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S. Hrg. 115–657

OVERSIGHT OF HHS AND DHS EFFORTS TO PROTECT UNACCOMPANIED ALIEN CHILDREN FROM HUMAN TRAFFICKING AND ABUSE

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

APRIL 26, 2018

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Printed for the use of the
Committee on Homeland Security and Governmental Affairs

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OVERSIGHT OF HHS AND DHS EFFORTS TO PROTECT UNACCOMPANIED ALIEN CHILDREN FROM HUMAN TRAFFICKING AND ABUSE

THURSDAY, APRIL 26, 2018

U.S. SENATE, PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:01 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Rob Portman, Chairman of the Subcommittee, presiding.

Present: Senators Portman, Lankford, Daines, Carper, Heitkamp, Peters, and Hassan.

Also present: Senators Johnson, McCaskill, and Harris.

OPENING STATEMENT OF SENATOR PORTMAN[1]

Senator PORTMAN. We have some colleagues who are joining us, and I know some of them have multiple hearings this morning. So we are going to get moving here and give them a chance to come and ask questions as well.

I want to start by talking about why we are here and how this all started, at least for me. In 2015, I learned the story of eight unaccompanied minors from Guatemala who crossed our Southern Border. A ring of human traffickers had lured them to the United States, had actually gone to Guatemala and told their parents that they would provide them education in America. To pay for the children's smuggling debt, their parents actually gave the traffickers the deeds to their homes. The traffickers retained those deeds until the children could work off the debt because they were not interested in giving them an education, it turned out. They were interested in trafficking them.

When the children crossed our border, their status, as defined by Federal immigration law, was that of an "unaccompanied alien child," (UACs). You will hear the term "UAC" used today. The Department of Homeland Security (DHS) picked them up and, following protocol, transferred them to the Department of Health and Human Services (HHS). HHS was then supposed to place these children with sponsors who would keep them safe until they could go through the appropriate immigration legal proceedings. That is the practice.

[1] The prepared statement of Senator Portman appears in the Appendix on page 55.

That did not happen. What did happen was that HHS released these children back into the custody of those human traffickers without vetting them.

Let me repeat: HHS actually placed these children back in the hands of the traffickers. The traffickers then took them to an egg farm in Marion, Ohio, where these children lived in squalid conditions and were forced to work 12 hours a day, six or seven days a week, for more than a year. The traffickers threatened the children and their families with physical harm—and even death—if the children did not work these long hours.

This Subcommittee investigated. We found that HHS did not do background checks on the sponsors. HHS did not respond to red flags that should have alerted them to problems with the sponsors. For example, HHS missed that a group of sponsors were collecting multiple UACs, not just one child but multiple children. HHS did not do anything when a social worker provided help to one of those children, or tried to, at least, and the sponsor turned the social worker away.

During the investigation, we held a hearing in January 2016—so this goes back a couple of years—where HHS committed to do better, understanding that this was a major problem. In 2016, of course, that was during the Obama Administration, so this has gone on through two Administrations now. HHS committed to clarifying the Department of Homeland Security and HHS responsibilities for protecting these children. HHS and DHS entered into a three-page Memorandum of Agreement (MOA), which said that the agencies recognized they should ensure that these unaccompanied alien children were not abused or trafficked.

The agreement said the agencies would enter into a detailed Joint Concept of Operations (JCO)—so an agreement that would actually lay out the responsibilities—that would spell out what the agencies would do to fix the problems. HHS and DHS gave themselves a deadline of February 2017 to have this Joint Concept of Operations pulled together. That seemed like plenty of time to do it. But it was not done, and that was over a year ago, in February 2017.

It is now April 2018. We do not have that Joint Concept of Operations, the so-called JCO—and despite repeated questions from Senator Carper and from me, as well as our staffs, over the past year, we do not have any answers about why we do not have the Joint Concept of Operations.

In fact, at a recent meeting, a DHS official asked our investigators why we even cared about the JCO. Why? Let me be clear. We care about the JCO because we care that we have a plan in place to protect these kids when they are in government custody. We care because the Government Accountability Office (GAO) has said that DHS has sent children to the wrong facility because of miscommunications with HHS and because of other concerns.

We care because the agencies themselves thought it was important enough to set a deadline for the JCO, but then blew past that date. We care because these kids, regardless of their immigration status, deserve to be properly treated, not abused or trafficked.

We learned at 4 p.m. yesterday that 13 days ago there was an additional Memorandum of Agreement reached between the two

agencies. We requested and finally received a copy of that new agreement at midnight last night. It is not the JCO that we have been waiting for, but it is a more general statement of how information will be shared between the two agencies. Frankly, we had assumed that this information was already being shared, and maybe it was. It is a positive thing that we have this additional memorandum. That is great. It is nice that this hearing motivated that to happen. But it is not the JCO we have all been waiting for.

We called this hearing today for DHS and HHS to give us some answers about the JCO. Once DHS hands unaccompanied minors off to HHS, the law provides that "the care and custody of all unaccompanied alien children . . . shall be the responsibility of the Secretary of Health and Human Services." But HHS told this Subcommittee that once it places children with sponsors—even sponsors who are not related to the children—it no longer has legal responsibility for them. Not if they are abused, not if they miss their court hearings. No responsibility. That is, of course, not acceptable and not workable.

HHS, by the way, inherited responsibilities relating to these children when Congress dissolved the Immigration and Naturalization Service (INS). We continue to believe HHS has the authority and responsibility to care for and keep track of these children.

Since our 2016 hearing, we also have heard about other problems. We have heard that sponsors frequently fail to ensure these children show up to their immigration court proceedings. That undermines our rule of law and an effective immigration system. In almost all of those cases, the judge enters an in absentia removal order. That means that even if the children are eligible for immigration relief, like asylum status, they do not get it and are ordered removed. So that is bad for the children, too.

We also learned that HHS does not track these children once HHS releases them to the sponsors. Nor does HHS notify State or local governments when it places these children with sponsors in those communities. HHS says they do plan to start notifying local law enforcement when it releases a relatively small number of high-risk children. That is good. But HHS has not yet done so because it cannot figure out who to tell. That seems like a straightforward step. We should be able to at least figure that out here today.

Since 2016, HHS has called sponsors and children 30 days after placement with sponsors to check on the children. That is a good step, in my view. But in his testimony, Mr. Wagner says that between October and December last year, the Office of Refugee Resettlement (ORR) tried to reach 7,635 of these children. Of those, he says, "ORR was unable to determine with certainty the whereabouts of 1,475 UAC." In other words, that is almost 1,500 kids missing in just a 3-month period. We would like to know how HHS plans to keep track of these children.

We have also heard about problems at the three secure facilities HHS uses to house UACs who are higher risks—those accused of crimes, who might do harm to themselves, or who present a flight risk. The head of the Yolo County, California facility says HHS does not give them enough money for the number of children they house, which means they cannot hire enough staff to take care of

the children safely. We have a witness from the facility in Shenandoah Valley, who is going to talk later today, who will tell us why their facility simply is not equipped to handle some of the children that the HHS Office of Refugee Resettlement places there and what can be done about that.

Again, this is not an issue that just came up in this Administration. This dates back to the Obama administration, now into the new Trump administration. The topic of unaccompanied alien children obviously continues to be a hot-button issue generally. But today we want to focus on two key issues related to them.

First, just human decency. Once these unaccompanied kids are in the United States, we have a duty to ensure they are not trafficked and not abused.

Second, the rule of law. Our immigration system is clearly broken, and one problem is that half of these kids are not showing up at their court hearings. That is not good for the kids or for our system. We need to do better.

I look forward to hearing from our witnesses today about how we can make that happen, and, again, I appreciate my colleagues being here. We will go through the testimony quickly, and then I will withhold my questions until you all have had a chance to ask yours.

With that, I would like to ask our Ranking Member, Senator Carper, for his opening statement.

OPENING STATEMENT OF SENATOR CARPER[1]

Senator CARPER. Thanks. Thanks so much, Mr. Chairman. Thanks not just for holding the hearing. I want to thank you for the commitment you have shown over a number of years to better care for vulnerable migrant children who end up in our Nation and in our communities. I welcome all of our witnesses. Thank you for making time to be here with us today. This is not easy. This is not an easy problem; it is not an easy issue. I think if we work together and pull together and be honest with one another and work at it, we can make some real progress today. And we want to do that.

I want to thank our staffs who have worked very hard in preparing for today's hearing, and for the good work that they do on both the majority and minority side.

Most of the kids we will be talking about today arrived in our country during an unprecedented surge of migration that we have seen along our Southern Border in recent years. They came here primarily from Guatemala, Honduras, and El Salvador to escape extreme poverty and, in some cases, unspeakable violence in the countries where they were born and raised. Yet our Subcommittee has found that in too many cases, in Ohio, in Delaware, and around the country, we are failing in our responsibility to protect and properly care for these children after they arrive here seeking our help. A 2008 law signed by former President George W. Bush clearly places all children who arrive at our borders and ports of entry (POEs) without a parent or guardian under the care and custody of the Department of Health and Human Services.

[1] The prepared statement of Senator Carper appears in the Appendix on page 57.

In fulfilling its responsibilities to these children, HHS must place them in safe homes, offer them mental health care and other services that they might need, and ensure that they are participating in immigration court proceedings. Based on our Subcommittee's findings, though, HHS is failing in these and in a number of other areas.

In January 2016, our Subcommittee held a hearing on a staff report detailing how HHS had placed eight Central American children with sponsors in Marion, Ohio—the Chairman has already talked about that, and I am not going to repeat what he has already said. But we learned that HHS failed to detect that the sponsors in this case sought and received custody of multiple, unrelated children. HHS also failed to perform background checks on some of the adults who would be living with or caring for the children and did not visit them where they were supposed to be living.

At one point, HHS even failed to take action when someone answering the door at a child's home declined the mental health treatment that was approved for the child and denied the caregiver access to them.

Since 2016, HHS and the Department of Homeland Security have taken steps in response to recommendations from us and from the Government Accountability Office that should make it less likely that unaccompanied migrant children might fall through the cracks and wind up exploited by other unscrupulous people. Specifically, HHS policy now calls for more background checks, more home visits, and more access to services like mental health treatment for children once they are placed with sponsors.

The Department also now requires that all children and their sponsors be contacted at least once within 30 days of their placement so that problems can be detected and referred to local authorities. These are positive steps, but the testimony we will be receiving today tells us that too many of the children we are placing in homes across the country are still at great risk.

Sadly, it is not impossible to imagine a child today finding himself or herself in a situation similar to the one that was discovered in Ohio just three years ago. In preparation for this hearing, our staffs have heard reports of children being placed in homes with people they do not know who expect them to work to help with living expenses. We have heard about children, sometimes due to a need to send money home or to pay debts to smugglers, working all night and as a result unable to stay awake at school during the day.

These are the kinds of problems that HHS, working with State and local partners, should be able to detect and address or, better yet, prevent from happening in the first place. Unfortunately, it seems they cannot.

HHS informs us in their testimony today that, between October and December of last year, they actually lost track, as the Chairman has said, of nearly 1,500 children placed in their care who they attempted to contact after placement with a sponsor. Dozens more ran away from home or were found to have moved in with someone not vetted or approved by HHS.

Given all that we learned in 2015 and 2016, it is unacceptable that we can still be this bad at keeping track of these children and

keeping them out of danger. We have also learned more in preparing for this hearing about how our system too often sets children up for failure even when they find themselves in good, stable homes.

Many Central American migrants do not speak English; some do not even speak Spanish. Their sponsors are often in the same boat, yet HHS leaves them with confusing guidance on how to register for school and how to navigate our immigration court system.

Even when children and their sponsors know what to do, we make it very difficult for them to get to court and participate in the process. In Delaware, for example, children placed in homes in Sussex County—that is in southern Delaware—must find a way to get to immigration court in Philadelphia. It is about 100 miles away, a drive that can take more than two hours each way.

A lawyer can help, but many cannot afford one, and free legal services are not always available, as we know. So what happens too often is children do not show up for hearings. More likely than not, those who do not show up will be ordered removed back to their home countries even if they have a legitimate claim to stay here.

In a number of ways, Mr. Chairman, we are denying these children—you have already said this, but we are denying these children the chance that they deserve, the chance our laws require we give them, to live in safety and to make their case for asylum or some other protected status.

There are steps we could be taking right now to change this. I will mention a few.

First, it is imperative that HHS and DHS get us the document that we have been promised us since 2016 that, among other things, would lay out each Department's roles and responsibilities when it comes to protecting and caring for unaccompanied children. This Joint Concept of Operations, due 14 months ago, was intended, at least in part, to provide the kind of detail agencies need to identify gaps that put children at risk.

Here in Congress, this document will help us hold agencies accountable and make decisions about what new authorities and resources might be needed to properly care for the unaccompanied children in our country.

We need this information, and we need it now.

What we also need now is to have a conversation about how to better partner with the State and local officials who run the schools, the law enforcement agencies, and the child welfare agencies where these children will be living.

Given how much HHS clearly relies on State and local officials to protect this population of children, it does no one any good if we first learn that a child is being placed in Delaware when they walk through the front doors of Sussex Central High School in Georgetown.

We also need to do more to help our immigration courts. Based on data that my staff has received, we have more than 75,000 cases involving migrant children pending across our country, and we are adding more just as quickly as we are resolving others. Expecting judges to just work faster, as the Trump administration recently proposed, will not solve this problem. We need more judges, and we

need to encourage the courts to work more flexibly so that fewer children are forced to drop out of the legal process.

Finally, we need to make a long-term commitment to our neighbors in Guatemala, Honduras, and El Salvador to help them address the poverty, the crime, and hopelessness that plagues those countries.

Along with some of my colleagues, I have visited all three countries in the Northern Triangle a number of times over the years. I have met with their leaders and seen on the ground how communities there are struggling to deal with challenges that would be unimaginable to most Americans. A good number of those challenges are fueled by our addiction to drugs and our past interventions in regional conflicts.

As long as these challenges go unaddressed, children and other vulnerable Central Americans will continue to make the dangerous trek across Mexico to our southern border.

Some have pointed to the continuing Central American migration to our country as a sign that we need to bolster our border security or even build a wall along our Southern Border.

But so many of the migrants that we are talking about here are just turning themselves in when they get here. They do not run away. They run to the Border Patrol officers. A wall or the National Guard just will not stop them from coming.

A sustained commitment from us, from our partners in the region, and from the governments in the Northern Triangle to improve the lives of the citizens of Guatemala, Honduras, and El Salvador is the only way—the best way, I think—to address the root causes of the migration that we see into our Nation.

Mr. Chairman, thanks very much for bringing us here, and to our witnesses. Everything I do—my colleagues have heard me say this every day, almost every week, everything I do I know I can do better. I think the same is true of all of us, and it is certainly true of our Federal agencies and our State and local partners. The kids deserve something better, and let us make that happen.

Thank you.

Senator PORTMAN. I thank the Ranking Member and agree with him, and that is what this hearing is about. We are going to now introduce the first panel.

James McCament is Deputy Under Secretary for the U.S. Department of Homeland Security, Office of Strategy, Policy, and Plans.

Steven Wagner is the Acting Assistant Secretary for the U.S. Department of Health and Human Services, Administration for Children and Families (ACF).

Kathryn Larin is Director of the U.S. Government Accountability Office's Education, Welfare, and Income Security team.

Although she will not be GAO's main witness, we also have with us Rebecca Gambler, GAO's Director for the Homeland Security and the Department of Justice (DOJ) team. She is seated behind and to the left of Ms. Larin, and she will also be sworn in in case any questions come up that she is better equipped to handle.

I appreciate all of you being here today. Thank you for coming. I thank you for your willingness to testify and help us to improve this system.

The rules of the Subcommittee require all witnesses, including Ms. Gambler, to be sworn in, so at this time I would ask you to please stand and raise your right hand. Do you swear that the testimony you are about to give to this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. MCCAMENT. I do.

Mr. WAGNER. I do.

Ms. LARIN. I do.

Ms. GAMBLER. I do.

Senator PORTMAN. Please be seated. Let the record reflect the witnesses all answered in the affirmative.

We will be using a timing system today. To the witnesses, all of your written testimony will be printed in the record in its entirety. We will ask you, though, to limit your oral testimony to five minutes. Mr. McCament, we would like to hear from you first.

TESTIMONY OF JAMES W. MCCAMENT,[1] DEPUTY UNDER SECRETARY, OFFICE OF STRATEGY, POLICY, AND PLANS, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. MCCAMENT. Thank you, Mr. Chairman.

Chairman Portman, Ranking Member Carper, and distinguished Members of the Subcommittee, thank you for the opportunity to testify at today's hearing to examine the current efforts by the Department of Health and Human Services, and the Department of Homeland Security, to protect unaccompanied alien children, from human trafficking and abuse. On behalf of DHS, we appreciate that this hearing reflects the Subcommittee's sustained interest, dedication, and focus regarding this important issue.

The policies and procedures regarding UACs are directly informed by the 1997 *Flores* Settlement Agreement, the Homeland Security Act of 2002, and the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA). The 1997 *Flores* Settlement Agreement resulted in establishing a nationwide policy for custody and treatment of UACs which still governs our actions in 2018. In 2002, as mentioned, the Homeland Security Act divided responsibilities for UAC processing and treatment between DHS and HHS' Office of Refugee Resettlement. DHS then became responsible for the apprehension, transfer, and repatriation of UACs while HHS' responsibility is for the coordinating and implementing care and placement and maintaining a list of legal service providers, among other responsibilities.

