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NO HOME FOR CHILDREN:

THE HOMESTEAD "TEMPORARY EMERGENCY" FACILITY

AMNESTY INTERNATIONAL

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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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1. EXECUTIVE SUMMARY

The current US Administration under President Donald Trump has implemented a series of policies deliberately targeting children and families seeking safety in the USA. These policies have led to deplorable outcomes violating the human rights of children, as well as adults, that were entirely avoidable, and a measure of political ill will toward the right to seek asylum, as enshrined in both US and international law. Amnesty International has documented these harmful policies, from the forcible separation of children from their family members or guardians at the US southern border, which in some cases has amounted to ill-treatment and torture to the use of tent cities to detain children for seeking asylum in the USA. The organization has also documented other abuses that have harmed children, such as the so-called "metering" of people at the US southern border who are seeking asylum to the prolonged and indefinite detention of asylum-seekers. The purpose of these policies has been to deter and punish children and adults for seeking safety in the US, and the consequences have been devastating. Children have been held in cages locked up in freezing cells, without adequate food or medicine; and most tragically, children are dying, as witnessed most recently of a Salvadoran father and child who drowned attempting to cross the Rio Grande River into Texas. Focusing on unaccompanied children seeking safety in the USA, this report documents one aspect of the Administration's attempt to strip away the individual humanity, dignity, and sense of security of people seeking protection – children in this instance – in order to deter and punish them and others who might follow.

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Each year, thousands of children travel alone to the United States to flee violence and persecution in their home countries. These children are frequently in search of safety and are seeking asylum or other forms of humanitarian protection as provided for under US and international law. Pending resolution of their immigration claims, thousands of children are being detained for months in violation of international human rights law, and in conditions that also violate human rights, as it is exemplified at a "temporary influx" detention center in Homestead, Florida, which Amnesty International visited in April 2019. Homestead is operated by a private contractor, Comprehensive Health Services, which is owned by Caliburn International Corporation.

Under US and international law, all actions concerning children should be guided by the principle of the best interests of the child. Amnesty International therefore believes that children should never be detained for migration-related reasons, as it is never in their best interests. The analysis in this report of the compliance of migration detention of children with US and international law does not prejudice this position. Under international law, individuals can only be deprived of their liberty when their detention is provided by law, necessary to fulfil a legitimate objective and proportionate to that objective. In the exceptional circumstances where the detention of children complies with these requirements, it should be for the shortest possible time and in the least restrictive setting.

The USA considers children under the age of 18 who arrive without their parent or legal guardian to be "unaccompanied". Unaccompanied children who are apprehended by immigration authorities at the US border may initially be detained by the US Department of Homeland Security (DHS) at a Customs and Border Patrol (CBP) facility for a period up to 72 hours before being transferred to the care and custody of the Office of Refugee Resettlement (ORR). They are then held by the ORR in its network of state-licensed, permanent shelters pending placement with sponsors, which should take place "without unnecessary delay". Although unaccompanied children are in the care and custody of ORR, it is not an immigration enforcement agency. ORR is housed within the Administration for Children and Families (ACF) in the US Department of Health and Human Services (HHS).

The USA provides certain legal protections for unaccompanied children because of their unique vulnerabilities. The 1997 *Flores* Settlement Agreement (*Flores* or *Flores* Agreement) governs the detention, release and treatment of all migrant children in the USA. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) incorporates the *Flores* standards by requiring ORR to place unaccompanied children in the least restrictive setting possible, in accordance with their best interests.

Contrary to those legal obligations, Amnesty International has found that the USA is violating the human rights of thousands of unaccompanied children by detaining them at an ORR "temporary influx" care facility in Homestead, Florida (Homestead). The Homestead facility has been designated as a "temporary emergency" shelter where children are being detained, and this deviates from the standard practice of detaining unaccompanied children in state-licensed, permanent ORR shelters, pending placement with sponsors. This "temporary influx" designation enables Homestead to evade US legal requirements for unaccompanied children that apply to permanent ORR shelters. The US government is relying on an exemption which should be used in exceptional circumstances only to circumvent its obligations under *Flores* to provide state-licensed care and other required services for migrant children. The long-term operation of Homestead defies its temporary emergency designation; Homestead had been in operation since March 2018 – well over a year at the time this report was published.

Since March 2018, the Homestead facility has been the first destination of thousands of children at the end of often perilous and traumatizing journeys in search of safety. HHS reported that unaccompanied children at Homestead were held on average for 52 days in March 2019. This number does not include the amount of time children may have also spent in the custody of DHS prior to being transferred to Homestead, or in another ORR shelter if transferred onward from Homestead, as opposed to being released to a sponsor. Amnesty International spoke to one child who had been detained at Homestead for eight months prior to his transfer to another permanent ORR shelter. In other cases, lawyers reported that children had been held for over 100 or even 200 days. The average length of detention across the ORR system is 44 days as of June 2019. Under *Flores*, unaccompanied children in temporary emergency facilities are to be moved to state-licensed shelters "as expeditiously as possible" – and within 20 days if possible. However, children at Homestead are routinely held there for weeks or months beyond that point before being placed in non-secure shelter systems or with a sponsor.

Furthermore, unaccompanied children are detained for prolonged periods of time at Homestead despite the fact that it is an unlicensed facility. Because of its designation as a "temporary influx" care facility and its location on federal land, Homestead is permitted to operate without state licensing and to provide lower standards of care than is required of state-licensed, permanent ORR shelters. Caught in the "emergency" categorization, unaccompanied children at Homestead are receiving lower standards of care and oversight than their peers at nearby state-licensed, permanent ORR shelters.

Addressing the harm caused by detaining children for prolonged periods in an unlicensed facility is imperative. The prolonged and indefinite detention of children, extends to the whole ORR shelter system. The current state of prolonged detention of unaccompanied children across the ORR shelter system violates the USA's human rights obligations. These children must be promptly released to appropriate sponsors. In the majority of cases, as of April 2019, the children at Homestead were waiting to reunify with their immediate or extended family members who were already living in the USA.

Amnesty International found that the conditions and services provided at Homestead fail to meet international obligations and the standards set out in US law and ORR policy for facilities that provide care for unaccompanied children. It is a highly restrictive setting where children are required to wear bar codes, are provided with insufficient language services, inappropriate remote case-management services, potentially inadequate educational services and an inadequate system to report allegations of sexual abuse.

The inappropriate continuing designation of Homestead as a temporary emergency facility is undermining children's well-being. The Administration has relied on Homestead for well over a year when it could have utilized that time to increase state-licensed, permanent ORR shelter capacity responsibly, in line with *Flores* and its human rights obligations. Amnesty International is

concerned that facilities like Homestead and the previously closed Tornillo temporary emergency facility in Texas will become a common feature of how the USA treats people seeking safety – children, families, and any person who asks for protection as guaranteed under US and international law. Even more alarming is the Administration's move towards opening large new "tent cities" like Tornillo to detain children near to the border, which risks normalizing both the unlawful detention of children and the use of "emergency" facilities such as Homestead throughout the system, instead of adequately state-licensed, permanent shelters.

The expanded use of Homestead can be traced to a new policy to prioritize immigration enforcement over child welfare, implemented through an information-sharing agreement between ORR and DHS signed in April 2018. In a departure from previous policy, the agreement required ORR to share a broad range of information on unaccompanied children with Immigration and Customs Enforcement (ICE), including the fingerprints of potential sponsors such as parents and legal guardians as well as members of potential sponsors' households, for immigration enforcement purposes. The risk of being detected as irregular migrants and deported has chilled the willingness of potential sponsors to come forward and drastically delayed the placement of unaccompanied children with sponsors, resulting in their prolonged detention. This agreement was preceded by earlier initiatives to target potential sponsors, including the June 2017 policy, "Human Smuggling Disruption Initiative."

The ORR-DHS agreement perpetuated family separation. Although the Administration anticipated that the information-sharing agreement would result in a backlog of unaccompanied children in ORR facilities, it proceeded nonetheless to implement it. The ORR-DHS agreement fits the Administration's pattern of seeking to deter and punish asylum-seekers through prolonged detention instead of respecting the rights of refugees to seek safety in line with US law and human rights obligations.

There is a well-established process in place in the USA for the care and custody of unaccompanied children and that process should be resourced properly to ensure that all unaccompanied children are placed in small-size, state-licensed, permanent ORR shelters that adhere both to the *Flores* Agreement and international human rights standards on the treatment of children.

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1.1 KEY RECOMMENDATIONS

- The Homestead "temporary influx" facility should be closed as quickly as possible
- The protracted use of "temporary influx" facilities such as Homestead should be discontinued
- Unaccompanied children should never be detained, however if detention is necessary in exceptional circumstances, children should be placed for the shortest period of time possible in small-size, state-licensed, permanent ORR shelters while they are reunified with their families in the USA, or matched with other appropriate sponsors.
- Decisions regarding the release of unaccompanied children to sponsors must always be expeditious and made in a child's best interests, not based on the sponsor's immigration status, with any information-sharing agreements between ORR and immigration enforcement rescinded
- The Administration must ensure that its policies and practices regarding the care of unaccompanied children conform to the best interests of the child standard as outlined in *Flores* and international law, no matter the type or location of ORR facility

1.2 METHODOLOGY

This report is based on interviews and site visits Amnesty International conducted on 2 and 3 April 2019 at the ORR "temporary influx" care facility for unaccompanied children in Homestead, Florida, and two nearby ORR permanent shelters. Following the closure of the temporary influx facility in Tornillo, Texas, in January 2019, Homestead is the only such emergency facility currently in operation as of the time of this report. On 2 April 2019, Amnesty International interviewed Homestead staff and was given a guided tour of the facility. Amnesty International conducted a limited return visit to Homestead on 12 July 2019.[1] Although researchers were not allowed to interview children at Homestead, they observed them in classrooms, the cafeteria, residential areas, common areas, and outside on the grounds. In addition to the visit to Homestead, on 3 April 2019, Amnesty International visited two nearby state-licensed, permanent ORR shelters for unaccompanied children. Researchers interviewed staff at both shelters for a total of four-and-a-half hours, received a tour of the facilities and were permitted to interview seven children who had previously stayed at Homestead in 2018 and 2019 for periods ranging from one day to eight months. Due to privacy and security concerns for unaccompanied children at ORR shelters, Amnesty International is not disclosing the names or the physical locations of the two permanent shelters visited, or the real names of the children interviewed. Although media articles have listed the names of ORR shelters for unaccompanied children, ORR does not publicly disclose the full list of these shelters. Additionally, Amnesty International reviewed national and international standards, consulted media reports and interviewed experts and NGO workers.

Prior to publication, Amnesty International wrote to Caliburn International Corporation, the parent company of Comprehensive Health Services, which operates the Homestead Facility, to provide it with an opportunity to respond to our findings. Amnesty International reviewed the company's response in detail and took appropriate account of information provided in updating its findings. A copy of Caliburn's letter can be found in the Appendix of this report.

1 Due to the timing for the release of this publication, the findings from this visit could not be included in this report.

2. WHO ARE UNACCOMPANIED CHILDREN AND WHAT IS THE SHELTER SYSTEM?

UNACCOMPANIED CHILDREN ARE HELD IN A NETWORK OF

168 FACILITIES IN 23 STATES

HOMESTEAD IS REPORTEDLY THE ONLY ORR SHELTER

OPERATED BY A FOR-PROFIT COMPANY

Children under the age of 18 who arrive alone at the US border are considered unaccompanied children.[2] Children can also be rendered "unaccompanied" after US border and immigration authorities separate them from their parents, close family or legal guardians. This can be the result of government policy and practice to forcibly separate families. Amnesty International has documented that such separations occurred in 2017 and 2018 in violation of US and internatioanl human rights law.[3] Children may also be separated because there is a determination made that it is in their best interests, for example if they could be at risk with the parent or legal guardian or if the immigration authorities are unable to determine that there is a family relationship between the child and adult.[4]

After unaccompanied children are initially processed by immigration authorities, they undergo an initial screening process and are transferred to the care and custody of ORR.[5] The children are housed in a network of approximately 168 ORR facilities operating in 23 states.[6] According to ORR, the permanent shelters in its network are operated by not-for-profit organizations.[7] Homestead is reportedly the only ORR shelter operated by a for-profit company.[8] ORR shelters are not run by DHS.[9]

2 Under US law, unaccompanied children are defined as children under the age of 18 who arrive at the US border without lawful immigration status or a parent or legal guardian, or who do not have a parent or legal guardian in the US available to provide care and custody. (6 U.S.C. § 279(g)(2)).

