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January 26, 2022

Mark Greenberg
Deputy General Counsel
U.S. Department of Health & Human Services
Washington, DC 20201

Re: Response to Letter of December 23, 2021

Dear Mr. Greenberg:

Thank you for your December 23 letter seeking clarification concerning the recent decision of the Department of Children and Families (DCF) to cease issuing or renewing licenses in support of a federal program to house unaccompanied alien children (UAC). I have been authorized to respond on behalf of the Governor and the Secretary. We understand that Congress has made a policy choice to require the Federal Government to assume custody and care of UAC who arrive at the southern border. We also understand that the Office of Refugee Resettlement (ORR) in the U.S. Department of Health & Human Services (HHS) has been assigned ultimate responsibility for this difficult task and that the Biden administration's weak immigration enforcement policies have made the task even more difficult. Nevertheless, the states, including the State of Florida, have no obligation to aid or assist the Federal Government's policy choices. The Federal Government has chosen to be the caretaker of UAC arriving at the border; it must take full responsibility for that choice.

The DCF emergency rule reflects the determination that Florida law does not require DCF to exercise its licensing authority (and the oversight responsibilities that come with that) to support or otherwise facilitate the resettlement of UAC in Florida. Until now, DCF had issued licenses to (and provided oversight of) facilities whose sole purpose was to house and provide services to UAC that ORR had brought to Florida. This policy made sense when the Federal Government was faithfully enforcing its immigration laws to deter illegal immigration. Since taking office, however, the Biden administration has exacerbated the UAC problem by pursuing open border policies and lax immigration enforcement. As a result, the number of UAC arriving at the southern border exploded to over 146,000 during President Biden's first year in office, compared to approximately 33,000 in fiscal year 2020 and 80,000 in fiscal year 2019.¹

The burdens of this administration's policies are not shared equally among the states. Only 22 states currently have ORR-contracted facilities that house UAC.² We estimate that at

¹ *Southwest Land Border Encounters*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last modified Jan. 11, 2022).

² *Unaccompanied Children Program Fact Sheet*, U.S. Department of Health and Human Services (Nov. 1, 2021), <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.

least 4,284 UAC have been housed in these facilities in Florida over the last year. In addition, ORR placed 11,145 UAC with sponsors in Florida last fiscal year.³ That number, second highest in the country, exceeds the 10,773 UAC placed in California, which has almost twice the population of Florida.⁴

Federal policies that incentivize the trafficking of UAC are not only a burden on states but are also dangerous for the unaccompanied minors. Many of these UAC are trafficked to the southern border by cartels and other illicit actors. After taking custody of the minors, the Federal Government then, in effect, completes the human trafficking scheme by delivering the minors to persons across the country, many of whom are unknown or poorly vetted, involved in the trafficking conspiracy, or are themselves in the country unlawfully.⁵ A recent news report indicated that, once the minors are placed with sponsors, the Federal Government often loses contact with the minors and their sponsors. According to the report, “[r]oughly one-in-three calls made to released migrant kids or their sponsors between January and May went unanswered, raising questions about the government’s ability to protect minors after they’re released to family members or others in the U.S.”⁶

The UAC program is also a hazard to Floridians. Most UAC are male teenagers nearing adulthood, and some are gang members when they arrive or later become gang members.⁷ Given the illicit nature of smuggling or trafficking minors at the southern border, it can understandably be difficult to confirm the true age of many UAC. Unfortunately, the Federal Government’s failure to verify the age of UAC released into the United States can have deadly consequences. Late last year, a Florida man was murdered by an adult foreign national who entered the country illegally claiming to be an unaccompanied minor.⁸

³ *Unaccompanied Children Released to Sponsors by State*, Administration for Children and Families (June 24, 2021), <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>.

⁴ *See id.*

⁵ *See, e.g., United States v. Nava-Martinez*, No. 1:13-cr-00441 (S.D. Tex. Dec. 13, 2013) (“This is the fourth case with the same factual situation this Court has had in as many weeks. In all of the cases, human traffickers who smuggled minor children were apprehended short of delivering the children to their ultimate destination. In all cases, a parent, if not both parents, of the children was in this country illegally. That parent initiated the conspiracy to smuggle the minors into the country illegally. He or she also funded the conspiracy. In each case, the DHS completed the criminal conspiracy, instead of enforcing the laws of the United States, by delivering the minors to the custody of the parent illegally living in the United States.”).

