings from less restrictive settings.

We used survival analysis to address two research questions: (1) how does the incidence of reunification vary between program categories, and (2) do UAC characteristics predict their risk of step-up? Survival analysis is used to analyze the expected duration of time until the occurrence of one or more events of interest. The event of interest is referred to as a "failure" in survival analysis, and the rate at which individuals who are "at risk" of failure experience failure is called the "hazard rate." Individuals who do not experience failure before the end of the observation period are said to be "right censored."

To compare the incidence of reunification between program categories, we estimated the cumulative incidence function (CIF)—a type of summary statistics in survival analysis—for each program category. The CIF estimates the proportion of stints that resulted in reunification before a given time. We examined the CIFs of reunification for each program category to compare the incidence of reunification after varying amounts of time in custody.

To examine the risk of step-ups, which can occur at varying lengths of custody for different children, we used another type of survival analysis: the Cox proportional hazards model. A proportional hazards model allows us to quantify the effect of UAC characteristics on the hazard of step-up. The Cox model takes the form:

$$\lambda(t|X_i) = \lambda_0(t)\, exp(X_i \cdot \beta)$$

where $\lambda(t|X_i)$ is the instantaneous rate of "failure" at time $t$ (the "hazard") for a subject $i$ with a vector of characteristics $X_i$. In the Cox model, the baseline hazard function, $\lambda_0(t)$, is not estimated. Each subject, however, is assumed to face a hazard function that is proportional to the baseline hazard function. The average effect of each covariate in $X$ on this proportion is estimated by the coefficient vector $\beta$.

In our analysis of the risk of step-up, the "failure" of interest is a security step-up and the characteristic vector $X_i$ is composed of the UAC's gender, age, and country of birth. It is important to note that a UAC may experience an event that

precludes step-up. For example, a child who is discharged from custody is no longer at risk of step-up. Our Cox model thus estimates the instantaneous rate of step-up at time *t* for children who have not experienced any type of discharge by time *t*.[77]

Finally, to examine the probability of initial placement in a restrictive setting, which occurs at the time of referral to the ORR, we estimated a binary logistic regression model. Binary logistic regression is commonly used to predict the odds of an event of interest (in this case, an initial restrictive placement) occurring or not occurring. This model takes the form:

$$ln\left(\frac{p}{1-p}\right) = \beta_0 + \beta_1 x_{i1} + \beta_2 x_{i2} + \ \ldots \ + \beta_k x_{ik} + \varepsilon_i$$

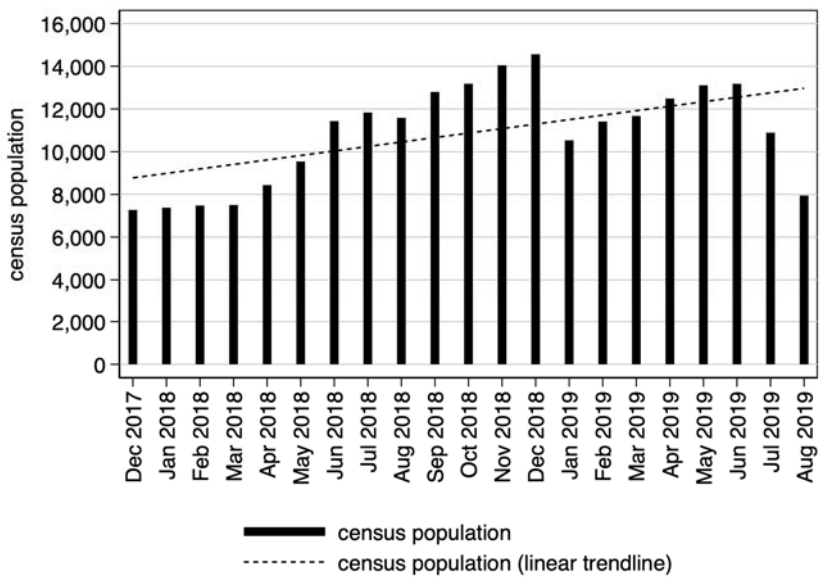
where $p$ is the probability of being initially placed in a restrictive setting, $x_{i1}$ through $x_{ik}$ are the characteristics of subject $i$ (UAC's gender, age, and country of birth), and $\beta_1$ through $\beta_k$ estimate the average effects of the individual characteristics on the log-odds ratio, $ln\left(\frac{p}{1-p}\right)$. $\beta_0$ estimates the intercept and $\varepsilon_i$ is an error term.

## III. KEY EMPIRICAL FINDINGS

In this Part, we present the results of our empirical analysis relating to: (a) the characteristics of children in ORR custody, (b) the characteristics of ORR facilities, and (c) custodial outcomes experienced by children in ORR custody. Before doing so, we consider changes in the size of the overall ORR population during the study period. The underlying statistics for all of the figures presented below are included in the Appendix Tables.

77. This type of analysis is referred as cause-specific survival analysis. For a discussion on cause-specific survival analysis, see Melania Pintilie, *Analysing and Interpreting Competing Risk Data*, 26 STAT. MED. 1360 (2007); Adrian Sayers, Jonathan T. Evans, Michael R. Whitehouse & Ashley W. Blom, *Are Competing Risks Models Appropriate to Describe Implant Failure?*, 89 ACTA ORTHOPAEDICA 256 (2018).

**Figure 2:** ORR Census Population, December 2017–August 2019




*Note*: Authors' calculations are based on Census Data.

Figure 2 shows a steady increase in the ORR census population starting around April 2018, the beginning of the Zero Tolerance Policy.[78] The census population reached a peak in December 2018 at 14,562 children, and then dropped to 10,533 children in January 2019. (See Appendix Table 2 for detailed monthly ORR census statistics. Appendix Table 2 also includes detailed referral and discharge statistics.) Subsequently, the census population reached a second peak at 13,179 children in June 2019 and dropped to 7,951 in August 2019. The linear trend line (the dashed line) shown in Figure 2 is a linear regression line that best fit the monthly fluctuations in the census of children in ORR custody. This trend line rises at a rate of approximately 210 children per month.

78. Press Release, Dep't of Just., Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry [https://perma.cc/ K3BT-PRA4]. *See also* Aaron Hegarty, *Timeline: Immigrant Children Separated From Families at the Border*, USA TODAY (July 25, 2018, 10:54 AM), https://www.usatoday.com/story/news/2018/06/27/immigrant-children-family-separation-border-timeline/734014002 [https://perma.cc/6JG4-H8BG] (providing a timeline relating to the Zero Tolerance Policy).

For ease of reference, we refer only to month and year in Figure 2 and the corresponding discussion, but it is important to recall that the census population represents the total number of children in ORR custody on a *single snapshot date* in a given month, not the total number of children in ORR custody during a given month, nor the average daily population during a given month.

### A. Portrait of Migrant Children in Custody

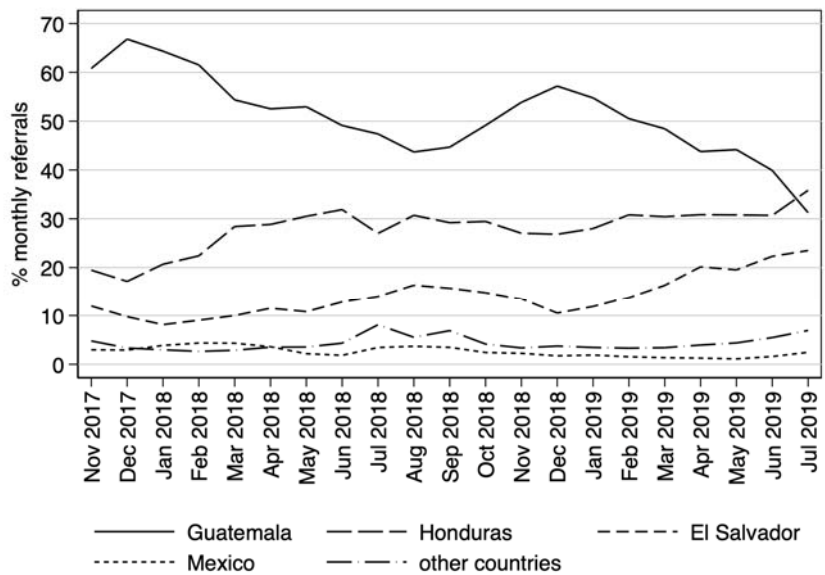
This Subpart presents the following key demographic characteristics of the children held in ORR custody: country of birth, gender, and age.

#### 1. Country of Birth

To examine possible changes in the composition of the ORR population, we present the percentage of monthly ORR referrals by country of birth. We present referral statistics for the top four countries with the highest number of referrals, and a residual category that combines all other countries of origin. The top four referral countries include the three Northern Triangle countries of Central America—Guatemala, Honduras, and El Salvador—and Mexico.

As shown in Figure 3, there was a relatively steady decline in the Guatemalan children population as a percentage of the overall total referrals during the study period (see Appendix Table 3 for detailed ORR referral statistics by country of birth). Specifically, the percentage of children from Guatemala fell by half, from 61 percent to 31 percent during the study period. By contrast, there was a relatively steady increase in the Honduran and Salvadoran population, respectively, as a percentage of total referrals. During the study period, the Honduran population rose from 20 percent to 36 percent and the Salvadoran population rose from 12 percent to 24 percent. In the same time period, the Mexican population fluctuated between about 1 to 4 percent, whereas the percentage of all other population rose from 5 percent to 7 percent.

**Figure 3:** ORR Referrals by Country of Birth, November 2017–July 2019




*Note*: Authors' calculations are based on Longitudinal Data.

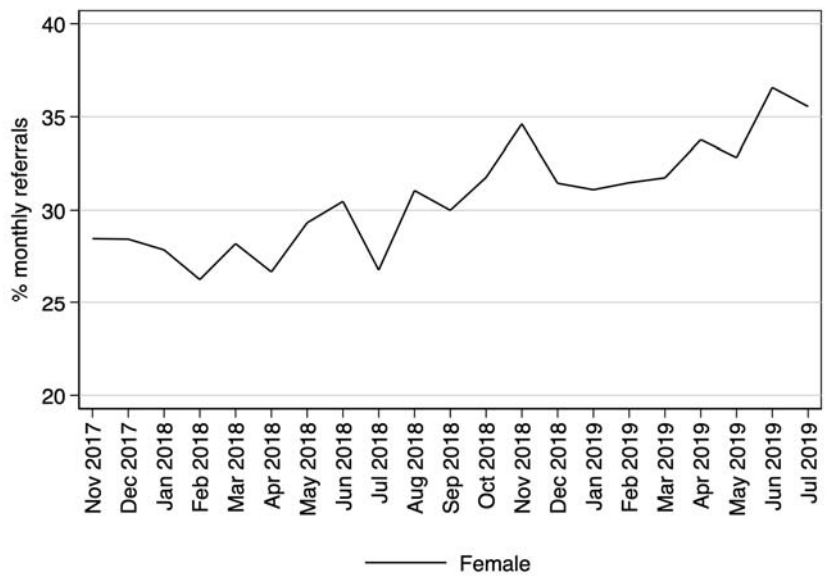
Notably, the residual Other category includes 272 U.S. citizens, 260 of whom are of tender age. A total of 140, or 51 percent, of these U.S. citizen children's birth dates were the same as their ORR admission dates. The rest of the U.S. citizen children's birth dates preceded their ORR admission dates by a range of 1 to 5,848 days. We believe that the U.S. government does not have a consistent and accurate data entry practice when it comes to referral and admission dates of babies born into ORR custody. Therefore, we have no way of determining from the data whether all children designated as U.S. citizens were born in ORR custody. In any event, detention of *any* U.S. citizen children in ORR custody raises special concerns given that the ORR's mandate is to provide care and placement for unaccompanied *alien* children.

## 2. Gender

The second compositional change that we present relates to children's gender. As shown in Figure 4, there was a steady increase in girls as a proportion of total ORR referrals during the study period. Specifically, the percentage of girls among ORR referrals rose from about 29 percent (N=1,102) to 36 percent (N=1,839) between November 2017 to July 2018 (see Appendix Table 4 for

detailed ORR referral statistics by gender). We also examined female ORR referrals by age group and we found that the overall increase in proportion of female referrals is not attributable to any specific age group (see Appendix Table 4).

**Figure 4:** ORR Referrals by Gender, November 2017–July 2019




*Note*: Authors' calculations are based on Longitudinal Data.

Of note, the data contains special notation in their A-Numbers for babies whose mothers are also minors in ORR custody. These mother–baby pairs share the same A-Number and the baby is designated with an additional alphabet letter (A or B) at the end of their A-Number. There were 268 such mother–baby pairs in the Longitudinal Data, indicating that 265 of the girls in ORR custody also had their babies in ORR custody.[79]

### 3. Age

Finally, we examined monthly referrals by age. Most of the referrals (85 percent) across the entire study period were teenagers. The mean age of children referred to the ORR during this period was 15 years old. Appendix Table 5

79. Three of the mothers were associated with two babies in ORR custody. For two of the 268 mother–baby pairs, the mothers are not present in the Longitudinal Data.

provides detailed ORR referral statistics by the following age breakdowns: ages 17 and older, between 13–16, between 9–12, between 5–8, and 4 or younger. Between November 2017 and July 2019, there were a total of 2,418 referrals of children 4 and younger (2.2 percent), 5,076 referrals of children between 5 and 8 (4.6 percent), 9,499 referrals of children between 9 and 12 (8.6 percent), 54,299 referrals of children between 13 and 16 (49.3 percent), and 38,759 referrals of children 17 or older (35.2 percent).

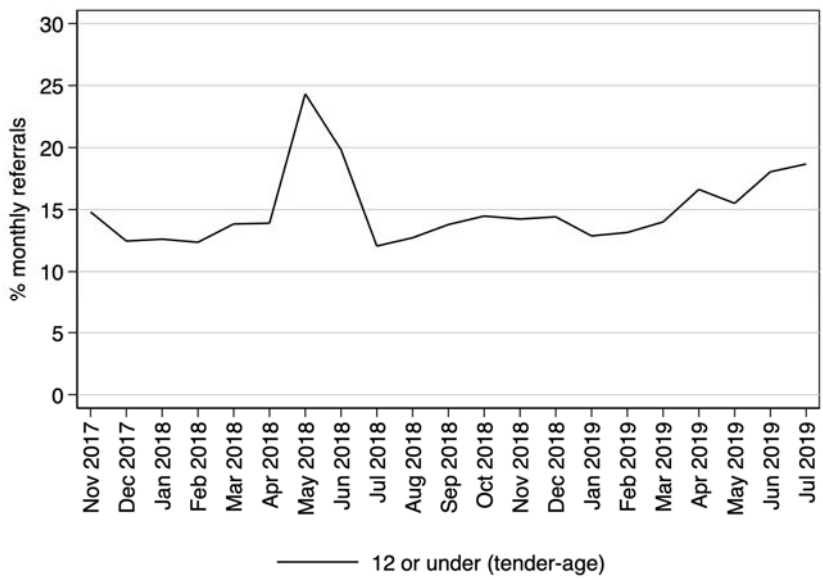
Figure 5 shows the referral trend over time for tender-age children (children aged twelve and younger). Two distinct trends shown in Figure 5 are worth highlighting. First, there was a sharp increase in the percentage of tender-age children in May 2018—peaking at 24 percent of referrals (N=1491). This peak is attributable to the Zero Tolerance Policy that resulted in the separation of hundreds of young children from their parents at the southwest border.[80]

Second, although the percentage of tender-age children declined significantly between May and July of 2018, it has been rising gradually since July 2018, reaching over 18 percent (N=966) by July 2019. This trend is consistent with reports that young children arriving as family units at the southwest border are continuing to be separated from their parents despite the official termination of the Zero Tolerance Policy.[81] It is also worth noting that children under the age of 1 were referred to the ORR for every month of the study period. There was a total of 740 such children referred to the ORR over the study period.

80. JOANNE M. CHIEDI, OFF. OF INSPECTOR GEN., U.S. DEP'T OF HEALTH & HUM. SERV., OEI-09-18-00431, CARE PROVIDER FACILITIES DESCRIBED CHALLENGES ADDRESSING MENTAL HEALTH NEEDS OF CHILDREN IN HHS CUSTODY 11–12 (2019), https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf [https://perma.cc/U9WU-TYKD] [hereinafter OIG, CARE PROVIDER FACILITIES]. *See also* HOMELAND SECURITY ADVISORY COUNCIL, *supra* note 21, at 6 ("Most, 73%, of the children in . . . [family units] illegally crossing our border are tender aged, being 12 or younger.").