3 Amnesty International, USA: *"You Don't Have Any Rights Here": Illegal pushbacks, arbitrary detention and ill-treatment of asylum seekers in the United States,* 11 October 2018, (Index number: AMR 51/9101/2018), available at www.amnesty.org/en/documents/amr51/9101/2018/en/

4 See Amnesty International, "*You don't have any rights here".*

5 According to advocates, more often than not, children do not have a court date scheduled by the time they enter ORR custody. It can take several days or weeks for a date to be set and entered into the Executive Office for Immigration Review (EOIR) system. Children should arrive to ORR care from DHS with a Notice to Appear (NTA), but typically the date and location of appearance are listed as "to be determined". The court venue will be that nearest to the ORR shelter facility the child is placed in.

6 Administration for Children and Families, 'Fact Sheet – July 2019' (ORR Shelter Fact Sheet), available at www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Program-Fact-Sheet.pdf

7 US Department of Health and Human Services, 'Frequently Asked Questions Regarding Unaccompanied Alien Children', (Department of Health and Human Services FAQs), 7 August 2018, available at www.hhs.gov/programs/social-services/unaccompanied-alien-children/faqs/index.html.

8 Joann Bautista, National Immigrant Justice Center (NIJC), 'FAQ: How The Administration's Immigration Enforcement Agenda Got In The Middle Of Family Reunification,' (NIJC FAQ), 22 February 2019, available at https://immigrantjustice.org/staff/blog/faq-how-administrations-immigration-enforcement-agenda-got-middle-family-reunification

9 See also *Administration for Children and Families, Fact Sheet – April 2019, (ORR Shelter Fact Sheet), available at* www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Program-Fact-Sheet.pdf.

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The ORR shelter system for unaccompanied children is entirely separate from the family immigration detention centers holding children and their parents, which are run by DHS. Unaccompanied children are generally housed in small-size, state-licensed ORR shelters resembling group homes or residential facilities. Those in such facilities range from infants to 17-year-olds.[10] ORR is not involved in the apprehension, processing, or initial detention of unaccompanied children by DHS immigration authorities prior to their referral to ORR custody.

Unaccompanied children have the right to ask for asylum like any other person arriving in the USA and are subject to the same immigration processes. Once unaccompanied children arrive at the border, and while they are in ORR shelters, they can begin the process of requesting asylum or other forms of humanitarian protection.

10 NIJC *FAQ;* See also *Jenny Lisette Flores et al v. Janet reno, General of the United States,* (Case No. CV85-4544-RJK(Px), Stipulated Settlement Agreement, (*Flores Agreement*), available at cliniclegal.org/sites/default/files/attachments/flores_v._reno_settlement_agreement_1.pdf

3. WHY IS HOMESTEAD A "TEMPORARY EMERGENCY" SHELTER?

The Homestead temporary emergency shelter has been in operation since March 2018.[11] The length of time it has been operating - well over a year - defies its defining purpose. An ORR shelter such as Homestead is supposed to be temporary and serve an emergency need, such as a sudden increase in the number of unaccompanied children and a corresponding lack of state-licensed, permanent shelter capacity to house them.[12]

However, the need for this "emergency" accomodation was the direct consequence of US government policy. The administration implemented a new information-sharing agreement between ORR and DHS in May 2018, as part of a policy that prioritized immigration enforcement over child welfare and has resulted in the prolonged detention of children.[13] There was, simply put, the failure of the authorities to plan for the consequences of a new process that the Administration knew would lead to prolonged detention.[14] Prolonged detention is a violation of international law, which requires that if children are detained, it should only be for the shortest period of time in the least restrictive setting.[15]

Under the ORR-DHS agreement, ORR continuously shares a broad range of information on unaccompanied children, including their potential sponsors, with ICE.[16] The agreement initially required ORR to fingerprint all potential sponsors, including parents and legal guardians, as well as all adults in a potential sponsor's household, and share that data with DHS.[17] In turn, ICE would be permitted to use the shared information, including fingerprints and other biometric data, for immigration enforcement.[18] ICE

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11 Administration for Children and Families.'FACT SHEET: U.S. Department of Health and Human Services, Unaccompanied Alien Children Sheltered at Homestead Job Corps Site, Homestead, Florida', (Homestead Fact Sheet), 10 May 2019, , available at www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Sheltered-at-Homestead.pdf. Homestead contracts with the US Department of Labor ("DOL") to use the Homestead Job Corps facility; currently DOL and HHS have a licensing agreement through June 2019. Amnesty International has requested further information from HHS on its plans post-June 2019. As of the time of this report, Amnesty International has not received additional information.

12 Administration for Children and Families, ORR Guide: Children Entering the United States Unaccompanied, § 1.7.6, 30 January 2015 (ORR Guide), available at www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1; *Flores* Agreement, EXHIBIT 3; *see also* HHS Office of Inspector General, *The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff (A-12-19-20000)*, 27 November 2018, *available at* oig.hhs.gov/oas/reports/region12/121920000.pdf.

13 Memorandum of Agreement Among the Office of Refugee Resettlement of the US Department of Health & Human Services and US Immigration and Customs Enforcement, US Customs and Border Protection of the US Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters (MOA), available at www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf; see T. Kopan, The Simple Reason More Immigrant Kids are in Custody Than Ever Before, CNN, 14 September 2018, *available at* www.cnn.com/2018/09/14/politics/immigrant-children-kept-detention/index.html; National Center for Youth Law, Center for Human Rights and Constitutional Law, and the University of California Davis School of Law Immigration Clinic, *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody* at 12 (February 2019) ("National Center for Youth Law *Flores Report*"), *available at* youthlaw.org/publication/the-flores-settlement-agreement-unaccompanied-children-in-federal-custody; Women's Refugee Commission ("WRC") and National Immigrant Justice Center ("NIJC"), *Children as Bait: Impacts of the ORR-DHS Information-Sharing Agreement*, March 2019, ("*Children as Bait*"), *available at* www.womensrefugeecommission.org/images/zdocs/Children-as-Bait.pdf.

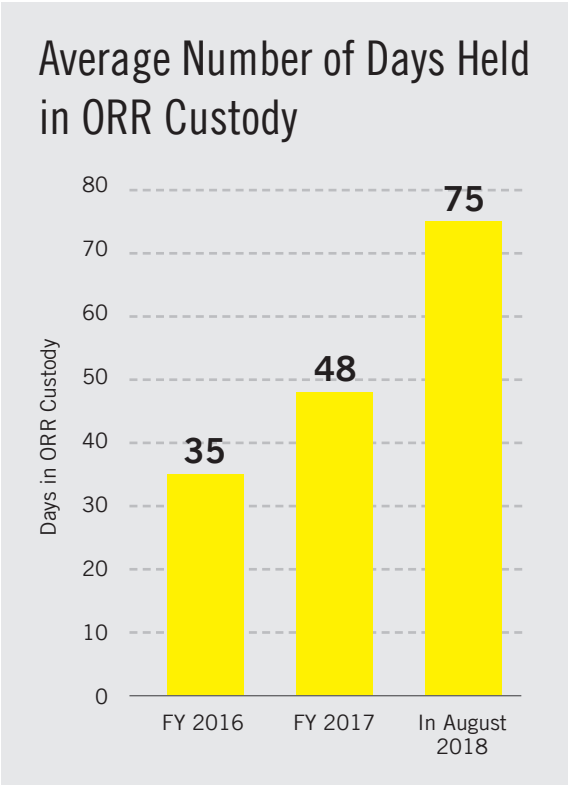
14 Exhibit 5, Draft Memorandum – Policy Options to Respond to Border Surge of Illegal Immigration, *J.E.C.M. et al. v. Scott Lloyd*, No. 1:18-cv-00903 (LMB/MSN), Eastern District of Virginia, 2018, *available at* www.splcenter.org/sites/default/files/72.6_-_3d_am.compl_._exh._5_leaked_memo_01-18-2019.pdf.

15 Additionally, while highlighting the harmful impact of the ORR-DHS agreement, the National Center for Youth Law, co-counsel on *Flores*, has identified other changes in policy and practice that have contributed to unnecessary delays in the reunification of children with their sponsoring families, such as more stringent requirements for potential sponsors and additional requirements of unaccompanied children to be considered suitable for release. See National Center for Youth Law *Flores Report*.

16 MOA. Experts, advocates, and providers working on issues of human trafficking believe that instead of protecting unaccompanied children from trafficking, the MOA will increase their risk of trafficking. See Brief of *Amicus Curiae* Human Trafficking Legal Center in Opposition to Defendants' Motions to Dismiss, *J.E.C.M. et al. v. Scott Lloyd*, No. 1:18-cv-00903 (LMB/MSN), Eastern District of Virginia, 2018, (on file with Amnesty International); *Children as Bait*; Justice for Immigrants, *The ORR and DHS Information-Sharing Agreement and Its Consequences*, April 2019, available at justiceforimmigrants.org/wp-content/uploads/2019/05/Updated-formated-MOA-backgrounder-4.29.19.pdf.

17 *ORR Guide*, para. 2.6.2.

18 *See* Notice of Modified Systems of Records, 83 Federal Register 20,844, 8 May 2018, (promulgating regulations permitting Immigration and Customs Enforcement (ICE) to use ORR-supplied sponsor information for immigration enforcement).



arrests of potential sponsors from July to November 2018 demonstrated that the placement of unaccompanied children was being used as a tool of immigration enforcement.[19]

The ORR-DHS agreement departed from previous ORR policy and practice to place unaccompanied children with the most appropriate sponsor, without consideration of the sponsor's immigration status for enforcement purposes.[20] Previously, ORR typically did not collect the fingerprints of parents or legal guardians who were potential sponsors, or of members of potential sponsors' households.[21] DHS had to request full access to a potential sponsor's files and ORR only shared information on a sponsor, which did not include the sponsor's immigration status, with ICE in the 24 hours before an unaccompanied child's release.[22]

The ORR-DHS agreement and subsequent immigration enforcement based on that agreement has had a chilling effect on the willingness of potential sponsors to come forward and has drastically delayed the placement of unaccompanied children with sponsors.[23]

In Fiscal Year (FY) 2016, unaccompanied children were held in ORR custody on average for approximately 35 days, rising to 48 days in 2017.[24] According to reporting on information provided by HHS to Congress, the equivalent figure has risen to 75 days in August 2018.[25] This average represents only the unaccompanied children who had already been released and not those who were still detained for longer periods. By August 2018, the daily discharge

19 See, for example, the testimony of Matthew Albence, Executive Associate Director, US Immigration and Customs Enforcement-Enforcement and Removal Operations, before the US Senate Homeland Security and Governmental Affairs Committee, 18 September 2018, available at www.c-span.org/video/?451534-1/justice-homeland-security-officials-testify-migrant-children-policy&start=6318 (@1:44, testifying that ICE had arrested 41 sponsors as a result of the ORR-DHS information-sharing agreement); *see* K. Cooke and Y. Torbati, *U.S. has arrested 170 immigrants who tried to claim migrant children*, Reuters, 10 December 2018, *available at* www.reuters.com/article/us-usa-immigration-arrests/u-s-has-arrested-170-immigrants-who-tried-to-claim-migrant-children-idUSKBN1O92IY (reporting that ICE stated it had arrested 170 sponsors from July through August 2018 based on information gathered from the ORR-DHS agreement, 109 of whom did not have a criminal record; this number included the 41 arrests about which ICE testified in September 2018).

20 *See* National Center for Youth Law, Center for Human Rights and Constitutional Law, and the University of California Davis School of Law Immigration Clinic, *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody* at 12 (February 2019) ("National Center for Youth Law *Flores Report*"), *available at* youthlaw.org/publication/the-flores-settlement-agreement-unaccompanied-children-in-federal-custody; *see also, Children as Bait*.

21 ORR has received information on the immigration status of potential sponsors since 2005, with ORR's policy "providing for the release of unaccompanied alien children ('UAC') to undocumented sponsors, in appropriate circumstances and subject to certain safeguards." The immigration status of potential superiors was assessed only "to ensure the safety and well-being of the child by making sure that there is an adequate care plan in place that takes all relevant aspects of the sponsor's situation into consideration." Not until the 2018 ORR-DHS agreement did ORR share the immigration status of potential sponsors with immigration agencies for enforcement action. ACF, *Sponsors and Placement Release of Unaccompanied Alien Children to Sponsors in the U.S.*, 13 February 2019, *available at* www.acf.hhs.gov/orr/about/ucs/sponsors.

