

The Threat of International Adoption for Migrant Children Separated From Their Families

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When news reports first began to emerge that 81 of the migrant children recently separated from their parents had been sent into the care of one of the largest adoption agencies in the country, the response was swift alarm. Was the government planning on creating “social orphans” out of the children, then offering them up for adoption?

Horried observers had already drawn parallels between the separation crisis and the blatantly assimilationist treatment of Native American children, starting with their mass removal to [boarding schools](#) in the late 19th Century and continuing through the Indian Adoption Project, which from the late 1950s to early 1970s [removed 25 to 35 percent](#) of all Native American children from their families. Or how U.S. slavery systematically broke apart families, selling children away from their parents. A number pointed out that the forcible transfer of children from one group of people to another fits the United Nations definition of genocide.

To adoption reform advocates, who monitor unethical and abusive practices in child welfare, it looked like any number of adoption crises in the past, like the airlifts out of Haiti in the wake of its cataclysmic 2010 earthquake. Then, masses of unaccompanied children were suddenly labeled orphans and became the focus of a deafening campaign in the U.S. to rescue them through inter-country adoption, even as Haitian adults were being warned not to try to come themselves.

Fears of a new adoption rush in today’s border crisis weren’t groundless. There was reason to be concerned. The former head of U.S Immigration and Customs Enforcement under President Barack Obama [warned](#) that some of the children who’d recently been separated would remain separated “permanently” and potentially be adopted. Reports surfaced of mothers who were told that their children would be adopted as an incentive to “[behave](#).” On Tuesday night, the [Daily Beast](#) reported that the threat of adoption has become weaponized, as a Guatemalan mother detained by Customs and Border Protection earlier this month was allegedly presented with the ultimatum that if she didn’t abandon her asylum appeal, she would be jailed for a year and her daughter put up for adoption. And conservative figures deeply hostile to immigrant families, like Fox News provocateur Laura Ingraham, herself an adoptive mother, toggled between mocking the detention of children as akin to “summer camp” and [calling](#) to “make adoption easier for American couples who want to adopt these kids.”

What policies and laws might apply to the children was so unclear that even many child welfare experts and former officials weren’t sure how to think about the threat. When migrant parents were taken into ICE custody at the border, their children became wards of

Health and Human Services, specifically its Office of Refugee Resettlement, which facilitates the care of “unaccompanied alien children.” Although they’d arrived with parents, upon separation, the children had been officially transformed into unaccompanied minors with immigration cases distinct from the adults they’d arrived with. And it was already becoming clear that, despite its protestations to the contrary, the government had [no real plan](#) for bringing them back together.

Children, including infants, began arriving at care facilities around the country, [sometimes](#) in the dead of night, [sometimes](#) without being told where they were going, [sometimes](#) without paperwork noting their parents’ detention locations or even their names.

“Thus far, we’ve seen no evidence that any system has been put in place by the government to ensure these families are communicating or connecting,” said Wendy Young, president of Kids in Need of Defense, on a recent media call. “Some of us have been trying to reconnect the children, but it’s incredibly hard.” Young added, “It feels like our legal aid staff have become private investigators, working from what you have — a name, a birthday, an [‘A’ number](#)” — an alien registration number.

Sometimes authorities claim they don’t have any information either: On a form filled out by a detained parent requesting a phone number to reach her daughter, an ICE official [responded](#) tersely, “I do not have this information.”

It was a system that Suzan Song, head of George Washington University’s child and family psychiatry division and a former humanitarian protection adviser for youth and families of forced migration with the U.N. High Commissioner for Refugees, said was more poorly organized than the process for reuniting refugee children who’d fled Syria.

“With this policy, the focus is really on the separation part,” said Song, “and it seems there’s very little planning or foresight about the complex processes for family tracing and reunification that has to happen.”

Part of the context for the advocates’ alarm over adoption is that international adoption as an industry has been in [free fall](#) for the last decade. Country after country has suspended or shrunk its adoption program, leaving a greatly reduced supply to meet a U.S. demand for adoptable children that hasn’t waned. At its peak in 2004, some 23,000 children were sent from abroad to the U.S. to be adopted, including thousands from Guatemala, the home country of many of today’s detained migrants.