81. *See* Maria Sacchetti, *ACLU: U.S. Has Taken Nearly 1,000 Child Migrants From Their Parents Since Judge Ordered Stop to Border Separations*, WASH. POST (July 30, 2019, 1:03 PM), https://www.washingtonpost.com/immigration/aclu-us-has-taken-nearly-1000-child-migrants-from-their-parents-since-judge-ordered-stop-to-border-separations/2019/07/30/bde452d8-b2d5-11e9-8949-5f36ff92706e_story.html [https://perma.cc/ AH48-BZMM].

**Figure 5:** ORR Referrals by Tender Age, November 2017–July 2019




*Notes*: Authors' calculations are based on Longitudinal Data. To calculate age, we subtracted date of birth from referral date. For 624 referrals in January 2018, August 2018, and September 2018, we subtracted date of birth from custody-period start date (which is coded based on admission date) instead of referral date, since the government did not provide referral dates for these months. For one referral with referral date before date of birth, we assumed that the date of birth and the referral date are the same. Tender-age refers to UACs aged 12 or under.

Overall, the picture of children in ORR custody that emerged from our examination of the ORR referral data is that of an increasing number and proportion of children who are extremely vulnerable. Specifically, our analysis revealed an increasing proportion of ORR referrals relating to children leaving El Salvador and Honduras—two countries that lead the world in terms of crime and violence. Our analysis also showed an increasing proportion of girls and very young children among those referred to ORR custody.

### B. Portrait of the ORR Facilities

The ORR contracts with nonprofit and government organizations to hold immigrant children in various types of facilities that range from small to large and low to high security. During the study period, the ORR had a

network of over 185 such facilities. These facilities are charged with providing housing, food, and various services and programs, including medical care, mental health services, educational services, and recreational activities. In this Subpart, we examine the various facility types, their locations, and sizes.

### 1. Type of Facilities

Eight different program types appear in the ORR data[82]: shelter, transitional foster care, long term foster care, staff secure, secure, therapeutic staff secure, residential treatment center, and therapeutic group home. We classified these program types into five "program categories": (a) shelters, (b) transitional foster care, (c) long term foster care, (d) secure program (includes staff secure, secure, and therapeutic staff secure), and (e) treatment/therapeutic program (includes residential treatment center and therapeutic group home). We discuss each program type in turn below.

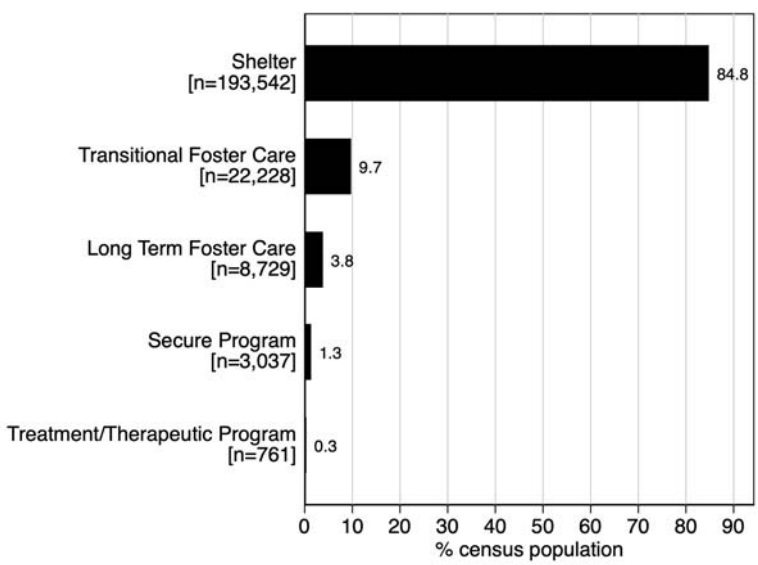
Shelters represent the least restrictive setting for migrant children in congregate care. Some of these are "influx" facilities (such as BCFS Tornillo), which provide temporary emergency shelter for migrant children during an "influx or emergency" and are exempt from state child welfare licensing requirements.[83] Transitional foster care is "an initial placement option for unaccompanied alien children under 13 years of age, sibling groups with one sibling under 13 years of age, pregnant/parenting teens, or unaccompanied alien children with special needs."[84] Children in transitional foster care may "attend school and receive most service components at the care provider site."[85] Children who will be in ORR custody for an extended period of time may be placed in long term foster homes and are allowed to attend public schools and receive community-based services.[86]

82. The ORR also uses "out-of-network" facilities. As we discuss later, however, little is known about these facilities and we do not analyze them in this study.
83. Off. of Refugee Resettlement, *Children Entering the United States Unaccompanied: Guide to Terms*, U.S. DEP'T OF HEALTH & HUM. SERV.: OFF. OF ADMIN. FOR CHILD. & FAMS., https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms#ShelterCare [https://perma.cc/BQV4-GVLP] (last reviewed Jan. 8, 2019) [hereinafter ORR, *Guide to Terms*]; Daniel R. Levinson, Inspector General, to Lynn Johnson, Assistant Sec'y, Admin. for Child. & Fams., The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff (A-12-19-20000) (Nov. 27, 2018), https://oig.hhs.gov/oas/reports/region12/121920000.pdf [https://perma.cc/CN9K-UUU8].
84. ORR, *Guide to Terms*, *supra* note 83.
85. *Id.*
86. *Id.*

Staff secure and secure facilities are two other types of ORR facilities. Staff secure facilities are designated for children "who exhibit disruptive behavior, are a flight risk, or display gang affiliation."[87] Secure facilities are for children "who pose a danger to self or others, or who have been charged with a crime."[88] Secure facilities maintain a "physically secure structure and staff able to control violent behavior."[89] Residential treatment centers provide a "therapeutic 24-hour-a-day structured program" for children who are considered to have mental health care needs. The ORR does not provide a description of "therapeutic staff secure" or "therapeutic group home," and we categorize them as secure and treatment/therapeutic programs, respectively, for the purposes of our analysis below.

Figure 6 shows the percentage of census population assigned to various program categories during the study period. Shelters held the largest proportion of the census population (about 85 percent), followed by foster care (transitional and long term foster care combined, about 14 percent), secure program (about 1 percent), and treatment/therapeutic program (less than 1 percent).

**Figure 6:** Census Population by Program Category, December 2017–August 2019




87. OIG, CARE PROVIDER FACILITIES, *supra* note 80, at 23.
88. *Id.*
89. ORR, *Guide to Terms*, *supra* note 83.

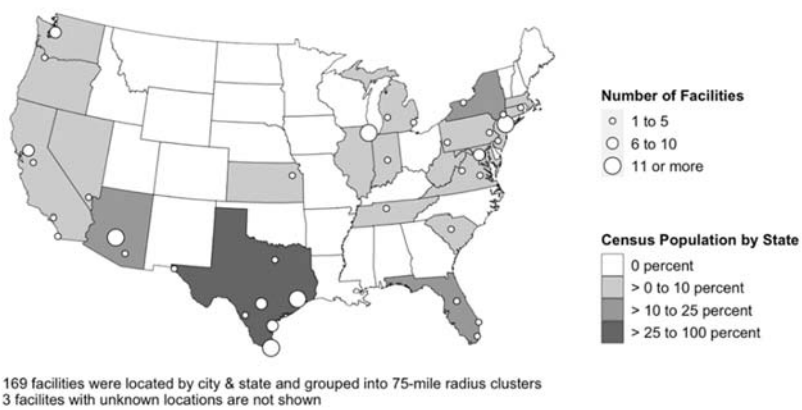
*Notes*: Authors' calculations based on Census Data. Secure Program category includes Secure, Staff Secure, and Therapeutic Staff Secure programs. Treatment/Therapeutic Program category includes Residential Treatment Center and Therapeutic Group Home.

## 2. Location of Facilities

Next, using our geocoded data, we examined the location of each facility that appears in the Census Data. Figure 7 shows the location of each facility as geocoded using its city and state. Each dot in Figure 7 represents a facility or a cluster of facilities, where the size of the dot indicates the number of facilities within a 75-mile radius.[90]

The shading of each state indicates the percentage of the total ORR census population held in each state between December 2017 and August 2019. As shown in Figure 7, Texas facilities held the largest share of UACs, as well as the largest number of facilities during the study period (see Appendix Table 6 for detailed ORR census population by state). Notably, Texas is also the leading state in terms of the number of ICE detention facilities and the adult immigrant detainee population.[91]

**Figure 7:** Census Population by Facility State, December 2017–August 2019




*Note*: Authors' calculations are based on Census Data.

90. As our analysis is based on the Census Data, some facilities that were in operation during the relevant time period but not in operation on the census date are not included in our analysis.
91. Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 S. CALIF. L. REV. 1, app. tbl. C (2018).

The other states with high census populations are New York, Florida, and Arizona, each of which also has a high number of adult immigrant detainees.[92]

**Table 1**: Alignment Between Facility Location and Sponsor Location, November 2017–July 2019

| Facility-Sponsor State | Number of Discharges to Individual Sponsors | Percentage of Discharges to Individual Sponsors |
|---|---|---|
| Texas to California | 5,761 | 6.2% |
| Texas to Florida | 5,310 | 5.7% |
| Texas to New York | 4,055 | 4.3% |
| Texas to Maryland | 3,152 | 3.4% |
| Texas to New Jersey | 2,872 | 3.1% |
| Texas to Virginia | 2,840 | 3.0% |
| Texas to Georgia | 1,769 | 1.9% |
| Texas to North Carolina | 1,754 | 1.9% |
| Florida to Texas | 1,696 | 1.8% |
| New York to Texas | 1,600 | 1.7% |
| Florida to California | 1,476 | 1.6% |
| Texas to Louisiana | 1,475 | 1.6% |
| Texas to Tennessee | 1,435 | 1.5% |
| Arizona to Florida | 1,417 | 1.5% |
| New York to California | 1,354 | 1.4% |
| Other Facility-Sponsor State Mismatch | 44,867 | 48.0% |
| Facility-Sponsor State Match | 10,527 | 11.3% |
| Facility or Sponsor State Unknown | 29 | 0.0% |
| Total | 93,389 | 100.0% |

*Notes*: Authors' calculations are based on Longitudinal Data. The analysis excludes 4,408 discharges in July 2018 due to missing discharge type and sponsor state information in the July 2018 Discharges Data.

Next, we examined the relationship between the location of facilities and the location of individual sponsors to whom the children were released. A mismatch between these respective locations can create or exacerbate communication problems between the children and their sponsors, and impose a variety of logistical challenges that can impact the children's legal proceedings during and

92. *See id.*

after the reunification process. Since the Longitudinal Data do not contain city-level information about sponsors, we conducted a state-level analysis.[93] Specifically, we examined the extent of mismatches between the states in which the facilities are located and the states in which individual sponsors are located. A more granular data such as city or county information for sponsors are not available in the monthly data.

Table 1 presents the total count and corresponding percentage of various types of mismatches by state. If a child had been transferred between facilities during their custody period, we examined only their discharging facility for the purposes of this analysis.[94] During our study period, there were 93,389 discharges to individual sponsors recorded in the Longitudinal Data. We lacked state information on either the facility or the sponsor for twenty-nine (less than 1 percent of) discharges. As shown in Table 1, only about 11 percent of children released to individual sponsors during the study period were in facilities located in the same state as their individual sponsors. This percentage would be even lower had we been able to analyze city- or county-level mismatches.

### 3. Size of Facilities

Finally, we considered variations in facility size. Facility size may have a variety of direct and downstream effects on children's custody experiences and outcomes. According to the Women's Refugee Commission:

> Child welfare principles have long established that large institutional facilities are an inappropriate setting for children . . . . Larger facilities necessarily rely on greater institutionalization as a means of maintaining control, have a higher staff to child ratio, and are less able

93. The ORR does make available aggregate statistics on the location of sponsors by counties. *See* Off. of Refugee Resettlement, *Unaccompanied Alien Children Released to Sponsors by County*, DEP'T HEALTH & HUM. SERV.: OFF. OF THE ADMIN. FOR CHILD. & FAMS. (Aug. 29, 2019), https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-county [https://perma.cc/5WSR-5UQC]. But these aggregate statistics do not allow us to determine whether individual children released from ORR custody to individual sponsors experienced a mismatch.

94. We also considered examining mismatches between sponsor states and the first facility at which the children were initially placed for those children who experienced interfacility transfers. However, for children who were referred before November 2017, the data do not contain information about their initial placements unless they were transferred at some point during November 2017 and July 2019 (if they were transferred during this period, their initial placement records would appear in the monthly Transfers Data).

> to adapt services to the needs of individual children. Both care and safety are compromised by this reliance on large facilities.[95]

What is the average number of children held in facilities across each program category? To answer this question, we analyzed the monthly Census Data, which contain information about the number of children held in a given facility on a single day in a given month. Table 2 presents the total number of unique facilities in the Census Data,[96] range (minimum and maximum census population), and average (mean) census population between December 2017 and August 2019. We present these statistics by program category, as there is substantial variation in these statistics across program category. Shelters include large influx facilities such as BCFS Tornillo, a tent city established in the Texas desert that held thousands of children between June 2018 and January 2019.

**Table 2:** Average Census Population by Program Category

| Program Category | Facility Count | Minimum Census Population | Maximum Census Population | Mean Census Population |
|---|---|---|---|---|
| Shelter | 94 | 1 | 2,769 | 123 |
| Transitional Foster Care | 31 | 1 | 899 | 61 |
| Long Term Foster Care | 30 | 1 | 55 | 15 |
| Secure Program | 14 | 1 | 32 | 13 |
| Treatment/Therapeutic Program | 3 | 3 | 29 | 15 |

*Note*: Authors' calculations are based on Census Data.

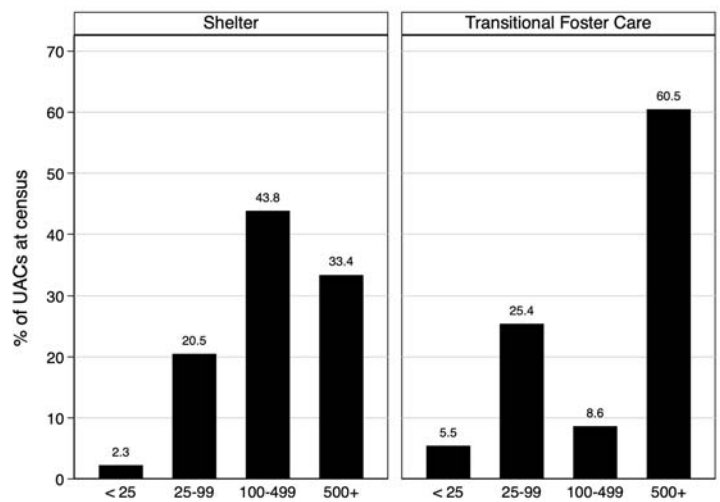
Table 2 shows that a total of ninety-four shelters had an average census population of about 123 children. The range is wide: The smallest census population across all shelters is one and the highest census population across all shelters is 2,769 children. Table 2 also shows that the total number of transitional foster cares during this time period was thirty-one, with an average census population of about sixty-one children. Finally, Table 2 shows that the average census population is substantially smaller in all other program categories.

95. Michelle Brané, Director, Migrant Rts. & Just. Program, Statement Reviewing the Administration's Unaccompanied Children Program, Address Before the House Appropriations Subcommittee on Labor, Health, and Human Services, Education and Related Agencies (Feb. 27, 2019), https://s33660.pcdn.co/wp-content/uploads/2020/04/LHHS-approps-testimony-Michelle-Brane-FINAL.pdf [https://perma.cc/D4J8-MWEK]. *See also* WOMEN'S REFUGEE COMM'N & ORRICK HERRINGTON & SUTCLIFFE LLP, *supra* note 30 (describing problems related to large ORR facilities).

96. As our analysis is based on the Census Data, some facilities that were in operation during the relevant time period but not in operation on the census date are not included in our analysis.

To get a sense of the distribution of children across small to large facilities, we also examined proportion of census population by program size. For the purposes of this study, we categorized the facilities as: (a) small (holding less than 25 children), (b) medium (holding between 25 and 99 children), (c) large (holding between 100 and 499 children), and (d) mega (holding more than 500 children). Our categorization of individual facilities into this classification scheme is based on the maximum monthly census population corresponding to each facility between December 2017 and August 2019.