With passage of the TVPRA in 2008, the Secretary of DHS, in conjunction with other agencies, was directed to develop policies and procedures to ensure UACs are safely repatriated to their country of origin or last habitual residence. It also established a different set of rules for UACs from contiguous countries versus non-contiguous countries. For example, a UAC who is a national or habitual resident of Canada or Mexico and encountered at the border may be permitted to withdraw an application for admission and be returned to his or her country of origin if there are no human trafficking indicators or claim of fear of return and the child is able to make an independent decision to withdraw that application. If

[1] The prepared statement of Mr. McCament appears in the Appendix on page 65.

not eligible to be voluntarily returned, the child is required to be placed in removal proceedings. In contrast, UACs from non-contiguous countries encountered at the border are generally issued a Notice to Appear (NTA) and placed directly in removal proceedings before an immigration judge.

Typically, UACs are first encountered by DHS when presenting themselves to Customs and Border Protection (CBP) at the border or port of entry. However, Immigration and Customs Enforcement (ICE), may encounter UACs in the interior of the United States during immigration enforcement actions. Upon encounter, the agency must first determine whether the individual meets the statutory definition of a UAC. Defined as a child who has no lawful immigration status in the United States, has not attained 18 years of age, and with respect to whom there is no parent or legal guardian in the United States—or no parent or legal guardian available in the United States to provide care and physical custody. Once a determination is made, with the exception of certain circumstances, the individual is indeed a UAC, DHS is required by law to notify HHS of the encounter within 48 hours and must transfer custody of the child to HHS within 72 hours.

With respect to removals and repatriations, the TVPRA does require DHS to ensure that UAC removal is fully coordinated with host government authorities, and we seek to do so.

To further protect the integrity of this process and our immigration system, DHS is also working closely within the Trump administration and with Members of Congress to address existing loopholes that allow individuals to exploit our immigration laws, particularly, as the Chairman mentioned, with respect to vulnerable populations. This effort includes, but is not limited to, the Administration's press for: first, amending the TVPRA to treat all UACs the same, regardless of nationality, so that if they are not victims of human trafficking they can be safely returned home or removed to a safe third country; second, clarifying that alien minors who do not meet the UAC statutory definition are not entitled to the presumptions or protections granted to UACs; and, finally, terminating the *Flores* Settlement Agreement by the passage of legislation that stipulates care standards for minors in custody and clarifying corresponding provisions of the TVPRA.

DHS works with our interagency and foreign counterparts on a daily basis to ensure the humane treatment of UACs while simultaneously seeking to enforce the laws Congress has passed. We fully understand that this responsibility carries great weight.

Thank you for the opportunity to testify before you on this critical topic. I look forward to answering your questions.

Senator PORTMAN. Thank you, Mr. McCament. Mr. Wagner.

TESTIMONY OF STEVEN WAGNER,[1] ACTING ASSISTANT SECRETARY, ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. WAGNER. Chairman Portman, Ranking Member Carper, and Members of the Subcommittee, it is my honor to appear on behalf of the Department of Health and Human Services. I am Steven Wagner, Acting Assistant Secretary for Children and Families. In this capacity, I oversee the work of the Office of Refugee Resettlement, which is responsible for the care and placement of unaccompanied alien children. Today I will discuss a number of developments in the programs, policies, and Administration since February 2016.

ORR has made a number of policy enhancements in the area of sponsor assessments and home studies. In 2016, ORR added and later redefined guidance on the types of documents ORR accepts as evidence of identity of the potential sponsor, the household members, and any adults listed in a sponsor care plan. The guidance also clarified what constitutes acceptable documents to prove the prospective sponsor's address, the child's identity, and the sponsor-child relationship. ORR also added an alternative method to verify a potential sponsor's address.

These changes help to protect children from traffickers, smugglers, and others who wish to do them harm. If ORR discovers that a sponsor is using fraudulent documents, ORR denies release and reports the case to the HHS Office of the Inspector General (OIG) and to U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI).

ORR conducts criminal public records checks and sex offender registry checks on all potential sponsors. ORR conducts national criminal history checks based on fingerprints for all potential sponsors. ORR conducts these checks on parents where there is a documented risk to the safety of the child, the child is especially vulnerable, or the case is being referred for a home study.

ORR also conducts immigration status checks through the Central Index System on all potential sponsors, except parents. Again, ORR conducts these checks on parents where there is a documented risk to the safety of the UAC, the child is especially vulnerable, or the case is being referred for a home study.

In addition, ORR conducts child abuse and neglect checks on all unrelated sponsors. ORR conducts these checks on parents or other relatives if the case requires a home study or a special concern has been identified.

In April 2016, ORR clarified that it may require enhanced checks for sponsors in any category where there are any unresolved issues or questions related to a child's well-being.

In assessing a sponsor's suitability, ORR, among other considerations, evaluates the sponsor's ability to ensure the child's presence at future immigration proceedings. To emphasize the importance of a child's attendance at immigration proceedings, in December 2017 ORR made attendance at the Legal Orientation Program for Custodians a criterion in the sponsor assessment process.

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[1] The prepared statement of Mr. Wagner appears in the Appendix on page 73.

In the area of home studies, ORR made two significant policy changes. The first is ORR began requiring home studies for all UAC 12 years of age and younger being released to non-relative sponsors. The other change underscored the need for case managers and case coordinators to recommend home studies if they think a home study would provide additional information required to determine that the sponsor is able to care for the health, safety, and well-being of the child.

Another step in improving the safety of releases is to contact the child and the sponsor shortly after release. To accomplish this, ORR initiated safety and well-being calls, during which a case manager contacts the child and the sponsor 30 days after release. If the case manager, or any other ORR grantee or contractor that has contact with a released child, has a concern about the child's safety or well-being, they are required to report all concerns to appropriate investigative agencies and notify ORR of immediate dangers to a child's safety or well-being. To remove children from unsafe situations, ORR reports notifications of concern to local law enforcement.

ORR has also expanded the services of its National Call Center. This is available 24 hours a day to all children and sponsors post-release and provides referrals to community assistance and other guidance to sponsors and children seeking help, including those with safety concerns.

Finally, ORR continues to develop its interagency communication efforts. ORR is working particularly to enhance its day-to-day consultations with the Department of Homeland Security. ORR notifies DHS 24 hours after a minor's release, and ORR and DHS are working toward the conclusion of the draft Joint Concept of Operations.

Thank you for this opportunity to update you on ORR's efforts in the UAC program. I look forward to working with you on our continued enhancement of policies and procedures and all facets of the UAC program. I welcome your questions.

Senator PORTMAN. Thank you, Mr. Wagner. Ms. Larin.

TESTIMONY OF KATHRYN A. LARIN,[1] DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; ACCOMPANIED BY REBECCA GAMBLER, DIRECTOR, SECURITY AND JUSTICE TEAM, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. LARIN. Chairman Portman, Ranking Member Carper, and Members of the Subcommittee, I am pleased to be here today to discuss progress made by the Department of Homeland Security and HHS' Office of Refugee Resettlement in improving the care and safety of unaccompanied children since we first reported on these issues in 2015 and 2016.

Specifically, my testimony today will cover four key questions:

First, how are unaccompanied children transferred from DHS to the custody of ORR? In 2015, we reported that the interagency process to refer unaccompanied children from DHS to ORR shelters was inefficient and vulnerable to error. We recommended that DHS

[1] The prepared statement of Ms. Larin appears in the Appendix on page 83.

and HHS develop a joint collaborative process for the referral and placement of unaccompanied children. In response, the agencies recently developed a Memorandum of Agreement that provides a framework for coordinating responsibilities. However, it is still under review and has not yet been implemented.

As DHS and HHS finalize and implement this Joint Concept of Operations, they will need to ensure that it includes a documented interagency process with clearly defined roles and responsibilities as well as procedures to disseminate placement decisions.

The second question I will address is: How does ORR monitor the care of these children while they are in ORR facilities? In 2016, we reported that ORR relies on its grantees to provide care for unaccompanied children, including housing and educational, medical, and therapeutic services. However, when we reviewed 27 randomly selected case files, we found that documentation of certain required services was often missing, and ORR was not conducting timely monitoring visits to all facilities.

More recently, ORR has reported taking steps to improve monitoring of grantees' provision of services and is currently revising its monitoring tools. These tools are expected to be completed by the end of fiscal year (FY) 2018. These revised tools, along with more timely monitoring, should help ensure an improved monitoring program as we recommended.

Third, how does ORR identify and screen sponsors? ORR grantees are also responsible for assessing the suitability of potential sponsors who can care for the children after they leave ORR facilities. Potential sponsors must complete application packages and provide documents to establish their identity and relationship to the child, and grantees are to conduct background checks on potential sponsors, and the type of rigor these checks depend on the sponsor's relationship to the child. Also, in a small percentage of cases, a more detailed home study must also be conducted.

In our 2016 report, we found that nearly 60 percent of children who entered the country in prior years were released to a parent, and fewer than 9 percent went to unrelated sponsors.

Finally, what is known about services received by children after they are released to sponsors and their eventual immigration status? In 2016, we reported that little information was available on the post-release services provided to children and their sponsors. At that time less than 10 percent received post-release services. Since then, eligibility has expanded, and in 2017, 32 percent received post-release services.

Additionally, starting in August 2015, grantee staff are required to call and check up on children 30 days after they are placed with sponsors. However, ORR still does not collect uniform data from grantees on post-release services as we recommended.

With respect to these children's immigration proceedings, the outcomes for many children have still not been determined. Some have been granted asylum, but most are still awaiting final disposition of their cases.

In summary, DHS and HHS have both take steps to improve the process of placing and providing care for unaccompanied children, but their efforts are incomplete. There is more to be done to ensure that our recommendations are fully implemented.

This concludes my statement. I am happy to answer any questions you may have.

Senator PORTMAN. Thank you, Ms. Larin. I appreciate it.

As I said earlier, I am going to delay my questions to give members here an opportunity to ask questions and get back to their other hearings and other responsibilities.

I will say, just to clarify, the Joint Concept of Operations you talked about has been worked on for 26 months, and it was over a year ago when it was promised, not by us requiring you to do it but promised by the two agencies, and so that is one reason we are here. Obviously, you have raised a number of issues about a lack of information regarding what happens to these children after they leave HHS and go with sponsors that is troubling, which we will get into later. Senator Carper.

Senator CARPER. Let me just ask my Democratic colleagues, anybody have a need to leave soon?

Senator HEITKAMP. I am good.

Senator CARPER. You are good? Claire?

Senator MCCASKILL. I am good.

Senator CARPER. OK, good. Thank you all for your testimony. I was thinking about the hearing, and I was thinking about three categories: One, where are we making progress? Where is it clear that we are making progress? And where have we made progress? Where are some areas that are underway? Ms. Larin actually talked about one of those, she mentioned we are still looking for the implementation, I think, of the plan. The Joint—there you go. Say it out loud.

Ms. LARIN. The Joint Concept of Operations.

Senator CARPER. There you go. I want to come back to that, but that is where something is underway, and hopefully we will make some real progress soon, even more progress soon.

Then, last, what are some areas we just flat have not done much at all? Finally, where can we help you? What have we done that is helpful? We just passed a big appropriations bill, as Senator Lankford knows, to fund the government for the rest of the year. What do we do in that appropriations bill that actually helps address some of these issues, these funding issues that we talked about?

Let us start off with the second area. Where is progress underway? Ms. Larin, you talked about the fact that we do not have the implementation yet. We have pretty good collaboration. Let me just talk about when can we expect the implementation to be not just a good idea, not just beginning, but actually done? Mr. McCament, if you would go first.

Mr. MCCAMENT. Thank you, Senator, for that question. With respect to the Joint Concept of Operations, and accurate as you all have reflected, we have been working through several iterations of that draft, beginning in——

Senator CARPER. How long have you been working on it?

Mr. MCCAMENT. It is my understanding, Senator, it began in October 2016.

Senator CARPER. A year and a half?

Mr. MCCAMENT. A year and a half.

Senator CARPER. Why so long?

Mr. MCCAMENT. In my understanding of the process, Senator, there have been several drafts initially on portions of the Joint Concept of Operations. With respect to care and transportation and processes, screening processes, there were those three sections. It is my understanding that our teams worked closely together in each one of those, working out key operational issues. It has been protracted, absolutely, and we have exchanged——

Senator CARPER. I think you are being kind. It is way too long.

Mr. MCCAMENT. Far too long.

Senator CARPER. Way too long.

Mr. MCCAMENT. But we have exchanged a reviewed draft that has gone through for DHS, gone through full DHS clearance, and the current iteration we have been able to provide back to our HHS colleagues for their review. We are likewise hopeful that collectively we will be able to move this.

If I may, it is important to note as well that the Joint Concept of Operations, to your point, Senator, is a memorialization of our current procedures, which is to say that we are doing much of this. However, to the point also, this has not been memorialized in the Concept of Operations, which, to the Chairman's point, we promised and committed to in our own MOA. Currently we have the exchange with HHS on this iterative draft that has gone through full DHS clearance, and——

Senator CARPER. If you can just stop, hear a clear message from all of us. Get this done.

Mr. MCCAMENT. Yes, sir.

Senator CARPER. Get this done. Way too much time has passed. We want to impart a sense of urgency. Get this done.

Mr. Wagner, your thoughts?

Mr. WAGNER. Senator, you have recently been made aware of the Memorandum of Agreement that was concluded between our Departments. I would like to say that we have an excellent working relationship with our partners at the Department of Homeland Security. This is a big accomplishment, and it addresses many of the concerns that were highlighted in the Committee's interest to get a Joint Concept of Operations done. We have taken a large step toward the conclusion of the JCO by the conclusion of this MOA, which governs information sharing.

I actually changed my comments today. I changed my comments to indicate that, going forward, we are going to conduct a background check on all sponsors, a fingerprint-based background check on all sponsors; whereas, in the past we had not done that with parents. This is the sort of improvement in our screening that is made possible by DHS' cooperation with us on this information-sharing agreement.

New political leadership of both Departments insists on taking a look at the situation governing UAC, precisely because of what this Committee highlighted in the terrible Marion, Ohio, case. We want to make sure that is never repeated.

Senator CARPER. You can stop right there. I do not have unlimited time. Again, my same message. Let us get this done. The other thing is that this new Administration has been in office now for 16 months. I can understand some delay in the stand-up, but it has been 16 months, and we need to get this done.

Do you want to comment on anything they have said, Ms. Larin, before I ask my last question? No? OK.

Given how much we ultimately need to rely on State and local officials to ensure that children in HHS' custody are going to school and are safe from abuse and neglect, I am concerned that there does not appear to be a very close partnership between your Department and State law enforcement and child welfare agencies. I think it makes sense for HHS to, at the very least, provide notice to States before a child is placed somewhere so they can offer the child or his or her sponsor services or guidance in handling school and the legal process. Why doesn't HHS do that today?

Mr. WAGNER. As part of the release procedure, we are giving the sponsor information required for them to provide these services to the children. As the Chairman indicated, we are looking at more collaboration with local law enforcement in the case of releases of UACs for whom we have concern. But we are doing our best to equip the families to provide the services that they have committed to in their sponsor plan going forward.

Senator CARPER. All right. I will reserve my time for the next round of questions. Thank you.

Senator PORTMAN. Thank you. Briefly, in terms of the timing here, 26 months since we started this process, over a year since you promised it in your own Memorandum of Agreement. We are told this morning that the new Memorandum of Agreement has nothing to do with the Joint Concept of Operations, and that is good because we are looking for a detailed description of who is responsible. It is all about accountability. This is not just because we want to document. We want to know who is accountable. The data continues to come in. We talked about 1,500 kids who are unaccounted for, missing. Recent data we just learned is that you do some home visits, but you do those for 482 of the 3,570 kids who are with non-family sponsors. We are just not keeping track.

With that, Senator Peters.

[No response.]

Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you very much, Mr. Chair and Ranking Member, and good morning to our panelists.

Mr. Wagner and Mr. McCament, I want to follow up on the issue that Senator Carper was just talking about because I am concerned with the answer that indicates that you do not usually notify State or local officials that children are being placed with sponsors in their areas. As a former Governor, that is really concerning to me. The other thing that is really concerning to me is there has been in some of the background materials I have read an indication that the Department still says the States and localities are responsible for these children's safety, but if you do not notify them, it is pretty hard for them to step up and take on that responsibility.

It seems like a fairly straightforward task to notify the States and localities when these children are placed. Mr. Wagner, why don't we start with you? What is standing in the way of notifying State and local authorities?

Mr. WAGNER. Senator, I think it is an issue of practicality. These families are integrated in their communities. They are accessing services that are available to all citizens of those communities, all residents of those communities. You are talking about a substantial list of potential local agencies that would need to be contacted.

