

MEMORANDUM OF AGREEMENT (MOA)  
AMONG  
THE OFFICE OF REFUGEE RESETTLEMENT  
OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AND  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AND  
U.S. CUSTOMS AND BORDER PROTECTION  
OF THE U.S. DEPARTMENT OF HOMELAND SECURITY  
REGARDING  
CONSULTATION AND INFORMATION SHARING IN MATTERS RELATING TO  
UNACCOMPANIED CHILDREN

I. Parties

The Parties to this Memorandum of Agreement (MOA) are the Office of Refugee Resettlement (ORR) in the Administration for Children and Families of the U.S. Department of Health and Human Services (HHS), and U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) of the U.S. Department of Homeland Security (DHS) (collectively “the Parties”).

II. Purpose

The sharing of immigration-related information among federal agencies is expressly provided for by various federal statutes. *See* 8 U.S.C. § 1232(c)(3)(C); 6 U.S.C. § 279(b)(2). In fact, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires that DHS “provide [to HHS] information necessary to conduct suitability assessments from appropriate Federal, State, and local law enforcement *and immigration databases.*” 8 U.S.C. § 1232(c)(3)(C) (emphasis added). ORR and DHS each require certain information from the other in order to implement their respective responsibilities under the TVPRA.

The instant agreement is not subject to the notice-and-comment requirements of the Administrative Procedure Act (APA) because it imposes no new requirements on the public. The APA specifically exempts from its rulemaking procedures interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice. 5 U.S.C. § 553(b)(3)(A).

III. Authorities

This MOA is authorized under, and entered into consistent with, the following provisions of law:

- A. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 102(b), 462, 116 Stat. 2135, 2142, 2202 (codified at 6 U.S.C. §§ 112(b), 279);
- B. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235, 122 Stat. 5044, 5077-79 (codified in principal part at 8 U.S.C. §

- 1232);
- C. Privacy Act of 1974, as amended, 5 U.S.C. § 552a;
- D. Immigration and Nationality Act of 1952, as amended, §§ 103(a), 287 (codified at 8 U.S.C. §§ 1103(a), 1357); and
- E. Tariff Act of 1930, as amended, § 589 (codified at 19 U.S.C. § 1589a).

#### IV. Termination

The April 13, 2018 MOA among the Parties regarding consultation and information sharing in matters relating to unaccompanied children (defined as “unaccompanied alien children,” or “UAC” by the applicable authorities and referred to as “unaccompanied children” or “UC” for the remainder of this MOA) is terminated as of the effective date of this MOA. This MOA does not revise, supersede, or terminate the Parties’ responsibilities under the February 22, 2016 MOA between DHS and HHS regarding unaccompanied children, which established a framework for interagency coordination.

#### V. HHS and DHS Responsibilities

##### A. Initial Referral and Transfer

1. At the time of initial referral, the DHS component (ICE or CBP) referring an unaccompanied child (UC) to HHS (specifically, ORR) will electronically transfer the following information about the UC, to the extent such information is known and can be gathered in an operationally reasonable manner, to ORR through the “UAC” Portal or by some other appropriate method:
  - a. Basic biographical data (e.g., name, date of birth, country of birth, potential sponsor information);
  - b. Situational factors (e.g., health, pregnancy, travel companions);
  - c. Human trafficking indicators; and
  - d. Known criminal or behavioral issues, including arrests, criminal charges and convictions, immigration history, criminal gang affiliation or suspected criminal gang affiliation, and violence or behavioral concerns.
2. To ensure ORR has available information and supporting documentation to make an informed placement decision, the apprehending DHS component (ICE or CBP) will normally include in the Transfer Packet, to the extent that such information is available and practicable to provide:
  - a. Copies of all identity documents;
  - b. DHS Form I-213, Record of Deportable/Inadmissible Alien;
  - c. DHS Form I-216, Record of Persons and Property Transferred;
  - d. DHS Form I-217, Information for Travel Document or Passport;
  - e. DHS Form 1-770, Notice of Rights and Request for Disposition;
  - f. DHS Form 1-862, Notice to Appear or other charging document;
  - g. CBP Form 93, Unaccompanied Alien Child Screening Addendum (trafficking

- information), if conducted;
- h. Other DHS, ICE, or CBP forms, if applicable, such as DHS Form 1-200, Warrant for Arrest of Alien; and
  - i. Copies of any publicly available federal, state, or local criminal records in the possession of the apprehending DHS component (ICE or CBP) at the time of transfer and appropriate available documentation describing any criminal gang, immigration, criminal, or other activity that may affect placement.
3. As expeditiously as possible, but no later than 24 hours after receiving notification from ICE or CBP of a UC needing placement at an ORR facility, ORR will send notification to ICE and/or CBP of the placement location. At a minimum, the message will include:
- a. Identifying information of the UC
  - b. ORR care provider name and address; and
  - c. ORR care provider point of contact (name and telephone number).