International adoptions finally slowed down amid a pattern that replicated itself, country by country, of adoption booms, followed by ethical scandals, then the closure of that nation’s international adoption program. The scandals were as diverse as the countries supplying the children: coercion or baby buying in [Vietnam](#); recruitment from poor, rural families in [Ethiopia](#); even cases of outright kidnapping in [Guatemala](#). The adoption programs of several frequent source countries were suspended over ethical concerns, in addition to other factors like the solidifying middle class in China, which provided stability and its own domestic adoption market, and [political retaliation](#) from Russia, which ended international adoptions to America after the U.S. passed the Magnitsky Act in 2012. International adoptions today are down nearly [80 percent](#) since 2004. Some adoption agencies went out of business, and one adoption lobbying group [closed shop](#) as well.

As the family separation crisis unfolded on the border, adoption reform advocates noticed that the agency facilitating the foster care of some immigrant children in Michigan, Bethany Christian Services, announced a waiver of its \$550 international adoption application fee for the month of June in a since-deleted Facebook post. The dissonance struck the anxious reformers as absurd on its face.

“Why in hell would they be lining people up for international adoption right now?” asked Karen Smith Rotabi, author of “From Intercountry Adoption to Global Surrogacy: A Human Rights History and New Fertility Frontiers” and a professor of social work at United Arab Emirates University. “There’s no way that lining people up for international adoption is ethical, because there simply isn’t the flow of children.” (Bethany Christian Services declined to comment for this story, but has [stated](#) that the children will not be offered for adoption and that it will continue to try to reunite children with their families.)

Bethany, which is caring for some of the separated children under a grant with the Office of Refugee Resettlement to offer transitional foster care for unaccompanied minors, has repeatedly said that they oppose the family separation policy and are involved because they believe that the children will suffer less in a family setting than in an institution. In a statement on its website, Bethany [argued](#),

“Nobody benefits from creating more orphans.”

But reform advocates familiar with numerous [allegations](#) regarding Bethany’s domestic adoption program, relating to coercive and misleading practices with birth parents — some of which I wrote about in my 2013 [book](#), “The Child Catchers: Rescue, Trafficking and the New Gospel of Adoption” — worried that the agency was finding in the separated children a new adoption supply.



Writing at [Medium](#), Kimberly McKee, a Grand Valley State University professor and assistant director of the Korean American Adoptee Adoptive Family Network, predicted,

“Bethany Christian Services is laying the groundwork to turn these children into adoptable objects — transformed into disciplined bodies acceptable to white America.”

On June 20, protesters stood outside Bethany's office in Grand Rapids, Michigan, holding signs that read, "No profit for kidnappers" and "End the contract," a reference to their agreement with the Office of Refugee Resettlement. Bethany's director of refugee and foster care programs, Dona Abbott, responded by telling [Fox17 West Michigan](#) that

"it would be hard to say we're profiting off of them for adoption when we've not placed any of these children for adoption. And it's so early on to say whether these children will be available for adoption at all."

"If the kids aren't reunified, what would the adoption process even look like?" asked Linh Song, a lecturer at the University of Michigan School of Social Work who described avid interest on adoptive parent listservs to take in the children. "Would it be international adoption? Would they have to petition for an orphan visa while being fostered in West Michigan?"