22 *See* WRC and NIJC, 'Backgrounder: ORR and DHS Information-Sharing Emphasizes Enforcement Over Child Safety', June 2018, *available at* www.womensrefugeecommission.org/images/zdocs/Backgrounder-ICE-MOA.pdf.

23 *See Children as Bait*; National Center for Youth Law *Flores Report*; T. Kopan, *The Simple Reason More Immigrant Kids are in Custody Than Ever Before*; R. Moore, *Thousands of Migrant Children Could Be Released with Trump's Major Policy Reversal*, Texas Monthly, 18 December 2018, *available at* www.texasmonthly.com/news/trump-fingerprint-policy-change-reduce-migrant-children-detention-tornillo/.

24 HHS, *Fiscal Year 2019: Justification of Estimates for Appropriations Committees*, Administration for Children and Families, March 2019, available at www.acf.hhs.gov/sites/default/files/olab/acf_master_cj_acf_final_3_19_0.pdf. The US government's fiscal year runs from 1 October -30 September.

25 L. Kriel, *Longer stays leave record number of immigrant children in detention*, Houston Chronicle, 21 November 2018, *available at* https://www.houstonchronicle.com/news/houston-texas/houston/article/Thanksgiving-in-immigration-shelters-as-number-of-13415048.php; *see also*, J. Blitzer, *To Free Detained Children, Immigrant Families Are Forced to Risk Everything*, The New Yorker, 16 October 2018, *available at* https://www.newyorker.com/news/dispatch/to-free-detained-children-immigrant-families-are-forced-to-risk-everything ("Officially, the H.H.S. claims that the average time is fifty-nine days, but according to one of the department's own officials, who agreed to speak with me on the condition of anonymity, detained children now spend an average of seventy-four days in federal custody, more than double what it was at the start of 2016."). ORR data shows that unaccompanied children in ORR facilities were detained on average for 78 days in August 2018; when the temporary influx care facilities are included, the average rises to 87 days. ORR, *XGDFG569*, 10 April 2019, *available at* https://www.acf.hhs.gov/orr/resource/xgdfg569.

rate fell below 1%, meaning more children were placed in shelters than released to sponsors.[26]

As a result, even as the number of unaccompanied children arriving at the US border remained steady through 2018 and into January 2019, the total population of unaccompanied children in ORR custody continued to increase.[27] The higher arrivals of unaccompanied children from February to April 2019 do not account for the high number of unaccompanied children already detained at Homestead and long processing times to release them to sponsors.[28] In other words, a higher number of arrivals of unaccompanied children since February 2019 does not account for the need for Homestead to begin operations in March 2018.

On 18 December 2018, ORR acknowledged that the policy had delayed the timely release of unaccompanied children without benefiting children's safety.[29] It dropped the requirement that all adult members of a potential sponsor's household be fingerprinted.[30] On 23 March 2019, ORR further changed its policy to lift fingerprinting requirements for sponsoring parents or legal guardians.[31] When Amnesty International visited Homestead on 2 April 2019, the Program Director attributed the drop in the average length of stay from 89 to 64 days at Homestead due to the December policy change.[32]

However, the ORR-DHS information-sharing agreement remains in effect and ORR still shares a broad range of information on potential sponsors with ICE. The FY 2019 Appropriations Bill signed in February 2019 prohibits ICE from initiating enforcement actions against a potential sponsor or members of their households based on information shared by ORR. However, the bill's broad exceptions still enable ICE to potentially use information obtained as a result of the ORR-DHS agreement to target sponsors or their household members for immigration enforcement.[33] In addition, the prohibition lapses with the FY 2019 funding cycle, unless Congress passes and President Trump signs a new spending bill limiting the immigration enforcement reach of the ORR-DHS agreement.

This information-sharing policy has perpetuated family separation by another name. It has deterred potential sponsors from coming forward and resulted in the unlawful prolonged detention of children.[34] The US authorities should rescind in full the information-sharing agreement immediately and cease using the process of placing unaccompanied children with sponsors as a tool for immigration enforcement. Unaccompanied children should be not used as a tool of immigration enforcement to monitor, document, and arrest sponsors based on their immigration status.

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26 ORR, *XGDFG569* (10 April 2019); *see, for example*, FOX News, *More immigrant kids than ever are in US custody. Trump administration is likely keeping them there*, 14 September 2018, *available at* www.fox4now.com/news/national/more-immigrant-kids-than-ever-are-in-us-custody-trump-administration-is-likely-keeping-them-there; T. Kopan, *The Simple Reason More Immigrant Kids are in Custody Than Ever Before.*

27 *See* US Customs and Border Patrol ("CBP"), 'Southwest Border Migration FY 2019', CBP, Southwest border migration FY 2019', available at www.cbp.gov/newsroom/stats/sw-border-migration; National Center for Youth Law *Flores Report* with Briefing Addendum.

28 Furthermore, the higher number of arrivals since February 2019 does not compare with the 10,000 unaccompanied children apprehensions per month in Fiscal Year (FY) 2014 under the Obama administration. *See* CBP, *Southwest Border Migration FY 2019*; CBP, *Total Unaccompanied Alien Children (0-17 Years Old) Apprehensions By Month – FY 2010-FY 2018*, available at www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-total-monthly-uacs-sector-fy2010-fy2018.pdf.

29 R. Moore, Thousands of Migrant Children Could Be Released with Trump's Major Policy Reversal, Texas Monthly, 18 December 2018, available at www.texasmonthly.com/news/trump-fingerprint-policy-change-reduce-migrant-children-detention-tornillo/ (citing HHS, "Since the implementation of this new policy five months ago, ORR has determined the additional steps required to fingerprint all household members has had an impact on the timely release of unaccompanied children without demonstrated benefit to the safety of children after their release from ORR care.").

30 See, for example, National Center on Youth Law *Flores Report; Children as Bait.*

31 Exhibit B: March 23, 2019 Operational Directive (25 March 2018), *J.E.C.M. et al. v. Scott Lloyd*, No. 1:18-cv-00903 (LMB/MSN), Eastern District of Virginia, 2018 (implementing an operational directive concerning the MOA that "[e]effective immediately, **Category 1 sponsors no longer require a fingerprint background check** as part of the sponsor assessment process unless a public records check reveals possible disqualifying information; there is a documented risk to the safety of the child; the child is especially vulnerable; or, the case is being referred for a home study.") (emphasis in original); *see* Justice for Immigrants, *The ORR and DHS Information-Sharing Agreement and Its Consequences*, April 2019, available at justiceforimmigrants.org/wp-content/uploads/2019/05/Updated-formated-MOA-backgrounder-4.29.19.pdf.

32 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

33 House Joint Resolution 31, Consolidated Appropriations Act 2019 § 224, 25 February 2019, available at, www.congress.gov/116/bills/hjres31/BILLS-116hjres31enr.pdf; *see*, T. Kopan, *Funding deal blocks ICE from arresting adults taking in undocumented children*, San Francisco Chronicle, 14 February 2019.

34 See National Center for Youth Law *Flores Report; Children as Bait.*

4. THE HOMESTEAD FACILITY

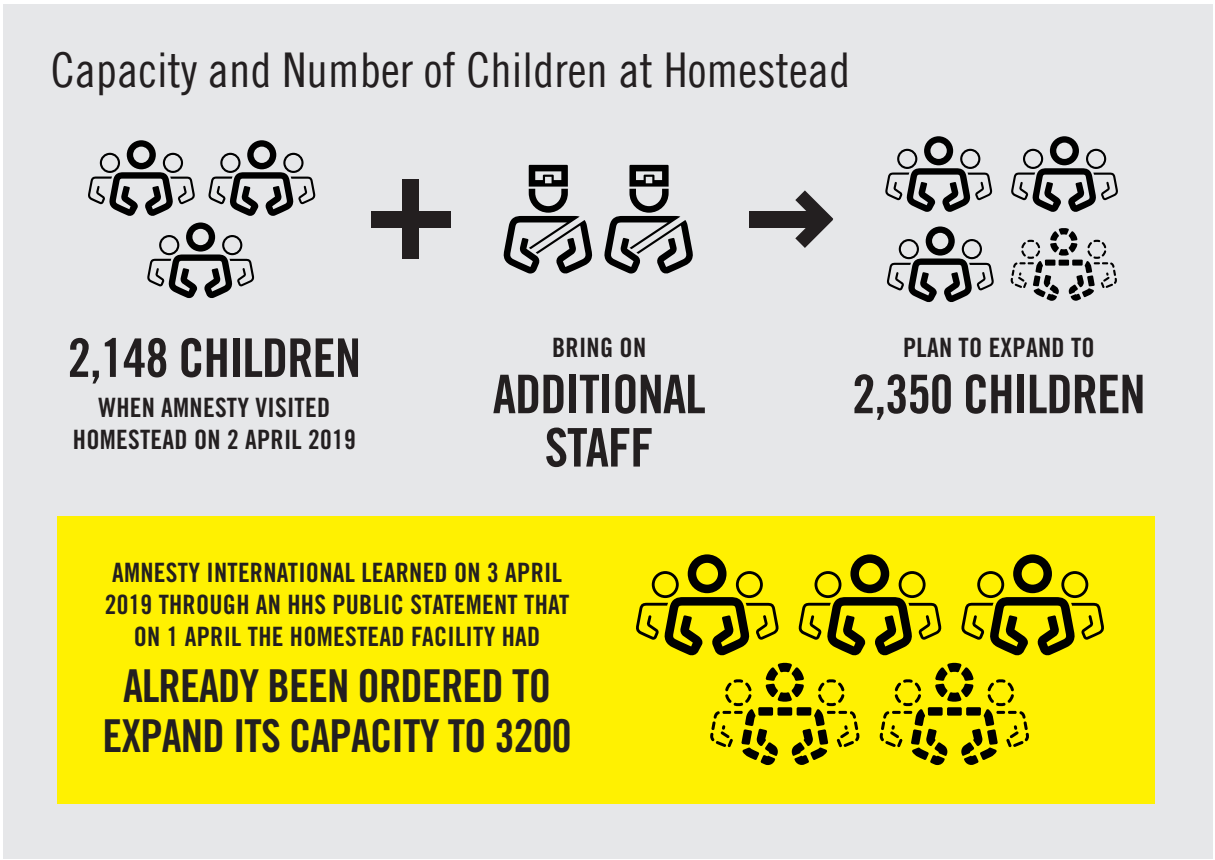
Homestead is part of the ORR network for holding unaccompanied children – and the only temporary emergency ORR facility in the USA. The Tornillo facility in Texas was also a temporary emergency facility; due to congressional oversight and public pressure, including by Amnesty International, related to conditions there, it closed in January 2019.

Homestead has the look and feel of an industrial-scale facility. It is composed of permanent and semi-permanent structures: brick and mortar buildings; metal shipping containers converted into offices for legal and other services and administration; and soft-sided structures. It sits on two campuses: the South Campus, where children aged 13 to 16 are housed, and the North Campus, where 17-year-olds are housed. Only children aged between 13 and 17 are held at Homestead; there are no babies or young children present. The Program Director informed Amnesty International that girls who are pregnant are transferred to other ORR facilities.[35] Sleeping arrangements within each campus are segregated by gender.

On the South Campus, Amnesty International observed 12 beds (six bunk beds) per room, with one shared toilet and shower and two sinks. There were no doors for privacy for the toilet or shower, only shower curtains. Buildings on the South Campus have an average population of 144 beds per floor, per building.

Staff informed Amnesty International that on the North Campus, children are housed in a former military vocational building, which has eight "bays". The bay that Amnesty International visited has 144 beds – 72 bunk beds lined up in rows. Showers and toilet stalls were located in an attached soft-sided tent structure. There were 30 showers (separate rooms, with six showers per room), a long row of toilets (partially private stalls) and rows of chairs, likely for children to wait for their turn to take a shower.

35 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.



When Amnesty International visited Homestead, on 2 April 2019, there were 2,148 children held at the facility. Staff told Amnesty International the population was 2,059[36] and capacity was 2,142. However, Amnesty International observed in the Control Room that the population was listed as 2,148 – meaning that the facility was technically already over capacity when Amnesty International visited. On 10 July 2019, Amnesty International received a letter from Caliburn International updating the population numbers at Homestead to 1,900 as of this date (see Appendix).