Senator HASSAN. Let me stop you right there. Why don't I ask this: I would like it, and I think from Senator Carper's question we have at least two of us who would like, if you would commit to looking into this further and making it a priority—I am not telling you to notify every single agency, but to notify States and localities when you place children with sponsors in those communities. The States have an interstate compact on how to do this, so it is not like you need to start from scratch. But if a child is being, for instance, kept at home and abused by a sponsor and a local school does not even know the child is supposed to be going there, then some of the usual triggers that we have for protecting children cannot be triggered, right?

Would you and Mr. McCament please commit to looking at ways that you might be able to notify States and localities so these children will have an extra layer of protection?

Mr. WAGNER. Yes, Senator, we would be happy to do that.

Senator HASSAN. Mr. McCament.

Mr. MCCAMENT. Senator, I would be happy to as well. As you know, we partner closely from DHS with State and local officials.

Senator HASSAN. Absolutely.

Mr. MCCAMENT. I am happy to support in any way that we can.

Senator HASSAN. OK. Thank you.

I want to move on to another issue, Mr. Wagner. I am also concerned about the actions taken by political appointee Scott Lloyd, the Director of the Office of Refugee Resettlement, which is one of the offices under your purview at the Administration for Children and Families. As I am sure you are aware, Mr. Lloyd has taken actions blocking young immigrant women under ORR care from accessing abortion, even in one case where the young woman had been raped. He is a political appointee who has gone to great lengths to intervene in these young women's care, personally meeting with them to try to coerce them and preventing them from meeting with attorneys.

We have also learned that he actually receives weekly spread sheets with information on every pregnant woman in ORR custody, tracking the gestation and whether the woman has asked for an abortion. Weekly spread sheets. That is invasive and entirely inappropriate.

Mr. Wagner, were you aware of these weekly spread sheets?

Mr. WAGNER. Senator, going back to 2007, it has been the policy that all major medical treatments for UACs go to the Director of the Office of Refugee Resettlement for review.

Senator HASSAN. Let me be clear. The 2007 to 2008 policy is about significant medical things. The 2017 policy that Mr. Lloyd has been invoking only singles out abortion. To have a senior political appointee directly, personally intervening and trying to block young women from their constitutionally protected health care and privacy is wrong. I am very concerned that the Department has allowed it to happen. I am pleased, though, that a Federal court just

last month ordered the Trump administration to stop blocking young immigrant women in Federal custody from getting abortions.

Will ACF comply with the court order?

Mr. WAGNER. Of course, Senator.

Senator HASSAN. OK. That is good to know. And you are complying with it now?

Mr. WAGNER. We are, and the case has been submitted for review.

Senator HASSAN. The case has been appealed, but the court did not stay its order pending appeal, correct?

Mr. WAGNER. That is correct.

Senator HASSAN. You have an obligation to follow the court order right now.

Mr. WAGNER. We do, and, of course, we are abiding by the court order, Senator.

Senator HASSAN. OK. For the record, I want to read Jane Doe's statement from October 25, 2017. This is one of the young women whose access to health care was interfered with by Mr. Lloyd.

She says, "I am a 17-year-old girl that came to this country to make a better life for myself. My journey was not easy, but I came here with hope in my heart to build a life I can be proud of. I dream about studying, becoming a nurse, and one day working with the elderly."

"I was told I was pregnant. I knew immediately what was best for me then, as I do now, that I am not ready to be a parent. While the government provides for most of my needs at the shelter, they have not allowed me to leave to get an abortion. Instead, they made me see a doctor that tried to convince me not to abort and to look at sonograms. People I do not even know are trying to make me change my mind. I made my decision, and that is between me and God. Through all of this I have never changed my mind. This is my life, my decision. I want a better future. I want justice."

That is Jane Doe's statement, and I hope very much that you will all take it to heart. Thank you.

Mr. Chair, I yield the remainder of my time.

Senator PORTMAN. Thank you. Senator Johnson.

OPENING STATEMENT OF SENATOR JOHNSON

Chairman JOHNSON. Thank you, Mr. Chairman. First of all, I appreciate you holding this hearing, and there is no doubt about the fact that we have a number of problems being described here that we all want to solve. Nobody wants to see any child exploited in any way, shape, or form. I would like to bring a slightly different perspective to this. It must be my manufacturing background, problem solving. There is a process you go through, root cause analysis, that type of thing.

What we are talking about right now is the problem we have in apprehending, processing, and dispersing unaccompanied children. That is what we have been forced to do. I have a chart—I do not have it right now, but as soon as the DACA memorandum was instituted and signed in 2012, this has become a crisis level. Let me just quote the numbers. Since 2013, 195,000 unaccompanied children have been let into this country; 275,000 family units, to be conservative, times two, that is 550,000 people. You are, in your

agencies, forced to deal with 750,000 very sympathetic humanitarian crisis individuals. OK?

I would suggest, if you really want to address this problem properly and solve it, we need to identify the root cause, and it is that flow that has been caused by a horribly broken legal immigration system that incentivizes more and more families, more and more unaccompanied children to take that very dangerous journey and subject themselves to these depredations.

Secretary Nielsen in a statement she issued on the caravan stated, and I will quote: "The smugglers, traffickers, and criminals understand our legal loopholes better than Congress and are effectively exploiting them to their advantage and the horrible disadvantage of the children that are being exploited."

I would kind of like to concentrate on our broken legal immigration security and let us stop the flow, let us end the incentives for all that illegal immigration, as we are trying to handle the processing and dispersing. But the fact of the matter is only 3.5 percent of unaccompanied children coming to this country illegally are ever returned, and that creates a huge incentive for more to come. These kids are dispersed around the country. They have access to social media. Their friends and family members see that in Central America, and more of them come. That is just a basic fact.

Another problem that we are not even discussing here is how many gang members are coming in. I do have a number of pieces of information. I would like to enter into the record: a letter I sent on May 23, 2017,[1] once we found out how CBP released into the country in 2014 admitted MS–13 gang members. I would like to submit for the record an ICE news release dated March 29, 2018,[2] talking about Operation Matador, Operation Community Shield, 3,200 MS–13 gang members rounded up in Operation Community Shield. Finally, a Justice Department press release dated November 16, 2017,[3] talking about Operation Raging Bull where 64 of the 267 people caught up in that MS–13 targeted raid, 64 of those entered this country as UACs. This is an enormous problem.

Senator PORTMAN. Without objection.

Chairman JOHNSON. Thank you.

Mr. Wagner, let us go through how difficult it is for our agencies to cope, for example, with MS–13 gang members. Let us walk through the process. I thought Mr. McCament did a pretty nice job, so either one of you can answer this. But let us do a hypothetical. Let us say you are a 16-year-old gang member from El Salvador, and we all know the whole recruitment process and the hazing process and how you gain gang membership and the crimes committed. Let us say this individual might have committed murders in Central America. They walk right up to the border. They know the rules, and they say, "I have a credible fear of being persecuted in my country." Walk us through the process of that hypothetical MS–13 gang member. By the way, assume we have no information, because we have very little information on these gang members,

[1] Letter referenced by Senator Johnson appears in the Appendix on page 137.
[2] ICE news release referenced by Senator Johnson appears in the Appendix on page 141.
[3] Justice Department press release referenced by Senator Johnson appears in the Appendix on page 145.

right? What happens? Let us start with DHS, CBP. What does CBP do?

Mr. MCCAMENT. Thank you, Senator. In that instance CBP, as they do with all interdictions when they encounter an unaccompanied—when they encounter a family unit, and——

Chairman JOHNSON. By the way, step through this pretty quick. Just boom, what do they do? What happens?

Mr. MCCAMENT. Customs and Border Protection, focusing on that particular element, would pull aside that individual and begin to question, because there would likely be indicators of lack of a family unit, relationship, and in this sense, as to your hypothetical of MS–13, not necessarily human trafficking per se.

Chairman JOHNSON. I will give you the answer. He is going to say, "I have a credible fear of being persecuted."

Mr. MCCAMENT. Correct.

Chairman JOHNSON. OK.

Mr. MCCAMENT. In that instance——

Chairman JOHNSON. "Never committed a crime. I am clean."

Mr. MCCAMENT. Right, and we would then work to very quickly adjudicate and move that person into a location where they could be interviewed by a U.S. Citizenship and Immigration Services (USCIS)——

Chairman JOHNSON. The kid's a good interviewer, he is an innocent little waif.

Mr. MCCAMENT. With respect to that, may I add that, as Secretary Nielsen pointed out, we have deployed additional officers to the border to be able to conduct those credible fear assessments as quickly as possible so we can determine if there is a false claim——

Chairman JOHNSON. But, again, he is really good. He has been coached. We have no record of him. What happens in the first 24 hours?

Mr. MCCAMENT. So within that——

Chairman JOHNSON. We have to step through this pretty quick.

Mr. MCCAMENT. We would utilize every access to information we would hope we detect. If we do not——

Chairman JOHNSON. Let us say you do not detect.

Mr. MCCAMENT. Right, and——

Chairman JOHNSON. Obviously, we do not, because there are thousands of them.

Mr. MCCAMENT. If we do not detect and we do not find any other means by which that person seems to indicate—and they do not, to your hypothetical, meet the credible fear claim, we would then assess—if they are an unaccompanied alien child, we would then—my understanding from the process, we would then proceed to put them over to HHS——

Chairman JOHNSON. You turn them over to ICE, correct?

Mr. MCCAMENT. Right.

Chairman JOHNSON. ICE in 21 days has to turn them over to HHS. Again, step through this quickly. I am running out of time.

Mr. MCCAMENT. Sorry. As a UAC with no other claim, no other assessment, yes, we would then notify and believe we would find—under that hypothetical, we have no other information, we would notify HHS that they need to be placed into a facility. ICE would begin the process of transportation over to that facility.

However, I would note, Senator, that just this last week there was a case where there was an MS–13 gang member, 18, but posing as a UAC that our Customs and Border Protection officers used all their facts, and they determined that.

Chairman JOHNSON. We have gotten better, but, again, people have obviously slipped through the cracks.

Mr. MCCAMENT. So, otherwise, then——

Chairman JOHNSON. I am assuming this kid is good. He has been coached. He knows exactly what to say, credible fear, credible fear, probably got made-up stories about his persecution. What happens with HHS then? Then we receive information from DHS regarding each UAC that is put in our care, and that transfer occurs in 72 hours. If there is any indication of gang affiliation—in your Manchurian Candidate case, there is none, so he would go into a normal shelter. However, during his stay with us, if clinical staff detect any violent tendencies or tendencies to gang participation, he would be stepped up into staff secure facilities.

Chairman JOHNSON. OK. The fact of the matter is they have slipped through the cracks, and I will give some other evidence. In Houston, I think, one of the Federal Bureau of Investigation (FBIs) task forces identified six homicides created by individuals let into this country as UACs. That is just in Houston.

This is the enormity of the challenge. I will end, again, the root cause of this problem, the goal of our policy ought to be fix our broken legal immigration system, do everything we can to reduce and stop the flow so your agencies do not have to deal with hundreds of thousands of individuals in this case.

Thank you.

Senator CARPER. Mr. Chairman, could I reclaim just a few seconds of my time? Chairman Johnson and I have focused, along with other of our colleagues, on root causes of illegal immigration, especially from the Northern Triangle countries. If we had a reasonable, comprehensive immigration reform plan in place and were implementing that so that people who actually wanted to come and work here could do so as a guest worker, go back and forth. There are a number of things that we could do to help reduce the flow. I like to say catching people coming across the border from Mexico into the United States is like finding needles in a haystack. We can either make the needles bigger or the haystack smaller. That is one of the things we need to do, and immigration reform would do that.

The other thing is we are complicit in the misery of the people who live in those three countries by virtue of our addiction to drugs. We are complicit. For us to somehow put it all on them ignores the reality that we are a big part of their problem.

Thank you.

Senator PORTMAN. I would say the other part we have not heard yet—and Mr. Wagner started to talk about this—is once that individual is in the custody of HHS and is being detained, then a sponsor is sought. A sponsor then is supposed to be responsible for that UAC prior to a court proceeding. As we will talk about when I get a chance to ask my detailed questions, there is a huge gap there. This is where we lose a lot of these UACs. Whether it is the fact that, as we said earlier, we have calls that are going out, 1,500 kids in a 3-month period, they cannot even find where they are or

whether it is just the time it takes to get into a court proceeding, that is a lot of that gap. If you could get someone into a court proceeding after keeping track of them until that period and having this be an expedited process, you would deal with that other point at which people are getting out of the system and getting into our communities and causing some of these issues. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Let me follow up on that same conversation and reaffirm something Senator Carper was saying earlier about the need for additional immigration judges. Let me just ask, how long does it currently take for a UAC to get before a judge? If they are given a notice to appear and they are told to appear, what is the average wait time now for them to actually appear before a judge?

Mr. MCCAMENT. Senator, I apologize. I do not know that number offhand. I can certainly get back to you, because there are different—several months but——

Senator LANKFORD. Each region is different.

Mr. MCCAMENT. Right, and also——

Senator LANKFORD. Give me a ballpark so we can get started on it.

Mr. MCCAMENT. I will say, because, again, I do not have it in front of me, at least several months or more. I know that is a very generic response, but I do not know. We could certainly work with the Department of Justice as well. They would have those official rates, I believe.

Senator LANKFORD. OK. Why don't you get back to us on that and let us know what it is. That is different depending on the State that they are actually delivered to, and the region and such. Give us a ballpark of where that is currently, because we know where it was a couple of years ago. I want to know what the current status is on that.

What is our percentage right now of UACs that are actually delivered into a home that the individual they are delivered to is not a citizen of the United States? Whether that be a family member, parent, or a sponsor that is a non-relative, what percentage is not a legal resident of the United States?

Mr. WAGNER. We actually do not have that data, Senator. We are going to collect it going forward as a result of this Memorandum of Agreement with DHS. That is one of the things that we will receive from them as part of their assistance with the background check. But currently we have anecdotal information about the immigration status of sponsors.

Senator LANKFORD. The current background check system does not check for legal status?

Mr. WAGNER. That is correct.

Senator LANKFORD. What does it check?

Mr. WAGNER. Criminal history, local, the State child abuse and neglect registry, and currently, up until the MOA, we did fingerprint checks on all but parent sponsors.

Senator LANKFORD. OK. Ms. Larin, you had mentioned that if there is a safety concern in a home—it might have been you, Mr. Wagner. I am trying to think of who it was. If there is a safety con-

cern in the home, that is reported to local law enforcement. How often does that occur?

Mr. WAGNER. Senator, I do not have that in front of me. I would be happy to get back to you on that.

Senator LANKFORD. It would be good to just know how often that occurs, if that has occurred. I assume there is a record of that, just to know. There is also the question—Mr. Wagner, you had made the comment about false documents, when we identify false documents. How often does that occur?

Mr. WAGNER. Senator, I do not have that information in front of me either. I would need to get back to you on that.

Senator LANKFORD. OK. Compare for me, then, ORR standards and State foster care standards for the home studies and the evaluation they do. You can take any State, any situation. As far as the home studies, the background, would these individuals that these UACs are being placed in, especially those that are not family members, would these homes qualify in that State as a foster care home and they meet that level of standard? Or is there a different standard if you are foster care for the State than what they are when they are coming in with ORR?

Mr. WAGNER. Senator, I am not an expert on the child welfare system. I am going to hazard a guess that, particularly in cases where we do a home study, the standard is comparable. Our UAC homes are equal to foster care homes in the State child welfare system. But let me look into that further and give you a more comprehensive——

Senator LANKFORD. That is a fair balance in a State. Obviously, a State has determined that an individual who needs additional care that is not with a parent, especially in a home that there is not a parent that is there, to try to figure out what—is there a different level, basically, or a different standard, especially if that is a lower standard for those individuals to come in? What are the numbers at this point of UACs that are not appearing for their Notice to Appear? What is the most current number for that?

Mr. WAGNER. We do not have visibility on that because it is——

Senator MCCASKILL. It is 58 percent so far in 2018.

Senator LANKFORD. OK. Agree or disagree with that number?

Mr. MCCAMENT. That is my understanding as well. The number might be slightly higher, so we will confirm that.

Senator MCCASKILL. I have out of the 6,237 cases completed fiscal year 2018 to date, 3,636 of them have been in absentia.

Senator LANKFORD. Let us say somewhere around 58 or 60 percent of the individuals are not showing for their Notice to Appear. Do we know why? Or do we know where they are? We have every variety here, I would assume, but when we have a child that has been released into the country and then there is a Notice to Appear and then they do not appear, especially with an individual that is not staying with a family member, what I am trying to determine is has this individual been trafficked because they were placed in a home with a person that is not a family member, we have lost track of where they are, they are not showing up for court hearings? Are they still in the same State? Are they still in the same school? Where are they? Or are they in a situation they have been

placed in a home where the family is not legally present in the United States and they have fled to another State? Do we know?

Mr. MCCAMENT. Senator, we do not know when someone fails to appear necessarily the reasons why, and I need to caveat the following: Not necessarily knowing the reasons why, we may not know where they are or why they did not appear. However, I will note that as part of the responsibilities for the Department of Homeland Security, ICE retains the immigration case record through our field office juvenile coordinators, meaning that once that person is transferred over to HHS custody, we still do have their file.

Senator LANKFORD. But does HHS try to pursue them? We now have a child somewhere in the country that did not appear in a court record, is not in their spot that we thought they were? Is there a pursuit to try to figure out where they are? Or what happens next?