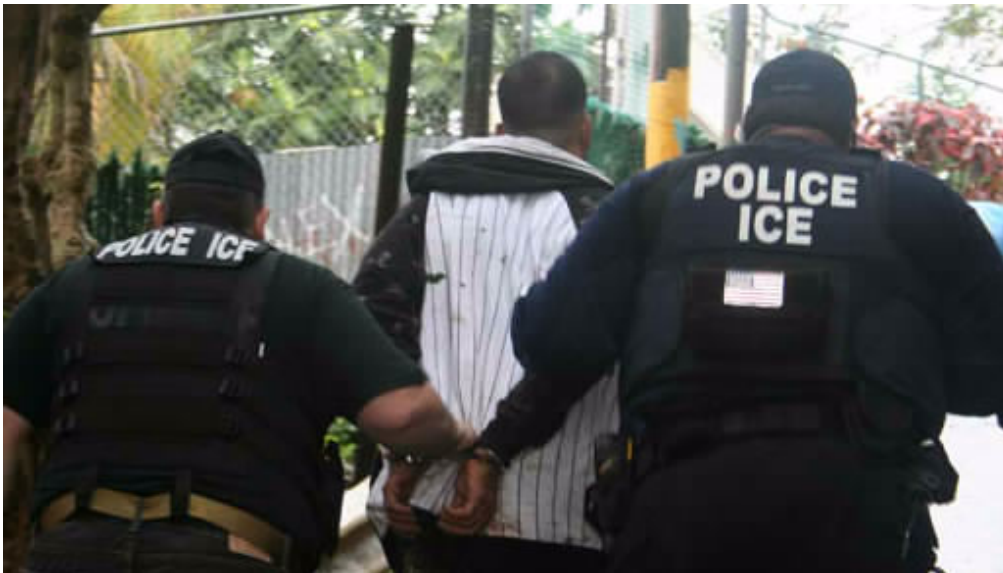
Given that the status of the children was so ambiguous, it remains unclear what policies would apply. Many worried that children being placed in foster care — not just with Bethany, but also other Office of Refugee Resettlement grantees around the country — could end up staying there so long that they would trigger a mechanism within the 1997 Adoption and Safe Families Act that was intended to keep children from languishing in foster care for years. The law provides that if a child has been in foster care for 15 out of 22 consecutive months, except in cases of relative foster care, child welfare agencies must stop working toward the goal of reunifying the child with their parents and instead, move to terminate parental rights and make the child available for adoption.

That law has become such a pivotal point in the child welfare process that parents whose children are taken into state custody are sometimes [shown](#) a video titled "The Clock Is Ticking," emphasizing how quickly they could lose their parental rights if they don't meet the requirements of their child protective services case plan. While in practice, many, many children do still remain in foster care for years — without either reunification or adoption — the law has also meant that parents who receive even short prison sentences for drug offenses may be left with far too little time to meet case plan objectives, such as making court or visitation appointments, and finding employment or housing.

The same principles could apply to the children separated at the border, legal analyst Danny Cevallos [speculated](#) last week on MSNBC.

"The initial goal is always reunification and state law usually requires that," said Cevallos. "But the parents can't meet any of the requirements such as visitation if they are detained or removed from the country."

He added that, in cases in which foster parents develop an attachment to the child they're caring for and seek to adopt, they often have a leg up on parents who have been separated from their children. Whereas foster parents are in the area and have access to the court system, he said, separated parents "may not even know anything about the process. And by the time they find out, it's possible that parental rights have already been terminated by a court." If court battles do ensue, he continued, the attachment that may have developed between foster parents and their wards could be taken into account by judges who are tasked with making decisions in the "best interest" of a child.



While there does exist an ICE [directive](#) that provides detained parents the right to be notified of any custody proceedings regarding their children, ICE isn't required to notify a state child protective agency of a detained parent's location so they could actually be informed. Nor does ICE have to transport parents to custody-related court hearings. [Advocates worry](#) that judges or caseworkers may wonder why parents went AWOL and aren't showing up to fight for their child, and may eventually terminate their rights.

JaeRan Kim, a University of Washington professor who researches issues around child welfare and an adoptee herself, recalled that several years ago, as reports began to arise about family separations at the border, some adoption scholars began to worry about exactly this scenario.

"At a conference I was at several years ago, someone said we shouldn't be surprised to see this as another avenue for adoption."