The Program Director informed Amnesty International that Homestead planned to expand to house 2,350 unaccompanied children "as soon as they could staff up".[37] When asked what Homestead would do in the event the population went higher than 2,350 unaccompanied children, she stated that she would move staff members out of office space in the brick and mortar buildings, if necessary, and convert that space into residential quarters for children. She asserted that children would not be placed in non-permanent structures, even if the capacity of the facility were to be expanded in the future.

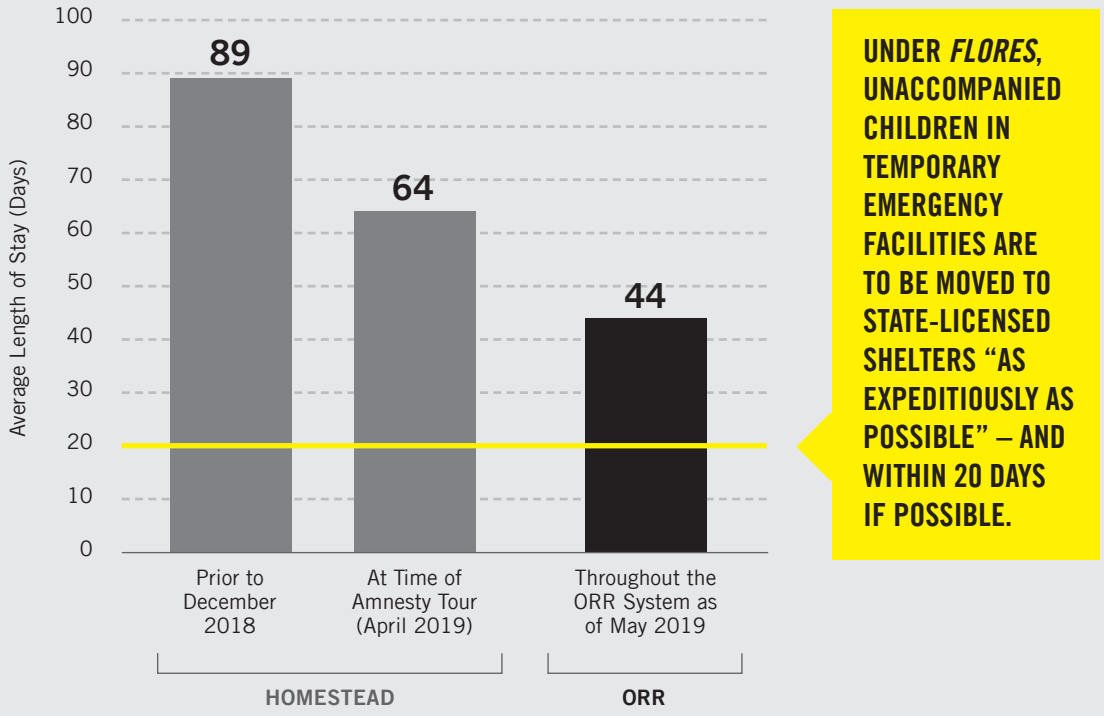
Amnesty International learned on 3 April through an HHS public statement that the Homestead facility had already been ordered on 1 April 2019 to expand its capacity to 3,200.[38] The Program Director did not indicate that she had received those orders, nor how this capacity could be reached without further undermining the best interests of the child by degrading the quality of facilities and care.

36 The age breakdowns were as follows, as relevant to North versus South campuses (totaling only 2,059, and thus not updated to reflect recent arrivals, as per the Category stats in footnote 63): North Campus: female, 219 and male, 641; South Campus: female, 343 and male, 856.

37 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019. After Amnesty International left the facility, the organzatoin learned that on 1 April 2019 that Homestead would expand to receive up to 3,200 children beginning in mid-April. The Program Director did not disclose the HHS announcement of Homestead's expansion to Amnesty International. Homestead Fact Sheet.

38 Homestead Fact Sheet.

Average Length of Stay of Unaccompanied Children at Homestead and in ORR Custody



According to Homestead staff, when Homestead began receiving unaccompanied children in March 2018,[39] 55 to 60 children came from other facilities. When Amnesty International visited, the Program Director reported that all children currently arrived straight from the southern US border with Mexico.[40] Homestead previously housed approximately 140 separated children, but the Program Director said none remained at the facility at the time of Amnesty International's visit; they had either been reunified with detained parents and held in one of several existing family detention facilities or released to parents or other sponsors.[41]

At the time of Amnesty International's visit, the Program Director stated that most children at Homestead had sponsors who were close family, called Category 2 sponsors, or immediate family, called Category 1 sponsors.[42] There were at least 97 children with no sponsors (Category 4). The Program Director explained to Amnesty International that when there is no sponsor for a child, it is better to "repatriate" (that is, deport) the child, as part of the facility's due diligence, rather than place the

39 Over 8,500 unaccompanied children were held at Homestead from June 2016 to April 2017 (Homestead Fact Sheet).

40 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

41 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019. Amnesty International did not discuss with the program director the number of children at Homestead who might have been subjected to family separations not covered under the *Ms. L.* class action lawsuit or whether they were reunified with family or aged-out into ICE detention facilities upon turning 18-years-old.

42 Category 1: Parent or legal guardian (including qualifying step-parents who have legal or joint custody of the child); Category 2: An immediate relative – a brother, sister, aunt, uncle, grandparent or first cousin (including biological relatives, relatives through legal marriage, and half-siblings); Category 3: Other sponsor, such as distant relatives and unrelated adult individuals; and Category 4: No sponsors identified. See www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2. Based on the population numbers Amnesty International observed in the Control Room, reporting that 2,148 children were held on 2 April, at least 59.5% of children had Category 1 or 2 sponsor. Not counting the Blank category designations, 81.3% of children with known sponsor status were Category 1 or 2. Further breakdown: such that 1,278/2,148 had Category 1 or 2 sponsors: Category 1) 272 male; 131 female; Category 2) 637 male; 238 female; Category 3) 150 male; 46 female; Category 4) 76 male; 21 female; and Blank) 361 male; 216 female.

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At the time of Amnesty International's visit, the program director stated that most children at Homestead had sponsors who were close family, called Category 2 sponsors, or immediate family, called Category 1 sponsors.

child with someone for the purpose of keeping them in the USA because the child might be trafficked.[43] Amnesty International is alarmed by this rationale, which could result in children being unlawfully returned to harm in the countries that they fled. Regardless of whether an unaccompanied child has a sponsor, children, like all people, have the right to seek asylum and should not be returned to a country where they may be at risk of persecution or other serious human rights abuses.

When Amnesty International visited Homestead, the Program Director reported that the average length of stay was 64 days, and that it had been 89 days, prior to the December 2018 change in the fingerprinting policy dictated under the terms of the information-sharing agreement between ORR and DHS (see Section 3).[44] The average length of time children were detained in the ORR system as a whole was 44 days as of May 2019.[45]

The Program Director reported that, since Homestead opened, approximately 93 out of over 8,500 children had turned 18 and "aged-out" from ORR care and into ICE custody at adult immigration detention facilities.[46] Homestead has a special case management team called the Age-Out Team, which works to expedite the release of any children within 90 days of their 18th birthday, when they are transferred to ICE detention. Staff informed Amnesty International that children have aged-out because they did not have a sponsor, arrived at Homestead just before they turned 18, or their sponsors did not want to (or could not) provide documentation or fingerprints.[47]

According to the staff at Homestead, 40% of the children there on 2 April were 17-year-olds[48], followed by descending age group (i.e., 16-, 15-, and 14-year-olds); 13-year-olds comprised the smallest number. Forty percent of the children were from Guatemala, followed by large representations from Honduras and El Salvador; there were small numbers of other nationalities present, including children from Ecuador, Colombia, Cuba, and Bangladesh. The Program Director informed Amnesty International that although the contract for the facility stipulates that the population should be 75% male and 25% female there can be flexibility.[49]

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43 Interview with Leslie Wood,Program Director at Homestead, 2 April 2019.

44 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

45 ACF, *Unaccompanied Alien Children Program Fact Sheet*, June 2019, www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Program-Fact-Sheet.pdf

46 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019. Once an unaccompanied child turns 18, they are transferred to ICE detention and held in one of the hundreds of existing adult immigration detention facilities, where the special procedures and policies in place under the *Flores* Agreement no longer apply.

47 Unaccompanied children are not be placed at a temporary influx care facility if they will "be turning 18 years old within 30 days of the transfer." *ORR Guide* § 1.7.3. Amnesty International did not receive information on how soon before turning 18-years-old some unaccompanied were placed at Homestead.

48 Based on the population numbers listed for the North and South campus (totaling only 2,059, and thus not updated to reflect recent arrivals; see footnote 59) 41.8 percent of the 2,059 listed in the North/South campus stats were on the North campus, meaning they were 17-years-old.

49 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019. HHS reports that as of 30 March 2019, approximately 72% of unaccompanied children were male and 28% were female at Homestead. *Homestead Fact Sheet*. Based on the population numbers Amnesty International observed in the Control Room on 2 April 2019, 30.4 percent of the 2,148 kids present were female; whereas 27.3 percent of the 2,059 that the Program Director reported were present were female.

5. INTERNATIONAL AND US LEGAL STANDARDS

Asylum-seekers should not be detained except as a measure of last resort, which must be necessary and proportionate to achieve a legitimate aim, after all other non-custodial alternatives have proven or been deemed insufficient in an individual's specific case. The detention of asylum-seekers or migrants solely on the basis of their migration status, without particular legitimate legal justifications that are specific to the individual, constitutes arbitrary detention under international law.

Under international human rights standards, all actions concerning children should be guided by the best interests of the child.[50] Under that "best interests" principle, the UN Committee on the Rights of the Child has underscored that "protection and care" should be provided that ensures "the child's 'well-being' and development. Children's well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety."[51]

The USA has incorporated this principle at the federal and state levels. Congress has incorporated the best interests of the child standard into multiple immigration law provisions respecting children.[52] All 50 states, the District of Columbia, and US territories require consideration of a child's best interests in decisions about the child's custody.[53]

Children should never be detained, whether unaccompanied or accompanied, as it is not in their best interests.[54] If children are detained, they must only be detained as a last resort for the shortest possible time, in the least restrictive setting possible and in a facility that is appropriate to the child's needs and complies with both international and US standards.[55] Whenever a child is detained, they should be treated "in a manner that takes into account the needs of persons of his or her age."[56]

In the USA, the detention, release and treatment of all migrant children – whether unaccompanied or accompanied – is governed

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50 UN Convention on the Rights of the Child ("CRC"), Article 3(1), 20 November 1989, available at www2.ohchr.org/english/law/pdf/crc.pdf. The USA signed the CRC in 1995, though it is the only country in the world that has yet to ratify it. As a signatory to the CRC, the USA is prohibited under customary international law from acts that would defeat its object and purpose.

51 Committee on the Rights of the Children, General Comment No. 14, para. 71, 2013, available at https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf ("When assessing and determining the best interests of a child or children in general . . . The terms 'protection and care' must also be read in a broad sense, since their objective is not stated in limited or negative terms (such as 'to protect the child from harm'), but rather in relation to the comprehensive ideal of ensuring the child's "well-being" and development. Children's well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety.").

52 See, for example, 8 U.S.C. § 1101(a)(27)(J) (incorporating a best interests finding into eligibility standards for special immigrant juveniles); Immigration and Naturalization Service, *Guidelines for Children's Asylum Claims*, 10 December 1998, at 2, 6, 9, (applying "the internationally recognized 'best interests of the child' principle" to interview procedures for child asylum-seekers). Federal agencies that take unaccompanied children into custody must place them in the least restrictive setting that is in their best interests. 8 U.S.C. § 1232(c)(2).

53 See Child Welfare Information Gateway, *Determining the Best Interests of the Child, 2012,* available at www.childwelfare.gov/pubPDFs/best_interest.pdf.

54 See the International Covenant on Civil and Political Rights (ICCPR), Article 9(3), 19 December 1966; United Nations High Commissioner for Refugees (UNHCR), UNHCR's Position Regarding the Detention of Refugee and Migrant Children in the Migration Context, January 2017, at p.2, *available at* www.refworld.org/docid/5885c2434.html ("[C]children should not be detained for immigration related purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests.").

55 See CRC, Article 37; UNHCR General Comment on ICCPR Article 9; Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, Article 32(f), 16 November 2017.

56 CRC, Article 27(c) 129.

by standards set in the *Flores* Agreement.[57] These standards are based on two principles: the best interests of the child and family unity. It requires the government to release migrant children as quickly as possible and to hold them in the least restrictive setting possible – generally, in a non-secure facility licensed by a state child welfare entity.

