



**NEW INFORMATION AND TESTIMONY FROM BIDEN ADMINISTRATION  
OFFICIALS REVEAL DISREGARD FOR POTENTIAL GANG AFFILIATION OF  
UACS**

Interim Staff Report of the  
Committee on the Judiciary  
and  
Subcommittee on Immigration Integrity, Security, and Enforcement  
U.S. House of Representatives



June 17, 2024

---

## EXECUTIVE SUMMARY

---

Incentivized by the Biden Administration’s open-borders policies, increasing numbers of unaccompanied alien children (UACs) have traveled to the southwest border since 2021.<sup>1</sup> Since January 20, 2021, Customs and Border Protection (CBP) has encountered more than 8 million illegal aliens along the southwest border, more than half a million of whom have been UACs.<sup>2</sup> Under the Trafficking Victims Protection Reauthorization Act of 2008, UACs from non-contiguous countries who are encountered along the border are referred by CBP to the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS), which is charged with the care and placement of UACs.<sup>3</sup>

As UAC encounters continue to escalate, so too has the pace of UAC referrals from CBP to HHS. In total, more than 400,000 UACs have been released to sponsors during the Biden Administration,<sup>4</sup> up 100 percent compared to all four years of the Trump Administration combined.<sup>5</sup> Most of these UACs are teenage boys, not infants or small children. According to HHS data from FY 2023, nearly 70 percent of referred UACs were 15 or older, whereas just 19 percent were under 12.<sup>6</sup> HHS data show that males accounted for 61 percent of UAC encounters in FY 2023, 64 percent in FY 2022, and 66 percent in FY 2021.<sup>7</sup>

While UAC releases have soared to all-time highs, under the leadership of HHS Secretary Xavier Becerra, ORR has “par[ed] back protections that had been in place for years[,] including some background checks and reviews of children’s files.”<sup>8</sup> HHS’s failure to adequately screen sponsors pre-placement and monitor UACs post-placement has resulted in the exploitation of UACs, including UACs working in dangerous jobs that children are legally prohibited from doing.<sup>9</sup>

As the Judiciary Committee and Immigration Subcommittee’s oversight has shown, HHS’s failures have also led to the release of UACs who have gone on to commit egregious crimes against Americans.<sup>10</sup> As revealed in the Committee and Subcommittee’s May 22, 2023,

---

<sup>1</sup> U.S. Customs and Border Prot., *Sw. Land Border Encounters*, U.S. DEP’T OF HOMELAND SEC., <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last accessed May 15, 2024) [hereinafter CBP Sw. Land Border Encounters]; Griff Jenkins (@GriffJenkins), X (June 6, 2024, 10:30 AM).

<sup>2</sup> *Id.*

<sup>3</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5077 (2008) (8 U.S.C. § 1232(b)(1)).

<sup>4</sup> Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. DEP’T OF HEALTH AND HUMAN SERVS., <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state> (last accessed May 14, 2024).

<sup>5</sup> *Id.*

<sup>6</sup> Off. of Refugee Resettlement, *Fact Sheets and Data*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (Oct. 13, 2023), <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>. In fiscal year 2022 just 15 percent of UACs referred to HHS were under the age of 12, while 13 percent were between 13-14 years old, 36 percent were 15-16 years old, and 36 percent were 17 or older.

<sup>7</sup> *Id.*

<sup>8</sup> Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N. Y. TIMES (Feb. 25, 2023), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., H. Comm. on the Judiciary, Interim Staff Rep., *The Murder of Kayla Hamilton: A Case for Immigr. Enf’t, and Border Sec.* (May 23, 2023).

interim staff report, the UAC charged with murdering 20-year-old Maryland resident Kayla Hamilton was first “arrested in El Salvador for his ‘illicit association’ with the dangerous MS-13 gang” “[y]ears before coming to the U.S.”<sup>11</sup> Tragically, this information was only verified after the fact when “[l]aw enforcement officials investigating Kayla’s murder” merely made a call to Salvadoran officials, who alerted the officers to the alien’s criminal history.<sup>12</sup> Moreover, “[l]aw enforcement officials investigating Kayla Hamilton’s murder also noticed the alien’s gang tattoos, a fact not disclosed in the alien’s case file held by HHS or in the alien file.”<sup>13</sup>

As the Attorney General under the Trump Administration recognized, the UAC program has for years suffered from “exploitation . . . by gang members who come to this country as wolves in sheep[’s] clothing” and “use th[e UAC] program as a means by which to recruit new members.”<sup>14</sup> Contrary to the Trump Administration’s approach, which focused on rooting out gang members from the UAC program, new information and testimony from Biden Administration officials reveal the Administration’s disregard for the potential gang affiliation of UACs. According to new, nonpublic information uncovered by the Committee and Subcommittee:

- HHS “did not conduct any audit of [the case] file” for the UAC who murdered Kayla Hamilton.<sup>15</sup>
- Despite having released Kayla’s murderer, an alien with gang tattoos and a history of “illicit association” with MS-13, to a sponsor, HHS told the Committee that it does not have a policy to refer known or suspected gang members to the Department of Justice (DOJ) for investigation or, where appropriate, prosecution.<sup>16</sup>
- ORR Director Robin Dunn Marcos, a senior HHS official in charge of the UAC program, admitted that, while HHS contacts the consulate or embassy of the UAC’s country of origin or last habitual residence to verify certain documents or claimed familial relationships, HHS does not even request UACs’ criminal records from UACs’ home countries.<sup>17</sup>

---

<sup>11</sup> H. Comm. on the Judiciary, Interim Staff Rep., *The Murder of Kayla Hamilton: A Case for Immigr. Enf’t, and Border Sec.* (May 23, 2023).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Attorney General Sessions Gives Remarks to Federal Law Enforcement in Boston About Transnational Criminal Organizations*, U.S. DEP’T OF JUSTICE (Sept. 21, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-gives-remarks-federal-law-enforcement-boston-about>.