Mr. WAGNER. There is not a pursuit. We give DHS visibility on where the child has been placed. Going forward, again, as a result of the MOA, we will give them the opportunity to share with us information about the sponsors and their suitability. But once we provide that information, then we do not have a mechanism for tracking down the kids.

Senator LANKFORD. One of the ways that we could help protect this, as Senator Carper had mentioned before, is more immigration judges so that we are not waiting several months or a year or whatever that time period is, so we do not have this big gap, we are able to get them due process faster to be able to determine does this individual qualify for asylum, or do they not qualify for asylum, because that is really what we are dealing with in that Notice to Appear. Correct?

Mr. MCCAMENT. Yes, Senator.

Senator LANKFORD. The challenge is how do you actually get to that due process faster so we do not have individuals released and we do not know where they are an what has happened and if they have been trafficked or if they are just with a family on the run or whatever it may be.

Mr. MCCAMENT. Yes, and, Senator, if I may, with respect to Chairman Johnson's point earlier, if we do have information about them, to your point, we need to avoid the pull factors, so the shorter amount of time for them to appear will also, we hope, restrict that, which is why we are——

Senator LANKFORD. Again, going back to Senator Carper's statements earlier, the United States taxpayers have put about $650 million a year for the last two years into the Northern Triangle and the Alliance for Prosperity to directly deal with all the issues that we have already discussed here on how we can deal with some of those factors that are the push factors in Central America. We have not dealt with the pull factors on our side as well.

I yield back.

Senator PORTMAN. I think these points you have made are very important to the ultimate purpose of this hearing, which is to figure out how to close these gaps and how to be sure that these UACs are being properly tracked.

I will say the next panel, if you can stick around, will include some service providers who will maybe provide us some more data and also some more substantive information about how this actually works, how you actually get these children into a courtroom and get this resolved as quickly as possible. It is months, and we do not have the data we need to determine how many months on average. The service providers should be able to tell us more. Senator Heitkamp.

OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Thank you, Mr. Chairman, and thank you so much for making this an issue for the Permanent Subcommittee on Investigations. These children are the most vulnerable children that we have in North America. We can argue about whether they should be here, but because they are here, they are ours, and they are our responsibility.

I want to remind the witnesses, this is the Permanent Subcommittee on Investigations. This is not a typical hearing. This is an oversight hearing. We want answers, and I challenge you to go back and read the answers to the questions. I have been sitting here for most of the questioning. There is a lot of, "I do not know," "I cannot answer that question." That should not be where we are right now. We have been at this a long time. This started with Claire when Claire was Ranking Member. This is not a new topic. For you guys to come, in my opinion, fairly unprepared, with really no solutions makes me wonder if there is really a commitment to changing outcomes for kids.

Are there bad kids in this group? I will bet you there are. I will bet you Senator Johnson is right. But we take that small number of kids who are up here to join the gang and to continue that criminal enterprise, and we compare it with the large number of children who are here, sent by their parents, all alone, and now they are the most vulnerable. You are the worst foster parents in the world. You do not even know where they are.

I want to correct on the record, Senator Johnson always equates this problem with DACA. These kids do not qualify for DACA. They will never qualify for DACA as far as we know. But let me tell you, they are here because there was a bipartisan bill passed years ago that said these are vulnerable children and we are going to give them special protections and protect them. They have come to the United States of America. We wish they would not. We would love to see their families reunited and live safely where their home is. But they are here.

Contrary to talking about how we are going to stop them, the subject of this hearing is when they are in our custody, when they have come across the border, how do we track them? How do we know where they are? How do we get them through the adjudication process, and send them home if that is possible? We are failing. I do not think there is any doubt about it. When we fail for kids, it makes me angry.

The fact that we—I mean, I think what we are hearing today is if I asked you for a list of kids who came in through this program and I said, "Where are they exactly today?" at least in proximity,

in a neighborhood, in a school, "Where are they today?" would you know the answer?

Mr. MCCAMENT. Thank you, Senator, and we understand.

Senator HEITKAMP. The answer is no, right?

Mr. MCCAMENT. If I may.

Senator HEITKAMP. Yes.

Mr. MCCAMENT. The response that I provided to Senator Lankford that ICE holds an immigration case file that includes biographic information on the UAC, their last known residence, and the sponsor's name, we hold that information. To your point, a change has not been communicated to us, it is my understanding we would not necessarily—this is a long answer. We would not necessarily then know the next residence, so the point of someone not showing up at the NTA, if they have changed locations and that has not been communicated.

Senator HEITKAMP. I think I am not as angry at your agency as I am HHS. I understand. We do not want you to be baby sitters. We do not want you to be foster parents. I have said frequently the worst thing that happens in border protection is we have Border Patrol guards who carry guns changing diapers. That is not a good use of their time. We need to end that. We need to figure that out.

It is HHS. This is not a new problem. We have been at this a long time. Where are these kids? Why don't we know where they are? Why after months of investigation by this Committee, do we not seem to be getting any better answers, Mr. Wagner?

Mr. WAGNER. The answer to your question depends on what sort of timeframe you are talking about. If you are talking about the 30 days after release to a sponsor that we have determined to be qualified to provide for the care and safety and well-being of the kid, I think we are getting pretty close to 100 percent of those cases, we know where they are.

When you are talking about as time goes on, things change, yes, kids run away; no, we do not have the capacity for tracking down runaway UACs who leave their sponsor.

Senator HEITKAMP. What do you think would happen in IV–E program—the IV–E program is federally sponsored funding for foster care that the States access to pay for foster care kids. That is IV–E. In order to get that money, you have to be a responsible State and know. What would happen, do you think, with IV–E dollars in a State that said, we know where they are, we turned them over to a foster parent, we did not do any—I mean, as we know, not a lot of home visits, not a lot of follow up. If they ran away, we do not know. What do you think that you would do with the IV–E program in a State that had that kind of response?

Mr. WAGNER. Senator, you are constructing an additional legal responsibility which, in our view, does not currently exist with the UAC program. Our legal responsibility is to place these children in suitable households. In the IV–E program——

Senator HEITKAMP. And then forget about——

Mr. WAGNER [continuing]. It would be a crisis, and every State has a child protective service agency to deal with those situations. We do not have that apparatus.

Senator HEITKAMP. You have no intention of creating that apparatus. You have no intention of having a database—I do need to

understand where you think your lines of jurisdiction are. You have no intention of ever trying to solve the problem of here we gave the kid to the guy who said he was her uncle, we gave her to the uncle, and we found that was OK, and now we told the State maybe, or we did not tell the State, and good luck to that 15-year-old who went to her uncle.

Mr. WAGNER. I do not agree with your characterization of the decisionmaking process. However, as you know, this is an expensive program. Our duty is to execute the will of Congress and the President, which we will do faithfully. If you tell us you want us to track down——

Senator HEITKAMP. I think our duty is a little more humanitarian than that. But can you tell me that in every case you notify the State agency that you have placed a minor in the custody of a suitable sponsor?

Mr. WAGNER. No, Senator, it is not our procedure to——

Senator HEITKAMP. But you are telling me that the backdrop, the protection for that kid now falls on the State, even though you do not even give the State the courtesy of telling them where they are. Is that what I understand? I just have to say these are all of our children, and if we cannot figure out a high priority for protecting kids, we know these kids are at high risk for trafficking. We all care about that. They are at high risk for labor trafficking, for sex trafficking, and we have to reach beyond the letter of the law and do what is humanitarian, do the right thing.

I look forward to the ongoing investigation maybe coming up with some suggestions, and God knows you have a tough job. I am not saying that. But we have high expectations when it comes to kids, and we should.

Senator PORTMAN. Senator McCaskill.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. The hearing that we had in PSI—I want to thank the Chairman for this hearing. I think it is really telling that we got a new Memorandum of Understanding (MOU) at midnight last night because you called this hearing. I have no absolutely no confidence that would have happened had you not called the hearing. Thank you for doing the hearing.

Our original hearing on this, as you remember, Mr. Chairman, was July 13, 2015. I will ask each of the witnesses—first, certainly Mr. McCament and Mr. Wagner, have you read that report?

Mr. MCCAMENT. The staff Committee report?

Senator MCCASKILL. The Committee report that was done after our hearing on unaccompanied minors and how they were being handled. Have you read that report?

Mr. MCCAMENT. Yes, ma'am, I did read it.

Senator MCCASKILL. Mr. Wagner, have you read the report?

Mr. WAGNER. Pertaining to the Marion, Ohio, case? Yes.

Senator MCCASKILL. This was a detailed report that went through all of the findings of our investigation, including home studies, not appearing in immigration—all the things we are talking about today. We made one, two, three, four, five, six findings in that report. Have you had a chance to review that report, Mr. Wagner?

Mr. WAGNER. I have reviewed the report entitled "Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement."

Senator MCCASKILL. Perfect. First, I am a little concerned that you are asked a question about how many unaccompanied minors are not showing up for their hearing. You do not have the number, but I do. It is supposed to be the other way around. That is pretty basic if one of our findings in the report is that these unaccompanied minors are not showing up for their hearings.

Keep in mind our report found that 53 percent of the unaccompanied minors were not showing up. In this fiscal year so far, it is even worse.

Can you give me any specific thing that you are doing to track the children that are not showing up for their hearing, one specific thing you are doing?

Mr. WAGNER. Senator, are you addressing that to me?

Senator MCCASKILL. I am. You have responsibility. You take them from the Department of Homeland Security, and you have the primary responsibility, once they are given over to you. Now, I know that you have historically washed your hands once they got a sponsor, but it is still your responsibility. Can you give me a specific example of something you are doing to find out why the children are not showing up at these hearings?

Mr. WAGNER. My response was that the Department of Health and Human Services does not have visibility on immigration hearings. We do not know who is showing up and who is not. We do not know those kids——

Senator MCCASKILL. You do because you gave me—we have these publicly available numbers. You know how many are not showing up.

Mr. WAGNER. I do not think they came from me.

Senator MCCASKILL. According to the Executive Office of Immigration Review (EOIR)—I guess it does not come from you. You can get them, though. We got them. It seems to me that if it is your responsibility, you should at least know who is not showing up. They will not tell you where they are? You do not know where they are supposed to be? You do not know when they are supposed to have a hearing? You cannot find that out?

Mr. WAGNER. We could find it out, but it is not part of our protocol for post-release. We do not follow up to ensure that they go to the hearing.

Senator MCCASKILL. I do not even know what to say. It is just like stunning. I just got this information very late, but there are three categories of sponsors. Category 1 is parent. Category 2 is a relative. Category 3 is very distant relative or not a relative at all. In calendar year 2017, there were 29,761 children released by your agency, Mr. Wagner, to one of those three categories. The category that would seem to me to be the most dangerous for the children would be Category 3. Would you agree?

Mr. WAGNER. If you are talking about categories, I think I would agree, but not individual sponsors. I mean, all of these sponsors are vetted, so it is——

Senator MCCASKILL. I understand.

Mr. WAGNER [continuing]. Not the case that we put our dangerous sponsors——

Senator MCCASKILL. They are getting a criminal public records check and a sex offender registry check, correct?

Mr. WAGNER. Going forward, Senator, all sponsors will receive a fingerprint-based background check.

Senator MCCASKILL. OK. But what you had been doing for calendar year was a criminal public record check and a sex offender registry check. You did that on all of these. I see that you did it on all 29,761 sponsors that were released. But I want to hone in our Category 3. Would you agree that Category 3 is the one that is most dangerous for the children when they are not with a parent or a close relative?

Mr. WAGNER. I do not know how to respond to that, Senator. I have confidence in our decision to select sponsors in all categories.

Senator MCCASKILL. OK. Now there are home visits. Would you think that Category 3 should get a priority for home visits over Category 1 where there are parents in the home?

Mr. WAGNER. I think that the top priority for home visits is the categories that were articulated in the TVPRA, the four categories of most vulnerable kids. All of those kids get home visits, in addition to kids that our staff have identified as being particularly vulnerable. A you know, we have——

Senator MCCASKILL. Isn't a child more vulnerable that is not with a family member?

Mr. WAGNER. Again, Senator——

Senator MCCASKILL. Isn't that common sense?

Mr. WAGNER. I would not draw that conclusion.

Senator MCCASKILL. You would not?

Mr. WAGNER. No.

Senator MCCASKILL. I think you would be a very small minority in the United States of America. I think a child who has been placed—if you look at what happened in Ohio, if you look at the tragedies we have seen around this country, it has been when, unfortunately, there has been someone trying to prey upon these children that was not a family member. If you do not want to acknowledge it for purposes of this hearing, it just makes me scratch my head about common sense.

But what is really interesting is when you look at the home visits, there are more home visits going on in the homes where there are parents than there are in the homes where there are no relatives. In Category 1, which is parents, there were 1,302 home visits in calendar year 2017; in Category 2, where it is a close relative, 888; and in Category 3, there were only 482—for a grand total of 2,672 home visits out of 29,000 children who have been released.

In Missouri, we had nine home visits. In Ohio, they had 29. I would like follow up on the home visits and the prioritization of who is getting the home visits. Your unwillingness to acknowledge that someone who is not related to a child is more dangerous than a parent is something I would like you to give some thought to, and I will be following up with the Secretary of HHS to see if that is his view, because I cannot imagine that would be the view of this Administration, that a child with a parent is not in any more a secure situation than a child with a stranger.

Mr. WAGNER. To clarify my point, Senator, at the beginning of the process I would agree. If you have two people coming in the door who want to sponsor a kid and one is a parent and one is an unrelated adult, I would agree absolutely that the unrelated adult deserves greater scrutiny. My point is, at the end of the process, after we have gone through the scrutiny, I think the kid is equally safe with both households.

Senator MCCASKILL. I guess I have too much experience prosecuting child abuse, and too many times I have been looking at the reports that come in through the hotline, with foster parents who on the surface appear to be great folks but have committed unspeakable horrors against children. Maybe my experience is coloring my judgment here, but I think it is experience grounded in reality. I would like your agency to take another look at this.

Overall, as has been said a number of times, it has been 14 months since you agreed to have the JCO, and I think doing this, which is what has occurred in this category, you guys know that. DHS has gone HHS, HHS has gone DHS, and, this in government where one agency points to the other and says, "Well, we do not have"—what did you say, "We do not have visual"—"We cannot see that," "We cannot see when the kids are not showing up at their hearings?" That has to stop. That is unacceptable. These are children. Someone has to take responsibility for these children that are not showing up and we have no idea where they are, especially if this Administration thinks they are all gang members. You would think you would get after that, because that is what they seem to be—the President always tries to say that every child coming into this country is a gang member, which we know is total balderol, it is stupid, it is not true. But if, in fact, this Administration believes that and these gang members are not showing up for their hearings and you guys are sitting around going, "Well, we do not have"—"we cannot see it," that does not even make sense.

There are more answers that we are due on this. Thank you, Mr. Chairman.

Senator PORTMAN. Senator Harris.

OPENING STATEMENT OF SENATOR HARRIS

Senator HARRIS. Thank you, Mr. Chairman, for holding this hearing. I appreciate it.

These questions are initially for Secretary McCament.

Before the House Appropriations Committee on April 11th, Secretary Nielsen said that DHS' standard, and I am going to quote, is "to in every case keep a family together as long as operationally possible." She went on to say that "DHS only separates because the law tells us to, and that is in the interest of a child," and the reference there was apparently to trafficking of children.

The next day, at another House Appropriations hearing, CBP Commissioner Kevin McAleenan stated that, "A separation of a group that presents as a family unit is as of right now a very rare event."

However, last week HHS' Office of Refugee Resettlement confirmed to the New York Times that approximately 700 children have been taken from adults who say they are their parents at the border since October 2017, most notably including more than 100

children who were under the age of 4. Reportedly, DHS officials initially denied that the number was this high. Is this number correct?

Mr. MCCAMENT. Thank you, Senator, for that question.

Senator HARRIS. Is the number correct?

Mr. MCCAMENT. The 700 figure represents the number of children that came into HHS custody from DHS, not just at the border. But, yes, that number is correct.

Senator HARRIS. How many of those children were at the border?

Mr. MCCAMENT. I do not have that in front of me, Senator, but I will get it back to you.

Senator HARRIS. I would like it by the end of next week, please.

Mr. MCCAMENT. Certainly.

Senator HARRIS. How many were under the age of 4?

Mr. MCCAMENT. Ma'am, I apologize, but I will confirm the number that you mentioned and——

Senator HARRIS. Are you not aware of this article?

Mr. MCCAMENT. I am, ma'am. I just do not recollect, and I do not want to mislead. I will provide that response.

Senator HARRIS. OK. It would seem to me you would have been prepared to answer this question today.

Mr. MCCAMENT. Understood, Senator.

Senator HARRIS. Since early 2017, DHS officials have made inconsistent statements about the consideration of policies to forcibly separate children from parents at the border despite due process concerns and denunciations from child welfare and medical professional organizations. Is DHS still considering a policy of family separation for asylum seekers?

Mr. MCCAMENT. Thank you, Senator. We do not currently have a policy of separating women and children, but we do seek to protect the best interests of the minor children. If there are any changes, we would review and notify appropriately.

Senator HARRIS. What is the practice if there is no policy?