Flores stipulates various requirements relating to standards of treatment, including transportation arrangements and access to legal representation, telephones, health care, counseling, education, recreation, and religious services.[58] It also provides for exemptions to the care and oversight of migrant children "in the event of an emergency or influx of minors into the United States."[59] The TVPRA incorporates the *Flores* standards by requiring that ORR place an unaccompanied child in the least restrictive setting possible, in accordance with the child's best interests.[60]

Together with international human rights standards, the *Flores* Agreement and TVPRA provide a fundamental legal framework to measure US compliance with regard to the treatment of unaccompanied children.

57 *Flores v. Lynch*, No. CV 85-04544 DMG (Ex), Central District of California, 21 August 2015, (*Flores* Agreement), available at www.aila.org/File/Related/14111359p.pdf.

58 *Flores* Agreement, EXHIBITS 1 and 2.

59 *Flores* Agreement.

60 William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) § 235(c)(2); 8 U.S.C. §1232(c)(2), Pub. L. No. 110–457, 122 Stat. 5044 (2008).

6. HOMESTEAD VIOLATES THE US'S HUMAN RIGHTS OBLIGATIONS

Given its length of operation – over a year – Homestead functions more like an ORR permanent shelter, yet it is not required to be state-licensed or held to the more stringent standards that permanent shelters must adhere to under *Flores*, let alone the USA's human rights obligations.[61]

In short, children are held at Homestead in conditions that violate international standards and contravene the requirements of *Flores* regarding standards of detention conditions for unaccompanied children.

Unaccompanied children at Homestead are held in prolonged and indefinite detention. Care and conditions are not adequately centered on the best interests of the child principle, undermining their well-being and potentially endangering their security.

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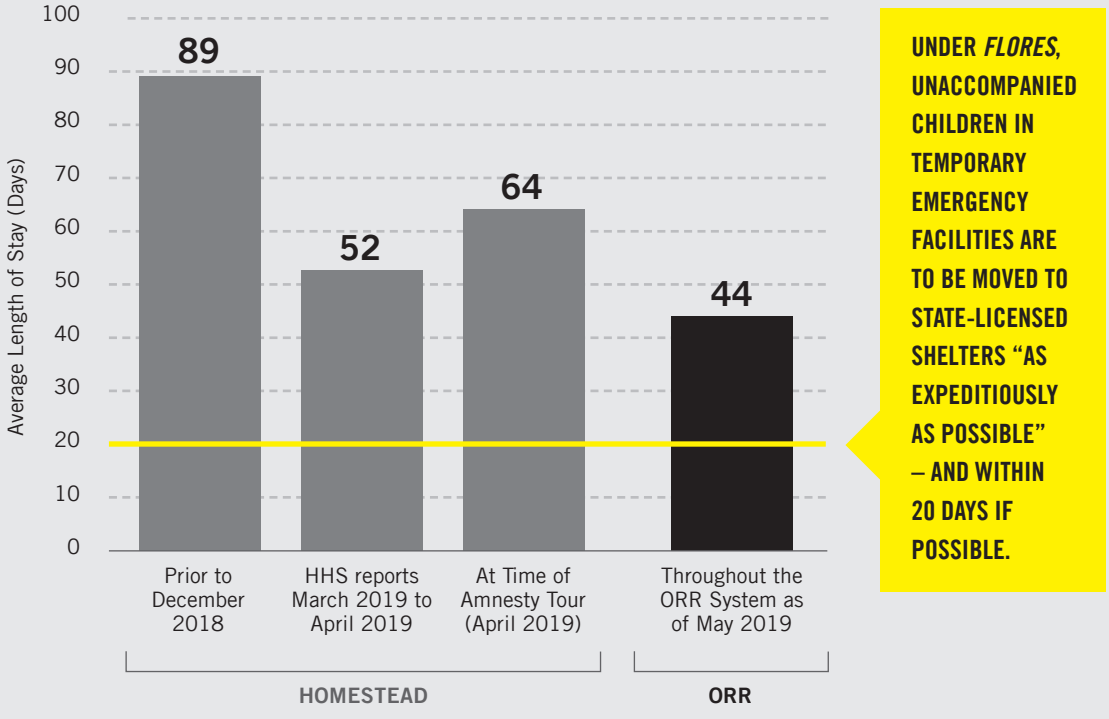
61 *Flores* Agreement.

6.1 PROLONGED AND INDEFINITE DETENTION

Children should not be detained. It is never in their best interests. They should not be held in prolonged or indefinite detention. Detention has well-documented negative effects on children's development and can cause long-term trauma and disability.[62] If children are detained, they must only be detained as a last resort for the shortest possible time and in the least restrictive setting possible.

The USA is violating its human rights obligations at Homestead by holding unaccompanied children in prolonged and indefinite detention. According to reports, as of mid-January 2019, more than 140 children had spent 100 days or more at Homestead and 26 children had spent 200 days or more there.[63] On 1 April 2019, HHS reported that "[unaccompanied children] discharged from the Homestead facility in the last 30 days remained in care on average for 52 days."[64] The Program Director at Homestead told Amnesty International on 2 April 2019 that the average length of stay at Homestead was 64 days and that previously it had been 89 days.[65] In comparison, the average length of stay in shelters throughout the ORR system as of May 2019 was 44 days. Under *Flores*, unaccompanied children in temporary emergency facilities are to be moved to state-licensed shelters "as expeditiously as

Inconsistent Reporting on the Average Number of Days in Care at Homestead



62 See, for example, J.M. Linton, M. Griffin, A.J. Shapiro, American Academy of Pediatrics, *COUNCIL ON COMMUNITY PEDIATRICS*, 'Detention of Immigrant Children,' *Pediatrics* 2017;139(5):e20170483, available at pediatrics.aappublications.org/content/139/5/e20170483.

63 National Center on Youth Law report, *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody*, February 2019.

64 Homestead Fact Sheet.

65 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

UNACCOMPANIED CHILDREN ARE DETAINED FOR PERIODS RANGING FROM TWO MONTHS TO

MORE THAN 100 OR 200 DAYS

possible" – and within 20 days if possible.[66] Caliburn International informed Amnesty International on 10 July 2019, that the average length of care in Homestead is 25 days (as of June 28, 2019). (See Appendix). However, children at Homestead are routinely held there for weeks or months beyond that point before being placed in non-secure shelter systems or with a sponsor.

As the above figures demonstrate, there is a considerable amount of inconsistent reporting on how long unaccompanied children are detained in temporary emergency facilities. Congress should investigate these discrepancies to determine the with accuracy the length of time that unaccompanied children are spending in prolonged detention at Homestead.[67] Yet, the bottom line remains the same: unaccompanied children are detained for periods ranging from two months to more than 100 and even as long as 200 days, a violation of the USA's human rights obligation.

Release from Homestead to another ORR shelter, as opposed to a sponsor, also constitutes continued prolonged detention. Amnesty International interviewed seven children at a nearby state-licensed, permanent ORR shelter who had been transferred there after being detained for periods ranging from one day to eight months at Homestead. Similarly to the now shuttered facility in Tornillo, where average lengths of detention did not reflect the fact that children had been detained at other ORR shelters, the average length of detention at Homestead reported by HHS is not inclusive of the detention of unaccompanied childrenwithin the ORR system overall.[68] It is not known how many children released from Homestead are placed with sponsors, as opposed to being transferred to other ORR shelters or even deported to their countries of origin. Further investigation of Homestead is needed into: 1) the length of time spent at Homestead; 2) the practice of transferring children in Homestead to other facilities; 3) how long children detained at Homestead are held overall in the ORR shelter system; and 4) the number of deportations from Homestead.[69]

Prolonged and indefinite detention also threatens to jeopardize the ability of 17-year-old unaccompanied children – approximately 40% of the the children held at Homestead – to remain in the shelter system while they seek reunification with sponsoring family members and pursue asylum claims. Homestead's special case management team, the Age-Out Team, works to expedite the release of any children within 90 days of their 18th birthday. However, if a child is unable to secure a willing sponsor or find placement in a foster care facility, they face being transferred from Homestead to ICE detention. Seventeen-year-olds who are held in prolonged and indefinite detention at Homestead and then transferred to another ORR shelter similarly face transfer to ICE detention from the new shelter. Transfer to ICE detention means these young people transfer from the child welfare model followed by ORR to immigration detention with adults. And, as Amnesty International has documented previously, immigration detention exposes detainees to a number of human rights violations and impedes their ability to pursue asylum claims.[70]

Under ORR policy, unaccompanied children should not to be placed at a temporary emergency facility if they will "be turning 18 years old within 30 days of the transfer."[71] The Homestead Program Director informed Amnesty International that children have in fact

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66 *Flores* Agreement, para 12(3); see *Flores v. Lynch*, 212 Federal Supplement 3d 907, 914, Central District of California, 2015, *affirmed in part, reversed in part and remanded*, 828 F.3d 898, 9th Circuit, 2016.

67 Compare reporting on figures supplied by HHS in section 4 and note 44, and Homestead numbers in section 6, for example, with ORR data sheet, www.acf.hhs.gov/orr/resource/xgdfg569.

68 For example, HHS also reports that "since opening in March 2018 over 8,300 unaccompanied children have been placed at the site and more than 6,300 have been discharged to a suitable sponsor." The situation of some 2,300 children not released to sponsors is unknown. *Homestead Fact Sheet.*

69 Amnesty International submitted a Freedom of Information Act request with the Administration for Children and families on 25 June 2016. The request for data and information was still outstanding at the time of publication of this report.

70 See Amnesty International, *"You don't have any rights here" and Jailed without Justice: Immigration Detention in the USA* (2008), available at www.amnestyusa.org/wp-content/uploads/2017/04/JailedWithoutJustice.pdf.

71 Unaccompanied children are not be placed at a temporary influx care facility if they will "be turning 18 years old within 30 days of the transfer." *ORR Guide* § 1.7.3.

"aged-out" of ORR custody into ICE detention because they arrived at Homestead just before they turned 18.[72] Amnesty International did not receive information on how soon before turning 18 some unaccompanied children were placed at Homestead. However, due to the sheer number of 17-year-olds placed at Homestead, it is concerned that many children who are nearing their 18th birthday could be placed at Homestead, in violation of ORR policy, resulting in reality in their transfer to ICE and adult detention facilities.

As noted above, the prolonged unlawful detention of unaccompanied children developed in substantial part from the information-sharing agreement between ORR and DHS preventing quicker placement of unaccompanied children with sponsors.[73] The Administration and Congress must act immediately to end the prolonged detention of unaccompanied children by providing resources and adequate staffing support to ensure that children are placed with appropriate sponsors as quickly as possible. ORR should prioritize child welfare, and not immigration enforcement, in placing children with sponsors.

6.1.1 Lack of state oversight

Amnesty International is especially concerned about the human rights violation of prolonged detention at an unlicensed facility. State licensing is critical because it provides another set of child welfare standards requiring oversight and accountability, including unannounced and regular, periodic inspections by an independent child welfare agency. In temporary emergency facilities, state licensing is a gravely needed safeguard because federal requirements for ORR temporary emergency facilities are extremely limited.[74] All ORR facilities holding unaccompanied children must adhere to international human rights standards and fully adhere to the US legal framework protecting the welfare and rights of children, including detaining children as the exception, and for the briefest possible time in the least restrictive setting.

Flores applies to all ORR facilities, whether they are located on federal or state land. Homestead is exempted from state licensing requirements both because it is designated a temporary influx care facility and because it is on federal land.[75] Nonetheless, unaccompanied children in temporary emergency facilities are to be moved to state-licensed shelters "as expeditiously as possible" – and within 20 days if possible.[76] As noted above, some unaccompanied children at Homestead have been detained for 200 days, and the average length of detention at the facility was reportedly 52 days for March 2019.[77]

The continued categorization of Homestead as a temporary emergency facility – as well as its location on federal land – enables it to circumvent the more stringent requirements governing permanent shelters. Amnesty International has previously expressed concern that the temporary emergency categorization would allow authorities to use what is intended as an exception to be the norm and that rather than planning to accommodate larger numbers of unaccompanied children in state-licensed shelters, the authorities would rely on the temporary emergency provision to escape its responsibilities under *Flores*.[78]

For example, the US federal government granted a waiver allowing a private contractor, Comprehensive Health Services, which

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72 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

73 See Kids In Need of Defense (KIND), *Targeting Families: How ICE Enforcement against Parents and Family Members Endangers Children* (December 2017)("*Targeting Families*"), *available at* supportkind.org/wp-content/uploads/2017/12/Targeting-Families-December-2017_Final-v.2.pdf; K. Cooke and Y. Torbati, *U.S. has arrested 170 immigrants who tried to claim migrant children.*

74 See, *ORR Guide* § 1.7.6.

75 *ORR Guide* § 1.7; See also *Flores* Agreement, para. 12(3).