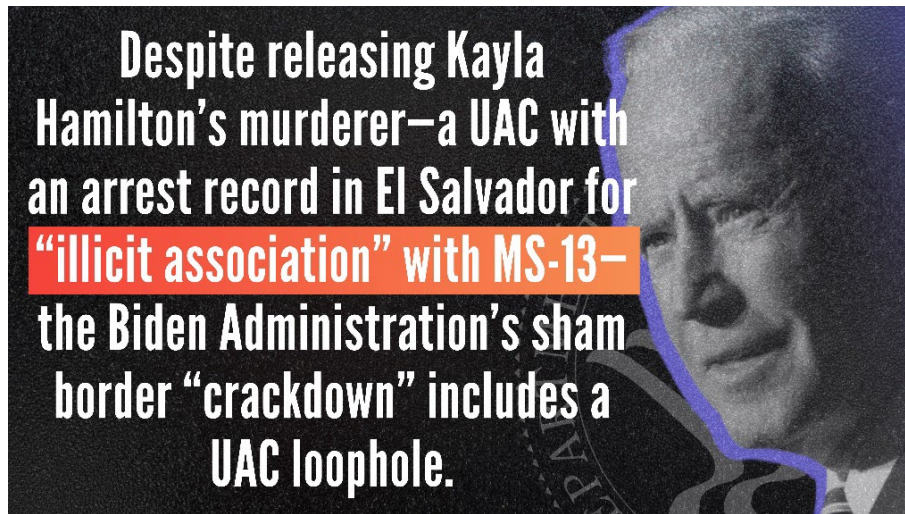
<sup>15</sup> E-mail from Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs., to Comm. staff, H. Comm. on the Judic. (Nov. 8, 2023) (on file with Comm.).

<sup>16</sup> E-mail from Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs., to Comm. staff, H. Comm. on the Judic. (Mar. 13, 2024) (on file with Comm.).

<sup>17</sup> Transcribed Interview of Robin Dunn Marcos, Director, Off. of Refugee Resettlement, U.S. Dep’t of Health and Human Services (June 8, 2023) at 15, 48, 56, 90 (on file with Comm.) [hereinafter Transcribed Interview of Robin Dunn Marcos].

- HHS admitted that it does not currently have any secure facilities “in-network”—that is, facilities designed for the secure placement of UACs who pose a danger to themselves or others or who have been determined to have a criminal record.<sup>18</sup>

At the same time, President Biden continues to signal to the world that UACs should keep coming to the United States. On June 4, 2024, he announced a new executive order to purportedly “crack down” on the illegal immigration crisis at the southwest border.<sup>19</sup> The



proclamation came after months of President Biden falsely asserting that he had “done all [he] could do” to address the crisis.<sup>20</sup> The Administration’s asylum regulation is so lax, however, that it sanctions the entry of “at least 1.8 million [illegal aliens] ... each year even if fully enforced.”<sup>21</sup> The measure also contains myriad loopholes,

including a UAC loophole,<sup>22</sup> ensuring that unlimited numbers of illegal aliens who qualify under the executive order’s broad exceptions will continue to stream into the United States.<sup>23</sup>

In sum, despite releasing to a sponsor a UAC with an arrest record for “illicit association” with MS-13, who then went on to murder an innocent young woman, HHS has failed to engage in the necessary due diligence to ensure such tragedies are not repeated in the future. Instead, HHS has doubled down on the disastrous policies that enabled Kayla Hamilton’s murder to occur in the first place. The failure of HHS and the Biden Administration to recognize vulnerabilities in its open-borders policies—and to take appropriate actions to protect the safety and security of the American people—continue to weaken public safety and national security. The Committee and Subcommittee will continue to conduct rigorous, fact-based oversight of the Biden Administration’s enforcement of immigration law to inform potential legislative reforms.

<sup>18</sup> Transcribed Interview of Robin Dunn Marcos, *supra* note 17 at 16. HHS has shared that while no secure facilities are in operation, it does have staff-secure facilities available, although as of March 13, just 14 UACs were in such facilities. See E-mail from Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs., to Comm. staff, H. Comm. on the Judic. (Mar. 13, 2024) (on file with Comm.).

<sup>19</sup> Briefing Room, Presidential Actions, *A Proclamation on Securing the Border*, THE WHITE HOUSE (June 4, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/06/04/a-proclamation-on-securing-the-border/>.

<sup>20</sup> Natalie Venegas, *Joe Biden Says He's Done All He Can Do About U.S.-Mexico Border*, Newsweek (Jan. 30, 2024), <https://www.newsweek.com/joe-biden-all-he-can-do-about-us-mexico-border-greg-abbott-texas-1865348>.

<sup>21</sup> Josh Christenson, et al., *Biden announces border ‘crackdown’ that will still let in at least 1.8 million illegally per year*, N. Y. Post (June 4, 2024), <https://nypost.com/2024/06/04/us-news/biden-announces-border-crackdown-that-will-still-let-in-at-least-1-75-million-per-year/>.

<sup>22</sup> 89 Fed. Reg. 48710, 48715 (2024).

<sup>23</sup> See e.g. *id.*

---

## UAC SURGES INCREASE EXPONENTIALLY DUE TO OPEN-BORDERS POLICIES & CURRENT LAW

---

Since January 20, 2021, CBP has encountered more than 8 million illegal aliens along the southwest border, more than half a million of whom have been processed as UACs.<sup>24</sup> Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), UACs from non-contiguous countries who are encountered along the border are referred by CBP to HHS, which is charged with their care and placement.<sup>25</sup>

The TVPRA created different sets of rules for UACs from contiguous and non-contiguous countries.<sup>26</sup> Under current law, minors from contiguous countries can be immediately returned to their home country if they consent, have not been trafficked, and do not have a credible fear of persecution.<sup>27</sup> However, minors from non-contiguous countries—meaning any country other than Mexico and Canada—must be referred to the custody of ORR pending lengthy removal proceedings in immigration court.<sup>28</sup> After their transfer to ORR, UACs are generally released into the United States to a sponsor.<sup>29</sup>

The number of UACs arriving at the southwest border doubled the year following the passage of the 2008 TVPRA.<sup>30</sup> Indeed, rather than preventing the smuggling and trafficking of UACs into the United States, the TVPRA created a significant pull factor, encouraging the very behavior the law was intended to prevent. In 2012, President Obama unlawfully circumvented Congress to create the Deferred Action for Childhood Arrivals (DACA) program to stay the removal of certain illegal aliens who entered the United States as children.<sup>31</sup> Predictably, after the Obama-Biden Administration instituted DACA in FY 2012, the number of UACs arriving at the southwest border again surged, more than doubling by FY 2014.<sup>32</sup> In June 2014, President Obama asked Congress to “provid[e] the DHS Secretary additional authority to exercise discretion in processing the return and removal of unaccompanied minor children from non-contiguous countries like Guatemala, Honduras, and El Salvador.”<sup>33</sup>

---

<sup>24</sup> CBP Sw. Land Border Encounters, *supra* note 1; Griff Jenkins (@GriffJenkins), X (June 6, 2024, 10:30 AM).