#### B. ORR Care

1. While UC are in ORR care, ORR will notify ICE or CBP of the following situations, as expeditiously as possible, but no later than 48 hours after the occurrence:
  - a. Absconding. The ORR-funded care provider will contact the ICE Enforcement and Removal Operations (ERO) Field Office Juvenile Coordinator (FOJC) by telephone and provide notice by email that a UC has absconded and not returned to the ORR care provider.
  - b. Arrest of a UC in ORR custody. The ORR-funded care provider will contact the FOJC by telephone and provide notice by email.
  - c. Death of a UC. ORR headquarters will immediately notify, by telephone, ICE ERO.
  - d. Allegation that a child is a victim of human smuggling or human trafficking. ORR will notify Homeland Security Investigations, as appropriate.
  - e. Allegations that a child is a perpetrator of a crime that ORR determines would make the child a danger to the community will be reported to DHS where required by Federal or state law, and where disclosure of the information does not waive any applicable privilege or confidentiality requirement under Federal or state law.
  - f. Allegation of abuse of a UC in ICE or CBP custody. If ORR becomes aware of allegations of abuse of a UC while he or she was in ICE or CBP custody, ORR will notify the appropriate DHS component (ICE or CBP) as required under ORR policy.
  - g. ORR will report physical assaults perpetrated by a UC on another person occurring at the care provider if such information is used in a determination that the UC is dangerous.
  - h. Change in level of care. ORR will provide notice by email to the FOJC of any step up/step down to or from secure care for the UC.

2. ORR will provide to the FOJC copies of all age-determination findings concluding that an individual is 18 years of age or over as soon as possible from the time of such determination.
3. If ICE or CBP becomes aware of any criminal information (e.g., information regarding criminal gang affiliation) that it did not have at the time of initial referral and transfer, ICE or CBP will notify ORR as expeditiously as practicable after becoming aware of the information (using their best efforts to provide such notification within 48 hours), and provide supporting documentation to aid in ORR's consideration of whether transfer of the UC may be necessary.
4. To the extent permitted by law, and consistent with policy, DHS will report to ORR the results of any investigations it conducts that would be relevant to ORR's determinations concerning UC care and placement. Such information will be provided as expeditiously as possible, and normally within 96 hours of such information becoming available.

#### VI. Severability

Nothing in this Agreement is intended to conflict with current law or regulation or the directives of DHS, CBP, ICE, HHS, or ORR. If a term of this MOA is determined to be inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

#### VII. Funding

Each Party intends to bear its own costs in relation to this MOA. Expenditures are subject to the Parties' budgetary resources and availability of funds pursuant to applicable laws and regulations. The parties expressly acknowledge that this MOA in no way implies that funding is to be made available for such expenditures and does not obligate the Parties to expend any funds. Nothing in this MOA is intended to or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Antideficiency Act, 31 U.S.C. §§ 1341-1519.

#### VIII. No Private Rights

This MOA is not intended to, does not, and should not be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party in any administrative, civil, or criminal matter, against the United States, or any of its agencies, officers, or employees. This MOA does not and is not intended to place any limitations on the otherwise lawful enforcement or litigation prerogatives of the Parties.

**IX. Effective Date, Modification, and Termination**

This MOA will take effect immediately upon execution by all signatories and will remain in effect until revised or revoked in writing by mutual agreement or terminated without cause by any Party upon five (5) days advance notice in writing.

**Signatures for U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, of the Department of Homeland Security and the Office of Refugee Resettlement of the Department of Health and Human Services  
Memorandum of Agreement Regarding Consultation and Information Sharing in Matters Relating to Unaccompanied Children**



Troy Miller  
Senior Official Performing the Duties of the Commissioner  
U.S. Customs and Border Protection

Date

3/10/21

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Tae Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement

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Date

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Jooyeun Chang  
Acting Assistant Secretary  
Administration for Children and Families  
U.S. Department of Health and Human Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cindy Huang  
Director, Office of Refugee Resettlement  
U.S. Department of Health and Human Services

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Pae Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement

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3/11/21  
Date

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Acting Assistant Secretary  
Administration for Children and Families  
U.S. Department of Health and Human Services

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Administration for Children and Families  
U.S. Department of Health and Human Services

03.11.2021  
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Date

  
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Cindy Huang  
Director, Office of Refugee Resettlement  
U.S. Department of Health and Human Services

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Date