Mr. MCCAMENT. The practice is for our Customs and Border Protection officers, when they encounter a family unit where they have concerns about the family relationship, legal guardianship, or human trafficking indicators, they will separately question; and if they determine that the child, unaccompanied alien child, does not have a parent or legal relationship or otherwise is perhaps trafficked, we will separate that child and then notify HHS and ICE as well to transport that child to HHS.

Senator HARRIS. Are there any written documents that outline this practice for DHS? How are you training the people at the border to make these decisions?

Mr. MCCAMENT. Thank you. If I may, our Customs and Border Protection officers, and as noted in the GAO report, work—first, for human trafficking they have a Form 93, which has a series of indicators on human trafficking which they will review against. Our officers are also trained, correlated to that Form 93 and updated periodically, in the indicators of human trafficking and the processes and procedures that they should have.

Senator HARRIS. Are those training materials available in writing?

Mr. MCCAMENT. I will confirm that, ma'am. I believe so.

Senator HARRIS. And then give us a copy, please.

Mr. MCCAMENT. Yes.

Senator HARRIS. Is there a practice or a protocol about how—within what period of time the decision and the determination should be made about whether that child should be separated from the parents or reunified with the parents?

Mr. MCCAMENT. Yes, Senator, there is a requirement that within no more than 72 hours, if Customs and Border Protection makes a determination that there is not a family relationship or indicator of human trafficking or abuse, we need to make that determination under the TVPRA and transfer that child, unaccompanied alien child, to the custody and protection of HHS.

Senator HARRIS. Let me be clear, are you saying that that decision about whether or not the child is, in fact, with a parent or with someone who may harm the child, that that decision must be made within 72 hours? Is that what you are saying?

Mr. MCCAMENT. Or less, yes.

Senator HARRIS. OK. Has that been what is happening?

Mr. MCCAMENT. That is my understanding from our processes, yes.

Senator HARRIS. Do you have a process in place to audit and ensure that that is exactly what is happening, that those decisions are made within 72 hours?

Mr. MCCAMENT. Senator, first, to your question, I will confirm that with our Customs and Border Protection officers. It is my understanding that we do. However, it is also because it is required under the TVPRA in that statute. But we will confirm back as well.

Senator HARRIS. What is the number of children who have been separated from adults who say that they are their parents and they are seeking asylum at the border?

Mr. MCCAMENT. I do not know that offhand, so I do not want to misspeak. I will bring it back to you.

Senator HARRIS. Do you have a general idea?

Mr. MCCAMENT. I do not want to speculate, and we will provide it back and work with——

Senator HARRIS. I would like information on the length of separation in each of those cases.

Mr. MCCAMENT. OK. We will work to see if that is available and provide it back.

Senator HARRIS. How many of those cases or even what percentage of those cases have resulted in trafficking charges, those cases where the parent has been separated from the child for more than 72 hours?

Mr. MCCAMENT. Again, Senator, we will work to provide that back so you have the specific number.

Senator HARRIS. Do you know if any of those cases have resulted in trafficking charges?

Mr. MCCAMENT. It is my understanding that they have, but I do not know the specific number, so I want to provide you accuracy.

Senator HARRIS. What is the protocol that DHS is following when you apprehend children to determine the potential case of trafficking? What is that protocol exactly?

Mr. MCCAMENT. What does that look like?

Senator HARRIS. Yes. Is it in writing?

Mr. MCCAMENT. We will work on providing back information. As I mentioned, our officers are trained on that Form 93, which is in writing, and it gives indicators of trafficking and questions that can be used to provide that analysis. We also have training material, so we will work to provide that. It is part of the process.

Senator HARRIS. Thank you. I just have a couple of seconds left. Both for Mr. Wagner and Mr. McCament, my understanding is that DHS and HHS have created a new policy where now ORR is going to be sharing fingerprints with ICE. Is that correct? What is the justification for that if that is, in fact, the case?

Mr. WAGNER. That is the case. It is covered in the new Memorandum of Agreement that we recently concluded.

Senator HARRIS. Is that the one we got at midnight last night?

Mr. WAGNER. Yes.

Senator HARRIS. OK. Mr. Chairman, if I can just have a couple minutes to understand exactly what it is that you have done and why is it that you have done that, to create this new policy that you gave us at midnight last night before this hearing?

Mr. WAGNER. Let me explain, Senator, that the MOA was concluded a couple weeks ago. It has a 30-day implementation period. It honestly was our hope to have it operational before we made it public. That was the reason for the late presentation to the Committee. This covers information sharing between DHS and Health and Human Services. We think it is a substantial step forward because we are going to give potential sponsor information to DHS so that they can provide their input based on all of the information they have available about potential sponsors to us, and that is going to improve the quality of our decisionmaking about the appropriateness of the sponsors.

Senator HARRIS. Is it your intention that DHS will then enforce immigration laws?

Mr. WAGNER. We have no such intention at the Department of Health and Human Services, but they have their job to do.

Senator HARRIS. Is there an indication that the information should be shared but not for the purposes of deportation?

Mr. WAGNER. The purpose of the information sharing is to help us make a better decision on the qualifications of the sponsors.

Senator HARRIS. Mr. Chairman, I think there is going to be a second round, so perhaps I will use the time then, or whatever it is you would prefer.

Senator PORTMAN. I thank Senator Harris, and I think we are going to try to call up the second panel, and I think you will find a lot of very helpful information in that second panel because the service providers will be there.

Let me just say quickly—I am going to take this time to ask the questions from the Chair that I have delayed. But with regard to separation of the kids from their families, Mr. McCament, my understanding is that DHS has confirmed that 100 of those 700 kids last year were under the age of four. My understanding is that is something you have confirmed. The two points I would make, in addition to the ones that Senator Harris made, are that the American Academy of Pediatrics (AAP) has indicated that that has a negative impact on kids. That seems sort of common sense, to be separated from their families. Second, that the financial responsi-

bility, as I understand it—correct me if I am wrong—is with the parents so long as the kids are with the parents, but then the taxpayer picks up the responsibility if you separate them. Is that accurate?

Mr. MCCAMENT. Mr. Chairman, that is my understanding, that once they are out of the auspices of their parents and go to a DHS facility.

Senator PORTMAN. I am not suggesting that this is an easy job, and some people may say they are parents and they are really not, and you certainly need to go through that process. But to the extent they are actual family members, those separations have to be something you have to seriously consider because of the impact on those kids and also, the responsibility then taken on by the government.

Let me back up for a second, if I could, and talk about what I said at the outset, which is this hearing is an opportunity for us to try to get more accountability in the system and to tighten up the loose ends, and we have heard so many today, the right hand not knowing what the left hand is doing. Of course, the focus has been on this Joint Concept of Operations because of that. We have been working on this with you all for 26 months, over two years, and, again, you promised in your own Memorandum of Agreement that you would have that completed over a year ago. As of today, it is not completed. I appreciate that Mr. Wagner said—and it is true, at midnight last night we received this additional Memorandum of Agreement, and I do think information sharing is a good thing. But what we are looking for is what I thought you were looking for, which is an understanding of how this is actually going to operate and who is accountable, because if we do not know who is responsible and accountable and what the plans are, it is impossible for us to do our oversight and for us at the end of the day to be sure that this system is working properly for the kids, but also for the immigration system.

I would ask you today—it has been 14 months since you promised it. Do you have it with you today? Yes or no. Mr. McCament?

Mr. MCCAMENT. I do not have it with me, the latest iteration.

Senator PORTMAN. Mr. Wagner.

Mr. WAGNER. No, sir.

Senator PORTMAN. OK. What is your commitment to getting this done now? We are 26 months into it. We are over a year past your previous commitment. What is your commitment you are going to make to us today as to when this Joint Concept of Operations agreement will be completed? Mr. McCament.

Mr. MCCAMENT. Mr. Chairman, being apprised and learning about the significant amount of time, we will be ready in partnership with HHS as soon as we receive the draft back, we will work as expeditiously as possible. I know that that is not to the extent of a timeline, but I will tell you that we are ready and we want to partner actively. You are correct that the MOA is part of that commitment. It is not all. The JCO memorializes our procedures that we already do, but it does not happen and collated it in one place. We will work as expeditiously as possible.

Senator PORTMAN. You make it sound so simple, and you are also pointing the finger at your colleague here, which has been our problem.

Mr. MCCAMENT. Understood.

Senator PORTMAN. Mr. Wagner, give me a timeframe.

Mr. WAGNER. Sir, we have to incorporate the new MOA in the draft JCO. We are months away, but I promise to work diligently to bring it to a conclusion.

Senator PORTMAN. OK. I am not sure I understand why we are months away if you seem to have completed your work, you seem to know what you want. Let us make a commitment today to do this within a timeframe. What is a reasonable timeframe? Give me a commitment.

Mr. WAGNER. Do you think, Senator, we could consult on that and get back to you?

Senator PORTMAN. Let us consult, but let us choose a date, and let us work toward that date, because we have now had 26 months of work on this, and these young people continue to fall between the cracks. Let us face it. That is what we learned today.

Going on to the issue that was raised earlier, you indicated, Mr. Wagner, and in your testimony a moment ago said that we know where about 100 percent of these kids are during this first 30 days after we release them to a sponsor. That is not consistent with the data. That is just not what we are learning. These post-release services are not often done, but in the follow up calls, we had learned, as we said earlier, that about 1,475 kids out of 7,000 roughly that you called, you had no idea where they were. That is not 100 percent. That is about 19 percent totally unaccounted for. Why did you say 100 percent?

Mr. WAGNER. I was trying to illustrate to the Senator that immediately upon release we know where everyone is and that time and tides intervene to change that. At the 30-day mark, we completed telephone calls with 86 percent of those we attempted to reach. That is not to say that the remaining 13 percent, 14 percent, are missing or not where they belong. But we were unable to confirm that that is where they were.

Senator PORTMAN. It is actually over 19 percent based on your own data because sometimes you place the call, you get somebody on the line who said, "I do not know where the kid is." By your own data, it is over 19 percent, and you said within 30 days. At a minimum let us stick to the facts. It is a problem. We have to deal with it. HHS told us this morning that if a contract service provider cannot locate one of these children, the provider makes a note in the child's file. That appears to be about it. Nothing else is done. Am I reading that correctly from the information we got this morning? If a provider believes a child is not being cared for, it alerts State authorities, but apparently not HHS. Is that accurate? Two questions for you, Mr. Wagner. One, is it true that other than making a note in the child's file, nothing else is done? This is from the service provider, again, they cannot locate the child. Second, if the provider believes a child is not being cared for properly, it does not alert you, it only alerts State authorities? Are those two accurate?

Mr. WAGNER. On the first instance, I believe that is accurate. There is not a further attempt to locate the child.

On the second, I think that is incorrect. I think we do receive notification from our contractors that they have concerns. We would be informed of any concern raised by the contractors during the post-release services phase.

Senator PORTMAN. OK. We learned this morning that about half, maybe up to 58 percent of these kids who are being placed with sponsors do not show up at immigration hearings. They just are not showing up. When a sponsor signs the sponsorship agreement, my understanding is they commit to getting these children to their court proceedings. Is that accurate, Mr. Wagner?

Mr. WAGNER. That is accurate. In addition, they go through the EOIR orientation on responsibilities of custodians.

Senator PORTMAN. When a child does not show up, HHS has an agreement with the sponsor that has been violated, and HHS, to my understanding, is not even notified if the child fails to show up to the proceeding. Is that accurate?

Mr. WAGNER. That is accurate, Senator.

Senator PORTMAN. So you have an agreement with the sponsor, they have to provide this—an agreement with you, HHS. The child does not show up, and you are not even notified. I would ask you, how could you possibly enforce the commitment that you have, the agreement you have with the sponsor if you do not have that information?

Mr. WAGNER. I think you are right. We have no mechanism for enforcing the agreement if they fail to show up for the hearing.

Senator PORTMAN. Obviously, a red flag when a child fails to show up at the hearing. I think we have identified this morning so many parts of the system that simply are not working, for the children or for our immigration system. I am not suggesting that the agreement that we have been looking for for 26 months is going to solve all these problems, but at least then we will force the agencies to come together and decide who is responsible and to close these gaps. Yes, we need a more expedited process to get to these hearings. I could not agree more. I assume you agree with that, Mr. McCament.

Mr. MCCAMENT. I do, Mr. Chairman.

Senator PORTMAN. Yes, we need to do more in terms of discouraging people through the push factors and the pull factors from coming to our country. But, meanwhile, these young people are here, and they are falling between the cracks. The tragedy of what happened in my home State with regard to these kids being trafficked, by the very traffickers that had brought them up from Guatemala and made all these false promises to their parents about education and taking care of these kids and then abused these kids that is something that got us engaged in this. But as we have gotten into it, we realize it is far broader than that. It is a system that has so many gaps, so many opportunities for these children to fall between the cracks, that we just do not know what is going on, how much trafficking or abuse or simply immigration law violations are occurring.

Let me end my questioning by asking again very simply, when are we going to have this agreement completed? If you cannot give

us a date today, can you give us a date that you will tell us when it will be completed? How about close of business on Monday that you will tell us by then what the date is that you actually have this agreement completed so we can begin to pull these pieces together to ensure that the right hand does know what the left hand is doing and that we can close these gaps? Is that a fair thing for us to ask? Can you tell us by close of business on Monday?

Mr. MCCAMENT. Mr. Chairman, to that question, I would ask that my colleague and I consult right after this hearing to talk about meeting tomorrow on the timeline. I think it is reasonable to give that timeline. It is 26 months. I would like to discuss with him so that——

Senator PORTMAN. I am going to take that as a yes, Mr. McCament.

Mr. MCCAMENT. Sorry, that was long.

Senator PORTMAN. You are on board, close of business Monday you are going to tell us when you can have this agreement completed.

Mr. Wagner, yes or no?

Mr. WAGNER. That would be fine, Senator.

Senator PORTMAN. All right. So close of business Monday. Ms. Larin is looking on and thinking she would sure like to have that agreement, too, as would GAO generally.

With that, I appreciate your testimony today. I think we have uncovered a number of issues that have to be addressed in an urgent manner, and I would ask if my colleague, the Ranking Member, has additional comments to make with regard to this panel.

Senator CARPER. Just very briefly. I have asked my staff to check, Mr. Chairman, and to our witnesses, and see what is the level of funding that we have provided in the past for immigration judges, immigration courts, that sort of thing. I was trying to figure it out and will ask you, each of you tell us one more thing we ought to be doing to help address these problems. What should we be doing? But one of the things we sought to do is address the funding issue for immigration courts and immigration judges. In 2014, we were providing $312 million. This year, 2018, we are providing $504 million. That is an increase of almost two-thirds over the last four years. The funding request for the Administration for 2019 would be $563 million. That is an increase of 80 percent since 2014, which I was surprised it was that much money. But it is a lot of money. One of the problems we have is making sure that the folks who need to get into immigration court, they actually have the ability to get there, and they actually have access to a lawyer before they get there and then actually when they are there.

Ms. Larin, one thing that you think we ought to be doing, we in the Legislative Branch, we in this Committee ought to be doing to address these issues?

Ms. LARIN. Based on the work that we have done, we made a number of recommendations both to HHS and to DHS that remain open, so we certainly see work to be done there. But we did not make any matters for congressional consideration.

Senator CARPER. All right. Mr. Wagner, what is one thing that we ought to be doing here to help address this problem? It is not

enough for us just to criticize you, hold you accountable, and say, faster, get this done. What can we do to help?

Mr. WAGNER. Well, thank you, and I appreciate your concern about the UAC program, and I am sorry we did not have a chance to talk about the incredibly high quality care that they receive when they are in our custody, because they are very well taken care of.

Senator, it is a challenging program because of the fluctuation of the population, surges, ebbs and flows. I have just got to say that I think Congress has been incredibly responsive to this program. You have accommodated major revisions in our budget requests in the last several sessions, and I can only express my gratitude, and I hope we can continue to work on those issues going forward.

Senator CARPER. All right. Mr. McCament, give us one thing that we ought to be doing more of or less of.

Mr. MCCAMENT. Senator, in keeping with, as my colleague mentioned, Congress' interest and focus on this program by amending the Homeland Security Act, by the creation of the TVPRA, we would really also, as mentioned, want to work closely on amending the TVPRA now, putting certain statutory provisions for care into law, terminating the *Flores* Settlement Agreement. Those would help further enhance the ability to protect the vulnerable population.

We also, to the subject of this hearing, which we very much take to heart, have our own responsibilities on that for coordinating our efforts and documenting it. But assistance on amending the TVPRA, making some other critical changes, would help further protect the population.

Senator CARPER. I am going to ask you the same question for the record, so just be prepared to respond to it in writing, if you would.

Mr. MCCAMENT. Understood.

Senator CARPER. Thank you all.

Senator PORTMAN. Thank you all. I would like to call the next panel. Thank you for your testimony.

We have a vote that has been called for 10 minutes from now, and so we are going to ask the next panel to come and between sworn in very quickly.

[Pause.]

We are calling our second panel of witnesses.

First, Allison Herre, Immigration Legal Services Director for Catholic Charities of Southwestern Ohio.

Ms. Jessica Ramos is an attorney with Advocates for Basic Legal Equity (ABLE), in Dayton, Ohio.