<sup>25</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 112 Stat. 5044, 5077 (2008) (8 U.S.C. § 1232(b)(1)).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

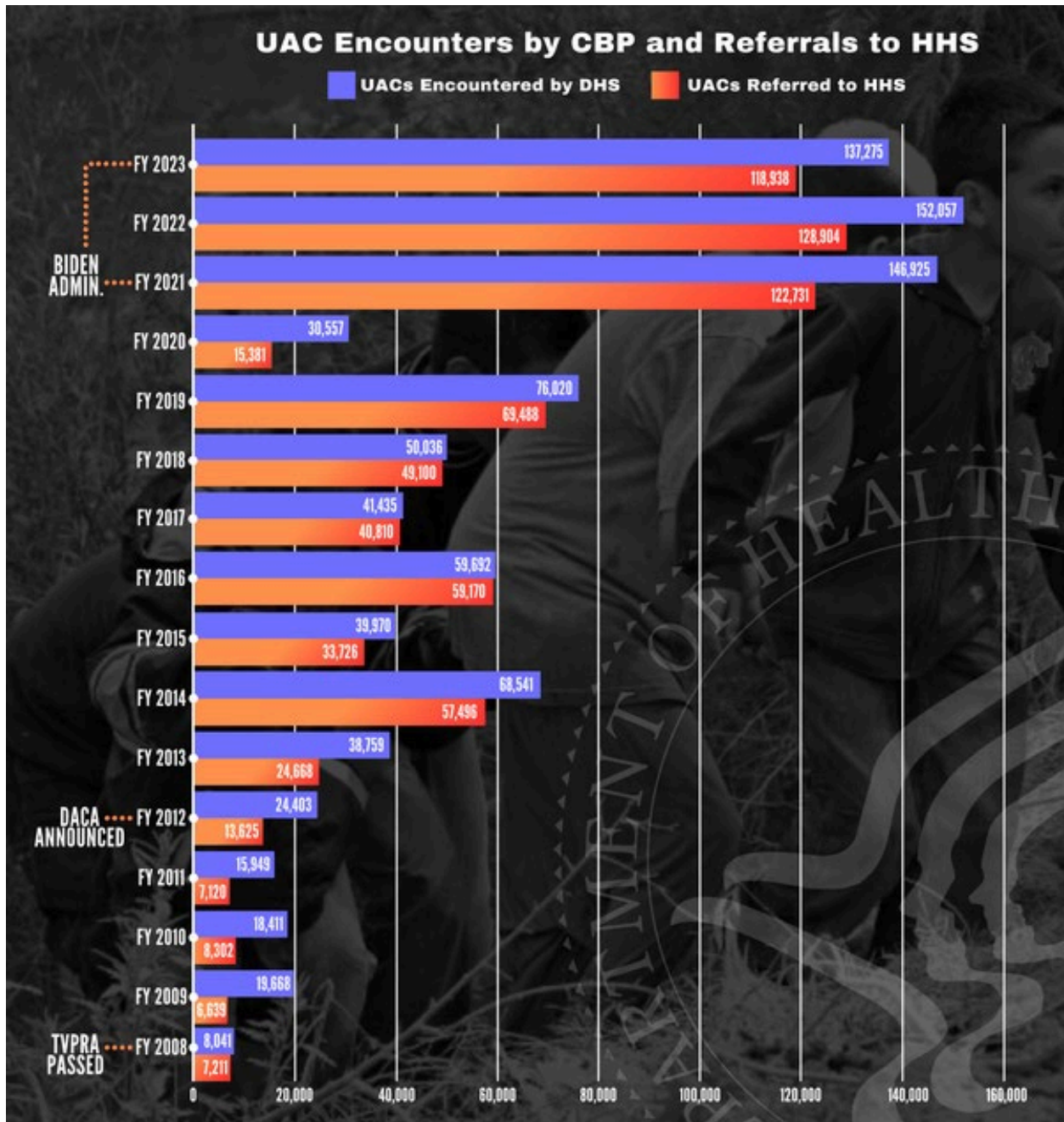
<sup>29</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-180, UNACCOMPANIED CHILDREN: HHS CAN TAKE FURTHER ACTION TO MONITOR THEIR CARE (2016).

<sup>30</sup> E-mail from Cong. Research Serv. to H. Comm. on the Judiciary staff (Mar. 16, 2023, 12:57 PM) (on file with Comm.) (compiling U.S. Customs and Border Prot. data).

<sup>31</sup> Off. of the Press Sec'y, *Remarks by the President on Immigration*, THE WHITE HOUSE (June 15, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>.

<sup>32</sup> E-mail from Cong. Research Serv. to H. Comm. on the Judiciary staff (Mar. 16, 2023, 12:57 PM) (on file with Comm.) (compiling U.S. Customs and Border Prot. data).

<sup>33</sup> *Letter from the President, Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation's Southwest Border*, THE WHITE HOUSE (June 30, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle>.



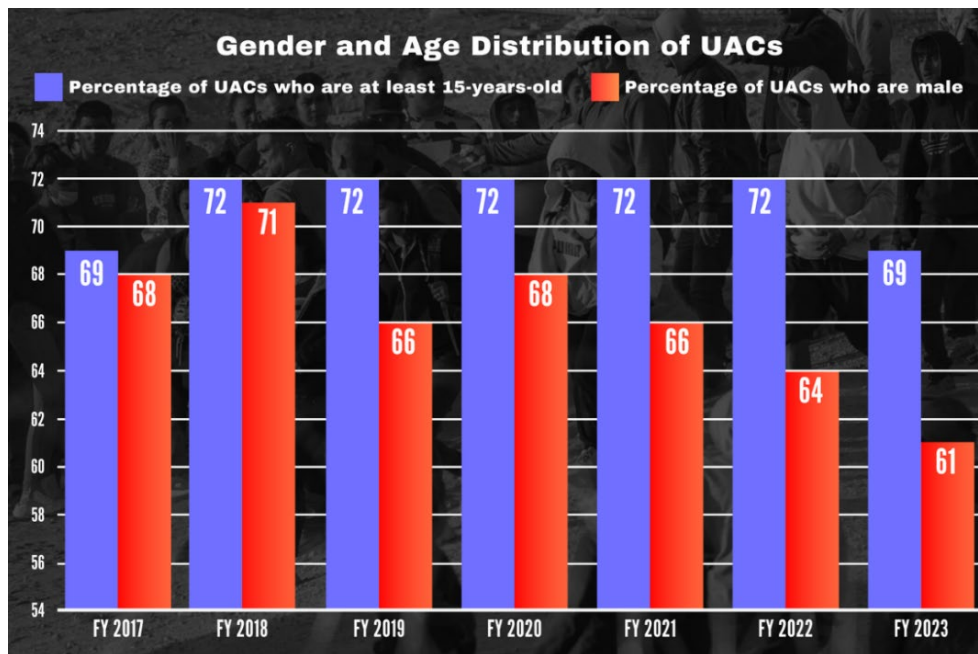
Incentivized by the Biden Administration’s open-borders policies, increasing numbers of UACs have traveled to the U.S. border since 2021.<sup>34</sup> Most UACs encountered are teenage boys, not infants or small children. According to data from FY 2023, nearly 70 percent of encountered UACs were 15 or older, whereas just 19 percent were under the age of 12.<sup>35</sup> HHS data from FY

<sup>34</sup> CBP Sw. Land Border Encounters, *supra* note 1.