**Figure 8:** Census Population by Facility Size, December 2017–August 2019




*Note*: Authors' calculations are based on Census Data.

First, we found that across all program categories, about 72 percent of the UAC population were in large or mega facilities, 22 percent were in medium facilities, and 6 percent were in small facilities. Next, we focused on shelters and transitional foster cares, which operate congregate care for the bulk of the UAC population (see Figure 6 for census population by program type). As shown in Figure 8, the majority of the census population in shelters were in large to mega facilities—about 44 percent and 33 percent, respectively. Together, about 77 percent the monthly census population in shelters were in large or mega shelters. A sizeable proportion of the census population in shelters—about 21 percent—were in medium shelters. Figure 8 also shows that the majority of the census population in transitional foster care facilities—about 69 percent—were in large or mega facilities. About 25 percent of the census population in transitional foster care facilities were in medium facilities.

In sum, our analysis revealed three key facility characteristics. First, there was a clear concentration of ORR facilities in a small, distinct number of states—Texas, Arizona, Florida, and New York. Second, a majority of the children released to individual sponsors—89 percent—were held in states that were different than the location of their sponsors. Finally, a majority of the census population—about 72 percent—were in large facilities with a population of 100 or more children. This proportion is even higher if we examine shelters alone: About 77 percent of the census population in shelters were held in facilities with capacities of 100 or more children.

### C. Custodial Experiences and Outcomes

We now focus our analysis on a number of important custodial outcomes: (a) custody length, (b) discharge to individual sponsors, and (c) placement in restrictive settings. As we discuss below, each custodial outcome has significant policy implications for the wellbeing of children and for U.S. immigration policy.[97] Before we examine each of these outcomes, we place them in context by presenting an overview of the various ways that children may be released from ORR custody.

#### 1. Overview

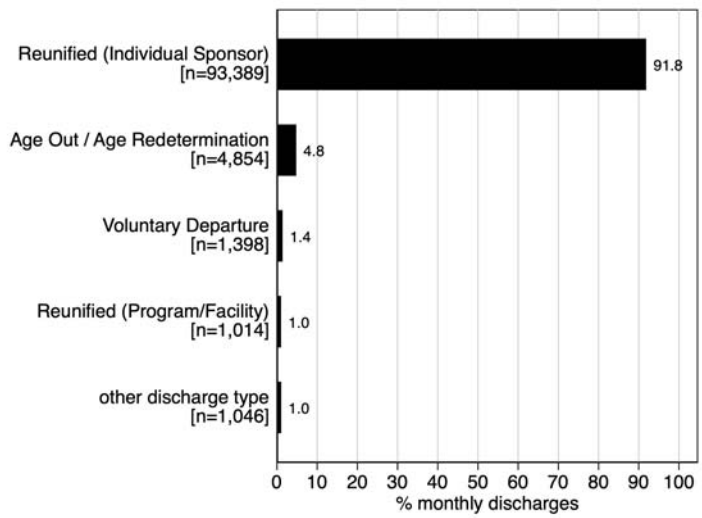
Children may be released from ORR custody if they are placed with individual sponsors who assume their custody pending the resolution of their immigration cases. Release from ORR custody to an individual sponsor does not mean the UAC has been granted legal immigration status. These children continue to be in immigration proceedings and must appear in an immigration court at a future date to have their immigration cases adjudicated. Children may also "age out" of ORR custody, which means that upon turning eighteen, children may be transferred from the ORR to DHS custody and placed in ICE detention facilities for adult migrants.[98] There are a number of other ways in which children may be released

97. There are, of course, many other types of custodial experiences and outcomes that demand close scrutiny. These include, for example, mental and physical health effects of custody on children, and the effect of custody on the children's ability to navigate the legal system and to pursue their legal claims. The government, however, does not appear to collect data that allow us to systematically investigate these other types of custodial experiences and outcomes.

98. This practice currently is being challenged in a class action lawsuit on the basis that the DHS is not considering placement of such children in the least restrictive setting available, as required by TVPRA, 8 U.S.C. 1232(c)(2)(B). *See* Ramirez v. U.S. Immigr. and Customs Enf't, 310 F. Supp. 3d 7 (D.D.C. 2018) (granting preliminary injunction).

from ORR custody. These include, for example, voluntary departure to countries of origin, a grant of legal relief from removal, and placement in non-ORR facilities such as independent shelters or in state foster care programs.[99]

**Figure 9:** Percent Discharges by Discharge Type, November 2017–July 2019




*Notes*: Authors' calculations are based on Longitudinal Data. July 2018 omitted due to missing discharge types data for this month.

We examined the distribution of all final discharges from ORR custody (in other words, nontransfer discharge types). The government did not provide discharge types in the July 2018 monthly discharges data, and our analysis of discharge types excludes this month, as we are unable to impute these missing discharge types. As shown in Figure 9, the most common type of discharge is reunification with individual sponsors, which constituted about 92 percent of all discharges during the study period. The second most common type of discharge is aging out or age redetermination, which constituted about 5 percent of all discharges during the study period. The other type of discharges combined together constituted about 3 percent of all discharges.

99. The following are all of the discharge types that appear in the Discharges Data: Age Out, Age Redetermination, DHS Family Shelter, Immigration Relief Granted, Local Law Enforcement, Marshal's Service, Ordered Removed, Ranaway from Facility, Ranaway on Field Trip, Reunified (Individual Sponsors), Reunified (Program/Facility), Transfer, Voluntary Departure, and Other.

### 2. Custody Length

A growing body of research indicates that detained children suffer substantial negative physical and mental health consequences the longer they are institutionalized.[100] For example, as documented in the 2019 Inspector General's report on the mental health care needs of children in ORR facilities across the United States: "According to facility staff, longer stays resulted in higher levels of defiance, hopelessness, and frustration among children, along with more instances of self-harm and suicidal ideation."[101] This type of deterioration in mental health is vividly captured in the following account of one child at an ORR shelter: "For about my first six months at the shelter, I was doing okay. But, as time wore on, I got more and more depressed about being detained and not knowing when I would be released, and I began cutting myself."[102]

Unsurprisingly, "even children who come into care with good coping skills become disillusioned after a lengthy stay."[103] Furthermore, the American Academy of Pediatrics has concluded, "there is no evidence indicating that any time in detention is safe for children."[104] Thus, custody length is an important outcome measure that requires close scrutiny. Below we present the results of our analysis on custody lengths using our Longitudinal Data. In the Methods Appendix, we highlight important empirical considerations in calculating custody lengths.

The overall mean custody length among all children discharged between November 2017 and July 2019 was 62 days (see note accompanying Figure 10 and Appendix Table 7). Figure 10 indicates a substantial variation around this overall custody length between November 2017 and July 2019. As shown in Figure 10, the mean custody length was 47 days among children who were discharged in November 2017. The mean custody length, however, substantially increased between June and July 2018 (61 days to 72 days) and continued to increase

100. *See, e.g.*, Michael Dudley, Zachary Steel, Sarah Mares & Louise Newman, *Children and Young People in Immigration Detention*, 25 CURRENT OPINION IN PSYCHIATRY 285, 287 (2012). For a review of research findings on this issue across different national contexts, see Emily Ryo, *Understanding Immigration Detention: Causes, Conditions, and Consequences*, 15 ANN. REV. L. & SOC. SCI. 97 (2019). On the relationship between length of institutionalization and cognitive problems for children, see Dozier et al., *supra* note 13.

101. OIG, CARE PROVIDER FACILITIES, *supra* note 80, at 12.

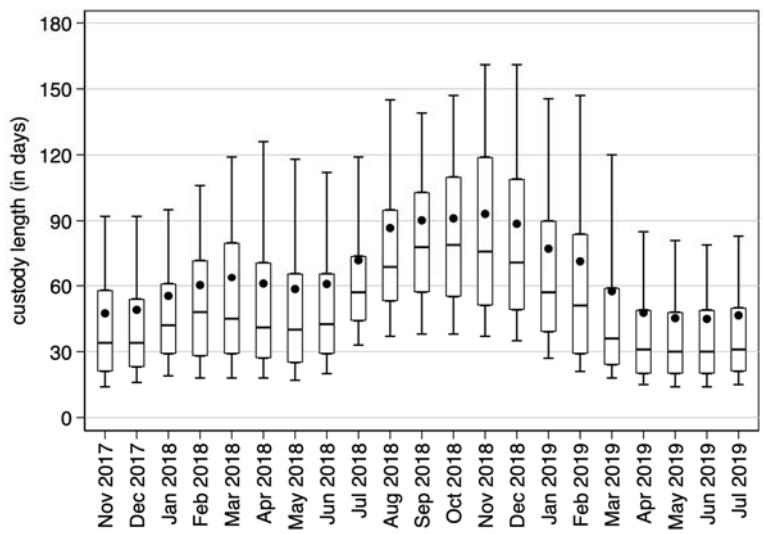
102. NAT'L CTR. FOR YOUTH L., CTR. FOR HUM. RTS. & CONST. L. & U.C. DAVIS SCH. OF L. IMMGR. CLINIC, THE FLORES SETTLEMENT AGREEMENT & UNACCOMPANIED CHILDREN IN FEDERAL CUSTODY 7 (2019), https://youthlaw.org/wp-content/uploads/2019/02/Flores-Congressional-Briefing.pdf [https://perma.cc/PVX8-NME5].

103. OIG, CARE PROVIDER FACILITIES, *supra* note 80, at 13.

104. Linton et al., *supra* note 2, at 6.

steadily thereafter, reaching a peak of 93 days in November 2018. After November 2018, there was a gradual decline back to the same mean custody length as in November 2017, at 47 days. This fluctuation in the overtime trend has been widely attributed to two controversial policy changes relating to the individual sponsor reunification process that the federal government implemented in summer of 2018, which we discuss at length later.

**Figure 10:** Custody Length among Discharged UACs, November 2017–July 2019




*Notes*: Authors' calculations are based on Longitudinal Data. Consistent with the government reporting practice, we calculated custody length using referral and discharge dates. For 751 discharges with missing referral dates, we used custody-period start date to calculate custody length. Horizontal line inside box represents median. Box represents 25th and 75th percentiles. Whiskers represent 10th and 90th percentiles. Dots inside the box represent mean custody lengths. Overall mean between November 2017 and July 2019 is 62 days.

Consistent with HHS's reporting practices on the "length of care" among discharged children,[105] Figure 10 presents monthly mean custody lengths as

105. The Department of Health and Human Services (HHS) website does not explicitly state whether it uses the referral date or the custody period start date to measure the "length of care." *See Latest UAC Data—FY2019*, U.S. DEP'T OF HEALTH & HUM. SERVS. (Sept. 6, 2019), https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/latest-uac-

measured by the number of days between the discharge date (for any and all final discharge type) and referral date. In Appendix Table 7, however, we report both the underlying statistics shown in Figure 10, as well as mean custody lengths measured by the difference between the discharge date and custody period start date (custody period start date refers to the first admission date within a custody period). As shown in Appendix Table 7, these two calculation methods produced only slight differences in custody lengths by month.

### 3. Sponsor Reunification

Given that placement with individual sponsors constitutes the most prevalent discharge type among UACs in ORR custody, we conducted a number of additional analyses on reunifications. Who are the individual sponsors? Our longitudinal data do not contain information about the individual sponsors' relationship to the children released from ORR custody. But the aggregate statistics that the ORR has made publicly available indicate that most sponsors are parents, legal guardians, or immediate relatives of the children. For example, in fiscal year 2018, 42 percent of all discharges to individual sponsors were to parents or legal guardians, and 47 percent were to immediate relatives.[106]

The Longitudinal Data contain a total of 93,673 individual sponsor reunifications that we could identify between November 2017 and July 2019. We examined the reunifications in a number of different ways, including: (a) whether the incidence of reunification differs by program categories, (b) whether the probability of reunification differs across facilities within certain program categories, and (c) whether time to reunification differs across facilities within certain program categories. In the Methods Appendix, we highlight important empirical considerations relating to these analyses.

data-fy2019/index.html [https://perma.cc/3DQE-DNUA] (reporting "[a]verage [l]ength of [c]are (for those discharged)"). However, our comparative analysis indicates that the government is using the referral date to estimate the mean care length.

106. *See Latest UAC Data—FY2018*, DEP'T OF HEALTH & HUM. SERV., https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/latest-uac-data-fy2018/index.html [https://perma.cc/E72Q-4STZ] (last reviewed Feb. 1, 2021). During partial fiscal year 2019 (October 2018–July 2019), 45 percent of all discharges to individual sponsors were to parents or legal guardians, and 47 percent were to immediate relatives. *See Latest UAC Data—FY2019*, *supra* note 105.

### a. Differences in Reunification Incidence Across Program Categories

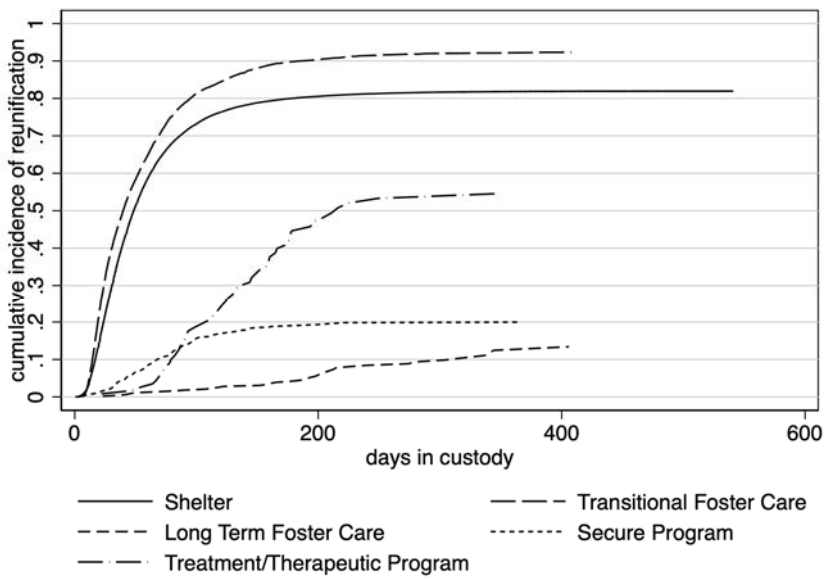
First, we investigated whether the incidence of reunification differs between different program categories. As we discussed earlier, there are other ways of being discharged from ORR custody than through individual sponsor reunification. We treated these other discharge types as "competing risks" that impede or make impossible reunification.[107] To examine how the incidence of reunification might vary across different program categories, we estimated the probability that reunification within specific program types will occur before a given time *t*, accounting for the possibility of other discharge types.

Figure 11 presents estimates of the cumulative incidence of reunification by program category. Because children who experience transfers during their custody period could have been held in more than one program type, we conducted a stint-level analysis.[108] Figure 11 shows that for all program categories, the incidence of reunification increases as the days in custody increase. For example, only about 10 percent of stints at shelters result in reunification by day 17, but by day 200, about 80 percent of stints have ended in reunification. Figure 11, however, also shows that the overall incidence of reunification is much lower for children in long term foster care, secure program, and treatment/therapeutic programs, compared to children in shelters and transitional foster care.

107. On competing risks, see MELANIA PINTILIE, COMPETING RISKS: A PRACTICAL PERSPECTIVE 1 (2006); Bryan Lau, Stephen R. Cole & Stephen J. Gange, *Competing Risk Regression Models for Epidemiologic Data*, 170 AM. J. EPIDEMIOLOGY 244 (2009).

108. We also conducted this analysis (1) at the custody-period level, focusing on the program type associated only with the final discharge record, and (2) examining only those custody periods without transfers. The results of those additional analyses are available upon request.

**Figure 11:** Cumulative Incidence of Reunification by Program Category




*Note:* Authors' calculations are based on Longitudinal Data.

Variation in the incidence of reunification across different program types is unsurprising given that assignment into different program types is likely determined in part by the level of difficulty that children face in reunifying with sponsors. For example, long term foster care is commonly reserved for children who are expected to have a protracted custody period because they lack a viable sponsor.[109] But substantial variations in reunification probabilities and time to reunification across facilities *within same program types* are of concern insofar as these variations reflect inconsistent reunification practices or screening procedures across facilities.