76 *Flores* Agreement, para 12(3); see *Flores v. Lynch*, 212 Federal Supplement 3d 907, 914, Central District of California, 2015, *affirmed in part, reversed in part and remanded*, 828 F.3d 898, 9th Circuit, 2016.

77 Further investigation is warranted to determine whether the reported average length of stay at Homestead reflects when unaccompanied children are released to sponsors or rather when they transferred to ORR permanent shelters. This recalls the situation at Tornillo, where the reported average length of stay was as low as 25 days initially – while not accounting for unaccompanied children's length of stays at other ORR facilities before their transfer to Tornillo. *See, for example, The Tornillo shelter for migrant children was supposed to close after 30 days. Here's why it's still open*, PBS NewsHour, 29 November 2018, *available at* www.pbs.org/newshour/nation/the-tornillo-shelter-for-migrant-children-was-supposed-to-close-after-30-days-heres-why-its-still-open.

78 Amnesty International, *United States of America: "Why Am I Here?" Children in immigration detention*, June 2003 (Amnesty International, "*Why Am I Here?*).

THE AVERAGE LENGTH OF DETENTION AT THE FACILITY WAS REPORTEDLY

52 DAYS

FOR MARCH 2019

provides most services at Homestead, to bypass running background checks on staff against Florida's child abuse and neglect background check system (CANS).[79] CANS would provide critical additional oversight of potential employees who are working directly with children on a daily basis for extended periods of time. According to the Homestead Program Director, the recruitment of staff involves a number of background checks.[80] After fingerprinting by the FBI, they are subject to a Volunteer and Employee Criminal History System (VECHS) check at the Florida Department of Law Enforcement (FDLE).[81] Once staff have cleared the FBI and VECHS checks, they undergo a drug test, education verification, language verification, and reference checks. They then go through a 40-hour training provided by an associate contractor and receive some on-the-job training. However, because CHS's parent company, Caliburn International, is not based in Florida, Homestead is unable to run background checks on staff against CANS.

The fact that temporary emergency facilities are able to evade background checks, such as CANS, which would provide another level of review to ensure children's safety, is an egregious security issue and places unaccompanied children at increased risk for abuse. All staff at any ORR facility that houses children must be properly and thoroughly vetted, without exception. Despite arrivals of unaccompanied children holding steady from 2017 into 2018, Homestead was opened as a temporary emergency facility on federal land in early 2018, enabling it to escape state oversight and other more stringent standards for permanent ORR shelters. State child welfare regulations should apply to all ORR facilities holding unaccompanied children,regardless of their location, including those designated as temporary emergency facilities.

6.2 FAILURE TO PRIORITIZE THE BEST INTERESTS OF THE CHILD

All actions concerning children should be guided by the best interests of the child principle, including their "protection and care". These are incorporated into the *Flores* Agreement and govern the conditions and services provided at ORR facilities. However, available services and the conditions at Homestead fall short of these standards. Amnesty International's concerns include the facility's rigid institutional nature, educational services, language services, remote case management services and systems for reporting allegations of sexual abuse.

6.2.1 Impersonal, industrial-size and highly restrictive

Children should be placed into the least restrictive setting possible. Homestead provides care in a large-scale, industrial setting with thousands of children adhering to highly regimented schedules. The children are deprived of individualized care, attention and the freedom to be children in age-appropriate ways.

Due to its sheer size and scale, Homestead has the feel of a secure detention facility, not a small-size group home or residential setting that is focused on the child's best interests. The facility is surrounded by tall perimeter walls and has a 24/7 security patrol.[82] Children are not able to leave Homestead freely, and as reported to Amnesty International by the Program Director, in some

79 G. Kates, *Migrant children in U.S. are being held in unlicensed shelters, lawyers say*, CBS News, 23 January 2019, *available at* www.cbsnews.com/news/migrant-children-in-u-s-are-being-held-in-unlicensed-shelters-lawyers-say/. The Program Director also informed Amnesty International that Homestead had been granted a waiver.

80 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019. *See also, Homestead Fact Sheet.*

81 For information on VECHS, *see* www.fdle.state.fl.us/Background-Checks/VECHS-Home.aspx.

82 *Homestead Fact Sheet.*

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cases have sought to escape the facility.[83] Should a child actually escape, they will be returned once re-apprehended and continued to be held there until placed with a sponsor.[84] They follow chalked lines when they walk outside, and they are always accompanied or led by a staff member. Children wear ID badges with barcodes that are scanned as they enter and leave buildings. The highly regimented, barracks-style residences further contribute to the feel of a detention center.

In contrast, ORR permanent shelters generally provide small-size residential or group home settings. In 2018, approximately half of ORR's permanent shelters housed under 50 unaccompanied children.[85] The two ORR state-licensed, permanent shelters which Amnesty International visited housed approximately 80 and 145 unaccompanied children, respectively.

83 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

84 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019. See also, Monique Madan, *Immigrant girl escapes Homestead detention center — and then found hiding in an auto shop*, The Miami Herald, 29 July 2018, www.miamiherald.com/news/local/immigration/article215738665.html

85 HHS *FAQ*.

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As mentioned above in Chapter 5, on 2 April, the population at Homestead was just under 2,150 and could expand its capacity to 3,200. However, as of 10 May, ORR reported its population as approximately 2,200, without any update on its total capacity.[86] This is not a small-size setting; it is a warehouse designed to scale up rapidly. This industrial size facility inhibits child-centered care and development.

Daily life and services are also strictly regulated. Children's days are tightly controlled from 6.30am to 10.00pm, with only one hour-and-50 minutes of free time. Access to services is highly regimented. For example, the Program Director informed Amnesty International that girls must submit a service request form if they need sanitary pads.[87] Several children interviewed by Amnesty International who had previously been held at the Homestead facility complained of the strict and rigorous rules imposed on them there.

Where the detention of unaccompanied children is unavoidable, they should be placed in a much less restrictive setting than Homestead, such as small-size, state-licensed, permanent ORR shelters, where the primary consideration is child-centered care as opposed to economy of scale and large-scale supervision.

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86 HHS, FACT SHEET: *U.S. Department of Health and Human Services Unaccompanied Alien Children sheltered at Homestead Job Corps Site, Homestead, Florida*, 19 June 2019, *available at* www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Sheltered-at-Homestead.pdf. ORR requires that facilities supervise unaccompanied children in accordance with state licensing requirements. However, staff-children ratios "must be maintained at a minimum of: 1) one (1) on-duty Youth Care Worker for every eight (8) children or youth during waking hours; and 2) one (1) on-duty Youth Care Worker for every sixteen (16) children or youth during sleeping hours." *ORR Guide* § 4.4.1. ORR does not specify this requirement for temporary influx care facilities. *ORR Guide* § 1.7.6. ORR requires temporary influx care facilities to provide case management and emergency clinical service, but does not require specific staffing ratios. Unlike with state-licensed, permanent shelters, ORR does not require temporary influx care facilities to provide ongoing individual and group counseling services. *ORR Guide* § 1.7.6 and § 3.3.

87 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

A 16-YEAR-OLD GIRL FROM HONDURAS

who spent six and a half months at Homestead from August 2018 to February 2019, told Amnesty International that the care provided at Homestead was not appropriate for children. When she finally left Homestead and was transferred to a permanent ORR shelter, she said the biggest difference was the intimacy of the care she received. Unlike at Homestead, she was able to share more details about herself with staff, whether she was worried or sad. She spent more time outside, playing with other children between lessons; at Homestead, she stayed in a room with bunks for 12 girls and they spent most of their time inside. She also described how at Homestead required children had to fill out forms for everything, even to receive the most basic care. If children broke from the highly regimented discipline system, for instance if they got in a fight, she said the child would be shadowed one-on-one at all times and made to sit in a separate space in the classroom and during meals.

6.2.2 Education

Receiving appropriate education is essential for all children[88] and it is a right enshrined in international law.[89] Other international instruments relating specifically to children who are detained specify that states have a responsibility to provide education for detained juveniles, in particular asylum-seekers, to ease their acclimatization: "Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society."[90] International laws and standards provide that every child has the right to free and compulsory primary education and that states must accord to refugees the same treatment to refugees as they do to nationals with respect to elementary education.[91]

The minimum requirements set for temporary emergency facilities fall far short of these standards and do not even approach education services based on a child's best interests. The ORR only requires that *"[t]o the extent practicable...* Influx Care Facilities are encouraged to provide the following services: 1) Educational services...".[92] (emphasis added).

That Homestead provides more educational services than required for a temporary emergency facility is not sufficient in itself, when the standard itself is so insufficient. According to Homestead staff, and in line with permanent ORR shelters, children are placed in classrooms based on their assessed academic level. Staff also informed Amnesty International that there is a student council with elected representatives. While Homestead provides six hours of instruction daily, like ORR permanent shelters,[93] Amnesty International was not permitted to see the curriculum when at Homestead and has yet to receive a copy.[94] Amnesty

88 UN Committee on the Rights of the Child, General Comment No. 14, para 79, 2013 ("In order to promote education, or better quality education, for more children, States parties need to have well-trained teachers and other professionals working in different education-related settings, as well as a child-friendly environment and appropriate teaching and learning methods, taking into consideration that education is not only an investment in the future, but also an opportunity for joyful activities, respect, participation and fulfilment of ambitions.") available at www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

89 See Universal Declaration of Human Rights (UDHR), Article 26, 10 December 1948, *available at* www.un.org/en/universal-declaration-human-rights; International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 13, 16 December 1966, *available at* www.ohchr.org/en/professionalinterest/pages/cescr.aspx; CRC, Article 29 (instruments recognizing the role of education in allowing the development of the child's personality, talents, and mental and physical abilities to their fullest potential).

90 Rule 38, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly Resolution 45/113, 14 December 1990, www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf

91 Convention Relating to the Status of Refugees, Article 22, available at www.unhcr.org/uk/3b66c2aa10 and UNHCR, Guidelines for Refugee Children, Chapter 2, Section 1, available at: www.unhcr.org/3b84c6c67.pdf (providing that the quality of education for refugee children should be as high as for nationals of the same age).

92 *ORR Guide* § 3.3.5.

93 *ORR Guide* § 3.3.5. (Unaccompanied children "must receive six hours daily of educational services in a structured classroom setting, Monday through Friday, throughout the entire year in basic academic areas – Science, Social Studies, Math, Reading, Writing, Physical Education, and English as a Second Language ("ESL"), if applicable. Care providers adapt or modify local educational standards to develop curricula and assessments . . . ."). Amnesty International has requested a copy of the curriculum used at Homestead. As of the time of this report, Amnesty International has yet to receive this curriculum.

94 An email response from the ORR declining to provide the curriculum and advising Amnesty International that "[v]arious types of records may be obtained through a Freedom of Information Act (FOIA) request", dated 3 May 2019 is on file with Amnesty Intentional.

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The minimum standards required for temporary emergency facilities do not even approach education services based on a child's best interests. ORR only requires that "[t]o the extent practicable . . . Influx Care Facilities are encouraged to provide the following services: 1) Educational services...."

International found that, unlike the two nearby permanent shelters, Homestead does not follow the Miami-Dade County public school curriculum and relies on a curriculum developed by its main contractor, CHS. Instruction is in large, noisy classroom settings. Education instructors and lead teachers are not certified teachers themselves (though their supervisors are), and are "required to be bilingual in English and Spanish, have a bachelor's degree, and a clean criminal background check."[95] In contrast, the two nearby permanent ORR shelters have state-certified teachers from the Miami-Dade County public school system to teach in shelter-based classrooms.

On the day Amnesty International visited Homestead, children ostensibly in a mathematics lesson had no relevant course books in front of them, but were instead copying out the words of the US Pledge of Allegiance. Three children with whom Amnesty International spoke complained, in particular, about the inadequate education facilities and services at Homestead and identified education as one of the biggest differences between Homestead and the smaller size setting at the ORR permanent shelter to which they had been transferred.

A 17-year-old boy from Guatemala, who was held at Homestead from July 2018 for eight months, told Amnesty International that

95 Homestead Fact Sheet.

On the day Amnesty International visited Homestead, as children were being instructed in math, there were no math books in front of them, but handbooks in which they were copying the words of the US Pledge of Allegiance.

the education provided there was one of its worst characteristics. He noted that lessons were difficult to understand due to the open-air design and very noisy surroundings.

