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PRESERVING FAMILY TIES: ENSURING CHILDREN'S CONTACT WITH FAMILY WHILE IN GOVERNMENT CUSTODY

Executive Summary

For years, unaccompanied immigrant children in federal government custody have only been guaranteed two telephone calls per week, 10 minutes each, to family members. As a result, many children in custody are permitted very limited contact with family, regardless of the child's age, individual needs, difficulty in adjusting to the conditions of custody, or trauma caused by separation from family. These restrictions are harmful to children and contravened by pediatric and child health experts, who have recognized both the long-term harm and trauma of family separation and the vital importance of the presence of a loving parent or caregiver to the health and wellbeing of children. For many children, 20 minutes a week is inadequate to receive the support they need and to maintain or develop stable relationships with parents or caregivers while they are in custody. Indeed, children in custody have repeatedly and explicitly expressed their desire and need to have more contact with family.

This report addresses this longstanding issue and explains why the government's restriction on child contact with family is not in the best interests of children. We call on the federal government to reform its policies to ensure that children in custody are able to have necessary, regular contact with parents and caregivers to advance their health and to mitigate the harm of family separation and prolonged stays. Specifically, we make the following recommendations:

- Children should have unlimited access to telephone and video calls with all persons that are included in their approved list of telephone contacts. If the government is unable to provide children with unlimited access to calls, then it should provide each child with, at a minimum, 30 minutes of phone time each day with parents, caregivers, and family members.

- Children should be permitted to make video calls with family members whenever video calls are feasible and would be beneficial to the child.

- Children should have regular in-person visits with parents and caregivers whenever possible, including in the case of children whose parents or caregivers are being held in immigration detention.

The government's restriction on children's contact with parents, family, and caregivers grossly fails to align with its child welfare mandate and its goal to provide individualized, trauma-informed care that promotes children's health and wellbeing, during the time unaccompanied children are in its custody. The time is long overdue for the government to end this harmful policy.

1. Children in federal government custody are not provided with adequate access to telephone communication with parents, caregivers, and family members in order to receive the support they need.

Children who seek protection at the United States' southern border without a parent or legal guardian accompanying them are designated "unaccompanied" under immigration law and are taken into federal government custody. The Office of Refugee Resettlement (ORR), a part of the U.S. Department of Health and Human Services (HHS), is responsible for their care until their release from custody. ORR contracts with childcare agencies, referred to as "providers," to shelter and care for children in ORR custody. Children are placed in a variety of types of settings that vary in level of restriction, from foster care to shelters to even more restrictive facilities, such as residential treatment centers and secure facilities. ORR is required to place children in the least restrictive setting that is in the child's best interests[1]. Under federal law, ORR must ensure that children are released in a timely and safe manner from ORR custody to sponsors, usually parents or close relatives, who can care for them pending their immigration proceedings.[2]

ORR requires its providers to afford children the opportunity to make a minimum of two telephone calls per week, 10 minutes each, to family members and/or sponsors, in a private setting.[3] Although ORR policy states that this limit is a "minimum," many ORR providers use this guidance as a ceiling, and limit children to no more than two 10-minute telephone calls per week. Some providers allow children to make as many calls as they wish but still limit children to a total of twenty minutes of telephone calls per week. In the Young Center's experience, only a small number of providers serving a small number of children will allow more than two calls or over 20 minutes of calls each week. Still, the amounts vary, and in some instances, children in the same facility are permitted different amounts of phone contact.

Over the years, the Young Center has advocated in specific cases with ORR providers to permit children to have additional time beyond the 20 minutes of phone time providers typically allow for children to communicate with parents, family members, and sponsors. The decision to follow our recommendation is frequently left to the discretion of the case manager or clinician involved. In some cases, ORR provider staff have denied these requests with the response that they are not required to provide more than 20 minutes of phone calls each week or that it would be unfair to provide the child with more time than is provided to other children in the same facility.