⁶ Stef Kight, *Exclusive: Government can’t reach one-in-three released migrant kids*, Axios (Sept. 1, 2021), <https://www.axios.com/migrant-children-biden-administration-a597fd98-03a7-415c-9826-9d0b5aaba081.html>.

⁷ *See* Camilo Montoya-Galvez, *U.S. Shelters Received a Record 122,000 Unaccompanied Migrant Children in 2021*, CBS News (Dec. 23, 2021), <https://www.cbsnews.com/news/immigration-122000-unaccompanied-migrant-children-us-shelters-2021/> (stating that nearly three-quarters of unaccompanied minors encountered at the border during the 2021 fiscal year were believed to be ages 15 to 17 and roughly two-thirds of the total were males); Kerry J. Byrne, *The Number of Adult Migrants Posing as Children at Border Surging*, N.Y. Post (Nov. 13, 2021), <https://nypost.com/2021/11/13/the-number-of-adult-migrants-posing-as-children-at-border-surging/> (reporting that about “30% of the MS-13 members arrested in recent years by ICE originally entered the U.S. as unaccompanied minors”); *see also* *Written testimony of CBP U.S. Border Patrol Acting Chief Carla Provost for a Senate Committee on the Judiciary hearing titled “The MS-13 Problem: Investigating Gang Membership As Well As Its Nexus to Illegal Immigration, and Assessing Federal Efforts to End the Threat”*, Department of Homeland Security (June 21, 2017), <https://www.dhs.gov/news/2017/06/21/written-testimony-cbp-senate-committee-judiciary-hearing-titled-ms-13-problem#fn3>; *Unaccompanied child immigration loophole releases MS-13 gang members*, AP News (Jan. 13, 2019), <https://apnews.com/article/5d2784fb7c909b43791d6aca63339a6c>.

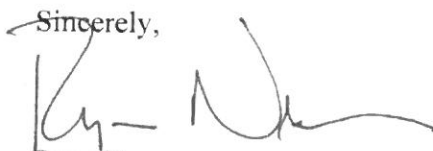
⁸ Adam Shaw, *Honduran illegal immigrant charged with murder entered US falsely claiming to be unaccompanied minor: report*, Fox News (Nov. 4, 2021), <https://www.foxnews.com/politics/honduran-illegal-immigrant-charged-murder-entered-us-unaccompanied-minor>.

For these reasons, DCF can no longer participate in or otherwise facilitate this highly flawed federal program until significant changes are made in federal immigration enforcement. (Unlike the UAC program, DCF will continue to license facilities that house Unaccompanied Refugee Minors.) Under the emergency rule, DCF has no obligation to enter into any cooperative agreement with the Federal Government, and it does not intend to do so unless the Federal Government restores the immigration enforcement policies of the prior administration or implements similar such policies. Faithful enforcement of federal immigration law to secure the border, deter illegal immigration, and prevent the surge of illegal aliens at the border, including UAC, is a baseline prerequisite to any future cooperative agreement involving the resettlement of UAC in Florida. In any event, any such future cooperative agreement would need to include, at a minimum, advance notice when UAC are transported into Florida, verification that the UAC are under the age of 18 and do not have a criminal history or affiliation with criminal gangs, and an opportunity for the state to object if the number of UAC transported to Florida becomes excessive as compared to other states.

With respect to existing licensees, the emergency rule makes clear that any child-caring agency providing services "under a current license to UAC ... who have already resettled in Florida shall not take placement of any additional UAC ... until a cooperative agreement is entered." 47 Fla. Admin. Reg. 5640 (Dec. 10, 2021). Therefore, any existing licensee that accepts additional UAC, notwithstanding the absence of a cooperative agreement, may have its license suspended or revoked. Nevertheless, we acknowledge that the Supremacy Clause of the U.S. Constitution limits a state's ability to prohibit through enforcement action activities of federal officers or agents, including federal contractors, that are expressly authorized by federal law.

It is critical that lines of responsibility and accountability are clearly drawn. So long as the Biden administration continues its irresponsible immigration policies, Florida no longer wishes to be involved in the Federal Government's UAC resettlement program. DCF's change of policy makes clear that the Federal Government, not the State of Florida, is solely responsible for the care and safety of the UAC that it has chosen to bring into the country.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Newman", with a stylized flourish at the end.

Ryan Newman
General Counsel

cc: by email
Alexander K. Haas
Director
U.S. Department of Justice, Civil Division
Federal Programs Branch