Amid massive public outrage, President Donald Trump backtracked on the family separation plan on June 20, indicating that he'll instead seek to detain families together and ultimately overturn the federal settlement, known as "[Flores](#)," that mandates that children not be held in detention facilities longer than 20 days. After initial wavering from the administration about whether the at least 2,300 already separated children would be "grandfathered in" to the order came news that either 522 or "[several hundred](#)" children had been reunited with their parents. Simultaneously, a New York Times [report](#) cited the Department of Homeland Security in explaining that "some children will remain separated from the adults they were traveling with if a family relationship cannot be established or if there are concerns about the children's safety with those adults." And on Wednesday, a week after Trump issued his executive order, [the New Yorker](#) reported that migrant families who have arrived at the border since the policy change are still being threatened with separation as a deterrent to applying for asylum, including through being shown videos of crying children being taken away from their parents and of adults dying in immigration detention facilities.

"What's the legal status of the kids down the road?" asked Linh Song. "The longer they stay, will there be foster parents who will contest for custody and adopt? It would be one thing if the kids are going as unaccompanied minors or teens. But if you have an infant with you, I bet there are parents who won't want to give that child up." She said, "What's the likelihood of an indigenous

Guatemalan mom fighting a family in western Michigan with access to law firms and large, conservative Christian megachurches? It's really daunting."

At present, any potential efforts to adopt these children don't have the support of some of the most influential voices in the adoption world. Jedd Medefind, president of the Christian Alliance for Orphans — an umbrella group that once led a movement of evangelicals advocating widespread international adoption as a religious calling, but now focuses more of its efforts on other child welfare issues — said that within his community, there was "concerned speculation" about the implications of the family separation crisis. "Because clearly if a child's temporary separation from their family became permanent, that is a profound tragedy for all involved."

Chuck Johnson, president and CEO of the National Coalition for Adoption, an adoption industry interest group, was even more forceful.

"Not only do we not believe these children are candidates for adoption, but as we understand the policies, they would never be considered for adoption."

The coalition just wrapped up its annual conference in Washington, D.C., he said, and among the hundreds of child welfare professionals in attendance — including from groups that have contracts or grants with Health and Human Services —

"I didn't hear of anyone who said that they'd be willing to work with any family toward completing adoption processes for these children."

"These children — the reason they've come here, the purpose, what's happened to them — I think it would send the world a terrible signal for them to be adopted," Johnson said.

Several former officials with Obama's Health and Human Services Department said they believed that the threat of adoption doesn't track with how they understand federal law to apply. At least as the Office of Refugee Resettlement functioned under Obama, they said, there was no provision for adoption for children in Health and Human Services custody. The forms of foster care offered by the Office of Refugee Resettlement — typically short-term care for young and special needs children, and longer-term care for teenagers who lack U.S. sponsors — are both distinct processes from state foster care and lack a mechanism for adoption. The Adoption and Safe Families Act, they believe, doesn't apply.

State foster care is a child welfare program, which is fundamentally different from the Office of Refugee Resettlement's mission to care for and reunite unaccompanied minors, according to Maria Cancian, the former deputy assistant secretary for policy at Health and Human Services' Administration for Children and Families, which oversees the refugee resettlement bureau. While the latter uses some foster home placements, in addition to a lot of congregate care, such as group homes, Cancian explained,

"The mandate is different, the rules are different, the funding is different. It's a really different program."

"In [regular] foster care, the kids are typically in state custody because the state has determined that parents are doing an inadequate job keeping the

kids safe,” said Cancian. “The mission of ORR is principally to reunite children with their parents, where the presumption is that parents are appropriate and adequate parents to provide for their children. It’s the circumstances that separated the kids, so it’s not like the parents have something to prove in the way that they usually do in a child welfare setting.”

On a practical level, Cancian added, state foster care systems are unlikely to want to take in this population, given that they’re chronically overburdened already, with many states already lacking enough foster care homes to accommodate the U.S. kids in their care.