Twenty minutes of contact with parents or caregivers each week is inadequate for unaccompanied children to receive the support they need and to maintain or develop stable relationships with parents or caregivers while they are in custody. This contact is particularly critical to mitigating the stress and negative health effects that children in ORR custody experience, and it may facilitate a more stable reunification when the child is reunified.

a. Regular contact with parents and caregivers can serve a critical buffering function for children in custody

The American Academy of Pediatrics has stated that "the most fundamental adaptational mechanism for any child is a secure relationship with a safe, stable, nurturing adult who is continuous over time in the child's life[,] usually the child's parent or caregiver but can involve extended family and biological or fictive kin."[4] "[T]he caregiver's proximity and responsivity to the child's needs and reflection of the child's emotional experience" are central to a child's development of an attachment relationship to their caregiver.[5] Supportive caregivers provide children with a sense of safety and security, serving as a critical buffer and a protective factor for children in stressful and difficult situations.[6]

Mental health experts have found that caregiver presence and relationships when children are exposed to migration-related stress may effectively mitigate the negative effects of this exposure.[7] It is well-established that many children in ORR custody have experienced intense trauma from events that occurred while in their country of origin, during their migration journey, or upon arriving in the United States.[8] Many children have experienced harm and violence in their countries of origin prior to migration. Child migrants from Central America, from where many unaccompanied children migrate, often flee gang violence, the erosion of human rights, violence in the home, and other grave danger and serious harm in their countries of origin.[9]

Children also experience trauma from events that occur upon arrival at the border; for instance, some children experience trauma from being separated from their parents, caregivers, or family members.Mental health experts have found that "threatened or actual separation from caregivers constitutes a major traumatic exposure that is associated with behavioral and psychological difficulties for children both immediately following and for years following separation."[10] Research has shown that separation from a caregiver or parent for even a short period of time can be traumatic for a child.[11] Children may also be traumatized by their time in Customs and Border Protection detention, where conditions of severe deprivation and cruel treatment have been repeatedly documented.[12]

"For unaccompanied children in ORR custody, the support of parents, caregivers, and other family members can be a critical protective factor, providing children with a sense of stability and security as they confront trauma, separation from loved ones, and the stressors of being in ORR custody."

The experience of being transferred to ORR custody and placed in an ORR facility can also be stressful and traumatic for children, as they adjust to being apart from family members and caregivers and living in unfamiliar congregate care settings where they are interacting with adults whom they do not know, are subject to significant restrictions on their movement and freedom, and may face language barriers in communicating with staff and other children.

Children experiencing longer stays in ORR custody often experience face "detention fatigue" in the form of increased stress, frustration, anxiety, behavioral issues, and self-harm or suicidal ideation.[13] Longer stays are frequently associated with delays in reunification with family or release to other potential sponsors, delays or denials of placement in foster care or other long-term community-based settings, and transfers to more restrictive settings. Children confronting these circumstances often struggle with feelings of frustration, hopelessness, helplessness, and lack of control that further impair their mental health.[14] Moreover, for children in ORR custody, the added insecurity and uncertainty of their immigration status, the stress of current or future immigration proceedings, and a lack of permanency contribute to a "'building block effect'" of exposure to trauma that is associated with an increase in mental health problems such as post-traumatic stress disorder."[15]

For unaccompanied children in ORR custody, the support of parents, caregivers, and other family members can be a critical protective factor, providing children with a sense of stability and security as they confront trauma, separation from loved ones, and the stressors of being in ORR custody. While nothing can substitute for the protection and benefit of the continuous in-person presence and care of a parent or trusted caregiver for a child, access to regular videoconferencing or telephone contact with parents, caregivers, or other family members can be enormously beneficial to children as they navigate past trauma and the various stressors of migration and being in ORR custody. Mental health experts have specifically recommended that unaccompanied children have access to regular communication with their parents, caregivers, and family when they are in government custody or otherwise experiencing a period of long separation from their parents or caregivers.[16]

Video visitation between parents or caregivers and children has been used in other family contexts, such as when a parent is incarcerated or in the child welfare context, and has often had significant benefits to maintaining caregiver-child relationships and promoting the emotional well-being of children, particularly as a supplemental form of contact in addition to (rather than instead of) in-person visits.[17]

Human rights law also recognizes the fundamental importance of children's regular contact with parents, caregivers, and family in situations where the child has been separated from their parent or family. The Convention on the Rights of the Child (CRC),[18] to which the United States is a signatory, recognizes the right of a child who has been separated from one or both of their parents "to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."[19] Expounding on that right, the UN Committee on the Rights of the Child has stated that "[w]hen separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child's best interests. The quality of the relationships and the need to retain them must be taken into consideration in decisions on the frequency and length of visits and other contact when a child is placed outside the family."[20] It has also made clear that in the context of unaccompanied and separated children held in detention, conditions are to be governed by the best interests of the child standard, which includes providing children with "the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian."[21]

b. Restricting children's access to telephone communication with family is harmful to children's health and wellbeing