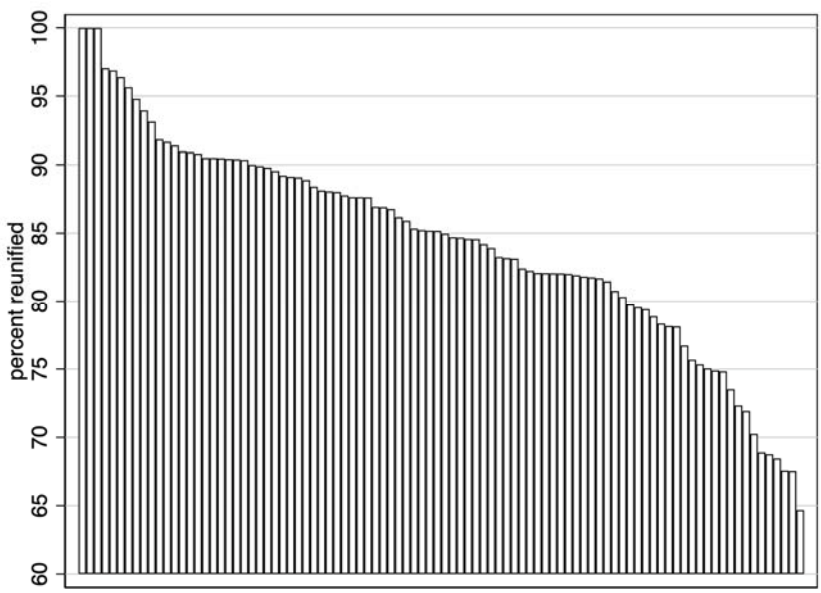
Thus, below we examined variations in reunification probabilities and time to reunification across facilities within two dominant program types, respectively: shelters and transitional foster cares.

109. Off. of Refugee Resettlement, *1.2.6 ORR Long Term Foster Care*, *in* ORR GUIDE: CHILDREN ENTERING THE UNITED STATES UNACCOMPANIED, https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied [https://perma.cc/F9XS-R6NV] (last revised Oct. 15, 2015).

### b. Reunification Probabilities Among Shelters and Transitional Foster Cares

First, we examined the probability of reunification for shelters and transitional foster cares. This probability is calculated by dividing the number of reunifications by the total number of discharges for each facility. Since the discharge type is unknown for right-censored stints, these stints are not considered in the calculation of the facility-specific probability of reunification.

**Figure 12:** Probability of Reunification in Shelters



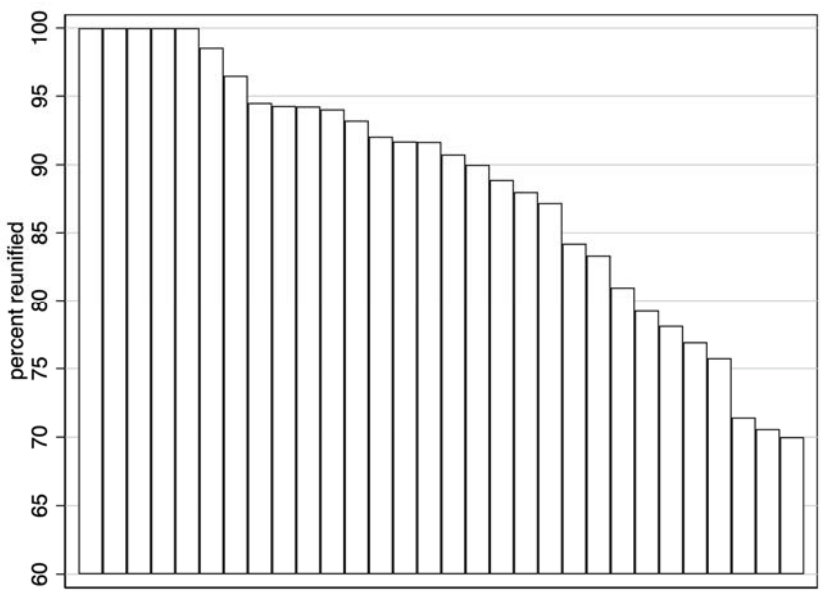

*Notes:* Authors' calculations are based on Longitudinal Data. Each bar relates to an individual shelter.

Figure 12 shows the probability of reunification for each facility designated as a shelter. Each bar corresponds to an individual shelter. Figure 12 illustrates a great deal of variation in the probability of reunification across individual shelters, with the probability ranging from 64.7 percent to 100 percent. Note that the shelters with a 100 percent probability of reunification each have only a small number of stints, from 2 to 11.

Next, Figure 13 shows the probability of reunification for facilities designated as transitional foster care. As we noted earlier, there are far less transitional foster cares than shelters, as reflected by a fewer number of bars shown in Figure 13 than

in Figure 12. Like Figure 12, however, Figure 13 also shows a great deal of variation in the probability of reunification across individual transitional foster cares, with reunification probabilities ranging from 70.0 percent to 100 percent. Again here, the transitional foster cares with a 100 percent probability of reunification have small sample sizes of 2 to 13 stints each.

**Figure 13:** Probability of Reunification in Transitional Foster Care



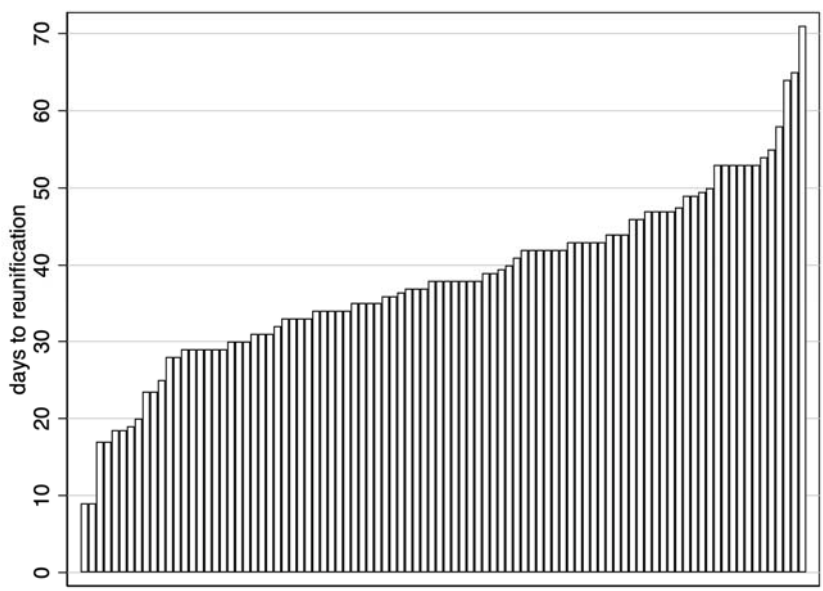

*Notes*: Authors' calculations are based on Longitudinal Data. Each bar relates to an individual transitional foster care.

Finally, to test the possibility that substantial variations in the probability of reunification across different facilities are merely reflecting a concentration of certain group of UACs with higher risks of reunification than other groups of UACs, we fit a logistic model to estimate the odds of reunification across facilities, adding the following individual UAC-level covariates as control variables: gender, country of origin, and age at custody period start date. The results of these models (available upon request) suggest that the large variations that we found in the probability of reunification across shelters and transitional foster cares, respectively, are not driven by the assignment of certain UACs into certain shelters and foster cares.

### c. Time to Reunification Among Shelters and Transitional Foster Cares

Shelters and transitional foster cares have many facilities with a high number of children who experienced reunification, which allows us to reliably estimate facility-specific median times to reunification. We thus estimated the median time to reunification for stints that resulted in reunification. Figures 14 and 15 illustrate the various median times to reunification for stints at shelters and transitional foster cares, respectively. Stints resulting in discharge types besides reunification and right-censored records were not considered in this calculation. Excluding the right-censored records may underestimate the median time to reunification.[110]

**Figure 14:** Median Time to Reunification in Shelters



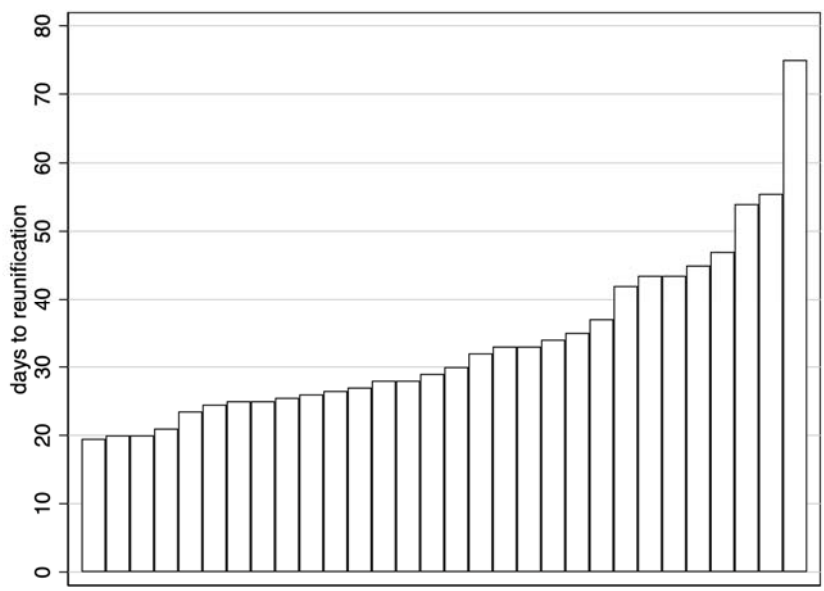

*Notes*: Authors' calculations are based on Longitudinal Data. Each bar represents an individual shelter.

Figure 14 shows wide variations in median times to reunification across individual shelters. The difference between the shelter with the lowest median time to reunification and the shelter with the highest median time to

110. *See* MARIO CLEVES, WILLIAM W. GOULD & YULIA V. MARCHENKO, AN INTRODUCTION TO SURVIVAL ANALYSIS USING STATA 93, 118–20 (3rd ed. 2016).

reunification is 9 days versus 71 days. This means that the median time to reunification is nearly eight times higher at the second shelter than the median time to reunification at the first shelter. Likewise, we found substantial variations in the median time to reunification among transitional foster cares, as shown in Figure 15. The median time to reunification at the transitional foster care with the lowest median time is 20 days, compared to 75 days at the transitional foster care with the highest median time.

**Figure 15:** Median Time to Reunification in Transitional Foster Care




*Notes:* Authors' calculations are based on Longitudinal Data. Each bar represents an individual transitional foster care.

To test the possibility that the differences in median time to reunification between facilities might be due to compositional differences between UACs assigned to different facilities within a given program category, we fit Cox models to estimate the hazard of reunification across facilities. These Cox models contains the following individual UAC-level covariates as control variables: gender, country of origin, and age at custody period start date. Consistent with our descriptive analysis of time to reunification, we restricted the sample to stints that ended in reunification. The results of these models (available upon request) suggest that there is significant variation in the hazard of reunification across shelters and transitional foster cares, even after controlling for these individual characteristics.

### 4. Placement in Restrictive Settings

We now turn to the question of placement in restrictive settings. Placement in restrictive settings can have a significant impact on the children's custodial experiences and outcomes. For example, our analysis in the previous Subpart showed that the probability of reunification is substantially lower in secure programs and treatment/therapeutic programs. Children can be placed initially in restrictive settings or they can be stepped up to more restrictive from less restrictive settings. The former type of placements provides insights into the government's initial evaluative process and decisionmaking about which children are considered unsuitable for the general ORR population, whereas the latter type of placement decisions (step-ups) offers a unique window into possible behavioral and health effects of institutionalization on children. Our analysis focuses on both the initial placement in restrictive settings and step-ups. In the Methods Appendix, we highlight important empirical considerations relating to these analyses.

**Figure 16:** Less Restrictive to More Restrictive Program Types

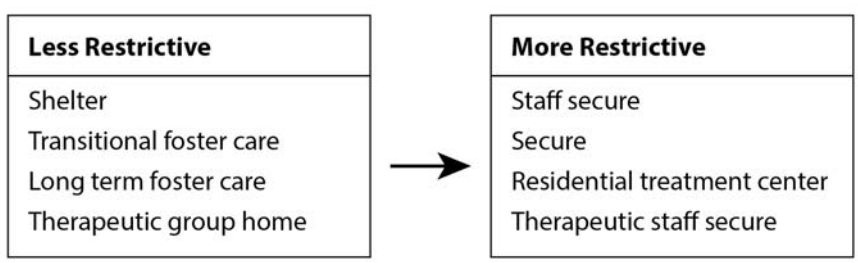



Figure 16 is a diagram listing less restrictive and more restrictive program types, which we use to code initial placement in restrictive settings and step-ups.[111]

#### a. Initial Placement in Restrictive Settings

The outcome of interest in our analysis of initial placement in restrictive settings is whether the child was initially placed in a more restrictive program type as shown in Figure 16 (staff secure, secure, residential treatment center, or therapeutic staff secure) (1 = yes; 0 = no). We used binary logistic regression analysis to investigate whether gender, country of origin, and age at custody period

111. Our conversations with practitioners familiar with the operation of ORR facilities suggested that residential treatment centers belonged in the more restrictive category.

start date were significant predictors of initial placement in one of these programs. We used effect coding to create dummy indicators of different countries of origin that were included in the binary logistic regression models. Under this coding scheme, each country dummy indicator shows the difference between the corresponding country and the mean effect of all countries.

Table 3 shows the results of our regression analysis. The Longitudinal Data contain 110,021 unique custody periods with a total of 504 initial placements in restrictive settings. Table 3 shows that the odds of initial placement in restrictive settings for boys are nearly 11 times those of girls, controlling for age and country of origin. The odds of initial placement in restrictive settings for children aged 13 and older are nearly 12 times those of tender-age children, controlling for gender and country of origin.

**Table 3:** Coefficients From Logistic Model of Initial Placements

| Variables | Odds Ratios | Coefficients | Standard Errors |
|---|---|---|---|
| Gender | | | |
| Male[a] | 10.68*** | 2.37*** | 0.28 |
| Age[b] | | | |
| 13 and Older[c] | 11.83*** | 2.47*** | 0.41 |
| Country of Origin | | | |
| El Salvador (vs. mean) | 0.80 | -0.22 | 0.13 |
| Guatemala (vs. mean) | 0.21*** | -1.58*** | 0.13 |
| Honduras (vs. mean) | 0.77* | -0.27* | 0.11 |
| Mexico (vs. mean) | 12.36*** | 2.51*** | 0.11 |
| Other (vs. mean) | 0.65* | -0.44* | 0.22 |
| Log Likelihood | -1,775.34 | | |
| N (total number of custody periods) | 110,021 | | |

*Notes*: *** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$.
[a] Reference category is female. [b] Age calculated at the first date of admission of the custody period. [c] Reference category is 12 and under (tender age).
Standard errors are clustered by A-Number.

Table 3 also shows that children originating from Guatemala, Honduras, and Mexico have significantly different odds of initial placement in restrictive settings than the average of all countries, controlling for gender and age. Specifically, the odds of initial placement in restrictive settings for children from Guatemala and Honduras are about 79 percent and 23 percent lower, respectively, than the average of all countries (100 * [1 – *odds ratio*]). By contrast, the odds of initial

restrictive placement for children from Mexico are more than 12 times the average of all countries.

**b. Step-ups**

We coded a transfer as a step-up if the transfer involved a movement from any one of the following less restrictive program types: (1) shelter, (2) transitional foster care, (3) long term foster care, and (4) therapeutic group home, to any one of the following more restrictive type of programs: (1) staff secure, (2) secure program, (3) residential treatment center, and (4) therapeutic staff secure. To investigate whether certain children are at greater risk of step-ups than others, we fit a cause-specific Cox proportional hazard model with standard errors clustered by A-Numbers (identification numbers provided by the government for each child).[112] The longitudinal data contain 110,021 custody periods with a total of 594 step-ups. Our analysis of the risk of step-up is conducted at the custody period level. This means that if a UAC is transferred during their custody period, her time at risk of step-up does not "reset" after the transfer. As shown in Table 4, the hazard of step-ups for boys is nearly 4 times the hazard of step-ups for girls, controlling for age and country of origin. The hazard of step-ups for children aged 13 and older is more than 6 times the hazard of step-ups for tender-age children, controlling for gender and country of origin.