Ms. Kelsey Wong is the program director and project director for the Shenandoah Valley Juvenile Center (SVJC) . We talked about her earlier.

Ms. Pattiva Cathell is an English language learners school counselor at Sussex Central High in Georgetown, Delaware.

And Ms. Laura Graham is the deputy director and managing attorney of the Delaware Medical-Legal Partnership and Immigration Program of Community Legal Aid Society (CLASI) in Wilmington, Delaware. That is a mouthful.

I appreciate you all being with us today, we look forward to your testimony, and I apologize for the votes. We are going to try to

stagger our attendance here so we can be sure and get the information that we are really eager to get from your testimony and the questions.

Under the Subcommittee's rules, all witnesses are required to be sworn in, so I would ask you at this point if you would please stand and raise your right hand. Do you swear that the testimony you are about to give to the Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. HERRE. I do.

Ms. RAMOS. I do.

Ms. WONG. I do.

Ms. CATHELL. I do.

Ms. GRAHAM. I do.

Senator PORTMAN. Having heard the affirmative from all of our witnesses, we will get started. We will use the timing system, as we talked about earlier. You have five minutes in your presentation, but your entire written testimony will be printed in the record.

Let us start with Ms. Herre.

Senator CARPER. Before you start, let me just say to our witnesses, I am an Ohio State guy, so I have a special affection for our witnesses from Ohio, and a great affection for our witnesses and gratitude to our witnesses from Delaware. Pattiva and Laura, thank you very much for coming and for sitting as long as you have to wait for this opportunity. We have one witness who is not from Ohio, who is not from Delaware, and we are delighted that you are here, too.

Thank you all.

TESTIMONY OF ALLISON E. HERRE,[1] IMMIGRATION LEGAL SERVICES DIRECTOR, CATHOLIC CHARITIES OF SOUTHWESTERN OHIO

Ms. HERRE. I would like to start by thanking Chairman Portman and Senator Carper for inviting me to testify this morning. Before I begin my written remarks, I do want to address a line of questioning that Senator Harris began with HHS. She was asking about the Memorandum of Understanding whereby now ORR is going to be using ICE for background check support. While we support the efforts of safe placements of UACs in the United States and encourage a thorough background check, the problem with having ICE involved in the background checks for UAC sponsors is something that was addressed or tried to be addressed through the *Flores* litigation in the 1990s. Families were afraid to come forward and claim their children that were at the border because that information was shared with legacy INS. They were afraid to come forward in terms of their own immigration safety and status. I believe that this Memorandum of Understanding or at least this piece of it—and I have not read it, admittedly—would lead to a prolonged separation of children from their parents and sponsors and a prolonged detention of UACs in government custody, which is what the *Flores* Agreement seeks to address.

[1] The prepared statement of Ms. Herre appears in the Appendix on page 99.

Now, the issue of unaccompanied immigrant children is very near and dear to me. I applaud the efforts of this Committee in bringing to light the opportunities presented by the UACs residing in the United States. As an immigration attorney at a Catholic nonprofit social service agency, I work directly with UACs, their sponsors, and the community organizations that support them. I am here to provide a voice for their stories, and I have two stories that I would like to share with you today.

The first story exemplifies the benefits of the existing protections for UACs in the case of ORR. In the summer of 2016, my safe release support specialist, who provides fingerprint services and assistance in completing the family reunification packet to potential sponsors of UACs, came to me with an unusual situation. A potential sponsor was in our office that raised some eyebrows.

First, the sponsor, who purported to be the biological mother of a UAC in ORR custody, was an American woman who spoke no Spanish. The child was from Guatemala.

Second, the sponsor's visit to our office was her second trip for fingerprinting. Her two prior results came back as unclassified, meaning that no identification match could be made with her.

Finally, the alleged mother seemed very agitated by the fact that the shelter caseworker requested the alleged mother to submit to a DNA test to prove maternity because the Guatemalan consulate indicated to the caseworker that the birth certificate listing the alleged mother as the birth mother had been falsified.

Typically, once a fingerprint packet is submitted to the government, we do not know whether a UAC is released to a particular sponsor. However, in this instance, a few months later Catholic Charities was called to conduct a home study for a potential sponsor of this same UAC. This time the child's biological father was seeking custody. When the Catholic Charities social worker visited the home, she found a number of concerns, including the father who actually spent most of his time in Pennsylvania, lived with the alleged mother who had been denied as a sponsor by ORR previously.

The social worker was denied access to parts of the home apparently because trained attack dogs were being kept in the concealed rooms. The Catholic Charities social worker recommended that the child not be placed with the father, and as far as we know, the child was saved from a potentially horrific trafficking situation by the diligence of his caseworker and the Catholic Charities social worker.

My second story, which I will have to run through quickly since I am running out of time, highlights the problems that can befall UACs when ORR fails to provide adequate vetting of potential sponsors or to provide post-release services released from custody. When Anabel, a 17-year-old girl from Honduras, entered the United States as a UAC in 2016, she was released to her mother in Cincinnati. But before reunifying with her mother, Anabel had not seen her mother in over 10 years. Her mother did not receive a home study, nor did ORR conduct any post-release follow up with Anabel. While in Cincinnati, Anabel enrolled in high school and began to learn English. Her caseworker at Catholic Charities

claims that she does very well in school, has a strong attendance record, and has been a model student.

For reasons unclear, Anabel's mother kicked Anabel out of the house approximately five months after Anabel was released to her care. On top of dealing with immigration proceedings and instability in her living situation, Anabel's mother also called police to report Anabel as a drug addict and a runaway, which triggered a juvenile delinquency proceeding. Despite all of this, Anabel still received straight A's and goes to school.

Congress has delegated the supportive functions to the Executive Branch of the care and custody of UACs. Continued congressional oversight coupled with continuous funding of these functions is essential to protecting the safety of these very vulnerable children. Thank you.

Senator PORTMAN. Thank you. Ms. Ramos.

TESTIMONY OF JESSICA A. RAMOS,[1] STAFF ATTORNEY, ADVOCATES FOR BASIC LEGAL EQUALITY, INC., UNACCOMPANIED IMMIGRANT CHILDREN'S PROJECT

Ms. RAMOS. Mr. Chairman, fellow Ohio State alum Ranking Member Carper, and distinguished Subcommittee Members, good morning. Thank you for the opportunity to provide testimony on the matter of unaccompanied immigrant children in Ohio.

My name is Jessica Ramos. I am an attorney with Advocates for Basic Legal Equality, a nonprofit legal services provider. Since 2008, I have worked on more than 400 cases of unaccompanied children and have represented children throughout Ohio from as young as a few months old all the way through adulthood.

I have been asked to share my experiences working with these vulnerable children and my observations in Ohio in the past 2 years, and they are very similar to my observation in previous years that the Office of Refugee Resettlement expends little to no resources on UACs that are released from their custody that are reunified with sponsors in Ohio, even though unified ORR post-release services have a profound effect on the safety and well-being of these children. This is exemplified by my client stories in my written testimony, and many of these experiences have been echoed by colleagues that do the same work throughout this country.

By the time I meet with my clients, ORR has abdicated all responsibility for them. In my years of representing UACs, I have only had a handful of clients that received home studies or any post-release services. Home studies can ensure that the child's sponsor has adequate resources and a safe environment for the child. Seeing the home and interviewing the potential sponsor can shed light on the sponsor's abilities to protect and care for the child as well as their intentions, which minimizes the risk that ORR will place the children with an improper sponsor. This is a crucial prevention tool that is underutilized, resulting in children being placed in dangerous situations.

Post-release services are also vital and rarely offered by ORR in Ohio. In my experience, when these services are not provided, the child is exposed to increased risk.

[1] The prepared statement of Ms. Ramos appears in the Appendix on page 105.

Many of our clients have suffered through horrible tragedies and hardships, and some arrive traumatized from their experiences. The effects of trauma on children, however, may not manifest itself immediately. In most parts of Ohio, there are very few resources available for undocumented children that do not speak English. In cases where the sponsor is not acting in the child's best interest, these ORR services, post-release services, may be the only link that the child has to the outside world. The availability of post-release services provided by ORR should be expanded to include children whose needs arise after their initial screening and placement with sponsors. Currently, my understanding is that that is not a possibility.

Post-release services should also be provided in conjunction with monitoring of these children after placement. Case management and post-release services are important to ensuring their continued safety and well-being. For example, ORR has no mechanism, as we have heard, to track a child that is no longer in their original placement, which could be remedied by post-release services.

In fact, one of the few people that do keep track of these children after their release are their lawyers, if they are lucky enough to have found one. Representation is extremely important to these children to make sure they are properly cared for and do not fall off the radar. Not only does being represented increase the likelihood of compliance with immigration court proceedings to the high 90th percentile, but attorneys can often connect children with additional resources that the families may not be aware of.

In States like Ohio, where the immigration court is more than 4 hours away from where some of these children live, attorneys can arrange for telephonic hearings that would prevent the children from having to pay hundreds of dollars for transportation to their immigration court hearings.

Universal representation of children in immigration proceedings is one way to protect them from falling victim to predators and those who do not have their best interests at heart. It also protects their due process rights and assists the immigration courts with the timely and effective processing of their cases as opposed to dealing with pro se children.

Finally, the ever increasing aggressive manner in which DHS is pursuing children and their sponsors is putting children further at risk. As my colleague mentioned and as was mentioned in the previous panel, ICE arrests of potential sponsors is a disturbing trend that is dissuading suitable individuals such as parents from becoming sponsors. DHS' narrowing interpretations for eligibility of relief, their stripping of UAC status from children, and opposing all motions in immigration court during proceedings lengthens the children's time in legal limbo, leaving them more vulnerable to exploitation.

This prioritization of enforcement over humanity is endangering the welfare and safety of children. My clients, despite having been born in another country and not speaking English, are still, above all things, children who deserve to be safe from harm, children who deserve the chance just like our own children, children like my 4-year-old, Oscar, who could only talk to the immigration judge about

his Spider-Man shirts and his shoes that lit up, and not about his legal defense.

ORR has a responsibility and a legal mandate, even after placement, to ensure these children's safety while their claims are being processed. I believe more coordination amongst agencies and legal representation for children are needed.

I appreciate the dedication of Chairman Portman, Ranking Member Carper, and this Subcommittee in safeguarding the well-being of my clients. Thank you.

Senator PORTMAN. Thank you. Ms. Wong.

TESTIMONY OF KELSEY R. WONG,[1] PROGRAM DIRECTOR AND PROJECT DIRECTOR, SHENANDOAH VALLEY JUVENILE CENTER

Ms. WONG. Chairman Portman, Ranking Member Carper, and Members of the Subcommittee, thank you for your invitation and the opportunity to discuss the services the Shenandoah Valley Juvenile Center provides to unaccompanied children for the Office of Refugee Resettlement. My name is Kelsey Wong, and I am the program director for the unaccompanied children program at the Shenandoah Valley Juvenile Center, or "Shenandoah." I have been working with this population for almost six years and have witnessed the evolution of ORR over time.

Shenandoah is a 58-bed residential facility for youth in local, State, and Federal custody. We serve approximately 300 male and female youth from the ages of 12 to 17 each year, with an average daily population of 46.

Since 2009, Shenandoah has been providing secure residential services to ORR. At this time, we provide services to 34 unaccompanied children, 30 males and four females. These services include, but are not limited to, case management, education, group and individual counseling, medical, mental health, nutrition, recreation, religious, acculturation, and vocational services. We deliver secure residential care and all required child welfare-related services in a State-licensed secure detention facility. We serve approximately 92 unaccompanied children per year with an average daily population of 25. Our goal with the unaccompanied children program is to provide high-quality secure services and facilitate each youth's safe and timely release from our care.

Shenandoah is one of three programs that provides secure care provider services to ORR in the United States. ORR places unaccompanied children in a secure setting when he or she is unable to maintain in a less restrictive setting due to behavioral issues, significant disclosures of violent or criminal history, or possible gang involvement. Secure placement is the most restrictive setting within the ORR network. While the number of unaccompanied children requiring a secure setting is small, we believe that this population should be a high priority for the Federal Government.

Prioritizing unaccompanied children in a secure placement requires the Federal Government to improve their referral process, internal network capacity, and decision-making on individual cases.

In our written statement, we recommend the following:

[1] The prepared statement of Ms. Wong appears in the Appendix on page 112.

First, referring agencies, DHS and ORR, to thoroughly assess the youth prior to their placement into custody, including their status as an unaccompanied individual and possible gang involvement.

Second, expand ORR's internal network capacity to better meet the needs of unaccompanied children with mental illness, significant behavioral issues, and disclosures of violent or criminal histories.

Third, streamline and expedite its decision-making process for unaccompanied children in a secure setting in order to reduce their length of stay in secure placement. This may be achieved by streamlining decision-making processes, providing a dedicated field staff for each secure care provider in the ORR network, and funding legal service providers to work with unaccompanied children pending release decisions so that they may make progress on their legal case while they are in care.

At Shenandoah we understand the importance of our role as a care provide to the unaccompanied children population, and we take it seriously. We look forward to continuing to work with this Committee and ORR in order to set these young people up for success, whether it is here in the United States or in their country of origin. We also welcome the Subcommittee Members to tour our facility in the beautiful Shenandoah Valley.

Thank you again for the opportunity to discuss our services, and I hope that the information provided has been helpful to you. I am also happy to answer any questions that you may have. Thank you.

Senator PORTMAN. Thank you, Ms. Wong. Ms. Cathell.

TESTIMONY OF PATTIVA M. CATHELL, ED.D.,[1] ELL SCHOOL COUNSELOR, SUSSEX CENTRAL HIGH SCHOOL, GEORGETOWN, DELAWARE

Ms. CATHELL. Chairman Portman and Subcommittee, thank you for inviting me and giving me the platform to shed light on how Sussex Central High School in Georgetown, Delaware, is providing access to education at all points for our UAC demographic.

At Sussex Central High School, we have seen a surge in the UAC enrollment because of the resettlement in Georgetown, Delaware. When a family or sponsor comes to the high school to register a student, they typically come in with a manila packet with all of the paperwork that comes from ORR and all of the court proceedings prior to being released to the sponsor. When that happens, they give me the packet, and I do not really keep any of the paperwork because technically the school has no right to look at their legal paperwork. But one of the documents that we do keep is the release of verification form which has the UAC's photo and the sponsor's address and phone number. So that helps us as a document for the proof of residency.

We do require paperwork for proof of residency when a parent or sponsor does enroll a student. Some of the issues that we see are that we see a surge in the age group of 17 for the UAC. Some of them are illiterate in their own language. Some of them do have diplomas from their country and then are told by the judge that they need to be enrolled in a comprehensive high school. They come

[1] The prepared statement of Ms. Cathell appears in the Appendix on page 116.

to us in both scenarios, and we as a school have to interview them and use the tools that we have to identify what literacy gaps, what education they do have so that we can connect them to the appropriate level of education.

We have created a mechanism to reach the illiterate and the student with limited education or maybe a gap in education from their home country to the United States, and we created a program called the Accelerated Pre-Literate English Language Learner Program (APELL). Students that have less than a 2-year gap or have been educated in their country are then provided education through the immersion program, through our ELL Department.

It is important to note that we started the year with around 27 students. We saw a surge in January with another 27 students. Of the 27 students, there were only three females; the rest were male. We have been observing trends for the last five years. Typically in January—it is right before planting season. We are in a rural area where we have agriculture in the fields. We have poultry plants. We have poultry farms. Labor is needed. We see that a lot of our students are coming to school during the day and then obtain fake documents with other people's names and are working at night or working in the field.

I recently enrolled 10 more students, so we are now at the count of 101 new UACs for this current school year. To speak to the first panel, we do see on that release form the category of sponsorship, and it is very rare that the child is released to Category 1, which is the parent. We see more often than not the Category 2, where it is a relative, but it does concern us, the amount of students who are released to the Category 3, distant relative.

It is not uncommon for a student to register, come to school for a couple of months, and then withdraw for employment reasons or move. It is a common trend that students who enroll now, which is our fourth marking period, cannot earn any credit. Once they have experienced a few months of school, they have the summer, and they do not return. This year we had 40 students, 40 UACs, not return. It is a big concern for us, and we are hoping to get more insight and help from the Department of Education and from you.

Thank you.

Senator PORTMAN. Thank you, Ms. Cathell. Ms. Graham.

TESTIMONY OF LAURA GRAHAM,[1] DEPUTY DIRECTOR AND MANAGING ATTORNEY, DELAWARE IMMIGRATION AND MEDICAL-LEGAL PARTNERSHIP PROGRAM, COMMUNITY LEGAL AID SOCIETY, INC.

Ms. GRAHAM. Thank you, Mr. Chairman, Ranking Member Carper, and other Members. It is with great pleasure that I am here today to speak with the Subcommittee regarding my agency, Community Legal Aid Society, in Delaware, and our work with unaccompanied alien children.

To give you some background about CLASI, we are nonprofit law firm in the State of Delaware, and we provide civil legal services to individuals who are low-income, people with disabilities, people who are elderly, and individuals who are victims of crime. Part of

[1] The prepared statement of Ms. Graham appears in the Appendix on page 133.

our crime-based work is to provide immigrants with relief related to their victimization.