As the Child Advocate appointed to thousands of children in ORR custody over the years, the Young Center has directly observed the harmful effects on the health and wellbeing of children that are caused by restrictions on children's telephone communication with parents, trusted caregivers, and other family members. The impact of these restrictions is particularly harmful for children with mental health issues and those who struggle to adjust to the conditions of ORR custody. Many of these children suffer from insomnia, other sleep difficulties, anxiety, and stress, among other health conditions. For these children, regular and substantial contact with parents or other family members is a critical source of comfort, peace, and a sense of safety and security, in the face of challenging and stressful circumstances. In addition, many children in ORR custody worry and struggle with anxiety, fear, guilt, and feelings of helplessness regarding the safety and wellbeing of their parents, caregivers, or family members from whom they have been separated; for these children, regular calls with family members can assuage their concerns and mitigate the stress, anxiety, and guilt they feel.

Just last month, the Vera Institute of Justice released a report on its findings from interviews it conducted with 32 young adults who had previously been held in ORR custody.[22] The report set forth a number of policy proposals based on the perspectives, recommendations, and priorities shared by these young adults. Among the policy proposals was a specific call for children in government custody to be "extended broader visitation privileges."[23] The report explained:

> ORR policy guidance only requires that children have two 10-minute phone calls with their relatives per week, and participants reported that the calls were not always private and that even the minimum was not always offered…Many of the young people Vera spoke to only received this minimum amount of time to connect with their family members, which they reported was not enough time. As Carolina described it, the calls "help us feel . . . like more free that if we have a problem or something we can talk about it with our family[.]"…Without privacy, some youth, such as Cecilia, felt "uncomfortable because . . . you want to get something off your chest but you couldn't[.]"[24]

Restrictions placed by ORR facilities on children's phone calls with parents and family members are perceived by children in custody as one more way their agency and freedom are limited while in custody, only exacerbating children's stress, frustration, and sense of helplessness and lack of control. As Disability Rights California observed in a 2018 report on conditions in ORR facilities in California:

> In all of the [ORR grantee] facilities, we found that children had very limited interaction with the outside world, including parents, family members, and loved ones. Staff closely monitored all activities and all children had to abide by strict schedules...Phone calls were also closely monitored and extremely limited. One shelter provider set up a system were (sic) phone calls end exactly at the 10-minute mark with no warning to the child, a practice that was particularly distressing to the younger children. These pervasive institutional qualities of ORR placements may have long lasting effects for children and negatively affect the psychological and emotional wellbeing of children that have undergone trauma.[25]

In the summer of 2021, Dr. Ryan Matlow, a licensed child clinical psychologist, conducted a psychological evaluation of children and conditions at ORR's Fort Bliss Emergency Intake Site as part of Flores monitoring, and found that children at Fort Bliss were experiencing distress as a result of "insufficient quantity and quality of contact with family."[26] Children at Fort Bliss reported having access to phone calls for 10 minutes twice per week, and that these calls would take place in a loud and crowded tent environment without privacy. The children "consistently stated that having more time to talk to family members in privacy. . . would help to mitigate their distress." Dr. Matlow found that the children's "lack of ability to both receive and provide updates on well-being with family members, and to seek reassurance and encouragement from family, contribute[d] to children's experiences of worry, anxiety, sadness, and depression."

Dr. Matlow further found that restrictions such as Fort Bliss' limitations on children's access to family supports only exacerbated the distress children already felt in custody due to their limited agency and control over their situation and their daily life activities. Dr. Matlow found that "[r]estrictions on [children's] options for self-determination and self-care in activities of daily living [at Fort Bliss] were neither trauma-informed, developmentally appropriate, nor culturally- sensitive."[27] Among his recommendations to mitigate psychological harm to children at Fort Bliss was a recommendation to "[i]ncrease [the] frequency and quality of opportunities for contact and communication with family members (e.g., via private phone conversation, videoconference, or live visitation), particularly for children with vulnerabilities (e.g., due to extended stays, preexisting conditions or disabilities, and/or mental health difficulties)."[28]

"They would punish us a lot. We would cry because they only allowed us to talk [on the phone] to our family for ten minutes. That would frustrate us and we would talk back to the staff. We didn't have the right to talk back, to use bad language... They would punish us by putting us on one-on-one [supervision] when we broke the rules."

- Carlita, 15-year-old Child in ORR Shelter in Texas[29]

2. Children in ORR custody should have access to telephone communication with parents and caregivers in an amount and under conditions that are in their best interests.