<sup>35</sup> Off. of Refugee Resettlement, *Fact Sheets and Data*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (Oct. 13, 2023), <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>. In fiscal year 2022 just 15 percent of UACs referred to HHS



2023 also shows that 61 percent of UAC encounters in that year were males, with similar numbers (64 percent) in FY 2022 and (66 percent) in FY 2021.<sup>36</sup>



As the surge of UACs at the southwest border continues unabated, the pace of UAC referrals from CBP to HHS has similarly increased. Between FY 2021 and 2023, 370,573 UACs have been referred by CBP to HHS.<sup>37</sup> At the same time, according to HHS data, at least 348,588—or more than 94 percent—of these UACs have subsequently been released to a sponsor,<sup>38</sup> with more than 400,000 UACs being released to sponsors during the Biden Administration in total.<sup>39</sup> UAC releases to sponsors under the Biden Administration have increased 100 percent compared to all four years of the Trump Administration combined.<sup>40</sup>

While UAC releases have soared to all-time highs, under the leadership of Secretary Becerra, HHS has “par[ed] back protections that had been in place for years[,] including some background checks and reviews of children’s files.”<sup>41</sup> In 2021, HHS and the Department of Homeland Security (DHS) signed a Memorandum of Agreement (MOA), replacing a previous 2018 MOA between the two departments and removing some requirements for background checks for potential UACs’ sponsors.<sup>42</sup> Specifically, the 2021 MOA removed the requirement

were under the age of 12, while 13 percent were between 13-14 years old, 36 percent were 15-16 years old, and 36 percent were 17 or older.

<sup>36</sup> Off. of Refugee Resettlement, *Fact Sheets and Data*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (Oct. 13, 2023), <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>37</sup> *Id.*

<sup>38</sup> Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. DEP’T OF HEALTH AND HUMAN SERVS., <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state> (last accessed May 14, 2024).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Dreier, *supra* note 8.

<sup>42</sup> S. Comm. on Homeland Sec. & Gov’t Aff., *Interim Staff Rep., Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse* (Dec. 19, 2022).

that ORR provide biographic and biometric data for all adult members of a sponsor’s household to check the Federal Bureau of Investigation’s national and statewide criminal history, child abuse and neglect databases, and sex offender databases prior to placement of a UAC.<sup>43</sup>

On February 25, 2023, press reports revealed private comments that Secretary Becerra made in July 2022, in which he likened HHS’s responsibility to safely place UACs with vetted sponsors to an “assembly line.”<sup>44</sup> Comparing UACs to automobiles, Secretary Becerra said: “If Henry Ford had seen this in his plants, he would have never become famous and rich. This is not the way you do an assembly line.”<sup>45</sup>

On March 9, 2023, more of Secretary Becerra’s private comments became public.<sup>46</sup> Seemingly expressing his desire to avoid Congressional oversight of HHS’s UAC failures, Secretary Becerra said:

Every time we have to go to the Hill and explain why we’re spending so much money, when most people are struggling to spend a little bit of money for their kids on a daily basis, we try to explain how we’re spending more than \$1,000 a day on kids who may not even have a legal right to be here? Not me.<sup>47</sup>

Secretary Becerra’s comments are especially troubling given HHS officials’ common refrain that, “[HHS’s] custodial responsibilities end when a child is discharged.”<sup>48</sup> Given this admission, it is curious that HHS, under Secretary Becerra’s leadership, places such emphasis on the speed of UAC releases, rather than on the integrity of these placements.

HHS’s failure to adequately screen sponsors pre-placement and monitor UACs post-placement has resulted in UACs being placed in dangerous situations and the exploitation of UACs, including UACs working in dangerous jobs that children are legally prohibited from doing.<sup>49</sup> According to the HHS OIG, these policies have also resulted in the failure of HHS to conduct required safety checks, including sex offender address and name checks.<sup>50</sup> In addition to failing to conduct required safety checks, in several cases, HHS has failed to update a sponsor’s record after staff identified concerns about a sponsor following a child’s placement.<sup>51</sup> For example, an HHS staff member conducting a follow-up call for one UAC discovered that the whereabouts of a 3-year-old UAC placed with an unrelated sponsor were unknown—but no notes or flags were added to the sponsor’s record in HHS’s internal system—meaning that a case

---

<sup>43</sup> S. Comm. on Homeland Sec. & Gov’t Aff., Interim Staff Rep., Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse (Dec. 19, 2022).

<sup>44</sup> Dreier, *supra* note 8.

<sup>45</sup> *Id.*

<sup>46</sup> Sabrina Tavernise, *A New Child Labor Crisis in America*, The Daily, N. Y. TIMES (Mar. 9, 2023), <https://www.nytimes.com/2023/03/09/podcasts/the-daily/migrant-child-labor-america.html>.

<sup>47</sup> *Id.*

<sup>48</sup> *See, e.g.*, Letter from Melanie Egorin, Acting Ass’t Sec’y for Leg., U.S. Dep’t of Health and Human Servs., to Jim Jordan et al., Chairman, H. Comm. on the Judiciary (Feb. 16, 2024).

<sup>49</sup> Dreier, *supra* note 8.

<sup>50</sup> *See* INSPECTOR GENERAL, DEP’T. OF HEALTH AND HUMAN SERVS., OEI-07-21-00250, GAPS IN SPONSOR SCREENING AND FOLLOWUP RAISE SAFETY CONCERNS FOR UNACCOMPANIED CHILDREN at 2 (2024).