Children from El Salvador and Guatemala face a lower hazard of step-ups than the average of all countries. Specifically, children from El Salvador face a step-up hazard that is about 29 percent lower than the average of all countries (100 * [1 – *hazard ratio*]). Likewise, children from Guatemala face a step-up hazard that is about 60 percent lower than the average of all countries. By contrast, children from Honduras and Mexico face much higher step-up hazards compared to the average of all countries. Specifically, children from Honduras face a step-up hazard that is about twice higher than the average of all countries. The step-up hazard is almost four times higher for children from Mexico than the average of all countries.

112. As a robustness check, we added facility effects to our Cox model. The hazard ratios for the UAC characteristics remained substantially the same, with the exception of age; age was still statistically significant, but the magnitude of the effect was reduced.

**Table 4:** Coefficients From Cox Proportional Hazard Model of Step-ups

| Variables | Hazard Ratios | Coefficients | Standard Errors |
|---|---|---|---|
| Gender | | | |
| Male[a] | 3.74*** | 1.32*** | 0.14 |
| Age[b] | | | |
| 13 and Older[c] | 6.57*** | 1.88*** | 0.26 |
| Country of Origin | | | |
| El Salvador (vs. mean) | 0.71* | -0.35* | 0.14 |
| Guatemala (vs. mean) | 0.40*** | -0.92*** | 0.09 |
| Honduras (vs. mean) | 1.73*** | 0.55*** | 0.08 |
| Mexico (vs. mean) | 3.63*** | 1.29*** | 0.12 |
| Other (vs. mean) | 0.57** | -0.57** | 0.19 |
| Log Likelihood | -5,888.40 | | |
| N (total number of custody stints) | 122,571 | | |

*Notes:* *** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$.
[a] Reference category is female. [b] Age calculated at the first date of admission of the custody period. [c] Reference category is 12 and under (tender age).
Standard errors are clustered by A-Number.

In short, boys and older children face substantially higher risks of both initial placements in restrictive settings and step-ups. With respect to countries of origin, children from Mexico stand out as a group at the highest risk of both initial placements in restrictive settings and step-ups.

## IV. POLICY IMPLICATIONS

The number of migrant children in U.S. custody has been on the rise and there has been a growing public focus on the treatment of these children in our immigration system. Yet we still lack a systematic and holistic understanding of who the children are, the facilities that hold them, and how they fare in custody. Our analysis represents the first systematic research effort to take the first step in addressing these questions with respect to children in ORR custody. We highlight our key findings in this Part and discuss their policy implications by placing the findings in the broader context of existing body of knowledge on international migration and on institutionalized care of children.

### A. UAC Characteristics

Our empirical analysis revealed an increasing share of referrals involving children from El Salvador and Honduras, girls, and young children of tender age.

As we explain below, children in each of these groups are some of the most vulnerable of all UAC populations. The rising proportion of these children in the UAC population suggests that insofar as punitive immigration enforcement policies have deterred some children from undertaking the dangerous journey to the United States, those who continue to arrive at the U.S. border are likely children most desperate to flee their home countries and in need of special care and legal protection.[113] As Jonathan Hiskey and colleagues conclude in their study of emigration decisions in Central America, "in a situation of extreme levels of crime and violence, many individuals choose to leave this 'devil they know' with the hope that the 'devil they don't' will be better."[114]

While each of the Northern Triangle countries has high rates of crime and violence, analysts have recognized an important distinction between El Salvador and Honduras on the one hand, and Guatemala on the other. Murder rates are a key measure of crime and violence. El Salvador and Honduras generally have had the highest murder rates in the Western Hemisphere for the past two decades.[115] Guatemala's rate has tended to be relatively lower than those of El Salvador and Honduras. Studies of migration motives among immigrant children confirm that while fear of violence constitutes the dominant reason for migration to the United States for children from El Salvador and Honduras, it plays less of an important role for children from Guatemala.[116]

113. *See* Ryo, *supra* note 100.

114. Jonathan T. Hiskey, Abby Córdova, Mary Fran Malone & Diana M. Orcés, *Leaving the Devil You Know: Crime Victimization, US Deterrence Policy, and the Emigration Decision in Central America*, 53 LATIN AM. RSCH. REV. 429, 430 (2018).

115. *See, e.g.*, NAT'L CTR. FOR RISK & ECON. ANALYSIS OF TERRORISM EVENTS & INST. FOR DEF. ANALYSES, NORTHERN TRIANGLE MIGRANT FLOW STUDY: FINAL REPORT 15–17 (2018), https://create.usc.edu/sites/default/files/northern_triangle_migrant_report.pdf [https://perma.cc/2YES-8EAX] (providing murder rates in Northern Triangle countries, Mexico, and the United States during 1995–2016); U.S. DEP'T OF STATE & U.S. AGENCY FOR INT'L DEV., PROGRESS REPORT FOR THE UNITED STATES STRATEGY FOR CENTRAL AMERICA'S PLAN FOR MONITORING AND EVALUATION 25 (2019), https://www.state.gov/wp-content/uploads/2019/05/FY-2019-Central-America-Strategy-Progress-Report.pdf [https://perma.cc/7BCZ-8TZC] (providing international homicide statistics for El Salvador, Honduras, and Guatemala during 2014–2018).

116. *See, e.g.*, CTR. FOR GENDER AND REFUGEE STUD. & JUST. AND HUM. RTS. CTR., CHILDHOOD AND MIGRATION IN CENTRAL AND NORTH AMERICA: CAUSES, POLICIES, PRACTICES AND CHALLENGES 80 (2015), https://cgrs.uchastings.edu/sites/default/files/Childhood_Migration_HumanRights_FullBook_English.pdf [https://perma.cc/KZ99-PVNC] (showing a lower percentage of Guatemalan migrant children citing violence as migration motivation compared to children from El Salvador, Honduras, and Mexico); Matthew Lorenzen, *The Mixed Motives of Unaccompanied Child Migrants From Central America's Northern Triangle*, 5 J. MIGRATION & HUM. SEC. 744 (2017) (same); U.N. HIGH COMM'R FOR REFUGEES, *supra* note 38, at 6 (showing a lower percentage of migrant children

More research is needed to better understand the underlying causes for the increasing proportion of girls in the UAC population. But recent reports on the growing number of women and girls fleeing Central America have documented rising rates of femicides or feminicides (gender-related killings of girls and women) and sexual violence against girls and women.[117] According to a recent report examining femicide in Latin American and the Caribbean countries:

> In El Salvador this phenomenon is particularly acute, finding no other parallel in any country in the region, with a rate of 10.2 femicides per 100,000 women in 2017. This is followed by Honduras, which in 2016 registered 5.8 femicides per 100,000 women. In Guatemala, the Dominican Republic and Bolivia (Plur. State of) high rates were also observed for 2017, which are equal to or greater than 2 cases per 100,000 women.[118]

Many female migrants also face heightened risks of sexual violence during their journey to the United States, in addition to other dangers such as abduction, theft, extortion, and torture.[119] This means that many girls who come into ORR custody may have been exposed to or threatened with gender-based and sexual violence not only in their home countries but also in transit to the United States.[120] In addition, as we discussed earlier, some girls in ORR custody face the added challenge of having their babies in ORR custody as well.

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from Guatemala with potential international protection needs than migrant children from El Salvador, Honduras, and Mexico). For comparable findings with respect to adult migrants, see DOCTORS WITHOUT BORDERS, FORCED TO FLEE CENTRAL AMERICA'S NORTHERN TRIANGLE: A NEGLECTED HUMANITARIAN CRISIS 11 (2017), https://doctorswithoutborders.org/sites/default/files/2018-08/msf_forced-to-flee-central-americas-northern-triangle_E.pdf [https://perma.cc/ZR57-45L6]; Hiskey et al., *supra* note 114, at 436.

117. *See* CTR. FOR GENDER & REFUGEE STUD. ET AL., *supra* note 116, at 38; Cecilia Menjívar & Shannon Drysdale Walsh, *Gender, Violence and Migration*, *in* HANDBOOK ON CRITICAL GEOGRAPHIES OF MIGRATION 45–57 (2017); Jeffrey Hallock, Ariel G. Ruiz Soto & Michael Fix, *In Search of Safety, Growing Numbers of Women Flee Central America*, MIGRATION POL'Y INSTIT. (May 30, 2018), https://www.migrationpolicy.org/article/search-safety-growing-numbers-women-flee-central-america [https://perma.cc/H7CL-TVFX].

118. GENDER EQUALITY OBSERVATORY FOR LATIN AM. & THE CARIBBEAN, FEMICIDE, THE MOST EXTREME FORM OF VIOLENCE AGAINST WOMEN 1 (2018), https://oig.cepal.org/sites/default/files/nota_27_eng.pdf [https://perma.cc/7TA7-BBAD]. *See also* U.N. HIGH COMM'R FOR REFUGEES, WOMEN ON THE RUN: FIRST-HAND ACCOUNTS OF REFUGEES FLEEING EL SALVADOR, GUATEMALA, HONDURAS, AND MEXICO (2015), https://www.unhcr.org/56fc31864.pdf [https://perma.cc/AB39-8TAG] (discussing other reasons why women are fleeing Mexico and Central America at increasing rates).

119. *See* Cesár Infante, Alvaro J. Idrovo, Mario S. Sánchez-Domínguez, Stéphane Vinhas & Tonatiuh González-Vázquez, *Violence Committed Against Migrants in Transit: Experiences on the Northern Mexican Border*, 14 J. IMMIGRANT MINORITY HEALTH 449 (2012).

120. *See* CTR. FOR GENDER & REFUGEE STUDIES ET AL., *supra* note 116, at 42, 272.

Finally, tender-age children constitute a particularly vulnerable population, and their growing presence in ORR custody has important policy implications. According to a recent Inspector General's report:

> Facilities noted that elementary-school-aged children had shorter attention spans, lacked the ability to comprehend the role of the facility, and more commonly exhibited defiance and other negative behaviors. Facilities noted the difficulties associated with completing assessments and other screenings for pre-school aged and younger children who could not accurately communicate their background information, needs, or the source of any distress.[121]

A longstanding body of research indicates that there are windows of time in early childhood (often referred to as "sensitive periods") when institutionalization can have particularly detrimental effects on children's development along many dimensions, including deficits in cognitive function, physical growth, and social-psychological health.[122] According to Anne Berens and Charles Nelson: "Unfortunately, deprivation during neurodevelopmental sensitive periods could have lifelong consequences."[123] In addition, as we discussed earlier, many tender-age children were likely separated from their parents by U.S. immigration authorities upon arrival at the U.S. border. Studies consistently demonstrate that trauma of parental separation can inflict lasting physical and psychological harm on young children.[124]

To be clear, all UACs are inherently vulnerable by virtue of their age, dependence, developmental needs, and lack of legal status. Nonetheless, from the policy standpoint of developing appropriate care for the migrant children in U.S. custody, it is important to recognize that some groups of children are at relatively higher or heightened risks of certain trauma and in greater need of specialized care and protection than others. Yet our findings on ORR facility characteristics and custodial outcomes raise serious questions about the system's capacity to provide such care and protection.

121. OIG, CARE PROVIDER FACILITIES, *supra* note 80, at 12.
122. *See* Berens & Nelson, *supra* note 13, at 391; Linton et al., *supra* note 2, at 6.
123. *See* Berens & Nelson, *supra* note 13, at 395.
124. *See* Johayra Bouza et al., *The Science Is Clear: Separating Families Has Long-Term Damaging Psychological and Health Consequences for Children, Families, and Communities*, SOC'Y FOR RSCH. CHILD DEV. (2018), https://www.srcd.org/briefs-fact-sheets/the-science-is-clear [https://perma.cc/RKC6-2MN8].

### B. Facility Characteristics

Our empirical analysis shows that most of the migrant children in ORR custody were held in states that were different than the states of their sponsors' residence, and in large facilities—for example, shelters with capacities of 100 or more children. Consistent with research on adult immigrant detention that shows that facility location and characteristics are significant predictors of detention outcomes,[125] we argue that our findings have substantial negative implications for the wellbeing and protection of legal rights of migrant children.

First, we turn to the extraordinary level of misalignment between the states from which the children were discharged and the states in which their sponsors reside. Only 11 percent of children reunited with their sponsors were held in the same state as the state of their sponsors' residence. This is significant because the distance between facilities and individual sponsors can pose numerous challenges not only to the sponsors' ability to visit the children in ORR custody, but also their ability to navigate the reunification process.

When a child is held in custody in a different state than the sponsor's state of residence, the mismatch can also have serious negative consequences for the child's court proceedings post reunification. Immigrant children are placed into immigration proceedings at the immigration court based on the location of their ORR custody. When a child is released from ORR custody to a sponsor in a different state, the venue for the immigration proceedings must be changed. This process can result in missed hearings or long-distance travels to attend hearings at the original venue. As one legal advocate for UACs recounted:

> [I]n a recent case, a Delaware sponsor was advised by ORR that the location of the UACs immigration hearing was changed from the Immigration Court in Chicago, Illinois, where the UAC was held in ORR custody, to the area to which the minor moved—the Immigration Court in Philadelphia, Pennsylvania, which has jurisdiction over UACs residing in the State of Delaware. However, this information was incorrect, and the UAC and the sponsor had no way of knowing that the venue was not changed, or how to motion the court to change the venue on their own . . . .[126]

125. *See* Ryo & Peacock, *supra* note 91; Emily Ryo & Ian Peacock, *Beyond the Walls: The Importance of Community Contexts in Immigration Detention*, 63 AM. BEHAV. SCIENTIST 1250 (2019).

126. Letter From Laura Carothers Graham, Deputy Director, Community Legal Aid Soc'y Inc., to Rob Portman, United States Senator, and Tom Carper, United States, Senator (April 24, 2018), https://www.hsgac.senate.gov/imo/media/doc/Graham%20Testimony.pdf [https://perma.cc/R85V-9BF2]; *see also Protection of Unaccompanied Children: Hearing*

Next, we turn to our findings concerning the relatively large size of average ORR facilities. We found that across all program types, about 72 percent of the UAC population were in large or mega facilities—facilities holding 100 or more children and those holding 500 or more children, respectively. The proportion is even higher if we look separately at shelters, which is where most migrant children are held in custody. Specifically, about 77 percent of the monthly census population in shelters were in large or mega facilities.

To understand why facility size is of concern, it is helpful to consider the longstanding research on institutionalized care for children. Beginning in the midtwentieth century, growing awareness of harms of institutional care for children spurred movements away from models of institutional care to more home-like group settings or foster family systems in Western Europe and the United States.[127] Since then, an extensive body of research has documented delays in important areas of physical, cognitive, and emotional development associated with institutional care.[128] In addition, some studies have found that smaller facilities have higher quality caregiving environments than larger facilities, and that larger facilities are associated with more deleterious outcomes for children.[129] To be clear, these findings do not suggest that facility size by itself is deterministic of negative outcomes for children. What is critical is the quality of caregiving.[130] And quality deteriorates the further a facility deviates from the following elements that characterize family care: small number of children; mixed-age interactions;

*Before the Permanent Subcomm. on Investigations of the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. 4 (2018) (statement of Laura Carothers Graham, Deputy Director and Managing Attorney—Immigration and Medical-Legal Partnership Program at Community Legal Aid Soc'y Inc.).

127. *See* Dozier et al., *supra* note 13, at 3.

128. *See* Mary Dozier et al., *Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association*, 84 AM. J. ORTHOPSYCHIATRY 219 (2014); Rebecca Johnson, Kevin Browne & Catherine Hamilton-Giachritsis, *Young Children in Institutional Care at Risk of Harm*, 7 TRAUMA, VIOLENCE, & ABUSE 34 (2006); Dongdong Li, Grace S. Chng & Chi Meng Chu, *Comparing Long-Term Placement Outcomes of Residential and Family Foster Care: A Meta-Analysis*, 20 TRAUMA, VIOLENCE, & ABUSE 653 (2019).

129. *See* IAN SINCLAIR & IAN GIBBS, CHILDREN'S HOMES: A STUDY IN DIVERSITY 257–58 (1998); Brenda Jones Harden, *Congregate Care for Infants and Toddlers: Shedding New Light on an Old Question*, 23 INFANT MENTAL HEALTH J. 476 (2002).