We recommend that ORR align its policies regarding children's access to telephone and video communication with parents, trusted caregivers, and family members with its mandate to provide individualized care that is in the best interests of each child. Restricting children's phone calls, typically to two 10-minute phone calls twice a week, is not in the best interests of children. It also does not align with a trauma-informed approach that requires attention and response to a specific individual's historical context, experiences, and needs.

"Restricting children's phone calls, typically to two 10-minute phone calls twice a week, is not in the best interests of children."

To ensure that each child receives the care and support they need, children in ORR custody should:

- Have unlimited access to telephone and video calls with all persons that are included in their approved list of telephone contacts.[30] If ORR is unable to provide children with unlimited access to calls, then it should require its providers to provide each child with, at a minimum, 30 minutes of phone time each day with parents, caregivers, and family members.
- Be able to make calls at times which they choose and with the privacy they need.
- Be permitted to make video calls with family members whenever video calls are feasible and would be beneficial to the child. For young children and other children who are not verbal and/or may not be able to make phone calls, ORR must ensure that they have access to video calls with their parents or caregivers. ORR should also require all ORR providers, including large facilities, Influx Care Facilities, and Emergency Intake Sites, to ensure that children are able to make calls with reasonable privacy in which the child can have meaningful communication with their parents, trusted caregivers, and family members.
- ORR should also require its providers to facilitate regular in-person visits with parents and caregivers for children whenever possible, including in the case of children whose parents or caregivers are being held in Immigration and Customs Enforcement detention. Our experience has been that children whose parents or caregivers are in ICE detention often endure weeks or even months in ORR custody before they are able to have any communication with their parent or caregiver, and even when contact does occur, the parent and child are not able to have regular calls due to a lack of coordination between ORR providers and ICE. ORR should address this problem by requiring its providers to coordinate with ICE immediately upon a child's arrival in custody to facilitate regular in-person visits, or regular video calls if in-person visits are not possible, whenever a child is separated from a parent or caregiver who is transferred to ICE detention.

Endnotes

1. 8 USC § 1232(c)(2)(A).

2. Id.; Stipulated Settlement Agreement ¶ 14, Flores v. Reno, No. CV85-4544-RJK (C.D. Cal. 1996).

3. ORR Guide: Children Entering the United States Unaccompanied [hereinafter ORR Policy Guide] § 3.3.10, https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-3#3.3.10.

4. Heather Forkey et al., American Academy of Pediatrics Council on Foster Care, Adoption, and Kinship Care, Council on Community Pediatrics, Council on Child Abuse and Neglect, Committee on Psychosocial Aspects of Child and Family Health. Trauma-Informed Care, 148 PEDIATRICS 1, 3 (2021), https://publications.aap.org/pediatrics/article/148/2/e2021052580/179745/Trauma-Informed-Care (hereinafter AAP Clinical Report on Trauma-Informed Care).

5. K.L. Edyburn et al, Seeking safety and humanity in the harshest immigration climate in a generation: A review of the literature on the effects of separation and detention on migrant and asylum-seeking children and families in the United States during the Trump administration, 34 SOCIAL POLICY REPORT 1, 17 (2021), https://srcd.onlinelibrary.wiley.com/doi/full/10.1002/sop2.12.

6. AAP Clinical Report on Trauma-Informed Care, supra n. 2, at 6.

7. Emily M. Cohodes et al., Migration-related trauma and mental health among migrant children emigrating from Mexico and Central America to the United States: Effects on developmental neurobiology and implications for policy, 63 DEVELOPMENTAL PSYCHOBIOLOGY 1, 4 (2021), http://candlab.yale.edu/sites/default/files/publications/Cohodes_etal_2021_DP.pdf [hereafter Migration-related trauma].

8. Acting Inspector General Joanne M. Chiedi, U.S. Dep't of Health & Human Serv. Office of the Inspector General, Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody 9 (2019), https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf [hereinafter HHS OIG Report].

9. U.N. High Comm'r for Refugees, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection 9-11 (2014), https://www.unhcr.org/en-us/about- us/background/56fc266f4/children-on-the-run-full-report.html; Amanda NeMoyer et al., Psychological Practice with Unaccompanied Immigrant Minors: Clinical and Legal Considerations, 5 TRANSL ISSUES PSYCHOL SCI. 4 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6415685/ [hereinafter Psychological Practice with Unaccompanied Immigrant Minors].