<sup>51</sup> *Id.* at 17.



manager screening this sponsor for a future sponsorship may not learn of this information if the individual attempted to sponsor another UAC.<sup>52</sup>

Despite these deficiencies, on April 30, 2024, HHS issued a final rule implementing these disastrous policies which prioritize the speed of UAC releases, no matter the cost.<sup>53</sup> The rule fails to contain necessary safeguards to ensure that individuals who refuse to submit to background and security checks cannot sponsor UACs.<sup>54</sup> The HHS rule further ensures aliens who enter or remain in the United States illegally can sponsor UACs and mandates that “ORR shall not share any immigration status information relating to potential sponsors with any law enforcement or immigration enforcement related entity at any time.”<sup>55</sup> Worse still, HHS’s rule fails to contain necessary reforms to ensure that gang-affiliated UACs are not released into the interior of the country and, instead, includes an arduous process for placing even convicted criminal UACs in secure placements.<sup>56</sup> As the Attorney General under the Trump Administration detailed in 2017, the UAC program has for years suffered from “exploitation . . . by gang members who come to this country as wolves in sheep[’s] clothing” and “use th[e UAC] program as a means by which to recruit new members.”<sup>57</sup>

---

### THE MURDER OF KAYLA HAMILTON

---

As detailed in the Committee’s May 22, 2023, interim staff report, in January 2023, police in Aberdeen, Maryland, arrested a 17-year-old illegal alien from El Salvador for the brutal sexual assault and murder of 20-year-old Kayla Hamilton in July 2022.<sup>58</sup> Kayla had recently moved to the area with her boyfriend.<sup>59</sup> Law enforcement officials later learned that the alien was a member of MS-13, a violent street gang with more than 10,000 members in the United States.<sup>60</sup> This alien had illegally entered the U.S. and been processed as a UAC in March 2022 in

---

<sup>52</sup> INSPECTOR GENERAL, DEP’T. OF HEALTH AND HUMAN SERVS., OEI-07-21-00250, GAPS IN SPONSOR SCREENING AND FOLLOWUP RAISE SAFETY CONCERNS FOR UNACCOMPANIED CHILDREN at 2 (2024).

<sup>53</sup> 45 C.F.R. § 410 (2024).

<sup>54</sup> 45 C.F.R. § 410.1202(c) (2024) (Stating that, “In all cases, ORR shall require background and criminal records checks, which at minimum includes an investigation of public records sex offender registry conducted through the U.S. Department of Justice National Sex Offender public website for all sponsors and adult residents of the potential sponsor’s household, and may include a public records background check or an FBI National Criminal history check based on fingerprints for some potential sponsors and adult residents of the potential sponsor’s household.” Indeed, the rule explicitly states that HHS may, but is not required to, conduct a public records background check or FBI National Criminal history check for potential sponsors.)

<sup>55</sup> 45 C.F.R. § 410.1201 (2024).

<sup>56</sup> 45 C.F.R. § 410.1105 (2024).

<sup>57</sup> *Attorney General Sessions Gives Remarks to Federal Law Enforcement in Boston About Transnational Criminal Organizations*, U.S. DEP’T OF JUSTICE (Sept. 21, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-gives-remarks-federal-law-enforcement-boston-about>.

<sup>58</sup> Jeff Hager & Ryan Dickstein, *Police: Teen gang member charged in strangling death of Aberdeen woman with autism*, WMAR (Jan. 19, 2023), <https://www.wmar2news.com/news/local-news/police-teen-gang-member-charged-in-strangling-death-of-aberdeen-woman-with-autism>.

<sup>59</sup> *Id.*

<sup>60</sup> Off. of Public Affairs, *Four MS-13 Members Indicted for 10 Murders, Kidnapping and Racketeering Charges*, U.S. DEP’T OF JUSTICE (Aug. 4, 2021), <https://www.justice.gov/opa/pr/four-ms-13-members-indicted-10-murders-kidnapping-and-racketeering-charges>.

the Rio Grande Valley Sector.<sup>61</sup> In March 2022, 14,137 UACs who illegally entered the U.S. were processed as UACs, 7,128 of whom entered in the Rio Grande Valley Sector.<sup>62</sup>

On February 27, 2023, Chairman Jordan and Subcommittee Chairman McClintock sent letters to DHS Secretary Mayorkas and HHS Secretary Becerra requesting the alien file and all case file materials for the UAC arrested in connection with Hamilton’s murder.<sup>63</sup> The Committee’s and Subcommittee’s review of the alien file and the alien’s case file revealed new details about how the Biden Administration’s lax enforcement of immigration law allowed a violent criminal into the U.S. It is quite likely that had Secretary Mayorkas and DHS adequately vetted this alien when he was apprehended at the border and had Secretary Becerra and HHS adequately vetted this alien, rather than releasing him to a sponsor, Kayla’s murder could have been avoided.<sup>64</sup> The alien’s known gang affiliation should have resulted in his placement in a secure facility for criminal UACs; tragically, however, he was allowed to freely roam the streets of Aberdeen, Maryland.<sup>65</sup>

According to statements made by the alien and recorded in his case file, the alien was apprehended by Border Patrol in Texas on March 23, 2022, and was then referred to ORR.<sup>66</sup> According to the alien, members of his family paid \$4,000 to a “guide” who smuggled him to the southwest border.<sup>67</sup> On May 3, 2022, ORR placed the alien with a sponsor, his alleged “first cousin,” in Maryland.<sup>68</sup> The alien ran away from that home just a month later.<sup>69</sup>

The case file also provided details about the alien’s criminal past. As revealed in his case file, the alien had been arrested by police in El Salvador on January 21, 2020, for “illicit association” with the dangerous MS-13 gang.<sup>70</sup> The alien’s MS-13 association was not discovered until after Kayla Hamilton’s murder by local law enforcement officials investigating the crime.<sup>71</sup> This fact is significant not only because it contradicts the alien’s narrative to federal immigration authorities that he fled El Salvador to escape gang-related threats, but also because the Biden Administration should have uncovered this key fact during its vetting of the alien after his encounter along the border.

---

<sup>61</sup> Anna Giaritelli, *‘He Should Have Never Been Allowed In’: Mother Demands Border Fix After Daughters Murder by Suspected MS-13 Immigrant*, WASH. EXAMINER (Feb. 1, 2023), <https://www.msn.com/en-us/news/crime/heshould-have-never-been-allowed-in-mother-demands-border-fix-after-daughter-s-murder-by-suspected-ms-13-immigrant/ar-AA16ZBzb?li=BBnbcA1>.

<sup>62</sup> CBP Sw. Land Border Encounters, *supra* note 1.

<sup>63</sup> Letter from Jim Jordan, et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Secretary, U.S. Dep’t of Homeland Security (Feb. 27, 2023); Letter from Jim Jordan, et al., Chairman, H. Comm. on the Judiciary, to Xavier Becerra, Secretary, U.S. Dep’t of Health and Human Services (Feb. 27, 2023).

<sup>64</sup> H. Comm. on the Judiciary, Interim Staff Rep., *The Murder of Kayla Hamilton: A Case for Immigr. Enf’t, and Border Sec.* (May 23, 2023).