For example, we provide relief related to U visas for victims of crime, T visas to victims of human trafficking, VAWA relief for spouses and children of U.S. citizens or permanent residents who have been victims of domestic abuse, and special immigrant juvenile status to children who have been found by a State court to have been abused, abandoned, or neglected by one or both of their parents and in whose best interest it is to remain in the United States in the care and custody of a court-appointed guardian.

I would like to speak a little bit about the children who have been placed in Delaware and then the concern that my agency has in the legal rights and the due process afforded to these children.

Between October 2016 and February 2018, which is the most recent 18 months for which data is available, ORR placed 272 children with sponsors in the State of Delaware. The concern that Community Legal Aid has or is seeing is that sponsors and the UACs are not educated or informed about their rights and responsibilities with regard to representation and immigration proceedings. I want to talk about two specific issues. First would be with relation to guardianship and second with relation to immigration proceedings.

First, with relation to guardianship, many UACs and their sponsors have very little information about what guardianship is, and many sponsors are unaware that they are not, in fact, the legal guardian of this child. Their understanding is the child has been placed with them, but they are unaware that they need to actually seek a court order from the State of Delaware family court granting them or ordering them to be the guardian of this child. What this means is the sponsor technically under State law does not have the right to make decisions with regards to medical care, legal care, educational decisions, and, more importantly, immigration issues. That is because the guardianship order not only gives the sponsor the legal status to make these decisions, but it also is a vehicle by which the child can qualify for special immigrant juvenile status.

The second issue that we are seeing is the lack of knowledge about the immigration relief available to these children, and, again, both the children themselves and their sponsors receive very little language-appropriate oral information about what their responsibilities are and the impact of those responsibilities. As the panel is aware, immigration relief and immigration law is very complicated. It is very difficult for the pro bono attorneys that we train to take these cases to navigate the special immigrant juvenile process, let alone for an unaccompanied child who may not have literacy or education in English.

An issue that we are seeing is that the sponsors and the UACs are not given information about the venue or how to change the venue of their immigration proceedings. In a recent case that we had, the child was held at an ORR facility in Chicago and then was released to a sponsor in the State of Delaware. No one informed the sponsor or the child that he was placed into proceedings in Chicago in the immigration court. The sponsor and the child had no idea how to change the venue and had to navigate that system

themselves to get the venue changed from Chicago to the Philadelphia immigration court, which has jurisdiction over children residing in our State.

The impact of representation or having an advocate on these cases is crucial, as a prior panelist mentioned. Recent University of Syracuse statistics have shown that over half of unaccompanied children are pro se, and only 15 percent of pro se children are successful on their claims. Conversely, over 75 percent of represented children are successful on their claims. Moreover, 94 percent of children who have attorneys actually appear for their immigration court hearing. Not only is representation crucial to the outcome, it is crucial for children to even appear in court.

My agency would like to see additional safeguards put into place so that these children are warmly referred to a State or local agency that can represent them and navigate them through these proceedings.

Thank you again for the opportunity.

Senator PORTMAN. Thank you, Ms. Graham. Thank you, all five of you, for your testimony.

We are going to run and vote. We are going to come back. If you are willing to be patient, we will be back to ask questions as fast as we can run to the floor, vote twice, then come back.

Senator CARPER. Does anybody have to leave? Are you able to stay? OK. Hopefully we will be back within 20 minutes. Thank you. Thanks for your patience. Thank you for your testimony.

[Recess.]

Senator PORTMAN. The hearing will reconvene. We are very happy to see that you did not abandon us. Thank you for sticking around.

We have only two of us here to ask questions, but others may well submit questions for the record. In other words, we will ask you to respond in writing after the fact. In fact, I am going to be doing that with some of the questions we will not get to today because I do not want to hold you too long, and I know both of us have other commitments.

I am going to start, if I could, with our two Ohioans, not just because they are Buckeyes but because they made a lot of interesting comments in their testimony. The first one has to do with this issue we talked about earlier whether HHS is actually taking its responsibility seriously to make sure these kids are placed with the right sponsors. You talked a little, Ms. Ramos, about the fact that the sponsors themselves do not know what their responsibilities are, and I thought it was fascinating, you talked about the guardianship issue. That seems to me to be a communication challenge that can be pretty easily solved, in other words, to provide sponsors with the information they need to be able to either get that guardianship or to change the legal situation so that they can have it to be able to provide proper care for these kids, including medical care, which was an interesting part.

Can you expand on that a little bit and suggest what an answer might be to that, what a solution might be to that?

Ms. RAMOS. Thank you, Chairman Portman. I believe Ms. Graham was the one that spoke about the guardianship issue, but it is true that we do find that many sponsors lack——

Senator PORTMAN. But she is from Delaware. [Laughter.]

Ms. RAMOS. Right.

Senator PORTMAN. I have to let Senator Carper ask her the question.

Ms. RAMOS. Sure. We encounter the exact same issue in Ohio, however, and I think that one great remedy is the additional post-release services being provided to all children and definitely legal representation. We are able to help guide them through the process. I know that in my preparation for this testimony today I spoke with colleagues from across the country to try to get some idea of what is going on in their States, if they are having similar issues. One of the complaints was that they are not notified about these legal issues about obtaining guardianship, and sometimes that does not happen in a timely manner, which restricts the child's ability to pursue that form of relief.

Basically, children may miss out on an opportunity to legalize their status through our existing laws because they are not notified of the proper process, and if they had been assigned an attorney from the get-go, then that would definitely relieve that problem.

Senator PORTMAN. As to their legal status, in addition to not being able to access some services that they could get through health care, through guardianship and so on.

Another issue that was raised—and it frustrates me that we only have one judge in Ohio, and that judge happens to be in Cleveland, Ohio, so you mentioned four hours. It is not four hours if you live in Cleveland, but it is if you live in southeast Ohio or Cincinnati. My question to you is: What could we do there—for a while there was the opportunity, as I understood it, for there to be either judges coming down to southern Ohio and convening proceedings there, which they no longer do. Or as you suggest, maybe some sort of a telehearing where you had the ability to do this through some sort of communications. What is your thought there? What can we do to improve access?

One of the issues that obviously concerns this Subcommittee is the fact that so many people are not showing up for their hearings, and making it more possible to show up because of transportation challenges seems to me to be a good idea. What are you solutions there?

Ms. RAMOS. Chairman Portman, yes, it is true that there used to be a video teleconference capacity with judges that were actually based in D.C. through Cincinnati. When the immigration court was staffed up in 2008 in Cleveland, they stopped those videoconferencing hearings. Videoconferencing is definitely one way, if those services were available in additional sites beyond Cleveland, that would increase access and would minimize the travel necessary by these clients to reach their court hearings.

We also feel that, again, representation with attorneys—our judge in Ohio that you mentioned that handles the juvenile docket, she is very generous with allowing telephonic representation and appearances when the child is represented. Through an attorney, we are often able to make sure that those hearings are conducted by telephone, and we ensure that the children appear for those.

Senator PORTMAN. Ms. Herre, we talked earlier a lot about what HHS is providing after they release a child to a sponsor, and the

home visits, as we learned, are done in a relatively small percentage of cases, maybe 20 to 30 percent—30 percent last year, 20 percent the year before. We also talked about the insufficient vetting, and if we can ever get this agreement between HHS and DHS, I think a lot of this can be improved.

But if you could talk for a second about that, are you aware of what kind of post-release services are being provided to UACs in the Cincinnati area? What do you think should be provided that is not being provided?

Ms. HERRE. Yes, thank you, Chairman Portman. The agency I work for, Catholic Charities of Southwestern Ohio, has grants through ORR. We are subgrantees on two grants, one which provides fingerprinting services and family reunification packet assistance to sponsors of UACs before a child is released. We also have through the Su Casa Hispanic Center a grant to do home studies and post-release services. The home study usually consists of a caseworker going to the family home, investigating the living conditions, talking to the family members in the home, and making a general assessment based upon their best judgment of whether or not it is going to be a suitable placement for the child.

Now, the post-release services, which are offered to more children, admittedly, than to individuals who receive the home studies, these services are more intensive case management. They include assistance in finding legal representation. They include assistance in enrolling in school, educating the sponsors on their legal rights and responsibilities as far as they are able to as a social worker. They also will make sure that the child is in a safe and nurturing environment.

Now, unfortunately, ORR has changed its policies in terms of how long children are given this post-release service, so I believe the prior policy was 90 days, and it has been cut down to 30 days now. Our caseworkers have had instances when they have had to actually request for more time, and more often than not, they are welcomed to do that, and with our partners at the U.S. Conference of Catholic Bishops, we have partnered with ORR to make sure that those post-release services are able to continue where needed.

Senator PORTMAN. Ms. Wong, I do not want to leave you out. You talked a little about what is going on at your facility, the Shenandoah Valley Juvenile Center. As you know well, HHS is not providing all of the information needed, as we talked about earlier, and not keeping track of these students. But with regard to Shenandoah Valley, do you feel like HHS is providing you with adequate information about these young people who end up in your facility? Do you feel like HHS is doing what it should be doing in terms of screening those UACs to be sure that the right ones are ending up in your facility?

Ms. WONG. Thank you for your question, Chairman Portman. Yes, I think there are several areas where I think ORR can improve with respect to screening and placing youth in a secure placement, specifically with respect to their unaccompanied status. Recently we have received a lot of youth who were previously placed in ORR custody and then placed with us again, but they were living with their sponsor or biological parent. There is a question to their unaccompanied status. The second thing is that the

youth were being screened as gang-involved individuals, and then when they came into our care and they were assessed by our clinical and case management staff, they did not necessarily meet those—they were not necessarily identified as gang-involved individuals. It really ends up affecting their long-term case plan and getting them released back into the community so that they can be with their family.

On another note, I think another issue that we have with ORR is with respect to the youth that we have who present with high mental health needs, and those youth we assess and, when approved by ORR, we do psychological evaluations for these kids. If the psychologist recommends a residential treatment center placement, then we elevate to ORR to refer to those residential treatment centers in network. Now, there are only a few of them in network, and most of them are unwilling to work with youth who have behavioral issues, and a lot of kids who are in our type of setting have significant behavioral issues. I think there is a real concern with internal network capacity and being able to have a secure residential treatment center to provide services to these kids who are in secure placement, and that is something we have elevated several times.

Senator PORTMAN. Well, thank you. We are going to follow up with, again, some written questions for the panelists. I appreciate your testimony today, and I now turn to Senator Carper.

Senator CARPER. Thanks. Again, thanks. We are deeply grateful that you are here and grateful for the work you do with your lives.

I want to go back to one of the questions I asked our first panel, and I oftentimes ask this question when we are doing oversight. I say to the panelists, the witnesses, what could we be doing better or more of at the Legislative Branch, the oversight committee? The earlier witnesses basically said nothing. They thanked us for what we are doing. We actually dramatically increased funding for judges, the courts, and stuff like that. Each of you give us one thing that we need to do more of. It might be oversight. I do not know.

Ms. GRAHAM. Thank you for the question, Senator. I think funding to ensure that these youth receive legal representation is something that would not only help the youth have a better outcome and access justice, but it would also actually help our overburdened immigration courts. Children who are represented have better results.

Senator CARPER. OK. Thank you. Ms. Cathell.

Ms. CATHELL. You had mentioned with the first panel that there should be a hand-off from ORR to somebody, the law enforcement agency or someone in the town or the county that the child is being released to. From the education standpoint, if that were to happen, I think that there should be someone at the Department of Education and there should be someone at every school district who is responsible for being able to process a student, a UAC, to determine their language acquisition, to determine their educational background, to ensure that they are possibly interviewing the parent or the sponsor when they do come. If you are going to choose a government agency to hand off to, if you are going to choose the

education piece, then the Department of Education has to work closely with the district.

Senator CARPER. All right. Thank you. Ms. Wong.

Ms. WONG. From the care provider's standpoint, I think what you are doing is what is necessary and just continuing to support HHS, ORR, and to improve its processes, and hopefully there will be changes to policies and procedures not only within the network overall, but specifically for secure care providers as well. Thank you.

Senator CARPER. All right. Thank you. Ms. Ramos.

Ms. RAMOS. All the good answers have been taken. No, just kidding.

Senator CARPER. You can repeat good answers. That is OK. [Laughter.]

Ms. RAMOS. Sure. I definitely agree that legal representation is a good step, but I also believe that expansion of post-release services to include children that may have needs arise after release. To my knowledge, services are only available to 25 individuals at one time. That is what their funding provides, when we have routinely between 500 to 800 children released in Ohio every year, so that covers a very small portion.

Senator CARPER. All right. Thanks.

Allison, would you pronounce your last name for me again?

Ms. HERRE. "Her-eee." It is like "Marie," like the woman's name.

Senator CARPER. It is not Spanish. What is it?

Ms. HERRE. It is French.

Senator CARPER. Thank you.

Ms. HERRE. Yes, I am not French——

Senator CARPER. We just had a French President before a joint session yesterday.

Ms. HERRE. Yes, Macron was just here.

Senator CARPER. He was quite good.

We thought about calling him as a witness.

Ms. HERRE. Well, he should be here today.

I do echo the points brought up by the other attorneys at the table today. I do want to caution in terms of informing local child welfare agencies and law enforcement agencies and even educational providers of UACs released in the jurisdictions of those individual agencies, that while thorough checks of sponsors is important and having someone checking in on those children after the fact of release is also important, that release of information should be coupled with some sort of confidentiality notice to protect the privacy and the identity of the children, because we do not know what the providers, although they might be very well intentioned, would do with that information once it is released to their agencies.

Senator CARPER. I often say in this room, find out what works, do more of that. One of the things we are trying to figure out what works in Delaware, I actually reached out to the Chief Justice of the Supreme Court in Delaware a couple of years ago, who used to be my intern—can you believe that? He is now the Chief Justice of the Delaware Supreme Court. I reached out to him and I said we have all these young people coming across the border into Mexico, a lot of Guatemalans migrate to southern Delaware. For years they worked in the chicken plants, in the agricultural sector of our

economy. I said on the issue of legal counsel, they do not have legal counsel. God bless the Chief Justice and the folks who work with him, they rounded up 75 lawyers to provide pro bono assistance, and almost none of them spoke Spanish. We had all these Spanish-speaking kids, and we had lawyers who were ready to do pro bono work, but they could not talk.

Now we are trying to work with Catholic Charities and trying to work with a couple of other entities, Widener School of Law, which is in our State, the northern part of our State, close to Philadelphia, which is where these immigration court hearings take place for our residents, and to see if there are not Spanish-speaking law students at Widener who might like to do some pro bono work and help out.

We are trying to think outside the box. Do you all know of any States that are doing an especially good job in terms of the hand-off from ORR to State and local folks, anybody that is doing an especially good job that we could look to as a model?

Ms. HERRE. I have heard that, at least in the legal representation context, in New York the city provides pro bono representation to immigrants in removal proceedings, not just immigrants who cannot afford—well, most immigrants that cannot afford attorneys, but UACs in particular.

Senator CARPER. Anybody else aware of a good practice that we ought to be mindful of?

Ms. WONG. Some of the care providers—I cannot speak to the shelter care providers, but within our setting we do a pretty comprehensive safety and supervision plan that we prepare with the sponsor and the youth prior to their release. Most kids are not released from our setting, but they step down and then released at lower-level settings. We prepare that comprehensive safety and supervision plan to make sure that there is the pass-off of information, and that information is also shared with the post-release worker so that they can follow up with them on whether it needs to be amended or something like that.

Senator CARPER. All right. Ms. Cathell.

Would you just take a minute to describe how you learn that an unaccompanied child is now part of the community say in Georgetown, Delaware, in southern Delaware? Is there a case manager that helps these kids if they register for school and make sure they are aware of the resources that are available to them?

Ms. CATHELL. Thanks for the question. There is not a case manager that connects the student and sponsor to the school. We have been operating and enrolling UACs for about five years now, and it is just word of mouth. Georgetown is the fifth largest resettlement for the Guatemalan culture and heritage in the United States. Sussex County is rich in agriculture as well as the beach and restaurant and leisure employment for our area. I am the only person that comes into contact with them at the point of registration with my administrative assistant, and we work through the paperwork that they give us.

The problem we have that is pretty pervasive is once the child is released to a sponsor, it is like the first panel, the question was: Are you vetting them to see that they are a good fit? Are they documented? A lot of our sponsors are also undocumented, so they have

not navigated the immigration system successfully either, so they do not see the importance of getting them to their appointment.

They are also filling out the registration paperwork, and they have a limited word bank in their own native language, so even though we provide the documents in their native language, they cannot read. A lot of our sponsors are also illiterate. It puts the UAC at a major disadvantage. Some of our UACs who come that are educated in their own country do a much better job. They learn the language acquisition quickly, and we have seen a success rate of graduates over the last three years.

Senator CARPER. You said, "We have seen a success rate." Is the success rate increasing?

Ms. CATHELL. Success rate in graduation rate. We went from—my first year we graduated 12 UACs.

Senator CARPER. Out of what?