130. *See* Anna T. Smyke, Sebastian F. Koga, Dana E. Johnson, Nathan A. Fox, Peter, J. Marshall, Charles A. Nelson, Charles H. Zeanah & BEIP Core Group, *The Caregiving Context in Institution-Reared and Family-Reared Infants and Toddlers in Romania*, 48 J. CHILD PSYCH. & PSYCHIATRY 210, 215 (2007) (concluding that when it comes to developmental outcomes, "mere fact of institutionalization is less powerful than the microcaregiving environment within which each child develops").

low children-to-caregiver ratio; high consistency of caregivers; and warm, sensitive and responsive caregiving.[131]

The foregoing discussion underscores the need for reform to ensure placement of migrant children in greater proximity to their sponsors to the greatest extent possible, and to diminish the ORR's reliance on large or mega facilities. These changes may be especially urgent and critical for children with experiences of trauma in their home countries and in transit to the United States, children of tender age, and children facing additional challenges such as language barriers and parental detention.

### C. Disparities in Outcomes

Our analysis produced three major findings relating to disparities in custodial outcomes. First, our analysis revealed a steady increase in the average custody length between June and November of 2018, which reached a peak at 93 days in November 2018. We argue that this pattern reflects the extent to which ORR reunification practices were coopted by enforcement priorities of the DHS—priorities that are impossible to reconcile with HHS's priorities of protecting child welfare and family unity. To understand the dramatic rise in the average custody length between June and November of 2018, it is important to consider two policy shifts that took place.

First, in May of 2018, the reunification process was transformed into an immigration enforcement mechanism when the ORR entered into a Memorandum of Agreement (MOA) with ICE and CBP. The MOA mandated continuous information-sharing on unaccompanied immigrant children, including information on the children's potential sponsors and everyone else living with the sponsor.[132] Before the signing of the MOA, the ORR had shared

131. *See* Robert B. McCall, *Review: The Consequences of Early Institutionalization: Can Institutions Be Improved? –Should They?*, 18 CHILD & ADOLESCENT MENTAL HEALTH 193, 197–98 (2013). *See also* E.L.L. Strijbosch, J.A.M. Huijs, G.J.J.M. Stams, I.B. Wissink, G.H.P. van der Helm, J.J.W. de Swart & Z. van der Veen, *The Outcome of Institutional Youth Care Compared to Non-Institutional Youth Care for Children of Primary School Age and Early Adolescence: A Multi-Level Meta-Analysis*, 58 CHILD. & YOUTH SERVS. REV. 208, 215 (2015) ("An explanation [for better outcomes for children in noninstitutional care compared to institutional care] is that a more stable (family) environment provides better conditions for development and treatment, such as the development of secure child-caregiver attachment relationships.").

132. *See* Memorandum of Agreement Among the Office of Refugee Resettlement of the U.S. Department of Health and Human Services & U.S. Immigration and Customs Enforcement & U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Child. Matters 4–5 (Apr.

information with ICE only on sponsors, and the shared information did not include the sponsor's immigration status. The information-sharing provision produced a chilling effect on the willingness of potential sponsors to come forward, dramatically delaying the reunification process.[133] It was not until February 2019 that Congress stepped in to prohibit the use of this information-sharing system to bring enforcement action against sponsors, potential sponsors, and members of the sponsors' and potential sponsor's households.[134]

Second, the ORR implemented a new fingerprinting policy in summer of 2018. Previously, the ORR had not required parents, legal guardians, and adult household members living with parents or legal guardians to submit fingerprints except under specific circumstances (such as cases involving documented risks to the child's safety). In June of 2018, however, the ORR began subjecting all parents and legal guardians, as well as their adult household members, to the FBI fingerprinting process. The new policy resulted in substantial delays in the reunification process.[135] In December 2018, the ORR suspended the requirement that all nonsponsor adult household members undergo fingerprint background checks. In March 2019, the ORR also suspended the fingerprint requirement for parents and legal guardians in every circumstance.[136] While the MOA with ICE and the new fingerprinting policy had been publicly justified as an added measure of protection for children against trafficking, a leaked internal memorandum revealed that the actual policy aim was to identify undocumented sponsors and to place them into removal proceedings.[137]

13, 2018), https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf [https://perma.cc/DJ3E-JRUD].

133. *See* AMNESTY INT'L, NO HOME FOR CHILDREN: THE HOMESTEAD "TEMPORARY EMERGENCY" FACILITY 8–9 (2019), https://www.amnesty.org/download/Documents/AMR5107142019ENGLISH.PDF [https://perma.cc/D5XL-4VMU]; WOMEN'S REFUGEE COMM'N, NAT'L IMMIGRANT JUST. CTR. & AM. U. WASH. COLL. OF L., CHILDREN AS BAIT: IMPACTS OF THE ORR-DHS INFORMATION-SHARING AGREEMENT (2019), https://www.womensrefugeecommission.org/images/zdocs/Children-as-Bait.pdf [https://perma.cc/T8SA-W9D9].

134. Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, § 224, 133 Stat. 13 (2019). There are important carve-outs to this prohibition. For example, enforcement action could be brought if the background check reveals a felony conviction or pending felony charge, among other exceptions. *Id.* § 224(b).

135. OFF. OF INSPECTOR GEN., U.S. DEP'T OF HEALTH & HUM. SERVS., OEI-09-18-00431, CARE PROVIDER FACILITIES DESCRIBED CHALLENGES ADDRESSING MENTAL HEALTH NEEDS OF CHILDREN IN HHS CUSTODY 4 (2019), https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf [https://perma.cc/U9WU-TYKD].

136. *Id.* at n.21.

137. WOMEN'S REFUGEE COMM'N ET AL., *supra* note 133.

In sum, we found general shifts in average custody lengths reflecting enforcement-driven policy changes in the reunification process. But we also found wide disparities across individual facilities in reunification risks that raise questions about whether certain custodial outcomes may be governed largely by the luck of the draw (such as by where the child happens to be placed). It is worth recalling that we conducted our analysis within specific program types. This allows us to conclude that we are not merely picking up on the selection process whereby children with different risks of reunification are sorted into different program types. We also controlled for children's country of origin, gender, and age, which allows us to rule out the possibility that our results simply reflect an uneven distribution of children with different underlying hazards of reunification in different facilities. We would have liked to have been able to account for as many other potential confounders as much as possible, but no additional information on migrant children in ORR custody is available at the individual level.

The extraordinary variations that we found across facilities in reunification hazards are consistent with growing reports of widely varying facility-specific practices and discretionary decisionmaking powers of case managers.[138] At a minimum, our findings highlight the need for the government to systematically and on an ongoing basis monitor ORR facilities to ensure that there is consistency and transparency within and across facilities in their reunification practices and requirements. Yet under the current policy framework, such monitoring is not even feasible given that the ORR does not provide written decisions on reunification applications unless the sponsor is the child's parent or legal guardian.[139] Nor is there a process for appealing a denial unless the sponsor is the child's parent or legal guardian.[140]

Decisions about placement in restrictive settings are equally lacking in transparency, making it difficult for us to pinpoint the underlying reasons why boys, older children, and children from Mexico are at significantly higher risks of initial placement in restrictive settings and step-ups to restrictive settings. One

138. *See, e.g.*, Third Amended Class Action Complaint and Petition for a Writ of Habeas Corpus para 68, at 17, J.E.C.M. v. Hayes, No. 1:18-CV-903-LMB (E.D. Va. Jan. 18, 2019) ("Taken together, these policies establish an opaque and overly burdensome reunification process, relying on the discretion of government-contracted case managers and subject to manipulation by the whims and directives of ORR administrators before any 'official' reunification decisions are made.").

139. OFF. OF REFUGEE RESETTLEMENT, ORR GUIDE: CHILDREN ENTERING THE UNITED STATES UNACCOMPANIED § 2.7.7 (2017), https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied [https://perma.cc/C6EU-JD7E].

140. *Id.* § 2.7.8.

possible explanation is that children in these groups are indeed more likely to pose a danger to themselves or others, more likely to be an escape risk, or more likely to be charged with having committed a criminal offense. For example, according to the Center for Gender and Refugee Studies, the children from Mexico "presented a particular protection-related concern not raised by children from any of the other countries—being used as 'guides' for human smuggling operations to bring people across the border from Mexico into the U.S."[141]

Another possible explanation, however, is that certain groups of children face heightened risks of being stigmatized and treated as disruptive, violent, dangerous, or criminal based on stereotypes or implicit bias.[142] Adjudicating between these and other possible explanations for the disparities that we have found in placement in restrictive settings is an important first step toward implementing greater oversight to prevent inappropriate placement decisions and misuse of the correctional model in situations calling for greater mental health services and deinstitutionalization.[143]

## CONCLUSION

The treatment of migrant children in government custody has ignited unprecedented public outrage and political firestorm in recent times. Yet this remains an exceedingly difficult area for empirical research given the scarcity of publicly available data on migrant children in government custody. This study was made possible only because the government has been required to collect monthly data on children in ORR custody as part of the *Flores* Settlement Agreement.[144] In the absence of *Flores*, it is unclear what records the federal government might have collected, given the emerging evidence of limited or poor government record keeping and data collection system for apprehended migrant

141. CTR. FOR GENDER & REFUGEE STUD. ET AL., *supra* note 116.

142. In the context of education research, a number of studies have found that racialized perceptions and implicit biases among teachers can lead to disparities in disciplinary outcomes. *See* Richard O. Welsh & Shafiqua Little, *The School Discipline Dilemma: A Comprehensive Review of Disparities and Alternative Approaches*, 88 REV. EDUC. RSCH. 752 (2018).

143. *See* WOMEN'S REFUGEE LAW COMM'N & ORRICK HERRINGTON & SUTCLIFFE LLP, *supra* note 30, at 17 ("Staff in secure and staff-secure facilities expressed deep concern that many of the children placed with them were there because of mental health issues and required more mental health services than the facility was equipped to provide.").

144. Stipulated Settlement Agreement, *supra* note 10, at paras. 28A, 30.

children.[145] For example, in the aftermath of the Trump administration's Zero Tolerance Policy that separated thousands of migrant children from their parents at the southwest border in spring and summer of 2018, it came to light that the government did not collect even the most basic records that would enable family reunification.[146]

We conclude by highlighting a number of critical issues pertaining to migrant children in custody that are beyond the scope of this Article but we argue require systematic research, greater public transparency, and data-driven policymaking. We begin by noting that although this study's focus is exclusively on children in ORR custody, there is also an urgent need to better understand what happens to migrant children *before* they enter ORR custody and *after* they are released from ORR custody. As we explained earlier in this Article, within the DHS, CBP and ICE share responsibility for UACs. Investigative reports of inhumane conditions facing children held in CBP facilities along the U.S.–Mexico

145. *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-521, UNACCOMPANIED ALIEN CHILDREN: ACTIONS NEEDED TO ENSURE CHILDREN RECEIVE REQUIRED CARE IN DHS CUSTODY 43–56 (2015), https://www.gao.gov/assets/680/671393.pdf [https://perma.cc/3NTA-DGRZ] (documenting problems with government recording keeping on UACs); Nick Miroff, Amy Goldstein & Maria Sacchetti, *'Deleted' Families: What Went Wrong With Trump's Family-Separation Effort*, WASH. POST (July 28, 2018, 10:15 AM), https://www.washingtonpost.com/local/social-issues/deleted-families-what-went-wrong-with-trumps-family-separation-effort/2018/07/28/54bcdcc6-90cb-11e8-8322-b5482bf5e0f5_story.html?noredirect=on&utm_term=.c484cb4ec880 [https:// perma.cc/L26F-MDJC] (describing the ORR data system as "broken").

146. OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., OIG-18-84, SPECIAL REVIEW–INITIAL OBSERVATIONS REGARDING FAMILY SEPARATION ISSUES UNDER THE ZERO TOLERANCE POLICY (2018), https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf [https://perma.cc/TT45-UEB2] ("DHS . . . struggled to identify, track, and reunify families separated under Zero Tolerance due to limitations with its information technology systems, including a lack of integration between systems.").

border have become commonplace.[147] Yet systematic research focused on understanding the experiences of migrant children in DHS custody is rare.[148]

In addition, while our data contain information on how the children are discharged from ORR custody, the data lack information on what happens to the children *after they leave* ORR custody.[149] Only a small proportion of unaccompanied children (less than 10 percent in fiscal year 2014) receive postrelease services.[150] Benjamin Roth and Breanne Grace found in their study of unaccompanied children who did receive postrelease services that services are highly uneven and variable depending on geographic location.[151] For the rest of the migrant children who are released from ORR custody, we know even less about their resettlement and integration trajectories.[152] How do released children—both those who are granted relief from removal and those who are removed—adapt to family life and integrate or reintegrate into their communities? Understanding the long-term effects of government custody on the children's health and wellbeing

147. *See, e.g.*, OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., OIG-10-117, CBP'S HANDLING OF UNACCOMPANIED ALIEN CHILDREN (2010), https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG_10-117_Sep10.pdf [https://perma.cc/APB6-9J9W] (reporting that CBP needed to improve its handling of UACs); HUM. RTS. WATCH, IN THE FREEZER: ABUSIVE CONDITIONS FOR WOMEN AND CHILDREN IN US IMMIGRATION HOLDING CELLS (2018), https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells [https://perma.cc/YHS6-LJZ5]; Adrian Horton & Lauren Aratani, *Children at the Border: The Crisis That America Wasn't Prepared for,* GUARDIAN (June 30, 2019, 2:00 PM), https://www.theguardian.com/us-news/2019/jun/30/children-border-crisis-america-wasnt-prepared-for-trump-us-immigration [https://perma.cc/684V-DP43].

148. These experiences include those of children who age out and are transferred to ICE custody from ORR custody. *See* Adam Avrushin & Maria Vidal de Haymes, *Well-Being and Permanency: The Relevance of Child Welfare Principles for Children Who Are Unaccompanied Immigrants*, 96 CHILD WELFARE 107, 120–22 (2018) (reporting on focus group discussions with service providers and attorneys on migrant children aging out of ORR custody).

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

150. U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-180, UNACCOMPANIED CHILDREN: HHS CAN TAKE FURTHER ACTIONS TO MONITOR THEIR CARE 33–34 (2016), http://www.gao.gov/assets/680/675001.pdf [https://perma.cc/R423-7AMB].

151. *See* Benjamin J. Roth & Breanne L. Grace, *Falling Through the Cracks: The Paradox of Post-Release Services for Unaccompanied Child Migrants*, 58 CHILD. & YOUTH SERVS. REV. 244, 248–50 (2015).

152. For studies on post-release experiences of children reunified with sponsors, see Jayshree S. Jani, *Reunification Is Not Enough: Assessing the Needs of Unaccompanied Migrant Youth*, 98 FAMS. SOC'Y 127 (2017); Lauren Heidbrink, *Assessing Parental Fitness and Care for Unaccompanied Children*, 3 J. SOC. SCIS. 37 (2017).

and on their legal outcomes is an urgent and pressing task that should be a policy priority for the U.S. government.

Legal representation of children in ORR custody remains another critical yet understudied issue. Courts have yet to recognize a constitutional right to government-appointed counsel for immigrant minors in removal proceedings.[153] Recent estimates indicate that almost 70 percent of immigrant children in removal proceedings in fiscal year 2019 lacked legal representation.[154] Under the TVPRA, however, the Secretary of HHS is required to provide all UACs in federal custody legal representation "to the greatest extent practicable."[155] To fulfill this obligation, the federal government established a grant program that funds 35 legal service providers in 19 states to assist UACs in their immigration proceedings.[156] This arrangement, however, has given rise to serious conflicts of interests at times.[157] These and related issues on access to justice for migrant children warrant close investigation and assessment.

There is wide recognition in research on institutionalized care of nonmigrant children that "there is no such thing as a good institution."[158] For example, research indicates that "despite evidence that improved institutions lead[] to better outcomes than poorer institutions, even institutional care with relatively high staff-to-child ratios and adequate cognitive stimulation has deleterious effects on young children's development."[159] These insights suggest that improving the conditions

153. For a helpful overview of issues relating to legal representation for UACs, see KATE M. MANUEL & MICHAEL JOHN GARCIA, CONG. RSCH. SERV., R43623, UNACCOMPANIED ALIEN CHILDREN—LEGAL ISSUES: ANSWERS TO FREQUENTLY ASKED QUESTIONS 21–23 (2016), https://fas.org/sgp/crs/homesec/R43623.pdf [https://perma.cc/3DLA-T7AF]. *See also* J.E.F.M. v. Lynch, 837 F.3d 1026, 1040 (9th Cir. 2016) (explaining that "children may not have a Constitutional right to a lawyer" but holding that federal courts do not have jurisdiction to hear right-to-counsel claims for indigent minor immigrants) (quoting Att'y Gen. Holder); C.J.L.G. v. Barr, 923 F.3d 622, 625 (9th Cir. 2019) (explaining that indigent mother and son had a right to find an attorney at their own expense but holding did not address right to counsel claims).