<sup>65</sup> 8 U.S.C. § 1232 (c). If a determination is made that an unaccompanied child “poses a danger to self or others or has been charged with having committed a criminal offense,” such an unaccompanied alien child may be placed in a secure placement.

<sup>66</sup> H. Comm. on the Judiciary, Interim Staff Rep., *The Murder of Kayla Hamilton: A Case for Immigr. Enf’t, and Border Sec.* (May 23, 2023).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

The alien’s case file also included a document from authorities, dated August 2022, noting that the alien had tattoos affiliated with gang activity.<sup>72</sup> There was no indication in the case file that DHS or HHS noted gang-affiliated tattoos on his body at the time of his apprehension or placement.<sup>73</sup>

According to his case file, the alien came to the United States with no money and his sponsor did not provide him with an allowance.<sup>74</sup> The short period between the alien’s entry into the U.S. and his arrest, the alien’s prior arrest for illicit gang association in 2020, and his lack of financial resources may suggest that the alien had the gang-affiliated tattoos upon his arrival at the southwest border. It is also possible that the alien received the tattoos after entering the United States. In any event, the reason the alien gave for leaving El Salvador—that he was escaping the gangs there—appears to have been a pretext for his guaranteed release into the United States. The alien’s HHS case file was also replete with notations from HHS caregivers and officials that the alien had “no behavioral issues,” was “a respectful young man,” and “demonstrated good judgment and age-appropriate behaviors.”<sup>75</sup> These conclusions, in light of his brutal murder of Kayla, were obviously wrong.

---

#### NEW DETAILS REVEAL BIDEN ADMINISTRATION DOUBLING DOWN ON FAILING POLICIES

---

The Committee and Subcommittee have continued to conduct vigorous oversight of the UAC program. On June 2, 2023, HHS held a bipartisan briefing for authorizing committees of jurisdiction in Congress<sup>76</sup> regarding an audit report that HHS prepared in response to press reports that it had lost contact with 85,000 UACs.<sup>77</sup> Unsurprisingly, in this audit, HHS deemed itself to have “comple[de] with its statutory requirements and adhere[d] to its policies and procedures for sponsor vetting.”<sup>78</sup> During the briefing relating to this audit, Committee staff inquired as to whether HHS had similarly undertaken an audit in the case of the UAC who murdered Kayla Hamilton.<sup>79</sup> After HHS initially indicated that such an audit had occurred, Committee staff requested that the audit be shared with the Committee.<sup>80</sup> The Committee followed up on this request for five months<sup>81</sup> before HHS finally responded on November 8,

---

<sup>72</sup> H. Comm. on the Judiciary, Interim Staff Rep., *The Murder of Kayla Hamilton: A Case for Immigr. Enf’t, and Border Sec.* (May 23, 2023).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> U.S. Dep’t of Health and Human Servs. briefing (June 2, 2023) (on file with Comm.).

<sup>77</sup> Dreier, *supra* note 8.

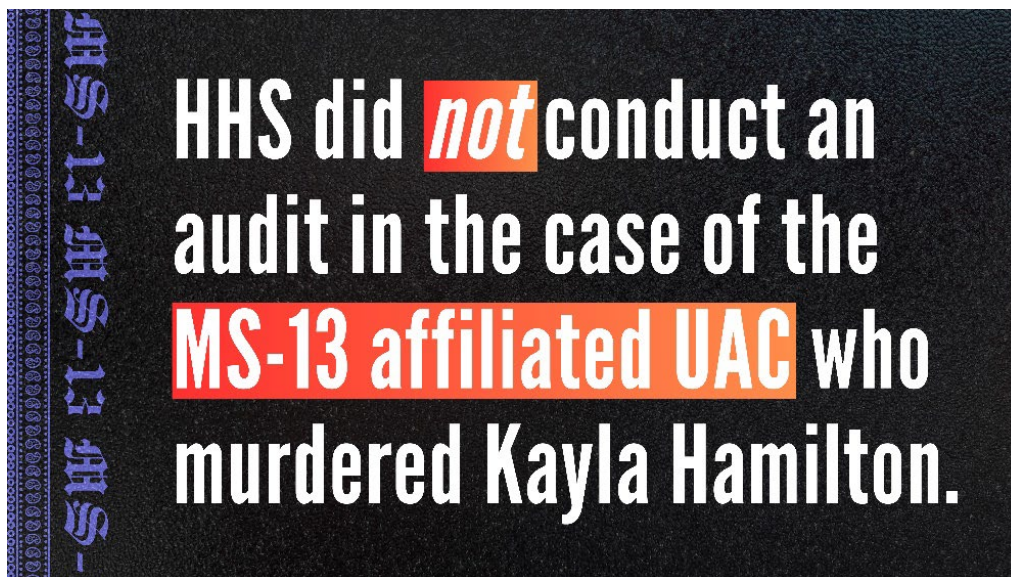
<sup>78</sup> Off. of Refugee Resettlement, *Update on Efforts to Mitigate Child Labor Exploitation and Internal Audit on Placement Process Used to Transfer Custody of Unaccompanied Children to Vetted Sponsors*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (June 2, 2023), <https://www.acf.hhs.gov/sites/default/files/documents/orr/update-on-efforts-to-mitigate-child-labor-exploitation-internal-audit-placement-process.pdf>

<sup>79</sup> U.S. Dep’t of Health and Human Servs. briefing (June 2, 2023) (on file with Comm.).

<sup>80</sup> *Id.*

<sup>81</sup> E-mail from Comm. staff, H. Comm. on the Judic. to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (June 2, 2023) (on file with Comm.); E-mail from Comm. staff, H. Comm. on the Judic. to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Aug. 4, 2023) (on file with Comm.); E-mail from Comm. staff, H. Comm. on the Judic. to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Aug. 21, 2023) (on file with Comm.); E-mail from Comm. staff, H. Comm. on the Judic. to Off. of Ass. Sec’y for Legis.,

2023, to state that there had been a “misunderstanding,” that HHS was “not aware of any such audit,” and that HHS “did not conduct any audit of this file similar to that which was the subject of the June briefing” for the UAC who murdered Kayla Hamilton.<sup>82</sup>



On June 8, 2023, the Committee conducted a transcribed interview of ORR Director Robin Dunn Marcos.<sup>83</sup> As ORR Director, Dunn Marcos is charged with administering HHS’s UAC program. During the interview, in response to the Committee’s questions about the precautions taken to ensure that known gang members were not among the non-gang-related UAC population, Director Dunn Marcos stated that she was unaware of whether UACs were examined for gang tattoos, including during a UAC’s required medical examination, or whether gang tattoos would be noted in a UAC’s file or elsewhere.<sup>84</sup> She also admitted to the Committee that HHS does not currently have any secure facilities “in-network”—in other words, there are no existing facilities “in-network” for HHS that are designed to securely place UACs who pose a danger to themselves or others or who have been determined to have a criminal record.<sup>85</sup> Director Dunn Marcos further stated that she was unaware of whether HHS undertakes any effort to determine if a UAC has a criminal record in the United States.<sup>86</sup> She testified:

Q. Does ORR ask UACs whether they have a criminal record in the U.S.?

---

U.S. Dep’t of Health and Human Servs. (Aug. 23, 2023) (on file with Comm.); E-mail from Comm. staff, H. Comm. on the Judic. to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Sept. 7, 2023) (on file with Comm.); E-mail from Comm. staff, H. Comm. on the Judic. to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Oct. 31, 2023) (on file with Comm.).