Amnesty International also spoke to a 15-year-old girl from Honduras, who was held at Homestead from December 2018 for three months. She said the quality of education at Homestead was particularly poor due to its large class sizes, with often only one teacher for 40 children.

Furthermore, unaccompanied children are hampered in their ability to access education due to language difficulties if they do not speak any English or Spanish. The UN High Commissioner for Refugees (UNHCR) has placed great emphasis on the maintenance of the mother tongue as a critical factor in retaining identity and strongly recommends that the children's own language be used as the primary medium of instruction.[96] Children who do not speak English or Spanish as their first language are disadvantaged at Homestead (see Section 6.2.3).

That Homestead does more than is required of temporary emergency facilities in the provision of education programming is welcomed. However, it can and needs to do more to provide education that is centered on the best interests of the child, as is required of permanent shelters. This includes adhering to the Miami-Dade County public school curriculum to ensure a full and comprehensive education for the unaccompanied children held and providing materials and instruction in appropriate languages.

6.2.3 Access to language services

"Over there, they just taught us English," a 17-year-old boy from Honduras told Amnesty International. He said the education provided at the smaller ORR permanent shelter was much higher-quality and expansive: "over here, they teach us more: history, science, math, and the history of the United States."

The isolation and confusion many detained children experience is compounded in some cases by language difficulties. Failure to provide support to children in a language they understand violates international standards.[97]

Homestead staff informed Amnesty International that the facility does have translation and interpretation services to assist children, but that they prefer to identify cases for transfer to an ORR permanent shelter so that the child does not feel alienated in Homestead's large setting.[98] However, children are not identified for transfer as long as they can communicate in either Spanish or English. This is especially troubling given that 40% of those detained at Homestead are Guatemalan children. The Program Director informed Amnesty International she did not know how many Guatemalan children at Homestead spoke an Indigenous language as their primary language. The Program Director further told Amnesty International that 13 cases had been flagged to ORR because the children did not speak English and had very limited Spanish or no Spanish.[99]

96 UNHCR, Guidelines for Refugee Children, available at: www.unhcr.org/3b84c6c67.pdf

97 ICCPR, Article 14.3; CRC, Article 40; UN *Rules for Juveniles Deprived of Their Liberty*, Articles 6, 24, 14 December 1990, *available at* https://www.ohchr.org/EN/ProfessionalInterest/Pages/JuvenilesDeprivedOfLiberty.aspx.

98 Amnesty International did not receive further information on how quickly children are transferred after placement at Homestead.

99 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

However, Homestead's approach to Indigenous and other children who do not speak Spanish or English falls short of international standards. Relying on a child's ability to communicate in a secondary language is not sufficient to look after their best interests in any sense – from well-being and development to legal and health needs to education and other services. Nearby state-licensed, permanent shelters offered translation services for non-English and non-Spanish speakers, including Indigenous languages.

Language services need to be improved to ensure care is appropriate for the children held at Homestead, from access to materials and instruction in children's first languages to interpretation services.

6.2.4 Services and case management

Based on its visit to Homestead and interviews with children who were held there, Amnesty International found that Homestead provided inconsistent and sometimes inadequate case management and social services for children.

At the time of Amnesty International's visit, the Program Director was aggressively expanding the use of remote care staff through video-conferencing as Homestead sought to increase its overall capacity, and were relying on remote case management services for 17-year-old children in particular. Case management teams include the case workers who focus on the children's release to sponsors as well as clinicians, who provide counseling services.[100] The Program Director informed Amnesty International that Homestead selected 17-year-olds for remote services because they were the oldest, suggesting that Homestead understands the inappropriateness of providing remote care to children.[101] Because ORR does not require temporary emergency facilities to provide ongoing individual and group counseling services and remote case management services take away the opportunity that could exist for face-to-face contact with clinicians.[102]

Furthermore, Homestead does not have the same requirements for the licensing of clinicians, raising additional concerns about inadequate care and questions about the outsourcing of critical psychosocial care. According to media reports, the government contractor enlisted counselors and case managers in Texas to work remotely with the clients because they did not receive enough applications from the area near Homestead. However, some local child care advocates questioned the use of remote access care at Homestead considering it is located 30 miles from Miami, Florida, where there is a large pool of bilingual case workers. Others stated that local providers had not been engaged by the administrators at Homestead, suggesting that the local area was not short of applicants. The lack of local case worker applicants is also the reason the Program Director provided to Amnesty International for the need for remote services.[103]

Whenever a child is detained, they should be treated "in a manner that takes into account the needs of persons of his or her age."[104] Children at Homestead are alone, often traumatized from the violence and persecution endured in their home country and possibly en route to the USA, and are awaiting uncertain reunification with sponsoring family members. Providing remote care is not conducive to open communication and creating a sense of personal connection and trust with care providers, which is the goal and anticipated outcome of in-person care.

At the time of Amnesty International's visit, almost a quarter of Homestead's case management teams worked remotely and were based in Texas. There were 26 case management teams working directly from Homestead and eight case management teams based in El Paso. Children with remote services communicate by video with their case management team – including their

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100 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019. see also, ACF, *Children Entering the United States Unaccompanied: Guide to Terms*, 21 March 2016, *available at* www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms.

101 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

102 *ORR Guide* § 1.7.6 and § 3.3.

103 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019. See also, A. Gomez Licon, *Critics decry long-distance counseling for migrant teens*, The Associated Press, 15 May 2019, www.apnews.com/8030f9b0e7f14e9fb0b38285fb0e5a07 .

104 CRC, Article 37(c)129.

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clinicians, in some cases. Children have the opportunity to request an in-person visit with their clinician, for example – if they submit a service request form, which is available in English and Spanish. In contrast, nearby permanent shelters rely on on-site case management teams.

Amnesty International spoke with a 17-year-old boy from Guatemala who was diagnosed with tuberculosis upon arrival at Homestead in July 2018. He was taken to a local hospital where he received treatment for the infection and returned to Homestead upon completion of treatment. Nonetheless, over the eight months he was held at Homestead, he was assigned a case manager based in Texas, with whom he spoke by video conference once a week before being released to a nearby permanent shelter.

Providing essential services for children's well-being through case management teams should be done in person. Face-to-face contact develops trust and creates a personalized environment that communicates the focus is on the child and their needs. Remote care is not ideal even for adults, let alone children, and does not meet the requirements of the best interests of the child held at this facility.

Several children interviewed by Amnesty International, who had previously been held at the Homestead facility, also complained of impersonal care by on-site case management staff.

Appropriate and personal care is particularly vital for children who may have experienced extreme trauma in their countries of origin, or on their journeys to the United States, and may have special needs for psychosocial support and health care.

Two 17-year-old boys from Honduras told Amnesty International that when they arrived at Homestead, medical tests found that they were HIV-positive. In one case, the boy lost his family sponsors after they learned of his HIV status and he was held at Homestead for three months before being transferred to a permanent ORR shelter. In the other case, Homestead personnel kept the boy in medical segregation for over a month because of his HIV status, during which time he did not participate in educational or other services. He was subsequently placed in a permanent ORR facility. The doctor told him not to tell anyone about his HIV status, supposedly to prevent bullying from other children, until they transferred him out of the facility. While the children in each of these cases were eventually transferred to permanent ORR shelter facilities where they have received state-

"SHE WOULD LIE TO ME AND TELL ME THAT SHE SPOKE TO MY SPONSOR EVERY DAY, WHEN SHE DIDN'T"

A 17-year-old boy from Honduras said he discovered he may have been held much longer than necessary because his case manager had misrepresented her efforts: "She would lie to me and tell me that she spoke to my sponsor every day, when she didn't," he said. During his three months at Homestead, he only met with his case manager three times, even though he was rapidly approaching his 18th birthday. At each appointment, they had the same conversation regarding the need to get fingerprints from his sponsor, which ultimately took 60 to 70 days. When he was able to speak to his sponsor, he learned that the case manager had not actually contacted the sponsor as frequently as she claimed.

licensed care, their experiences demonstrate how the prolonged detention of these children in a facility like Homestead without access to adequate care and services while dealing with serious health issues can cause serious harm to the children and is counter to the best interests of the child standard for the care of unaccompanied children and highlights the problem of detaining any unaccompanied children in such temporary facilities.

6.2.5 Reporting allegations of sexual abuse[105]

Ensuring the safety and security of children is fundamental to ensuring their best interests are met.

Amnesty International found that allegations of sexual abuse made by unaccompanied children in Homestead have not been adequately reported, as required by the 2013 Violence Against Women Reauthorization Act (VAWA).[106] The Program Director informed Amnesty International that there had been only one allegation of sexual assault reported by a child since Homestead opened in early 2018.[107] That case involved a Homestead employee and the Program Director sought to question the merit of the child's allegation. However, publicly available information and media reports indicate that there have been six or more allegations of sexual abuse at Homestead, including two involving staff members, since the facility opened in 2018.[108] Underreporting or a lack of transparency in the reporting of sexual abuse fosters an environment in which staff are not held accountable for custodial sexual misconduct and which does not facilitate the prevention of sexual abuse between children held at the facility. Congress should conduct oversight hearings into the reporting of sexual abuse allegations at Homestead.

Furthermore, while visiting the facility, Amnesty International observed that Homestead does not provide adequate privacy for unaccompanied children to report allegations of sexual abuse. Sexual assault awareness and reporting information are posted up in English and Spanish throughout the residences, medical center, and other public spaces on both campuses of the Homestead facility. There are Prison Rape Elimination Act of 2003 (PREA) phone booths labelled "PREA" that are pre-programmed for reporting sexual assault complaints – as well as to call consulates (of El Salvador, Guatemala, and Honduras), attorneys, and a national reporting hotline.

However, there is a difference between following the letter of the law and providing meaningful privacy to report sexual abuse.

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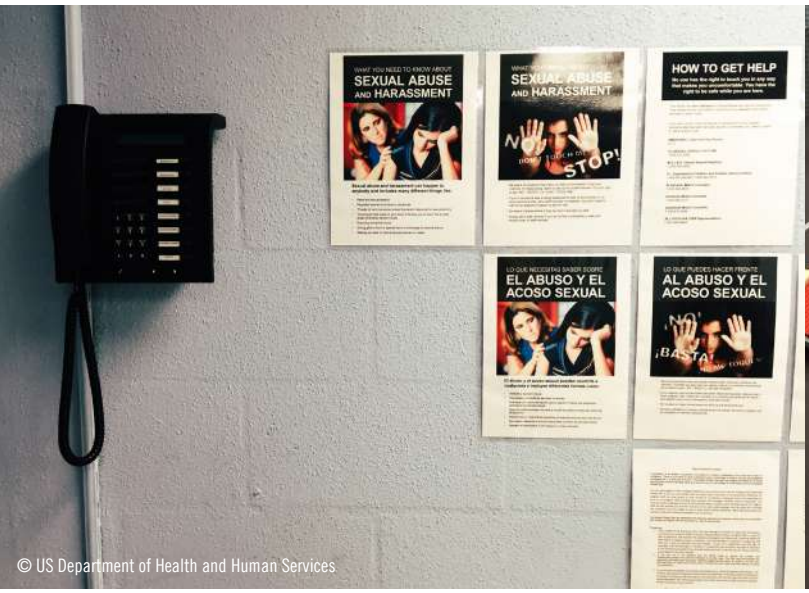
105 Various US laws and policies strictly regulate the prevention, detection, reporting of and response, and sexual abuse and harassment of unaccompanied children. See, for example the ORR Policy Guide. For allegations of other harm, unaccompanied children fill out complaint forms and have access to clinicians and youth care workers.

106 Violence Against Women Reauthorization Act of 2013, Public Law 113-4 (VAWA 2013).

107 Interview with Leslie Wood, Program Director at Homestead, 2 April 2019.

108 CBS Miami, 'State Probed Abuse Claims At Child Migrant Shelter In Homestead', 20 March 2019, available at miami.cbslocal.com/2019/03/20/state-probed-abuse-claims-at-child-migrant-shelter-in-homestead/.