154. *Juveniles—Immigration Court Deportation Proceedings*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE, https://trac.syr.edu/phptools/immigration/juvenile [https://perma.cc/ M6JE-5XMH] (reporting that in Fiscal Year 2019 (through September 2019), 128,286 children were unrepresented by an attorney out of 181,200 children).

155. 8 U.S.C. § 1232(c)(5) (2018).

156. *See* Shaina Aber & Anne Marie Mulcahy, *Legal Services for Unaccompanied Children*, VERA INSTIT. OF JUST., https://www.vera.org/projects/legal-services-for-unaccompanied-children [https://perma.cc/3XD7-2ZHZ].

157. Patrick Michels, *The Government Pays for Migrant Children's Lawyers. Challenge the Government, and They Can Lose Their Funding*, REVEAL (Nov. 14, 2018), https://www.revealnews.org/article/the-government-pays-for-migrant-childrens-lawyers-challenge-the-government-and-they-can-lose-their-funding [https://perma.cc/26LB-L4BG].

158. Berens & Nelson, *supra* note 13, at 389.

159. Dozier et al., *supra* note 13, at 9.

of ORR care for migrant children should not deflect attention and resources away from also investing in the development of viable, scalable alternatives to institutionalized care for migrant children.

## APPENDIX TABLES

**Table 1:** Annual Border Apprehensions & ORR Referrals, FY 2008–2019

| Fiscal Year | ORR Referrals | Border Apprehensions—Unaccompanied Juveniles |
|---|---|---|
| 2008 | 6,658 | 8,041 |
| 2009 | 6,089 | 19,668 |
| 2010 | 7,383 | 18,622 |
| 2011 | 6,560 | 16,067 |
| 2012 | 13,625 | 24,481 |
| 2013 | 24,668 | 38,833 |
| 2014 | 57,496 | 68,631 |
| 2015 | 33,726 | 40,035 |
| 2016 | 59,170 | 59,757 |
| 2017 | 40,810 | 41,546 |
| 2018 | 49,100 | 50,145 |
| 2019 | 69,488 | 76,136 |
| Mean | 31,231 | 38,497 |
| Total | 374,773 | 461,962 |

**Table 2:** Monthly Census Population

| Month/Year | Referrals | Discharges | Census Date | Census Population |
|---|---|---|---|---|
| Nov 2017 | 3,870 | 2,531 | . | . |
| Dec 2017 | 4,429 | 3,465 | Dec 12, 2017 | 7,274 |
| Jan 2018 | 3,107 | 2,975 | Jan 16, 2018 | 7,378 |
| Feb 2018 | 2,984 | 3,204 | Feb 16, 2018 | 7,482 |
| Mar 2018 | 4,205 | 3,382 | Mar 14, 2018 | 7,504 |
| Apr 2018 | 4,388 | 3,847 | Apr 16, 2018 | 8,438 |
| May 2018 | 6,127 | 4,274 | May 15, 2018 | 9,541 |
| Jun 2018 | 5,312 | 4,232 | Jun 15, 2018 | 11,433 |
| Jul 2018 | 3,864 | 4,408 | Jul 19, 2018 | 11,834 |
| Aug 2018 | 3,770 | 2,769 | Aug 15, 2018 | 11,584 |
| Sep 2018 | 4,060 | 3,192 | Sep 13, 2018 | 12,799 |
| Oct 2018 | 4,338 | 3,993 | Oct 15, 2018 | 13,181 |
| Nov 2018 | 4,523 | 3,886 | Nov 20, 2018 | 14,045 |
| Dec 2018 | 5,084 | 6,433 | Dec 13, 2018 | 14,562 |
| Jan 2019 | 4,488 | 5,980 | Jan 15, 2019 | 10,533 |
| Feb 2019 | 5,883 | 5,623 | Feb 19, 2019 | 11,413 |
| Mar 2019 | 7,948 | 7,263 | Mar 15, 2019 | 11,675 |
| Apr 2019 | 8,590 | 8,108 | Apr 15, 2019 | 12,491 |

| | | | | |
|---|---|---|---|---|
| May 2019 | 9,087 | 8,538 | May 15, 2019 | 13,109 |
| Jun 2019 | 8,821 | 9,139 | Jun 17, 2019 | 13,179 |
| Jul 2019 | 5,173 | 8,867 | Jul 15, 2019 | 10,891 |
| Aug 2019 | . | . | Aug 15, 2019 | 7,951 |
| Mean | 5,241 | 5,053 | | 10,871 |
| Total | 110,051 | 106,109 | | 228,297 |

**Table 3:** ORR Referrals by Country of Origin

| Month/Yr | GT | HN | SV | MX | Oth. | % GT | % HN | % SV | % MX | % Oth. |
|---|---|---|---|---|---|---|---|---|---|---|
| Nov 2017 | 2,353 | 754 | 463 | 115 | 185 | 60.8 | 19.5 | 12.0 | 3.0 | 4.8 |
| Dec 2017 | 2,959 | 760 | 433 | 129 | 148 | 66.8 | 17.2 | 9.8 | 2.9 | 3.3 |
| Jan 2018 | 1,999 | 643 | 253 | 120 | 92 | 64.3 | 20.7 | 8.1 | 3.9 | 3.0 |
| Feb 2018 | 1,836 | 669 | 270 | 130 | 79 | 61.5 | 22.4 | 9.0 | 4.4 | 2.6 |
| Mar 2018 | 2,286 | 1,195 | 421 | 182 | 121 | 54.4 | 28.4 | 10.0 | 4.3 | 2.9 |
| Apr 2018 | 2,305 | 1,266 | 505 | 158 | 154 | 52.5 | 28.9 | 11.5 | 3.6 | 3.5 |
| May 2018 | 3,244 | 1,870 | 663 | 133 | 217 | 52.9 | 30.5 | 10.8 | 2.2 | 3.5 |
| Jun 2018 | 2,609 | 1,694 | 681 | 98 | 230 | 49.1 | 31.9 | 12.8 | 1.8 | 4.3 |
| Jul 2018 | 1,831 | 1,044 | 543 | 133 | 313 | 47.4 | 27.0 | 14.1 | 3.4 | 8.1 |
| Aug 2018 | 1,647 | 1,158 | 617 | 139 | 209 | 43.7 | 30.7 | 16.4 | 3.7 | 5.5 |
| Sep 2018 | 1,814 | 1,186 | 639 | 141 | 280 | 44.7 | 29.2 | 15.7 | 3.5 | 6.9 |
| Oct 2018 | 2,132 | 1,278 | 643 | 105 | 180 | 49.1 | 29.5 | 14.8 | 2.4 | 4.1 |
| Nov 2018 | 2,436 | 1,223 | 610 | 102 | 152 | 53.9 | 27.0 | 13.5 | 2.3 | 3.4 |
| Dec 2018 | 2,907 | 1,364 | 535 | 88 | 190 | 57.2 | 26.8 | 10.5 | 1.7 | 3.7 |
| Jan 2019 | 2,458 | 1,257 | 533 | 85 | 155 | 54.8 | 28.0 | 11.9 | 1.9 | 3.5 |
| Feb 2019 | 2,972 | 1,813 | 812 | 91 | 195 | 50.5 | 30.8 | 13.8 | 1.5 | 3.3 |
| Mar 2019 | 3,851 | 2,419 | 1,299 | 108 | 271 | 48.5 | 30.4 | 16.3 | 1.4 | 3.4 |
| Apr 2019 | 3,760 | 2,650 | 1,732 | 109 | 339 | 43.8 | 30.8 | 20.2 | 1.3 | 3.9 |
| May 2019 | 4,014 | 2,799 | 1,775 | 101 | 398 | 44.2 | 30.8 | 19.5 | 1.1 | 4.4 |
| Jun 2019 | 3,521 | 2,708 | 1,968 | 141 | 483 | 39.9 | 30.7 | 22.3 | 1.6 | 5.5 |
| Jul 2019 | 1,617 | 1,854 | 1,216 | 127 | 359 | 31.3 | 35.8 | 23.5 | 2.5 | 6.9 |
| Mean | 2,598 | 1,505 | 791 | 121 | 226 | 51.0 | 28.0 | 14.1 | 2.6 | 4.3 |
| Overall | 54,551 | 31,604 | 16,611 | 2,535 | 4,750 | 49.6 | 28.7 | 15.1 | 2.3 | 4.3 |

*Notes*: GT = Guatemala; HN = Honduras; SV = El Salvador; MX = Mexico; Oth. = Other (all other countries of origin combined). Mean in this table refers to the mean of the monthly statistics shown, which may vary slightly from the overall percentages.

**Table 4:** ORR Referrals by Gender & Female Referrals by Age Groups

| All Referrals | | | | | Female Referrals | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Month/Yr** | **Male** | **Female** | **% Male** | **% Female** | **% 17+** | **% 13–16** | **% 9–12** | **% 5–8** | **% <=4** |
| Nov 2017 | 2,768 | 1,102 | 71.5 | 28.5 | 29.0 | 47.4 | 12.9 | 6.3 | 4.4 |
| Dec 2017 | 3,169 | 1,260 | 71.6 | 28.4 | 29.9 | 49.0 | 10.6 | 5.8 | 4.6 |
| Jan 2018 | 2,241 | 866 | 72.1 | 27.9 | 32.4 | 48.2 | 9.6 | 6.5 | 3.3 |
| Feb 2018 | 2,200 | 784 | 73.7 | 26.3 | 29.7 | 50.0 | 10.6 | 6.5 | 3.2 |
| Mar 2018 | 3,019 | 1,186 | 71.8 | 28.2 | 32.5 | 46.2 | 11.6 | 5.5 | 4.2 |
| Apr 2018 | 3,217 | 1,171 | 73.3 | 26.7 | 29.8 | 45.0 | 12.0 | 8.6 | 4.6 |
| May 2018 | 4,330 | 1,797 | 70.7 | 29.3 | 25.4 | 41.2 | 17.9 | 13.5 | 2.1 |
| Jun 2018 | 3,693 | 1,619 | 69.5 | 30.5 | 25.0 | 46.4 | 14.7 | 11.0 | 2.9 |
| Jul 2018 | 2,829 | 1,035 | 73.2 | 26.8 | 30.9 | 48.9 | 12.3 | 4.6 | 3.3 |
| Aug 2018 | 2,599 | 1,171 | 68.9 | 31.1 | 32.5 | 48.3 | 10.2 | 5.3 | 3.7 |
| Sep 2018 | 2,842 | 1,218 | 70.0 | 30.0 | 30.4 | 47.8 | 13.0 | 5.7 | 3.2 |
| Oct 2018 | 2,960 | 1,378 | 68.2 | 31.8 | 32.4 | 45.4 | 13.2 | 5.5 | 3.6 |
| Nov 2018 | 2,957 | 1,566 | 65.4 | 34.6 | 28.6 | 51.9 | 10.7 | 5.9 | 2.9 |
| Dec 2018 | 3,485 | 1,599 | 68.5 | 31.5 | 30.5 | 47.8 | 11.8 | 5.9 | 3.9 |
| Jan 2019 | 3,092 | 1,396 | 68.9 | 31.1 | 33.2 | 47.5 | 12.5 | 4.7 | 2.1 |
| Feb 2019 | 4,031 | 1,852 | 68.5 | 31.5 | 32.3 | 49.6 | 10.4 | 5.8 | 1.9 |
| Mar 2019 | 5,425 | 2,523 | 68.3 | 31.7 | 32.5 | 47.2 | 11.4 | 5.5 | 3.4 |
| Apr 2019 | 5,689 | 2,901 | 66.2 | 33.8 | 30.3 | 47.7 | 13.5 | 5.4 | 3.0 |
| May 2019 | 6,104 | 2,983 | 67.2 | 32.8 | 29.9 | 49.2 | 11.9 | 5.8 | 3.3 |
| Jun 2019 | 5,595 | 3,226 | 63.4 | 36.6 | 28.1 | 47.9 | 13.2 | 7.0 | 3.8 |
| Jul 2019 | 3,334 | 1,839 | 64.5 | 35.5 | 28.6 | 46.5 | 14.1 | 7.4 | 3.3 |
| Mean | 3,599 | 1,642 | 69.3 | 30.7 | 30.2 | 47.6 | 12.3 | 6.6 | 3.4 |
| Overall | 75,579 | 34,472 | 68.7 | 31.3 | 30.0 | 47.6 | 12.5 | 6.6 | 3.3 |

*Note*: Mean in this table refers to the mean of the monthly statistics shown, which may vary slightly from the overall percentages.

**Table 5:** ORR Referrals by Age

| Month/Yr | 17+ | 13–16 | 9–12 | 5–8 | <=4 | % 17+ | % 13–16 | % 9–12 | % 5–8 | % <=4 |
|---|---|---|---|---|---|---|---|---|---|---|
| Nov 2017 | 1,351 | 1,946 | 313 | 162 | 98 | 34.9 | 50.3 | 8.1 | 4.2 | 2.5 |
| Dec 2017 | 1,553 | 2,324 | 288 | 155 | 109 | 35.1 | 52.5 | 6.5 | 3.5 | 2.5 |
| Jan 2018 | 1,163 | 1,552 | 185 | 136 | 71 | 37.4 | 50.0 | 6.0 | 4.4 | 2.3 |
| Feb 2018 | 1,094 | 1,521 | 189 | 110 | 70 | 36.7 | 51.0 | 6.3 | 3.7 | 2.3 |
| Mar 2018 | 1,580 | 2,043 | 318 | 156 | 108 | 37.6 | 48.6 | 7.6 | 3.7 | 2.6 |
| Apr 2018 | 1,654 | 2,124 | 312 | 192 | 106 | 37.7 | 48.4 | 7.1 | 4.4 | 2.4 |
| May 2018 | 1,826 | 2,810 | 758 | 633 | 100 | 29.8 | 45.9 | 12.4 | 10.3 | 1.6 |
| Jun 2018 | 1,695 | 2,564 | 573 | 380 | 100 | 31.9 | 48.3 | 10.8 | 7.2 | 1.9 |
| Jul 2018 | 1,462 | 1,936 | 285 | 116 | 65 | 37.8 | 50.1 | 7.4 | 3.0 | 1.7 |
| Aug 2018 | 1,416 | 1,874 | 281 | 122 | 77 | 37.6 | 49.7 | 7.5 | 3.2 | 2.0 |
| Sep 2018 | 1,528 | 1,972 | 325 | 153 | 82 | 37.6 | 48.6 | 8.0 | 3.8 | 2.0 |
| Oct 2018 | 1,594 | 2,116 | 345 | 169 | 114 | 36.7 | 48.8 | 8.0 | 3.9 | 2.6 |
| Nov 2018 | 1,527 | 2,352 | 377 | 177 | 90 | 33.8 | 52.0 | 8.3 | 3.9 | 2.0 |
| Dec 2018 | 1,837 | 2,514 | 391 | 203 | 139 | 36.1 | 49.4 | 7.7 | 4.0 | 2.7 |
| Jan 2019 | 1,688 | 2,222 | 362 | 141 | 75 | 37.6 | 49.5 | 8.1 | 3.1 | 1.7 |
| Feb 2019 | 2,164 | 2,945 | 457 | 227 | 90 | 36.8 | 50.1 | 7.8 | 3.9 | 1.5 |
| Mar 2019 | 2,902 | 3,933 | 654 | 300 | 159 | 36.5 | 49.5 | 8.2 | 3.8 | 2.0 |
| Apr 2019 | 2,924 | 4,238 | 828 | 407 | 193 | 34.0 | 49.3 | 9.6 | 4.7 | 2.2 |
| May 2019 | 3,124 | 4,554 | 816 | 397 | 196 | 34.4 | 50.1 | 9.0 | 4.4 | 2.2 |
| Jun 2019 | 2,948 | 4,281 | 899 | 462 | 231 | 33.4 | 48.5 | 10.2 | 5.2 | 2.6 |
| Jul 2019 | 1,729 | 2,478 | 543 | 278 | 145 | 33.4 | 47.9 | 10.5 | 5.4 | 2.8 |
| Mean | 1,846 | 2,586 | 452 | 242 | 115 | 35.6 | 49.4 | 8.3 | 4.5 | 2.2 |
| Overall | 38,759 | 54,299 | 9,499 | 5,076 | 2,418 | 35.2 | 49.3 | 8.6 | 4.6 | 2.2 |

*Note*: Mean in this table refers to the mean of the monthly statistics shown, which may vary slightly from the overall percentages.