<sup>82</sup> E-mail from Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. to Comm. staff, H. Comm. on the Judic. (Nov. 8, 2023) (on file with Comm.).

<sup>83</sup> See Transcribed Interview of Robin Dunn Marcos, *supra* note 17.

<sup>84</sup> *Id.* at 21, 91.

<sup>85</sup> *Id.* at 16.

<sup>86</sup> *Id.* at 24.

A. Not that I'm aware of.<sup>87</sup>

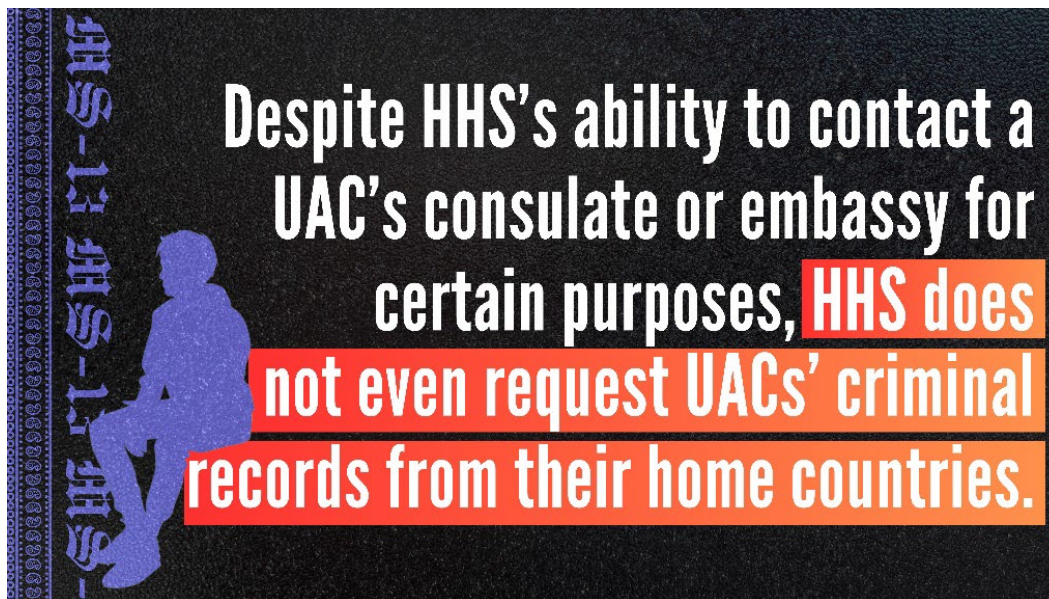
Later in the interview, Dunn Marcos admitted that in certain circumstances, HHS contacts the consulate or embassy of the UAC's country of origin or last habitual residence to verify certain documents or claimed familial relationships.<sup>88</sup> However, despite acknowledging HHS's ability to contact a UAC's consulate or embassy for certain purposes, Dunn Marcos confirmed that HHS does not request UACs' criminal records from such UACs' home countries. She testified:

Q. Earlier, we discussed well, earlier you mentioned that ORR contacts the UAC the consulate and the UAC's home country to verify date of birth, birth certificate of the UAC, and whether the UAC is suspected of being an adult in those types of contexts. What else does ORR verify with consulates? What other type of information?

A. I believe that it is birth certificates and identity documents.

Q. So ORR does not request the criminal record in the home country from the consulate?

A. We do not.<sup>89</sup>



In addition, Dunn Marcos testified that she was unaware of what efforts HHS undertakes to discover whether UACs are affiliated with gangs and stated she was unaware of any internal database or system that tracked known gang affiliates within the UAC program. She testified:

---

<sup>87</sup> Transcribed Interview of Robin Dunn Marcos, *supra* note 17 at 24.

<sup>88</sup> *Id.* at 15, 48, 56, 90.

<sup>89</sup> *Id.* at 90.

- Q. Initially, unless CBP has noted that a UAC is a gang member or has gang affiliation, you guys would not know about it. Is that correct?
- A. That is correct.
- Q. And you do not ask the UAC proactively if he or she has gang affiliation or a gang background?
- A. I can't speak to all the questions that are asked and by whom. There's a number of different service providers for any given child.
- Q. But it's not the policy of ORR to ask the UAC if they have gang affiliation or gang ties?
- A. I do not recall that specifically. By Congress, our authorities are to care for every child that is referred to us by a Federal entity, or by CBP, and that's what we do.
- Q. I understand that it's the safety and well being of each child. It doesn't seem like the safety and well being of non gang member UACs would be adequate, if you didn't know that there were also gang affiliated UACs in your custody. Do you have a system or a database to track gang affiliation or gang vulnerable UACs for ORR?
- A. Not that I'm aware of.<sup>90</sup>

Director Dunn Marcos was also unable to answer many of the Committee's questions, including whether HHS has a policy to refer known or suspected gang members to the Justice Department for investigation and, as appropriate, prosecution, among other topics.<sup>91</sup> Instead, the HHS attorneys at the interview represented that HHS would provide the Committee with the requested information at a later date.<sup>92</sup> The Committee followed up on its requests on multiple occasions for more than six months<sup>93</sup> and ultimately, due to HHS's lack of compliance, issued a

---

<sup>90</sup> Transcribed Interview of Robin Dunn Marcos, *supra* note 17 at 16-17.