10. Migration-related trauma, supra n. 5, at 4.

11. Sarah A. MacLean et al., Characterization of the mental health of immigrant children separated from their mothers at the U.S.–Mexico border, 286 PSYCHIATRY RESEARCH 1, 2 (2019), https://projectlifeline.us/wp- content/uploads/2020/09/Mental-Health-of-Separated-Migrant-Children.pdf.

12. See, e.g., U.S. Gov't Accountability Office, Southwest Border: CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths (2020), https://www.gao.gov/assets/gao-20-536.pdf; Julie M. Linton et al., American Academy of Pediatrics Council on Community Pediatrics, Detention of Immigrant Children, 139 PEDIATRICS 1, 4 (2017), https://publications.aap.org/pediatrics/article/139/5/e20170483/38727/Detention-of- Immigrant-Children; Psychological Practice with Unaccompanied Immigrant Minors, supra n. 7.

13. HHS OIG Report, supra n. 6, at 12.

14. See, e.g., Motion to Enforce Settlement Re Emergency Intake Sites, Exhibit C: Psychological Evaluation of Children and Conditions at Fort Bliss Emergency Intake Site, pp. 6, 8-9, Flores v. Garland, No. 85-cv-04544-DMG- AGR, ECF No. 1161-7 (C.D. Cal. Aug. 9, 2021) [hereinafter Fort Bliss Psychological Evaluation].

15. Suzan J. Song, Mental health of unaccompanied children: effects of U.S. immigration policies, 7 BJPSYCH OPEN 1, 3 (2021), https://www.researchgate.net/publication/355851660_Mental_health_of_unaccompanied_children_effects_of_US_immigration_policies [hereinafter Mental health of unaccompanied children].

16. See M. Paris et al, American Psychological Ass'n Immigration Psychology Working Group, Vulnerable but not broken: Psychosocial challenges and resilience pathways among unaccompanied children from Central America 58 (2018), https://www.apa.org/advocacy/immigration/vulnerable.pdf (unaccompanied children's access to supportive parents or caregivers, "either in person or through sustained communication during long separations," can help children to cope with extremely stressful and challenging circumstances); Mental health of unaccompanied children, supra n. 13, at 4 (Unaccompanied children in government custody "should also have routine, daily access to speaking with family and loved ones").

17. Jacqueline Singer & David Brodzinsky, Virtual parent-child visitation in support of family reunification in the time of COVID-19, 2 DEVELOPMENTAL CHILD WELFARE 153-171 (2020), https://journals.sagepub.com/doi/10.1177/2516103220960154; S.D. Phillips, The Sentencing Project, Video visits for children whose parents are incarcerated: In whose best interest? (2012), https://www.sentencingproject.org/publications/video-visits-for-children-whose-parents-are-incarcerated-in-whose-best-interest/; P. Iyer et al., Nuffield Family Justice Observatory, The effects of digital contact on children's wellbeing: evidence from public and private law contexts. Rapid evidence review (2020), https://www.nuffieldfjo.org.uk/resource/digital-contact-childrens-wellbeing.

18. G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989).

19. Id., art. 9, para. 3.

20. U.N. Comm. on the Rts. of the Child, General Comment No. 14 (2013): On the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), ¶ 65, CRC/GC/2013/14 (Feb. 1, 2013), http://www.unhcr.org/refworld/docid/42dd174b4.html.

21. U.N. Comm. on the Rts. of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, ¶ 63, CRC/GC/2005/6 (Sept. 1, 2005).

22. Emily Bartholomew et al., Vera Institute of Justice, Learning from Youth: Envisioning Freedom for Unaccompanied Children (Jun. 2022), https://www.vera.org/downloads/publications/learning-from-youth-envisioning-freedom-for-unaccompanied-children.pdf.

23. Id. at 4.

24. Id. at 16.

25. Disability Rights California, The Detention of Immigrant Children with Disabilities in California: A Snapshot 7, 25-26 (2019), https://www.disabilityrightsca.org/system/files/file-attachments/DRC-ORR-Report.pdf (italics added).

26. Fort Bliss Psychological Evaluation, supra, n. 12, at 7-8.

27. Id. at 8.

28. Id. at 11.

29. See, e.g., Susan J. Terrio, Whose Child am I?: Unaccompanied, Undocumented Children in U.S. Immigration Custody 124 (2015).

30. See ORR Policy Guide, supra n. 1, § 3.3.10.