**Table 6:** Census Population by State

| Month/Yr | TX | NY | FL | AZ | Oth. | % TX | % NY | % FL | % AZ | % Oth. |
|---|---|---|---|---|---|---|---|---|---|---|
| Dec 2017 | 3,711 | 937 | 169 | 1,030 | 1,427 | 51.0 | 12.9 | 2.3 | 14.2 | 19.6 |
| Jan 2018 | 3,701 | 905 | 168 | 1,269 | 1,335 | 50.2 | 12.3 | 2.3 | 17.2 | 18.1 |
| Feb 2018 | 3,583 | 891 | 186 | 1,522 | 1,300 | 47.9 | 11.9 | 2.5 | 20.3 | 17.4 |
| Mar 2018 | 3,429 | 888 | 197 | 1,655 | 1,335 | 45.7 | 11.8 | 2.6 | 22.1 | 17.8 |
| Apr 2018 | 3,941 | 1,051 | 314 | 1,672 | 1,460 | 46.7 | 12.5 | 3.7 | 19.8 | 17.3 |
| May 2018 | 4,273 | 1,320 | 648 | 1,689 | 1,611 | 44.8 | 13.8 | 6.8 | 17.7 | 16.9 |
| Jun 2018 | 5,382 | 1,367 | 1,319 | 1,656 | 1,709 | 47.1 | 12.0 | 11.5 | 14.5 | 14.9 |
| Jul 2018 | 5,667 | 1,410 | 1,536 | 1,596 | 1,625 | 47.9 | 11.9 | 13.0 | 13.5 | 13.7 |
| Aug 2018 | 5,492 | 1,337 | 1,523 | 1,644 | 1,588 | 47.4 | 11.5 | 13.1 | 14.2 | 13.7 |
| Sep 2018 | 6,487 | 1,462 | 1,547 | 1,722 | 1,581 | 50.7 | 11.4 | 12.1 | 13.5 | 12.4 |
| Oct 2018 | 7,024 | 1,507 | 1,527 | 1,571 | 1,552 | 53.3 | 11.4 | 11.6 | 11.9 | 11.8 |
| Nov 2018 | 8,228 | 1,691 | 1,472 | 1,048 | 1,606 | 58.6 | 12.0 | 10.5 | 7.5 | 11.4 |
| Dec 2018 | 8,894 | 1,680 | 1,539 | 797 | 1,652 | 61.1 | 11.5 | 10.6 | 5.5 | 11.3 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Jan 2019 | 5,886 | 1,429 | 1,313 | 378 | 1,527 | 55.9 | 13.6 | 12.5 | 3.6 | 14.5 |
| Feb 2019 | 6,056 | 1,679 | 1,797 | 243 | 1,638 | 53.1 | 14.7 | 15.7 | 2.1 | 14.4 |
| Mar 2019 | 6,103 | 1,704 | 1,934 | 335 | 1,599 | 52.3 | 14.6 | 16.6 | 2.9 | 13.7 |
| Apr 2019 | 6,230 | 1,663 | 2,499 | 474 | 1,625 | 49.9 | 13.3 | 20.0 | 3.8 | 13.0 |
| May 2019 | 6,289 | 1,746 | 2,550 | 814 | 1,710 | 48.0 | 13.3 | 19.5 | 6.2 | 13.0 |
| Jun 2019 | 6,046 | 1,707 | 2,603 | 1,121 | 1,702 | 45.9 | 13.0 | 19.8 | 8.5 | 12.9 |
| Jul 2019 | 5,326 | 1,505 | 1,530 | 946 | 1,584 | 48.9 | 13.8 | 14.0 | 8.7 | 14.5 |
| Aug 2019 | 4,438 | 1,136 | 203 | 877 | 1,297 | 55.8 | 14.3 | 2.6 | 11.0 | 16.3 |
| Mean | 5,533 | 1,382 | 1,265 | 1,146 | 1,546 | 50.6 | 12.7 | 10.6 | 11.4 | 14.7 |
| Overall | 116,186 | 29,015 | 26,574 | 24,059 | 32,463 | 50.9 | 12.7 | 11.6 | 10.5 | 14.2 |

*Notes*: TX = Texs; NY = New York; FL = Florida; AZ = Arizona; Oth. = Other (all other facility states and 4 facilities with unknown locations). Mean in this table refers to the mean of the monthly statistics shown, which may vary slightly from the overall percentages.

**Table 7:** Custody Length (in Days)

| Month/Yr | Estimated Using Referral Date | | | Estimated Using Custody Period Start Date | | |
|---|---|---|---|---|---|---|
| | Mean | Min. | Max. | Mean | Min. | Max. |
| Nov 2017 | 47 | 1 | 950 | 47 | 1 | 949 |
| Dec 2017 | 49 | 2 | 970 | 47 | 1 | 870 |
| Jan 2018 | 55 | 1 | 1,006 | 52 | 1 | 547 |
| Feb 2018 | 60 | 1 | 823 | 58 | 1 | 716 |
| Mar 2018 | 64 | 1 | 821 | 61 | 0 | 607 |
| Apr 2018 | 61 | 2 | 1,118 | 58 | 1 | 777 |
| May 2018 | 58 | 2 | 1,102 | 56 | 0 | 1,046 |
| Jun 2018 | 61 | 1 | 1,148 | 59 | 1 | 952 |
| Jul 2018 | 72 | 1 | 1,394 | 69 | 1 | 1,088 |
| Aug 2018 | 87 | 1 | 1,067 | 84 | 1 | 788 |
| Sep 2018 | 90 | 1 | 1,498 | 88 | 1 | 1,409 |
| Oct 2018 | 91 | 1 | 850 | 89 | 1 | 740 |
| Nov 2018 | 93 | 3 | 973 | 92 | 1 | 972 |
| Dec 2018 | 89 | 0 | 874 | 87 | 1 | 872 |
| Jan 2019 | 77 | 2 | 1,132 | 76 | 0 | 1,038 |
| Feb 2019 | 72 | 2 | 1,289 | 70 | 1 | 1,288 |
| Mar 2019 | 57 | 1 | 1,837 | 56 | 1 | 1,837 |
| Apr 2019 | 48 | 2 | 1,121 | 46 | 1 | 1,052 |
| May 2019 | 45 | 2 | 1,003 | 44 | 0 | 895 |
| Jun 2019 | 45 | 1 | 1,319 | 43 | 1 | 1,309 |
| Jul 2019 | 47 | 1 | 1,904 | 45 | 1 | 1,903 |
| Mean | 65 | 1 | 1,152 | 63 | 1 | 1,031 |
| Overall | 62 | 0 | 1,904 | 61 | 0 | 1,903 |

*Notes*: Min. = minimum; Max. = maximum. Mean in this table refers to the mean of the monthly statistics shown, which may vary slightly from the overall statistics.

## METHODS APPENDIX

### A. Constructing the Longitudinal Data

To construct the Longitudinal Data, we appended the monthly Referrals, Transfers, and Discharges Data into a single file. We then proceeded to resolve the following major categories of issues appearing in the appended dataset.

*Erroneous or missing values.* The monthly data contain both referral dates (the date on which the DHS referred a child to the ORR) and admission dates (the date on which a UAC was admitted into a particular ORR facility). The admission dates often lag behind referral dates because of the time required to transport UACs from DHS custody to ORR custody. A small number of records contained admission dates that preceded referral dates. We removed these erroneous referral dates and replaced them (if possible) with correct referral dates found in other records related to the same child.

The government failed to produce reliable information on discharge types (the field that indicates how the UACs were discharged from ORR custody) in the monthly Transfers Data for February, March, and April 2018.[160] We removed these records and replaced them (if possible) with correct discharge types found in other records related to the same child. The government also failed to produce discharge types in the monthly Discharges Data for July 2018. To address this issue, we took the following step: For the records that contained the names of individual sponsors, we replaced missing discharge types with the discharge type of "individual sponsor reunification."[161]

Next, we removed a small number of "fake" or "test" records that presumably were used by the government for internal testing purposes.[162] We also removed irregular characters from some of the facility names to generate consistency in the facility names. In addition, we removed records in which both the admission and discharge dates were missing. Records that are missing both admission and discharge dates generally indicate that the referral was cancelled before the UAC arrived at an ORR facility.

Finally, we addressed a number of problems that we identified with respect to A-Numbers. An A-Number is a unique number assigned to a noncitizen by the DHS. First, we assigned A-Numbers to UACs who lacked A-Numbers. We also

160. All of the discharge types for these months in the Transfers Data were denoted as "transfer."
161. For months that have both reliable sponsor data and discharge type data, we find that 95.61 percent of discharges that contains sponsor data have a discharge type of "individual sponsor reunification."
162. These records contain the word "FAKE" or "TEST" in the first name and/or last name fields.

ensured that distinct UACs with same A-Numbers were assigned distinct A-Numbers. Conversely, we ensured that same UACs with different A-Numbers were assigned the same A-Number by keeping the Alien Numbers from the latest monthly data.

*UAC Attributes*. There are two broad categories of variables in any longitudinal data: static variables and time-varying variables. Static variables contain values that do not change over time. In the current data, country of birth is an example of a static variable. Time-varying variables contain values that do change over time. In the current data, admission date is a time-varying variable because it changes each time a UAC enters a new facility. All of the values of static variables should stay constant for any given UAC across all monthly data. Given that this was not the case, we implemented the following step: When the values of the static variables varied across months for any given UAC, we ensured that all values for those variables reflected their most recently recorded values. The rationale for preferring the values in the latest monthly data is that insofar as the government is discovering and correcting errors in the records, the latest monthly data should reflect the most accurate and up-to-date information on any given UAC.

*Stint Attributes*. When the monthly Referrals, Transfers, and Discharges Data are appended into a single file, a given stint may appear more than once. This happens, for example, when a UAC has transfer records across multiple monthly data; each of those monthly data will contain all of the preceding transfer records for that UAC. When stint attributes (e.g., admission date, discharge date) varied across multiple monthly data for a given stint (as identified by A-Number and admission date), we updated those to reflect their most recently recorded values. We also removed duplicate stint records that appear in the appended file.

Finally, we took a number of steps to reconcile conflicting records across different stints.[163] For example, we removed stints that were fully nested within longer stints with the same program names. Where stints overlapped, we updated the discharge date of the preceding stint to match the admission date from the succeeding stint. This is consistent with our assertion that more recent data should be preferred over older data when records disagree.

The resulting Longitudinal Data takes on the basic structure shown below, which presents an example set of records with a number of variables pertaining to a male child who was transferred twice and eventually removed to his country of origin.

163. A comprehensive description of these coding decisions is available upon request.

**Example 1:** Records of a Single UAC Resulting in Removal

| ID | Gender | Date Referred | Date Admitted | Date Discharged | Facility | Discharge type |
|---|---|---|---|---|---|---|
| 1 | M | 1/28/18 | 1/29/18 | 1/30/18 | A | transfer |
| 1 | M | 1/28/18 | 1/30/18 | 2/4/18 | B | transfer |
| 1 | M | 1/28/18 | 2/4/18 | 3/1/18 | C | removed |

In the next table below, we present an example set of records with a number of variables pertaining to a female child who was transferred once and continued to be in ORR custody at the end of the study period.

**Example 2:** Records of a Single UAC in Continued Custody

| ID | Gender | Date Referred | Date Admitted | Date Discharged | Facility | Discharge type |
|---|---|---|---|---|---|---|
| 2 | F | 6/10/19 | 6/11/19 | 7/3/19 | A | transfer |
| 2 | F | 12/10/18 | 7/3/19 | . | B | . |

## B. Calculating Custody Lengths

Two important methodological points are in order with respect to the calculation of custody lengths. First, there are two ways of measuring custody length. We can measure it using the date that a child is referred to the ORR (the referral date). Alternatively, we can measure it using the date that a child actually entered an ORR facility (the admission date). More specifically, we can measure the custody length by using the first admission date within a custody period (custody period start date). For some children, the referral date and the custody period start date are the same, while for others, their custody period start date lags behind their referral date.[164]

Second, to stay consistent with government reporting practices,[165] we measured monthly average custody length among children who were discharged during a given month. However, it is important to note that this measure may be an underestimate of the actual amount of time that migrant children spend in ORR custody. This is because many children will continue to be in custody at the time of data reporting. Some of the children whose discharge dates are unknown at the time of data reporting ultimately may end up with custody lengths that are far

164. In our Longitudinal Data, the mean lag is 1.2 days.
165. *See Latest UAC Data—FY2019*, *supra* note 105 (reporting "[a]verage [l]ength of [c]are (for those discharged)").

longer than the average custody lengths of children who were discharged during a given month. Excluding the custody lengths of children whose discharge dates are unknown from the analysis may generate an underestimate of mean custody lengths. An additional potential source of downward bias in our estimates of custody length is the inclusion of custody periods that began before November 1, 2017, as these custody periods may be missing referral dates and reliable custody period start dates in the Longitudinal Data.[166]

### C. Sponsor Reunifications

As we noted earlier, the government did not provide discharge types in the July 2018 monthly discharges data. However, the July 2018 discharges data contain information about individual sponsors. For the purposes of our analysis pertaining to sponsor reunifications, we treated all discharges from the July 2018 discharges data with accompanying individual sponsor information as individual sponsor reunifications. This approach is reasonable because we found that 95.61 percent of discharges that contain sponsor information had discharge types that were designated as reunifications in months where discharge type data were available.

For all of the survival analysis that we present on reunifications, we used the admission date, rather than the referral date, to estimate the hazards of reunification. We chose this approach because admission dates are more complete and reliable than referral dates in the Longitudinal Data given that referral dates are missing for some records, and because custody period start dates reflect the actual start time of physical presence in ORR custody.

### D. Placement in Restrictive Settings

Our analysis results underestimate placements in restrictive settings. Consistent with emerging reports,[167] some of our recent monthly datasets contain

166. Of the 106,109 custody periods in the Longitudinal Data that ended on or before July 31, 2019, there were 5,173 custody periods that began before November 1, 2017. Of these custody periods, 127 are missing referral dates. When referral dates are unavailable, we use the first admission date of the custody period appearing in the Longitudinal Data to calculate the length of custody. But since the Longitudinal Data does not necessarily contain the entire event history of custody periods that began before November 1, 2017, the first *known* admission date of these 127 custody periods may represent the admission date of the final stint of the custody period rather than the first stint of the custody period.

167. *See* Aura Bogado & Patrick Michels, *US Government Uses Several Clandestine Shelters to Detain Immigrant Children*, REVEAL (Mar. 18, 2019), https://www.revealnews.org/article/us-

separate worksheets titled "Out-of-Network Placements." These worksheets were provided only between April and July of 2019 and contain records of fifteen unique children. These records are not accompanied by any explanation of their inclusion/exclusion criteria, but they likely pertain to children with more intensive physical, behavioral, or mental health needs.[168] In any case, we do not analyze these out-of-network records together with the rest of the records because in addition to containing a different set of variable than the variables in the Referrals, Transfers, and Discharges Data, the out-of-network records lack complete event history information.

It is worth noting that step-ups constitute only one type of a transfer—one that requires deeper scrutiny than non step-up transfers, given that children in secure settings face an even greater deprivation of personal liberty than in other settings. It is important to note, however, even non step-up transfers pose serious challenges for children. According to the Office of Inspector General of HHS: "Even for children who entered the United States without their parents—those not separated—some found it traumatic to adapt to new and unfamiliar situations in facilities."[169] As one mental health clinician explained, adapting was difficult because children "lose friends, staff, the routine. And if they have to move somewhere else, it's just one more loss."[170] These observations suggest that empirical investigation of all types of transfers is an urgent task.

government-uses-several-clandestine-shelters-to-detain-immigrant-children [https://perma.cc/LFN4-626R].

168. *See id.*

169. OIG, Care Provider Facilities, *supra* note 80, at 9.

170. *Id.*