Under the Obama administration, the former officials said, the Office of Refugee Resettlement focused on moving children quickly out of government custody into a ranked list of possible guardians: close relatives, who received the vast majority of children; followed by more distant relatives; then family friends. Longer-term stays in foster care were reserved typically for youth who didn’t have U.S. guardians to sponsor them. One former official, Marianne McMullen, the former deputy assistant secretary for policy and external affairs at the Administration for Children and Families, said that although she didn’t have a complete overview of the agency’s work, she could only recall one adoption that had taken place out of Office of Refugee Resettlement custody, under unusual circumstances.

She said she couldn’t imagine these children being offered for adoption,

“but a lot of things are happening that I couldn’t have imagined. Could things change? Could the Trump administration overstep? Well, they already have. They’re moving out of the realm of child welfare in compromising the welfare of children in order to enforce immigration law. The question is how far will they go in harming children for the sake of enforcing immigration law? It’s not alarmist at this point.”

Given that the Office of Refugee Resettlement’s mission has now been further compromised by the demand that they share potential sponsors’ personal information and location with ICE — as a recent open letter from one resettlement office counselor [details](#) — McMullen added,

“It could become such an anti-immigrant police state that [potential guardians] might not claim their own children. It’s worth playing out how bad this could be if it’s not stopped right now.”

“This administration is doing pretty horrific things,” said another former official, whose current employer doesn’t allow her to speak on the record. “So I can’t say that that’s not something they’ll consider going forward — especially considering they’re seemingly paternalistic, with Scott Lloyd’s [position] that he’s the dad figure and can tell a teenage girl she can’t have an abortion” — a reference to the Office of Refugee Resettlement director’s [maneuvering](#) to prevent minors in custody from terminating pregnancies. “It makes sense that they might think that it makes more sense for kids to be adopted by good Christian families in the U.S., instead of deported parents.”

The official added,

“I want to be careful to say that could happen.”

What such a potential change in policy would require is unclear, the officials agreed.

“This was never something that was considered,” said the former official. “It goes against the best interests of a kid if the parents did nothing wrong other than being separated.”



But the 2012 [case](#) of Encarnacion Bail Romero (image on the left), a Guatemalan mother who was arrested on immigration charges while working at a Missouri chicken processing plant, demonstrates that it can happen, as a Missouri judge ruled that the very fact of Bail Romero’s illegal immigration made her unfit, since “illegally smuggling herself into the country is not a lifestyle that can provide any stability for the child.”

However, Bail Romero’s case was also distinct in an important way: She was already living in the U.S. when she was taken into ICE custody and her child ultimately adopted. And that, said Cancian, is likely the more immediate threat when it comes to migrants’ children being unethically adopted.

“I have concerns about everything about this program right now, because of the pressure it’s under,” said Cancian.

When it comes to fears of separated children being adopted, she said,

“I would worry about children whose parents have been deported who are in many cases U.S. citizen children.”

In those cases — where a U.S. citizen child has been living here with her undocumented parents — deportation can very well mean the transfer of the child to state foster care, thereby triggering the Adoption and Safe Families Act timer for how long a parent has to regain custody before their rights are terminated. As the [Associated Press](#) noted, a 2017 [paper](#) found that, partly due to immigration enforcement, the percentage of Hispanic children in state foster care systems rose by 15 to 21 percent between 2001 and 2015.

Late Tuesday, in response to a lawsuit brought by the American Civil Liberties Union, a federal court in California issued a nationwide [injunction](#) to stop the Trump administration from separating families and ordered that all children be reunited with their parents within 30 days. Children younger than 5, the judge ruled, had to be reunited within 14 days. One of the two cases the ACLU brought was on behalf of the Brazilian mother who’d been threatened with adoption if she didn’t behave. Whether Attorney General Jeff Sessions appeals the decision, sparking a prolonged court battle, or how the order would be enforced,

remain significant unanswered questions, especially as the administration has already [conceded](#) that it will have trouble meeting the judge's deadlines. But even if the more than 2,000 currently separated children are returned to their parents within a month, for undocumented parents with U.S. citizen children, that threat — or, in some cases, anxious choice — remains.

