



November 26, 2023

Alliance for a Safe Texas
Sheena Rodriguez, President
Tarrant County, TX

RE: NPRM by ORR, Administration for Children and Families, and HHS

Dear Toby Biswas, Director of Policy, Unaccompanied Children Program, Office of Refugee Resettlements, Administration of Children and Families, Department of Health and Human Services, Washington D.C.

As the President of Alliance for a Safe Texas, and citizen of Texas, I submit the following feedback to the Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

The proposed NPRM by the Children and Families Administration to codify and replace regulations pertaining to the care of unaccompanied minors under ORR temporary custody will only result in further exploitation and abuse of the UC population and negatively impact Texas communities. Many of these policies and procedures the NPRM is attempting to codify have consistently proven inadequate to protect UCs from abuse and neglect inside of the HHS-contracted facilities and have failed to prevent further exploitation at the hands of improperly vetted sponsors.¹

The failures of these policies by federal agencies exorbitantly impact Texas and our communities. Since Fiscal 2015, more than 80,000 UCs were released to sponsors residing in Texas, **by far, more than any other state.**² Additionally, according to the latest publicly available information, in 2020 the U.S. Government Accountability Office (GOA) reported more than 50 HHS/ORR contracted facilities housing UCs in Texas **which is far more than any other state.**³

Consequently, the deficiencies of ORR continue to place substantial strain and impact on the sovereign state of Texas and its communities.⁴ The Office of the Inspector General (OIG) has reported in numerous

¹ Fourth Presentment of the Twenty-First Statewide Grand Jury, Case No.: SC22-796, Supreme Court of Florida, October 20, 2023, p. 5, <https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/651d8f68-f322-4cd0-831f-74dc9b0d77a8/docketentrydocuments/ca36bb04-8b44-4aee-a21d-f5ab85a170e6>, last accessed Nov. 9, 2023.

² Blankley, "More Unaccompanied Migrant Children being 'resettled' in Texas than elsewhere," The Center Square, Nov. 14, 2023, https://www.thecentersquare.com/texas/article_ef5c665c-830a-11ee-bb28-5f7d9c96c0c5.html. Last accessed Nov. 20, 2023.

³ "Unaccompanied Children: Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities," U.S. Government Accountability Office, Sept. 15, 2020, <https://www.gao.gov/products/gao-20-609>, last accessed Nov. 9, 2023.

⁴ Sheena Rodriguez, "The Need For State Regulation And Oversight Of Facilities Housing Minors In Texas," Alliance for a Safe Texas, Nov. 2023, <https://securetheborder.us/research-publications>.

occasions where ORR facilities failed to adhere to the required minimum standards of care in Texas based location as required by the Flores Settlement Agreement (FSA) and ORR’s own standards.⁵

For example, in Midland, Texas, UCs were brought into an abandoned man-camp, not suitable for children, in the middle of the night, with no prior communication or agreements with local or state officials. That EIS facility was eventually closed after numerous issues were identified, such as the use of non-potable water, and multiple other violations of minimum standards set by ORR and the state.⁶ In 2021, Texas Governor Greg Abbott requested the Texas Rangers to investigate allegations of abuse at HHS-contracted facilities operating in Texas. Gov. Abbott detailed findings from the Freeman Coliseum in San Antonio noting the investigation, “uncovered four problems related to the housing of these children (UC’s) in San Antonio. They are being sexually assaulted, there are not enough staff to supervise them, some are not eating throughout the day, and those who have tested positive for the coronavirus are not being physically separated from others. In short, the situation is a health and safety nightmare.”⁷

Similarly, the OIG found extraordinarily unsettling failures by HHS to adequately perform background and Sex Offender Register checks on employees and contractors with direct access to minors which is a violation of federal and state requirements.⁸ The OIG further noted that, “**ORR issued waivers based on previously experienced challenges in obtaining background checks for employees at facilities that are not State-licensed and did not confirm States’ inability or unwillingness to conduct the required background checks. As such, ORR may have unnecessarily issued waivers for critical background checks, potentially placing the safety of children at risk.**”⁹

The failures by ORR not only endanger the minors and staff in the facilities, but also the Texas communities where these facilities are operational. Yet, instead of fixing these long-standing issues placing the minors, fellow staff, and the community at risk by failing to properly background check contractors and employees, the NPRM would codify and further expand dangerous policies and procedures.