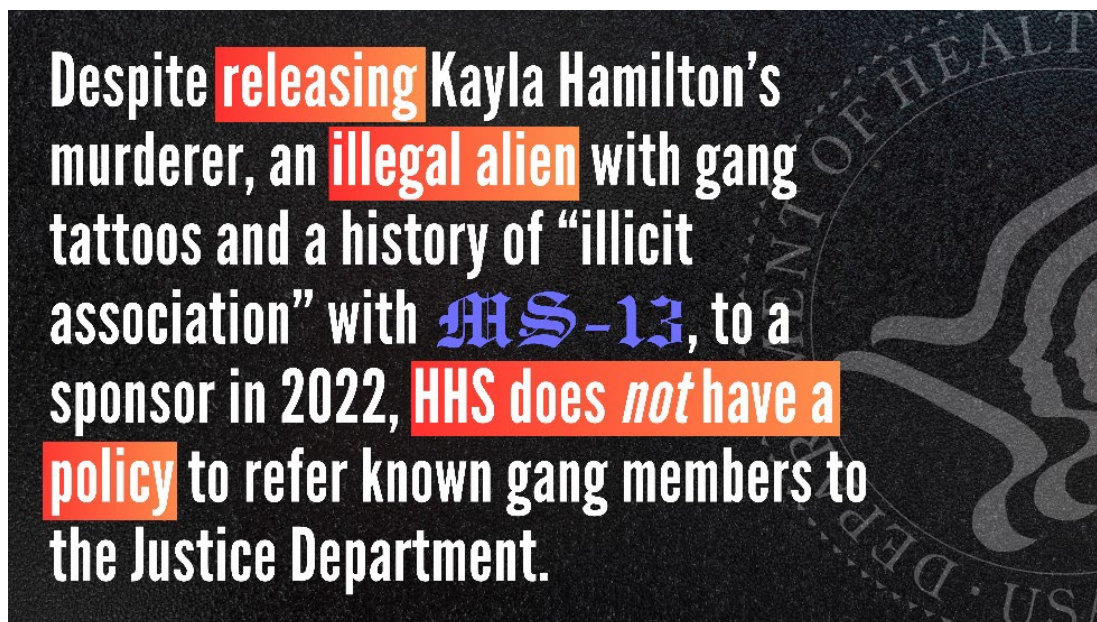
<sup>91</sup> *See e.g. id.*

<sup>92</sup> *See, e.g., id.* at 20-22 (on file with Comm.) (In reply to a question posed by Rep. Andy Biggs (R-AZ), agency counsel indicated she would relay that request, "[Y]es. Chairman, we'll take that back . . ."); *see also id.* at 30, 35, 91 (on file with Comm.).

<sup>93</sup> *Compliance with Committee Oversight: Hearing Before the Subcomm. on Responsiveness and Accountability to Oversight of the H. Comm. on the Judiciary*, 118th Cong. at 30-31 (July 18, 2023); Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to Robin Dunn Marcos, Director, Off. of Refugee Resettlement, U.S. Dep't of Health and Human Servs. (July 31, 2023); E-mail from Off. of Ass. Sec'y for Legis., U.S. Dep't of Health and Human Servs. to Comm. staff, H. Comm. on the Judic. (Aug. 11, 2023) (on file with Comm.); E-mail from Off. of Ass. Sec'y for Legis., U.S. Dep't of Health and Human Servs. to Comm. staff, H. Comm. on the Judic. (Aug. 21, 2023) (on file with Comm.); E-mail from Off. of Ass. Sec'y for Legis., U.S. Dep't of Health and Human Servs. to Comm. staff, H. Comm. on the Judic. (Aug. 28, 2023) (on file with Comm.); Letter from Jim Jordan, Chair, H. Comm. on the Judic., to Xavier Becerra, Sec'y, U.S. Dep't of Health and Human Servs. (Nov. 13, 2023).



subpoena to compel the production of the information it had requested.<sup>94</sup> Finally, on March 3, 2024, HHS admitted to the Committee that it does not even have a policy to refer known or suspected gang members to the Justice Department for investigation and, where appropriate, prosecution,<sup>95</sup> despite having released Kayla’s murderer, an illegal alien with gang tattoos and a history of “illicit association” with MS-13, to a sponsor just two years earlier.<sup>96</sup>



Despite releasing Kayla Hamilton’s murderer, an illegal alien with gang tattoos and a history of “illicit association” with MS-13, to a sponsor in 2022, HHS does not have a policy to refer known gang members to the Justice Department.

---

## CONCLUSION

---

President Biden’s open-borders policies—policies that have incentivized nearly 10 million illegal aliens to arrive at the southwest border<sup>97</sup>—coupled with Secretary Becerra’s emphasis on the speed, rather than the integrity, of UAC placements has created a toxic situation, endangering the American public and UACs alike. As the Committee and Subcommittee’s oversight has shown, these policies have incentivized criminals, such as the MS-13-affiliated illegal alien who murdered Kayla Hamilton, to come to the southwest border, knowing they very likely will be released into the interior of the country. Tragically, the Biden Administration has failed to engage in necessary diligence in the case of the UAC that murdered Kayla Hamilton, instead doubling down on the very policies that enabled her murderer to roam free.

---

<sup>94</sup> Letter from Jim Jordan, Chair, H. Comm. on the Judic., to Xavier Becerra, Sec’y, U.S. Dep’t of Health and Human Servs. (Jan. 23, 2024).

<sup>95</sup> E-mail from Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. to Comm. staff, H. Comm. on the Judic. (Mar. 13, 2024) (on file with Comm.).

<sup>96</sup> H. Comm. on the Judiciary, Interim Staff Rep., *The Murder of Kayla Hamilton: A Case for Immigr. Enf’t, and Border Sec.* (May 23, 2023).

<sup>97</sup> CBP Sw. Land Border Encounters, *supra* note 1; Casey Harper, *Border crisis creates national security threat for U.S., observers say*, WASH. EXAMINER (Aug. 7, 2023); Griff Jenkins (@GriffJenkins), X (May 9, 2024, 10:58 AM). Under the Biden Administration, there have been more than 8 million illegal alien encounters by CBP along the southwest border, in addition to nearly 1.9 million known illegal alien “gotaways,” who have evaded Border Patrol, escaping into the interior.

In passing H.R. 2, the Secure the Border Act of 2023 on May 11, 2023, the U.S. House of Representatives acted to remedy this issue. If passed, this legislation would reverse the unintended effects of the 2008 TVPRA, which has only increased UAC surges and encouraged the very behavior the law was intended to prevent. Presidents of both parties, including President Obama, have previously called upon Congress to amend the TVPRA in this manner to stop the surge of UACs. It is beyond time that the Senate and President Biden reverse course and act swiftly to take up this essential legislation to secure our borders and ensure no other Americans are similarly victimized. In the meantime, the Committee and Subcommittee will continue to conduct oversight to inform legislative reforms to the Administration's failing and dangerous open-borders immigration policies.