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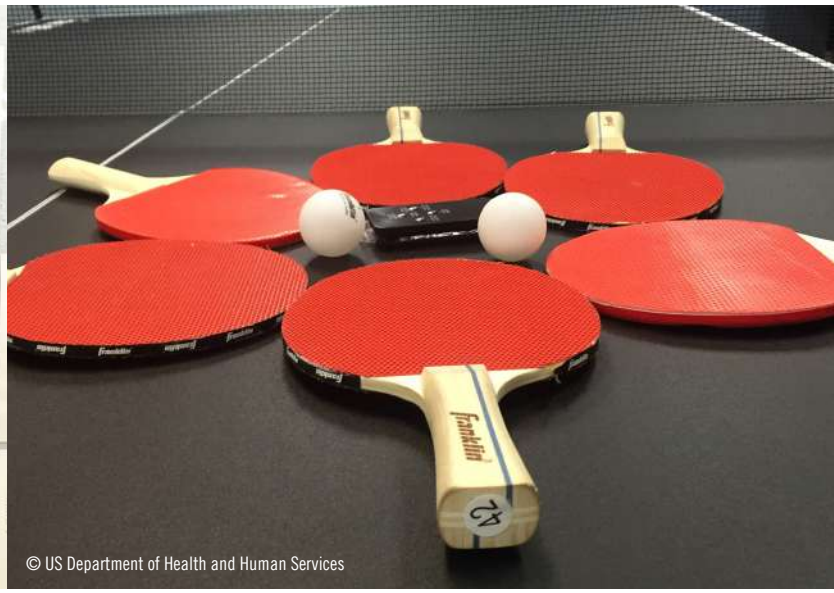

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The PREA phone on the North Campus, for example, is located in an open-air cubicle within five feet of a ping pong table in a recreation room. Such PREA phone booths are wholly inadequate; they do not offer privacy for an individual to report a traumatizing incident of abuse. PREA phones must be immediately placed in more private locations. The improvised PREA phone cubicle shows the inherent problems with a facility deigned to warehouse children – the focus is on scaling industrial-size care, not rooting practices in the best interests of the child.

Children's safety and security needs to be better prioritized. Accurate and transparent reporting on allegations of sexual abuse is needed, and children should be given the physical privacy – and sense of security – to encourage their reporting and open discussion of in some cases serious concerns.

7. CONCLUSION AND RECOMMENDATIONS

Homestead is not a home for children. It is an industrial-scale facility for processing mass numbers of children. Its focus is, therefore, on containment rather than the best interests of the unaccompanied children housed there.

Children are detained for prolonged and indefinite periods at Homestead in contravention of both US and international standards. These clearly state that children should only be detained as a last resort and, if detention is unavoidable, for the briefest time and in the least restrictive setting possible in a facility appropriate to their needs. This is not what is happening at Homestead.

The conditions of care and custody at Homestead do not satisfy the legal requirement that the authorities prioritize the best interests of the child. It is an unlicensed facility run without state oversight. The industrial-scale and restrictive setting of Homestead inhibits child-centered care. Critical case-related services are provided remotely for some children, and this looks set to increase. Those receiving such care include children in need of counseling for the trauma undergone in their home countries or on their journeys to the USA, who are separated from family sponsors and in prolonged detention. Language services are only provided in Spanish and English are not integrated into social services, which is especially problematic when a potentially large number of children speak Indigenous languages. Lastly, children are endangered by a lack of privacy to report allegations of sexual abuse.

Holding children in facilities such as Homestead is a violation of their human rights and the practice must be ended. Amnesty International, therefore, calls on the authorities to implement the following recommendations.

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RECOMMENDATIONS:

TO THE US CONGRESS

- Urgently conduct public hearings on the Homestead facility, covering:
  - » prolonged and indefinite detention, including the longest periods of detention
  - » the practice of transferring children in Homestead to other ORR facilities
  - » how long children detained at Homestead are held overall in the ORR shelter system
  - » length of detention at Homestead and the ORR shelter system generally by category of sponsor
  - » the scope of deportations from Homestead
  - » HHS's reporting on the number of unaccompanied children at Homestead and in the ORR system generally
  - » conditions of detention, including the restrictive, large-scale setting; opaque education services; insufficient language services; inadequate systems for reporting sexual abuse; and use of remote case management services; and the provision of individual and group counseling services, amongst others, and
  - » the extended usage of temporary emergency facilities since January 2018 and the Administration's plans for scaling up additional temporary emergency facilities
- Prioritize funding for resources, including staffing support, to ensure that unaccompanied children are placed with appropriate sponsors as quickly as possible.
- Urge HHS to develop a farsighted planning process that has the elasticity necessary to accommodate variations in the numbers of unaccompanied children populations, while complying with the standards set out in the *Flores* Agreement, including licensing, and international human rights standards.
- Ensure that funding for any new temporary emergency ORR facilities requires the facilities to be state-licensed, no matter where they are located, and follow the *Flores* Agreements and international human rights standards
- Include language in the DHS appropriations bill for 2020 restricting, with no exceptions, ICE's ability to use these appropriated funds to engage in immigration enforcement against potential or current sponsors or members of their households based on information provided through the ORR-DHS agreement.

TO THE US DEPARTMENT OF HEALTH AND HUMAN SERVICES

- Move to close the Homestead facility as soon as possible
- End the practice of protracted use of temporary emergency ORR facilities and transfer children to small-size, state-licensed, permanent ORR shelters that meet the standards set out in *Flores* and international human rights law
- Provide resources and adequate staffing support to ensure that unaccompanied children are placed with appropriate sponsors as quickly as possible. Whenever possible, all effort should be made to place unaccompanied children in ORR facilities as close to their potential sponsors as possible
- Ensure that decisions on releasing an unaccompanied child to an appropriate sponsor are made in a child's best interests, expeditious, and not based on the sponsor's immigration status
- Rescind the information-sharing agreement between ORR and DHS immediately

TO THE US DEPARTMENT OF HOMELAND SECURITY

- Rescind the information-sharing agreement between ORR and DHS immediately
- Do not use information provided by HHS to target sponsors of unaccompanied children for immigration enforcement

TO THE US ADMINISTRATION

- Unaccompanied children awaiting determination of their immigration status should not be routinely detained. The US government should revise its detention law and policy in light of the requirements of international law. International law requires that the detention of asylum-seekers is the exception and should normally be avoided and further stipulates that children should only be detained as a last resort and for the shortest possible period of time.
- Ensure that all agencies dealing with unaccompanied children comply fully with all relevant national laws, regulations, and international standards concerning detention conditions for children
- Immediately cease using the process of placing unaccompanied children with sponsors as a tool for immigration enforcement and rescind in full the information-sharing agreement

8. APPENDIX:

RESPONSE FROM CALIBURN INTERNATIONAL CORPORATION

CALIBURN

10 July 2019

Mr. Mark Dummett
Head of Business and Human Rights
Amnesty International
1 Easton Street
London, WC1X 0DW
United Kingdom

Dear Mr. Dummett:

Thank you for your recent letter regarding the emergency care shelter in Homestead, Florida, operated by the United States Department of Health and Human Services (HHS). Caliburn International LLC is a contractor supporting HHS at that location, along with other contractors and subcontractors. We appreciate the opportunity to correct the record regarding a number of inaccuracies in your letter and draft report, which have led to a set of unsubstantiated conclusions. Relevant facts which we would like to share include:

The Homestead emergency shelter is run by a caring staff of over 4,000 professionals who support nearly 2,000 children and is operated in accordance with United States law.

Under Title 8, Section 1232 of the United States Code, "all unaccompanied alien children" are required to be transferred to the care of the Secretary, HHS not later than 72 hours after identifying such children. HHS is directed to provide temporary care for the minors until suitable custodians can be found to safeguard their physical and mental well-being. This law was passed unanimously by the United States House of Representatives and Senate as part of the Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457).

Every effort is made by HHS to unite the teenagers at Homestead with properly vetted sponsors as swiftly as possible. The average length of care in Homestead is 25 days (as of June 28, 2019). This length of time comports with United States law, including the Flores Settlement Agreement of 1997, which states that in the event of an emergency influx of minors into the United States, the government shall place them with an authorized adult or in a non-secure licensed facility "as expeditiously as possible."

Homestead is a temporary facility that was re-opened by HHS in response to the arrival of thousands of unaccompanied children on the southern border of the United States.

The Homestead emergency care shelter first opened as a temporary facility in 2016 in response to a significant increase in the number of unaccompanied children entering the United States. Comprehensive Health Services (CHS), a Florida-based company that now is part of Caliburn International, was awarded contracts by HHS to provide staffing, medical support, and medical equipment to help HHS meet its responsibilities. Assistance provided by CHS included physicians, physician assistants, nurses, nurse practitioners, licensed clinicians, case managers,

youth counselors, teachers, and education instructors. HHS sheltered over 8,500 children at Homestead from June 2016 to April 2017, at which time the facility was closed as the number of arriving unaccompanied children declined, and they could be accommodated in permanent shelter facilities.

The excellent care provided by HHS and CHS from 2016-2017 was praised by members of Florida's Congressional delegation and, when a new surge of unaccompanied minors began in early 2018, state and local community leaders were notified of the reactivation of the Homestead site. HHS began to once again shelter children at Homestead in March 2018. As before, it is expected that the Homestead shelter will remain open until such time that HHS can accommodate arriving unaccompanied children in its permanent facilities.

Unaccompanied children receive excellent care at the Homestead emergency shelter.

Since its reopening in March 2018, over 13,000 teenagers have been placed at Homestead, and more than 10,000 have been discharged to a suitable sponsor. Currently, there are approximately 1,900 teenagers residing under temporary care at Homestead. To protect them from being placed in dangerous surroundings, careful vetting of potential sponsors is accomplished by HHS. This is pursuant to Congressional direction to protect the children from an unacceptable risk of trafficking and other forms of abuse.

The Homestead emergency care shelter is subject to all applicable federal regulations and HHS policies and procedures. All staff members at Homestead pass FBI fingerprint background checks, which highlight relevant information needed to ensure safety. All employees also undergo a drug test, education verification, language verification, and reference checks. They then complete 40 hours of formal training as well as on-the-job training alongside experienced staff members.

Legal services are provided to the teenagers at Homestead. Each receives a "Know Your Rights" presentation and an individual legal screening. Minors attending immigration court are assigned a lawyer who provides representation either as an attorney of record or Friend of the Court.

At Homestead, the shelter's education department administers a General Assessment Test to every teenager, to enable academic placement. The test focuses on Spanish, English, and Mathematics. The children then receive six hours of classroom instruction each day provided by education instructors who are supervised by certified teachers. Instructors at Homestead are required to be bilingual in English and Spanish, have a bachelor's degree, and pass a background check. After classes and on weekends, the children play outside for two-to-three hours per day (weather permitting). They are provided with three nutritious meals every day, plus snacks. They are given new clothes and a clean bed in which to sleep every night in air-conditioned rooms. Religious services are provided weekly. And great care is taken to ensure they are kept physically safe at all times.

To facilitate placement beyond the shelter, each teenager is provided with a case worker who is dedicated to finding a sponsor for that child in the most expeditious – yet safe – manner. Case workers are bilingual in English and Spanish. If the child speaks another language, translators are available to facilitate conversation and provide reassurance. If a minor is nearing his or her 18th birthday, a dedicated team is assigned in an enhanced effort to find a sponsor prior to the teenager being relocated beyond HHS' care.

Physical health care and emotional counseling are provided at the Homestead shelter by a staff of more than 160 medical professionals. All teenagers arriving at Homestead are medically screened and receive initial vaccinations within 48 hours of arriving. The initial screening includes a general health assessment, a mental health assessment, and a review of vaccination history. If a vaccination record is not located or is not up to date, the child receives all vaccinations recommended by the Centers for Disease Control and Prevention. If health issues arise during or after the initial screening, medical care is provided by the Homestead shelter staff. If health issues are identified that are beyond the capabilities of the staff, the children receive prompt treatment at nearby hospitals and dental clinics.

Conclusion

This response is intended to provide a more complete understanding of the facts pertaining to the Homestead emergency care shelter than was indicated in your letter. I ask that it be printed in full in your report, to furnish an accurate representation of the facts pertaining to Homestead.

Every day, over 4,000 dedicated government and private-sector professionals are working in the Homestead shelter to provide a secure and happy environment for unaccompanied teenagers arriving in the United States, while striving to expeditiously unite them with appropriately vetted sponsors. The success of their efforts to date has been noteworthy, and they continue to seek better ways to accomplish their mission.

The extraordinary efforts of the HHS/Caliburn team will continue at Homestead so long as the temporary shelter remains open, working together to address the needs of the vulnerable children entrusted to our care. We are very proud of our team's determined efforts, and we are grateful for their dedication and skill.

Sincerely,

Jim Van Dusen
CEO of Caliburn International, LLC

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