Additionally, the failures of the federal agencies and these policies continue to subject Texas communities and resources to inordinate strain as our law enforcement agencies work tirelessly to combat trafficking and cartel-affiliated activities plaguing our communities as detailed in the recent publication by Alliance for a Safe Texas.¹⁰

Despite claims by federal agencies of communication with local and state agencies, ORR-contracted facilities continue to hinder and actively avoid communication with local and state officials. The GOA found that ORR failed to communicate facility operations with federal and state government agencies.¹¹

At the influx facility in Pecos, Texas, local officials voiced concerns of the facility causing the population of the rural city to grow by 40% while the location is operational.¹² Other concerns for city officials included loss in tax revenue not reimbursed by federal agencies. City officials told CBS7 they received only “partial

⁵ Christi Grimm, “The Office of Refugee Resettlement Needs To Improve Its Practices for Background Checks During Influxes,” Office of Inspector General, U.S. Department of Health and Human Services, May 2023, p. 6, <https://oig.hhs.gov/oas/reports/region6/62107003.pdf>, last accessed Nov. 9, 2023.

⁶ <https://gov.texas.gov/news/post/governor-abbott-directs-tceq-to-look-into-new-unaccompanied-minor-facility-in-pecos>

⁷ Blankley, “Abbott: Biden administration is presiding over ‘abuse of children’,” The Center Square, April 7, 2021. https://www.thecentersquare.com/national/article_d688243e-9804-11eb-add3-ef2cb6d13b6a.html, last accessed Nov. 9, 2023.

⁸ Grimm, Ibid.

⁹ Grimm, Ibid. p.11.

¹⁰ Rodriguez, Ibid.

¹¹ “Unaccompanied Children: Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities,” U.S. Government Accountability Office, Sept. 15, 2020, <https://www.gao.gov/products/gao-20-609>, last accessed Nov. 9, 2023.

¹² Joshua Skinner, “Pecos struggles as government quietly expands migrant influx facilities,” CBS 7 News, August 29, 2022, <https://www.cbs7.com/2022/08/29/pecos-struggles-government-quietly-expands-migrant-influx-facilities/>, last accessed Nov. 9, 2023.

information” when the facility continued to quietly expand in 2022.¹³ Additionally, city officials raised numerous concerns of the facility placing a strain on finite and already strained resources.¹⁴

In Midland, Texas, frustrations were voiced by local officials due to the lack of communication and failure to abide by ORR’s own safety requirements. Investigations found the facility to have unsafe living conditions, including the use of non-potable water for the minors, and failure to adhere to occupancy standards.¹⁵

At a for-profit facility in the rural city of Wallis, the lack of timely communication continues to be a consistent issue placing local residents, staff and minors in the facilities in unnecessary potential harm despite concerns previously raised by local officials and residents.¹⁶ During the 88th Regular Texas Legislative session, in attempts to address the federal governments’ refusal to communicate with local officials, Austin County Judge Tim Lapham told the Texas Senate, “We don’t know who’s in this facility. We don’t know. There’s been no communication with the local government, city, or the county on this [facility]. The federal government is placing unauthorized children in facilities throughout our state, unknown to local governments.”

The County Judge further explained, “Austin County has a small rural hospital to provide immediate medical care 24/7. The holding center in Austin County is located at the opposite end of the county. In a small town with no doctor’s office, with no medical care, not even a pharmacy. Anytime a child at this facility needs more than a band aid, one of our ambulances has to transport. That leaves our residents without that emergency service.”

When the city of Wallis unanimously passed an ordinance aiming to attempt to address concerns, Judge Lapham stated, “The federal government has thumbed their noses at us, the local governments, on this issue.”

Texas Congressional and State officials made attempts to procure the copy of the contract between HHS and the contractors of the Wallis facility to no avail. During a recent Texas Senate committee hearing, Sen. Royce West, D-Dallas, stated, “You’re saying McCaul tried to get a copy of the contract but couldn’t get a copy of the contract? Is the contract between the federal government and this facility and he couldn’t get a copy of it?” To which Senator Lois Kolkhorst, R-Yoakum, responded, “Crazy right?” Senator West nodded in agreement.

The failure to effectively communicate with local and state agencies, in addition to continue the practice of failing to ensure proper background checks of employees and affiliated contractors, place UCs, staff, and the community under potentially harmful situations. Additionally, ORR’s policy, federal statute §410.1304(b), places minors in the facilities, Texas residents, and law enforcement officers in potentially precarious situations by discouraging contractors from reporting escalating issues.