"If a parent wanted their child back and couldn't find them, and the kid is put in an adoption, that's clearly an inappropriate adoption," said Cancian. "The parent and child want to be together and because we failed to put them in contact, they're not together. That's an easy one. But what happens if a parent is deported to El Salvador and thinks their kid is going to be killed in gang violence and decides it's better for the child to stay in the U.S., and that child is adopted by an American family? How do we think about that?"

"If I were a mother in El Salvador and I had to make that choice, it would really break my heart," she said.

Lauren Heidbrink, an anthropologist at California State University Long Beach and author of "Migrant Youth, Transnational Families, and the State: Care and Contested Interests," is one of the few scholars who has tracked the long-term trajectories of young people who have been in Office of Refugee Resettlement custody, conducting research within the office's facilities from 2006 to 2010. For the last five years, she followed 50 young people who were deported to Mexico or Guatemala after being detained in the U.S. Heidbrink says that adoptions of unaccompanied minors do sometimes take place — not directly from Office of Refugee Resettlement facilities, but rather after they've been reclassified as an unaccompanied refugee minor, rather than an unaccompanied alien minor. (The office of Refugee Resettlement did not respond to a request for comment.) In order for that to happen, migrant children must receive legal status of some sort: asylum, a visa for victims of crime or trafficking, or being recognized as a special immigrant juvenile if they're found to have been abused, neglected, or abandoned.

Cases where children receive the special status deserve particular attention, Heidbrink added, because, unlike asylum applications, crime, or trafficking visas, special immigrant juvenile status is determined by a probate or family court judge seeking to determine the best interests of the child. In those court proceedings, Heidbrink said,

"what's presented as abuse, abandonment, or neglect can instead be a parent who was deported or detained."

While Heidbrink does believe that the federal government has the information necessary to reunite children and parents, she said a mechanism for communication between Health and Human Services's Office of Refugee Resettlement, and the Department of Homeland Security, which detains the adults, is often lacking.

"If it doesn't happen, and they're mired in bureaucracy and lack of communication, what I've seen is the parents are deported, they try to find their child in the U.S. foster care system, whether federal or domestic, and it's really difficult to meaningfully participate in those custody proceedings," Heidbrink said. "ORR may say we don't have unaccompanied children being adopted from ORR facilities and that the forced separations we've been seeing at the border won't lead to adoption. But when you follow young children for

much longer, you see the different trajectories they follow, some of which end in adoption.”

Even in these instances or potential cases in which immigrant children and their parents might want them to be adopted — as a means of securing U.S. citizenship or keeping the child safe — the National Council for Adoption’s Chuck Johnson notes that the laws governing adoptees’ citizenship have been so restrictively written that they apply only to children who have entered the country for the express purpose of international adoption. It would be unlikely in these cases, he said, that citizenship would then attach to those children.

That recalls a key fight around the time of the Haiti adoption airlifts, when Americans clamored to adopt Haitian children by the thousands, even as Haitian adults were being told — at the U.S. Embassy, through a U.S. Air Force plane broadcasting messages in Creole, and in the form of a fleet of Coast Guard ships patrolling the waters outside Port-au-Prince — not to attempt to flee themselves. To facilitate those adoptions, Rep. Jeff Fortenberry, R-Neb., sponsored the Help HAITI Act, a bill that would have ensured that evacuated Haitian children who were adopted by Americans receive U.S. citizenship — something that, as many adult adoptees at risk of deportation know, is [not guaranteed](#). The bill almost didn’t pass when rumors flew that Democrats were considering tying it to Obama’s DREAM Act, thereby also creating a path to legal residency for undocumented children whose biological parents had brought them into the country. At the time, the website [Rightwing News](#) responded with outrage:

“Think of it ... if Republicans vote against the DREAM Act,” a post on the site said, “they would also be voting AGAINST the orphans.”

Then, as now, it was a potent illustration of the duality at the heart of discussions of immigration and adoption: of which sorts of people — adults or children — and even which sorts of children — infants or teenagers, those who are brought across the border by white adoptive parents or their brown biological ones — are viewed as worthy of help.

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