MEMORANDUM OF AGREEMENT
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 UNACCOMPANIED ALIEN CHILDREN MATTERS

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 purpose of this MOA is to set forth the expectations of the Parties and implement processes for the Parties to share information about unaccompanied alien children (UACs) at the time of referral from ICE or CBP to ORR; while in the care and custody of ORR, including in the vetting of potential sponsors and adult members of potential sponsors' households; and upon release from ORR care and custody. This MOA sets forth a process by which DHS will provide HHS with information necessary to conduct suitability assessments for sponsors from appropriate federal, state, and local law enforcement and immigration databases, as required by law. Such information includes information to which HHS would otherwise not have access and without which suitability assessments are incomplete. The Parties recognize such information-sharing as a top priority requiring special attention to ensure that the transfer, placement, and release of UACs are safe for the UACs and the communities into which they are released.

This MOA does not address all necessary coordination between the Parties, nor is that the intent of this document. It is not a substitute for, nor does it supersede or revise, the Parties' responsibilities under the Memorandum of Agreement between the Department of Homeland Security and the Department of Health and Human Services Regarding Unaccompanied Alien Children, executed on February 22, 2016, which established a framework for interagency coordination.

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. HHS and DHS Responsibilities Upon Initial Referral

A. Initial Referral and Transfer

1. At the time of initial referral, the DHS component (ICE or CBP) referring the UAC to HHS (specifically, ORR) will electronically transfer the following information about the UAC, 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, gang affiliation or suspected 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:

    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 I-770, Notice of Rights and Request for Disposition;
f. DHS Form I-862, Notice to Appear or other charging document;
g. CBP Form 93, Unaccompanied Alien Child Screening Addendum (trafficking information), if conducted;
h. Other applicable DHS, ICE, or CBP forms, if applicable, such as DHS Form I-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 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 UAC needing placement at an ORR facility, ORR will send a notification email notifying both ICE and CBP of the placement location. At a minimum, the message will include:

   a. Identifying information of the UAC at issue;
   b. Facility name and location; and
   c. Facility point of contact (name and telephone number).

B. ORR Care

1. While UAC 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. Unauthorized absences. 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.
   b. Arrest of a UAC in ORR custody. The ORR-funded care provider will contact the FOJC by telephone and provide notice by email.
   c. Death of a UAC. ORR headquarters will immediately notify, by telephone, ICE ERO.
   d. Alleged or suspected fraud, human smuggling, human trafficking, drug trafficking, weapons trafficking, or gang-related activity. ORR will notify the ICE Homeland Security Investigations Tip Line by email and, for human trafficking specifically (either by or of a UAC), ORR will also email the ICE Human Trafficking Help Desk.
   e. Abuse of a UAC in ICE or CBP custody. If ORR becomes aware of allegations of abuse of a UAC 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.
   f. Violence by a UAC while in ORR care. ORR will notify the FOJC of incidents of physical violence or assault by a UAC in its care, including incidents between a UAC and facility staff.

g. 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 UAC.

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 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 UAC may be necessary.

4. To the extent permitted by law, and consistent with policy, DHS will report to ORR the results of any investigations (including investigations commenced following ORR's notification under Section IV(B)(1) of this MOA) they conduct that would be relevant to ORR's determinations concerning UAC care and placement. Such information will be provided as expeditiously as possible, and normally within 96 hours of such information becoming available.

V. HHS and DHS Responsibilities Prior to ORR Release of a UAC to a Sponsor

A. HHS's Responsibilities

1. Pursuant to 8 U.S.C. § 1232(c)(3)(A), HHS must make a determination that a proposed sponsor is capable of providing for the child's physical and mental well-being. Such determination includes verification of the proposed sponsor's identity and relationship, as well as a finding that the proposed sponsor has not engaged in any activity that would indicate a potential risk to the child. In all placement determinations, HHS must ensure, among other things, that the UAC is likely to appear for all hearings or proceedings in which they are involved, is protected from smugglers and traffickers, and is placed in a setting where the UAC will not pose a danger to himself or others. 6 U.S.C. § 279(b)(2). In order to fulfill its statutory duty under 8 U.S.C. § 1232(c)(3)(A) and to ensure that all proposed placements meet the standards set forth in 6 U.S.C. § 279, ORR will take the following steps:

   a. Prior to any release of a UAC from ORR care and custody to any sponsor, ORR will request from ICE information about all potential sponsors and adult members of potential sponsors' households, in order to aid HHS in determining the suitability of a potential sponsor. Such information includes the citizenship, immigration status, criminal history, and immigration history (to the extent consistent with the Privacy Act of 1974). ORR will advise the potential sponsor that this process is a required step in the UAC placement process.

B. ORR will provide ICE with the name, date of birth, address, fingerprints (in a format and transmitted as prescribed by ICE from time to time), and any available identification documents or biographic information regarding the potential sponsor and all adult members of the potential sponsor's household. ICE will then provide ORR with the summary criminal and immigration history of the potential sponsor and all adult members of the potential sponsor's household to the extent available to ICE, consistent with the applicable confidentiality provisions of the Immigration and Nationality Act (INA). ORR will use the criminal and immigration history information provided by ICE in ORR's individualized determination of sponsorship eligibility.

1. ICE will ascertain only criminal and immigration history information. ORR will remain responsible for searching various databases including public records, Sex Offender Registry, National (FBI) Criminal History, Child Abuse and Neglect, State Criminal History Repository, and local police records for all potential sponsors.

C. DHS's Responsibilities

1. Upon notice from an ORR-funded care provider that a potential sponsor or adult member of a potential sponsors' household requires screening for criminal and immigration histories and that ORR has received proper authorization from the potential sponsor or adult household members, ICE will conduct the initial screening. At a minimum, the review will include:

    a. A biographic criminal check of the national databases;
    b. A biographic check for wants and warrants; and
    c. An immigration status check of the immigration databases.

2. ICE will run the fingerprints of the potential sponsor and/or adult household member and review the response received for any criminal activity.

3. ICE will provide the relevant criminal and immigration history information (consistent with the applicable confidentiality provisions of the INA) on the potential sponsor and adult household members within 72 hours, excluding weekends and holidays, after ORR requests the information and provides ICE with the necessary background information on the potential sponsor or adult member of the potential sponsors' household.

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 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. Disputes

Disagreements between the Parties arising under or related to this MOA will be resolved by consultation. Attempts to resolve disputes will occur first at the lowest level possible. Any issues left unresolved after due consultation may be raised to the appropriate levels in the Parties, or if necessary, DHS and HHS.

VIII. 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.

IX. No Private Rights

This MOA is an agreement between the Parties and 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 litigative prerogatives of the Parties.

X. Effective Date, Modification, and Termination

This MOA will take effect thirty (30) days after signature by the Parties and will remain in effect until revised or revoked in writing by mutual agreement of the Parties, or terminated without cause by any Party upon thirty (30) days advance notice in writing of intent to terminate.

Approved by:

Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection
U.S. Department of Homeland Security

04/13/18
Date

Thomas D. Homan
Deputy Director and Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

APR 13 2018
Date

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

04-13-18
Date

Scott Lloyd
Director
Office of Refugee Resettlement
Administration for Children and Families
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4/13/18
Date