Furthermore, the current policies utilized by HHS/ORR with the care of unaccompanied minors have repeatedly failed to keep minors and communities safe from documented deficiencies to properly conducted timely and sufficient background checks on staff in direct contact with UCs.

¹³ Ibid.

¹⁴ Rachel Ripp, “Pecos residents say migrants coming could put a strain on local resources,” News West 9, March 22, 2021, <https://www.newswest9.com/article/news/local/pecos-residents-say-migrants-coming-could-put-a-strain-on-local-resources/513-54fe1633-16e2-437a-98c7-9e8604cd79d1>, last accessed Nov. 9, 2023.

¹⁵ Joshua Skinner, Kate Porter, “Midland, Texas, leaders blindsided by arrival of migrants at holding facility,” March 16, 2021, <https://www.kcrg.com/2021/03/16/midland-texas-leaders-blindsided-by-arrival-of-migrants-at-holding-facility/>, last accessed Nov. 9, 2023.

¹⁶ “Citizens of Wallis Concerned over Opening of Immigrant Housing Facility,” Austin County News Online, October 25, 2022, <https://austincountynewsonline.com/citizens-of-wallis-concerned-over-opening-of-immigrant-housing-facility/>, last accessed Nov. 9, 2023.

According to an HHS Office of Inspector General report, several deficiencies including ORR's failure to adhere to the agency's own guidelines was documented.¹⁷ The deficiencies found in the OIG report included¹⁸:

- **“ORR did not require the transportation services contractor we reviewed to conduct background checks on employees as required by ORR minimum standards;”**
- **“ORR was not consistent with issuing waivers for FBI fingerprint checks and CA/N checks for employees at EISs;”**
- **“Public records checks used by EISs may not have been reliable;”**
- **“A few EISs did not ensure secure facility access.”**

Furthermore, ORR is required by law, before adopting a final rule, to both engage in such consultation with local and state agencies, as well as local citizens, and also to analyze the environmental, social, and economic effects, including but not limited to the effects by population growth, driven by this policy. The National Environmental Policy Act (“NEPA”) makes such analysis compulsory, not voluntary, on the part of ORR. In order to promote environmentally sensitive national policy, NEPA *requires* federal agencies to “provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment.” 40 C.F.R. § 1500.1(a). NEPA has “twin aims.” *WildEarth Guardians v. Jewell*, 738 F. 3d 298, 302 (D.C. Cir. 2013).

First, it obligates federal agencies “to consider every significant aspect of the environmental impact of a proposed action, and second, it ensures that the agency will “inform the public” of its environmental considerations. *Id.* Such considerations are particularly appropriate in the context of proposed actions like this one that have been shown to induce population growth. The adoption of NEPA codified explicit Congressional concern for the “profound influences of population growth” on the natural environment. 42 U.S.C. §4331(a). Congress has never passed an exemption to NEPA for concerns related to population growth or other environmental impacts caused by immigration policy. **Before finalizing the proposed action, ORR has no choice but to engage in some level of NEPA analysis.**

The Council on Environmental Quality (“CEQ”) provides direction in its regulations to “determine what actions are subject to NEPA’s procedural requirements and the level of NEPA review where applicable.” 40 C.F.R. § 1500.1(b). A “major federal action” is defined by the Council on Environmental Quality (“CEQ”) as any “activity or decision subject to Federal control and responsibility,” that does not fit into a stated exception. *See* 40 C.F.R. § 1508.1(q). Activities or decisions that constitute exceptions are: 1) those that have effects solely outside the U.S.; 2) those that are non-discretionary; 3) those that are not final under the Administrative Procedure Act; 4) judicial or administrative civil or criminal enforcement actions; 5) non-governmental actions that receive federal funding but where the government does not control the action through the funding. **None of these exceptions apply, NEPA therefore clearly applies to this proposed major action.**

The “action-forcing” provisions of NEPA and its implementing regulations by CEQ require that agencies take a “hard look” at the environmental consequences of their actions. *Robertson v. Methow Valley Citizens*, 490 U.S. 332, 350 (1989). “Simply by focusing the agency’s attention on the environmental consequences” before an action is taken, NEPA “ensures important effects will not be overlooked or underestimated” and will “inevitably bring pressure to bear on agencies” to respond to the needs of environmental quality.” *Id.* at 349. **In this case, a “hard look” must include an analysis of whether this proposed rule would add to the population of foreign nationals settling in this country and increase illegal crossing at the**

¹⁷ Grimm, *Ibid.*

¹⁸ Grimm, *Ibid.* p.11.

southern border, especially in the context of the Biden Administration's other immigration actions, including ending Remain in Mexico, creating a number of large-scale parole programs, ceasing construction on the border wall, deferred action and prosecutorial discretion for many categories of illegal aliens, among others. NEPA aims to "achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities" 42 U.S.C. §4331(b)(5). **Congress has never passed an exemption to NEPA for concerns related to population growth caused by immigration.**

Before finalizing this rule, therefore, ORR must conduct appropriate environmental analysis. The "effects or impacts" which must be analyzed by this impact statement are "changes to the human environment from the proposed actions" that are "reasonably foreseeable." 40 C.F.R. § 1508.1(g). Specifically included by CEQ are "indirect effects, which are caused by the action and are later in time but are still reasonably foreseeable." 40 C.F.R. § 1508.1(g)(2) Such effects "may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate..." *Id.* Furthermore, agencies must take into account cumulative effects, which result "from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions." § 1508.1(g)(3).

When an agency takes several actions which will have a "cumulative or synergistic environmental impact," their environmental consequences must be considered together. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1978). That is, an agency is not allowed to avoid the requirements of NEPA by "segmentation," where the combined environmental effect of a set of agency actions is overlooked by "dividing an overall plan into component parts, each involving action with less significant environmental effects." *Taxpayers Watchdog, Inc. v. Stanley*, 819 F. 2d 294, 298 (D.C. Cir. 1987). ORR must look at this action in conjunction with the other actions on immigration that the Biden Administration has taken.

A federal agency may prepare an Environmental Assessment ("EA") to evaluate whether an EIS is required. 40 C.F.R. §§ 1501.3, 1508.9. If a proposed action is determined to have no significant impact, the agency must issue a FONSI "accompanied by a convincing statement of reasons to explain why a project's impacts are insignificant." *Sierra Club v. Bosworth*, 510 F.3d 1016, 1018 (9th Cir. 2007) (quoting *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001)). An agency may only avoid preparing either an EIS or an EA when the agency action is properly "categorically excluded" from NEPA review. See 40 C.F.R. § 1504.4. A categorical exclusion is a "category of actions which do not individually or cumulatively have a significant effect on the human environment, and which have been found to have no such effect" in an agency's NEPA implementing regulations. 40 C.F.R. § 1508.4. **There are no categorical exclusions within HHS's NEPA regulations that apply or could apply to this action. Nor does the NPRM cite any— ORR clearly has no record of analysis that would support the application of any of their categorical exclusions. To apply any now would be arbitrary and capricious.**

The number of UCs has risen to unprecedented numbers since the FSA, and making failing policies permanent will only ensure the further demise of Texas communities and continue to place already vulnerable unaccompanied children in opportunities for further exploitation. Our system is undeniably broken and continues to fail under several administrations. Criminal cartel organizations continue to exploit loopholes created by such federal policies despite the original intent. The false message that the United States can adequately care for the displaced minors of the world has consistently proven detrimental to the UCs, Texas communities, and the United States. The failure to effectively communicate with local and state agencies, in addition to the continued implementation of failing to ensure proper background checks of employees and affiliated contractors, place UCs, staff, and Texas communities under unnecessary and potentially harmful situations.

Alliance for a Safe Texas views the attempts of the NPRM by the Children and Families Administration to codify and replace regulations pertaining to the care of UCs as a continued attempt to permanently expand the hostile takeover of communities in sovereign states by federal agencies. Therefore, Alliance for a Safe Texas does not support codifying current policies that have proven to fail. Instead of codifying these dangerous policies, FSA and incentivizing policies must be reevaluated and these harmful practices must cease. And, if this proposal is finalized, it will clearly be a final agency action that qualifies as a major agency action under NEPA as defined in statute, NEPA case precedent, and by the CEQ. ORR must conduct at the very least an Environmental Assessment prior to finalizing this rule or it will be in violation of NEPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheena Rodriguez".

Sheena Rodriguez
President
Alliance for a Safe Texas