Ms. CATHELL. Out of a class of 300, approximately. Last year, we had a class of 331, and we graduated 34 UACs. This year, we are at 364 in the cohort, and we are looking to graduate 53 UACs. That is through a customized approach looking at what the kid comes to the country with as far as their previous education, providing them English acquisition classes every single day, providing them summer school in the summer, and giving them a pathway. We offer career and technical education (CTE), in our schools to teach them a job skill. A lot of them are working in labor industries, but we——

Senator CARPER. I am going to have to ask you to wrap it up here.

Ms. CATHELL. I am sorry. We just preach that if you come to school and you become literate, you are going to be able to navigate your resources better. But it is a problem at the point of entry when they do not speak English and they are released to a sponsor that does not speak English, or read in their native language as well.

Senator CARPER. OK. Thanks.

Could I just ask a quick yes or no? The question is: Would it be beneficial for HHS to notify State governments of placement of unaccompanied children with sponsors within their States? Would it be beneficial for HHS to provide the notification to State Government? Just yes or no. Allison?

Ms. HERRE. Maybe.

Senator CARPER. Sorry?

Ms. HERRE. Maybe.

Senator PORTMAN. Privacy. Privacy is your concern?

Ms. HERRE. Right, privacy issue.

Senator CARPER. OK. Jess?

Ms. RAMOS. I would agree with Ms. Herre, yes, if there are some privacy implementations.

Senator CARPER. OK. Kelsey?

Ms. WONG. I would agree.

Senator CARPER. Dr. Cathell?

Ms. CATHELL. I also agree.

Senator CARPER. OK.

Ms. GRAHAM. Yes, assuming privacy concerns are addressed, yes. Thank you all very much.

Senator PORTMAN. Thank you all for your testimony.

Senator CARPER. Thanks to our staff. I know our staffs work really hard on getting us ready for today, but just for everybody on either side, thank you very much.

Senator PORTMAN. Thanks to Senator Carper and his team for working closely with us on this.

In terms of the staff, Amanda Neely behind me here has spent hours on this, but also Andy Dockham and Stephanie Hall; and our interns Jason Cowan and Tate Latinovich, who is here; and our PSI clerk, of course, Kate Kielceski, thank you for your hard work. And the minority staff, John Kilvington and Roberto Berrios, thank you, guys, very much.

What have we learned today? We learned a lot. We learned we have a broken immigration system. Of course, we have to repair that more broadly. But in the meantime, we have these young people here in our country, and we are not doing justice to them or to the immigration system or to the taxpayer in the way it is being handled. We learned about so many gaps, so many times where in the process the government agencies are not communicating and not doing what they should do. We need to be sure these children are not being trafficked, are not being abused, as happened in my home State. We also, though, need to be sure that they are showing up for their immigration proceedings. We learned today that, unfortunately, roughly half or more of those UACs are not showing up, and a lot of it is lack of follow up.

We learned today, which I thought was kind of shocking information, that so many of these young people are not being tracked at all. In other words, when you look at the testimony we got today, despite what was said in the oral testimony, when they make these calls 30 days afterwards, which in just a 3-month period we found out that 1,500 of these young people were unaccounted for, 1,500 out of roughly 7,000. So as I said, that is not 100 percent. That is closer to 19 percent or more who are literally going missing.

There are lots of opportunities here to improve a broken system, and we hope that we will be able to get some information back soon from the agencies you saw today as to how they are going to address some of these issues and provide some accountability so that somebody is in charge and that there is somebody to be held responsible to ensure the proper care and the proper working of the system.

The hearing record will remain open for 15 days for any additional comments or questions from any of the Subcommittee Members, and, again, if you all do not mind answering some additional questions for the record, we would appreciate that.

With that, this hearing is adjourned.

[Whereupon, at 1:06 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF CHAIRMAN ROB PORTMAN
U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Oversight of HHS & DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking & Abuse
REMARKS AS PREPARED
APRIL 26, 2018, 10 A.M.

In 2015, I learned the story of eight unaccompanied minors from Guatemala who crossed our southern border. A ring of human traffickers lured them to the United States with promises of education. To pay for the children's smuggling debt, their parents gave the traffickers the deeds to their homes, which the traffickers then retained until the children could work off the debt.

When the children crossed our border, their status, as defined by federal immigration law, was that of "unaccompanied alien children," or UACs. The Department of Homeland Security picked them up and, following protocol, transferred them to the Department of Health and Human Services. HHS then was supposed to place them with sponsors who would keep them safe until they could go through the appropriate immigration legal proceedings.

That didn't happen.

What did happen: HHS released these children back into the custody of those human traffickers without vetting them.

Let me repeat that: HHS placed those kids with human traffickers.

The traffickers took them to an egg farm in Marion, Ohio, where the children lived in squalid conditions and were forced to work 12 hours a day, six days a week, for more than a year. The traffickers threatened the children and their families with physical harm—and even death—if the children didn't work.

This Subcommittee investigated. We found that HHS didn't do background checks on those sponsors. HHS also didn't respond to red flags that should have alerted them to problems with the custodians. For example, HHS missed that this group of sponsors were collecting multiple UACs. And HHS didn't do anything when a social worker tried to provide help to one of those children, and the sponsor turned the social worker away.

Following our investigation, we held a hearing in January 2016 where HHS committed to do better, including by clarifying the DHS and HHS responsibilities for protecting these children. HHS and DHS entered a three-page "Memorandum of Agreement," which said that the agencies recognized they should ensure these unaccompanied alien children aren't abused or trafficked.

The agreement said the agencies would enter into a detailed "Joint Concept of Operations" that would spell out what the agencies would do to fix the problems. They gave themselves a deadline of February 2017. That was over a year ago.

It's now April 2018. We still don't have that Joint Concept of Operations—the JCO – and despite repeated questions from Sen. Carper and me, as well as our staffs, over the past year, we don't have any answers about why that is.

In fact, in a recent meeting, a DHS official asked our investigators **why we even cared about the JCO**.

Let me be clear. I care about the JCO because I care that we have a plan in place to protect these kids while they're in our government's custody. I care because the Government Accountability Office has said that DHS has sent children to the wrong facility because of miscommunications with HHS.

I care because the agencies themselves thought it was important enough to set a deadline for this JCO, but then blew by it. And I care because these kids, regardless of their immigration status, **deserve to be treated properly, not abused or trafficked.**

We learned at 4 pm yesterday that 13 days ago – there was an additional memorandum of agreement reached between the two agencies – we requested and finally received a copy of this new agreement at midnight. It's not the JCO – but a more general statement of how information will be shared. Frankly, we had assumed that this information was already being shared – maybe it was.

We called this hearing for **DHS and HHS to give us some answers about the JCO today.**

Once DHS hands unaccompanied minors off to HHS, the law provides that "the care and custody of all unaccompanied alien children . . . shall be the responsibility of the Secretary of Health and Human Services." But HHS told this Subcommittee that once it places children with sponsors—even sponsors who are not related to the children— it no longer has legal responsibility for them. Not if they're abused. Not if they miss their court hearings. That is completely unacceptable.

HHS inherited responsibilities relating to these children when Congress dissolved Immigration and Naturalization Services. **We continue to believe HHS has the authority and responsibility to care for these children.**

Since our 2016 hearing, we also have heard about other problems. We've heard that sponsors frequently fail to ensure these children **show up at their immigration court proceedings**. That undermines our rule of law and an effective immigration system. And in almost all of those cases, the judge enters an in absentia removal order. That means that even if the children are eligible for immigration relief, like asylum status, they don't get it and are ordered removed—so it's bad for the children, too.

We also learned that **HHS does not track these children** once HHS releases them to sponsors. **Nor does HHS notify state or local governments** when it places these children with sponsors in those communities. HHS says they do plan to start notifying local law enforcement when it releases high-risk children, but **hasn't done so because it can't figure out who to tell.** This seems like a straightforward step—why can't we figure that out?

Since 2016, HHS has started calling sponsors and the children 30 days after placement with sponsors to check on the children. That's a good step. But in his testimony, Mr. Wagner says from October to December last year, ORR tried to reach 7,635 of these children. Of those, he says "**ORR was unable to determine with certainty the whereabouts of 1,475 UAC." That's almost 1500 kids missing in just a three month period**. We want to know how HHS plans to track them down.

And we also heard about **problems at the three secure facilities HHS uses to house UACs who are higher risks**—those accused of crimes, who might harm themselves, or who present a flight risk. The head of the Yolo County, California facility says that HHS does not give them enough money for the number of children they house—which means they cannot hire enough staff to take care of the children safely. We have a witness from the facility in Shenandoah Valley here today who will explain to us why their facility simply isn't equipped to handle some of the children the HHS Office of Refugee Resettlement places there and what can be done about that.

The problems we are discussing today are longstanding and started under the Obama Administration. The topic of unaccompanied alien children continues to be a hot button issue. But today, I want to focus on two key issues related to them.

First: Human decency. Once these unaccompanied children are in the United States, we have a duty to ensure they are not trafficked or abused.

Second: The rule of law. Our immigration system is broken. One problem is that half of these children are not showing up to their court hearings. That's not good for the kids or for our system. We need to do better.

I look forward to hearing from our witnesses today about how we can make that happen.

Statement of Ranking Member Tom Carper
"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"
April 26, 2018

Thank you, Mr. Chairman, for holding this hearing and for the commitment you've shown over the years to better care for the vulnerable migrant children who live in our communities.

My thanks, as well, to your staff for the diligent, bipartisan work they did with my team to pull this hearing together.

Most of the children we'll be talking about today arrived in our country during an unprecedented surge of migration we've seen along our southern border in recent years.

They came here primarily from Guatemala, Honduras, and El Salvador to escape extreme poverty and unspeakable violence in their home countries.

Yet our Subcommittee has found that, in too many cases in Ohio, Delaware, and around the country, we're failing in our responsibility to protect and properly care for these children after they arrive here seeking our help.

A 2008 law enacted under former President Bush clearly places all children who arrive at our borders and ports of entry without a parent or guardian under the care and custody of the Department of Health and Human Services (HHS).

In fulfilling its responsibilities to these children, HHS must place them in safe homes, offer them mental health care and other services they might need, and ensure that they're participating in immigration court proceedings.

Based on our Subcommittee's findings, HHS is failing in these and a number of other areas.

In January 2016, PSI held a hearing on a staff report detailing how HHS had placed eight Central American children with sponsors in Marion, Ohio, who forced them to work on an egg farm. The children worked under threat of violence, apparently to pay off debts incurred to the smugglers who had brought them into our country.
HHS failed to detect that the sponsors in this case sought and received custody of multiple, unrelated children.
They also failed to perform background checks on some of the adults who would be living with or caring for the children, and did not visit them where they were supposed to be living.

At one point, HHS even failed to take action when someone answering the door at a child's home declined the mental health treatment that was approved for the child and denied the caregiver access to them.

Since 2016, HHS and the Department of Homeland Security have taken steps in response to

recommendations from PSI and GAO that should make it less likely that unaccompanied migrant children might fall through the cracks and wind up exploited by unscrupulous people.

Specifically, HHS policy now calls for more background checks, more home visits, and more access to services like mental health treatment for children placed with sponsors.

The Department also now requires that all children and their sponsors be contacted at least once within 30 days of placement so that problems can be detected and referred to local authorities.

These are positive steps, but the testimony we'll receive today tells me that too many of the children we're placing in homes across the country are still at great risk.

Sadly, it's not impossible to imagine a child today finding his or herself in a situation similar to the one discovered in Ohio in 2015.

In preparation for this hearing, our staffs have heard reports of children being placed in homes with people they don't know who expect them to work to help with living expenses. We've heard about children, sometimes due to a need to send money home or to pay debts to smugglers, working all night and, as a result, unable to stay awake at school during the day.

These are the kinds of problems that HHS, working with state and local partners, should be able to detect and address, or better yet, prevent from happening in the first place. Unfortunately, it seems they cannot.

HHS informs us in their testimony today that, between October and December of last year, they actually lost track of nearly 1,500 children placed in their care who they attempted to contact after placement with a sponsor. Dozens more ran away from home or were found to have moved in with someone not vetted or approved by HHS.

Given all that we learned in 2015 and 2016, it's unacceptable that we can still be this bad at keeping track of these children and keeping them out of danger.

We've also learned more in preparing for this hearing about how our system too often sets children up for failure even when they find themselves in good, stable homes.

Many Central American migrants don't speak English, some not even Spanish. Their sponsors are often in the same boat, yet HHS leaves them with confusing guidance on how to register for school and how to navigate our immigration court system.

Even when children and their sponsors know what to do, we make it very difficult for them to get to court and participate in the process. In Delaware, for example, children placed in

homes in Sussex County must find a way to get to immigration court in Philadelphia, a drive that can take more than two hours each way.

A lawyer can help, but many can't afford one and free legal services are not always available. So what happens too often is children don't show up for hearings. More likely than not, those who don't show up will be ordered removed back to their home country even if they have a legitimate claim to stay here.

So in a number of ways, Mr. Chairman, we're denying these children the chance they deserve - the chance our laws require we give them - to live in safety and to make their case for asylum or some other protected status.

There are steps we could be taking right now to change this.

First, it's imperative that HHS and DHS get us the document they've been promising us since 2016 that, among other things, would lay out each department's roles and responsibilities when it comes to protecting and caring for unaccompanied children. This Joint Concept of Operations, due fourteen months ago, was intended, at least in part, to provide the kind of detail agencies need to identify gaps that put children at risk.

Here in Congress, this document will help us hold agencies accountable and make decisions about what new authorities and resources might be needed to properly care for the unaccompanied children in our country.

We need this information now.

What we also need now is to have a conversation about how to better partner with the state and local officials who run the schools, the law enforcement agencies, and the child welfare agencies where these children will be living.

Given how much HHS clearly relies on state and local officials to protect this population of children, it does no one any good if we first learn that a child is being placed in Delaware when they walk through the front door of Sussex Central High School.

We also need to do more to help our immigration courts. Based on data my staff has reviewed, we have more than 75,000 cases involving migrant children pending across the country and we're adding more just as quickly as we're resolving others.
Expecting judges to just work faster, as the Trump Administration recently proposed, will not solve this problem. We need more judges and we need to encourage the courts to work more flexibly so that fewer children are forced to drop out of the legal process.

Finally, we need to make a long-term commitment to our neighbors in Guatemala, Honduras, and El Salvador to help address the poverty, crime, and hopelessness that plagues those countries.

I've visited all three countries in the Northern Triangle multiple times over the years. I've met with their leaders and seen on the ground how communities there are struggling to deal with challenges that would be unimaginable to most Americans. A good number of those challenges are fueled by our addiction to drugs and our past interventions in regional conflicts.

As long as these challenges go unaddressed, children and other vulnerable Central Americans will continue to make the dangerous trip across Mexico to our southern border.

Some have pointed to the continuing Central American migration to our country as a sign that we need to bolster our border security or even build a wall on our southern border.

But so many of the migrants we're talking about today are just turning themselves in when they get here. A wall or the National Guard won't stop them from coming.

A sustained commitment from us, from our partners in the region, and from the governments in the Northern Triangle to improve the lives of the citizens of Guatemala, Honduras, and El Salvador is the only way to address the root causes of the migration we see into our country.

My thanks again, Mr. Chairman, to you and your staff for your work on these issues. I look forward to hearing from our witnesses and to introducing our Delaware witnesses to the Subcommittee.

TESTIMONY OF

James W. McCament
Deputy Under Secretary
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security

BEFORE

U.S. Senate
Committee on Homeland Security and Governmental Affairs
Permanent Subcommittee on Investigations

ON

"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"

April 26, 2018
Washington, DC

Introduction

Chairman Portman, Ranking Member Carper, and distinguished Members of the Subcommittee, thank you for the opportunity to testify at today's hearing to examine efforts by the Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS) to protect unaccompanied alien children (UACs) from human trafficking and abuse. DHS appreciates the Subcommittee's interest in and dedication to this issue, as evidenced by its 2016 staff report and continued engagement with our Departments.

UAC Definition and Special Considerations

A UAC is defined in statute as a child who: A) has no lawful immigration status in the United States; B) has not attained 18 years of age; and C) with respect to whom (i) there is no parent or legal guardian in the United States, or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. UAC policies and procedures are directly impacted by the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and the 1997 *Flores* Settlement Agreement. The *Flores* Settlement Agreement established a nationwide policy for the custody and treatment of UACs and required, among other things, that UACs be provided with food and drink, emergency medical assistance, toilets and sinks, adequate temperature control and ventilation, adequate supervision, and separation from unrelated adults whenever possible. In 2002, the Homeland Security Act divided responsibilities for UAC processing and treatment between DHS and HHS' Office of Refugee Resettlement, or ORR. DHS became responsible for the apprehension, transfer, and repatriation of UACs whereas HHS became responsible for coordinating and implementing care and placement, maintaining a list of legal service providers, and collecting

relevant statistical information, among other responsibilities. In 2008, Congress passed the TVPRA, which directed the Secretary of Homeland Security, in conjunction with other agencies, to develop policies and procedures to ensure UACs are safely repatriated to their country of origin or last habitual residence. It also set forth different sets of rules for UACs from contiguous countries versus non-contiguous countries.

Under the TVPRA, a UAC who is a national or habitual resident of Canada or Mexico and who is apprehended at the border may be permitted to withdraw an application for admission and be returned to his or her country of origin if there are no human trafficking indicators or claims of fear of return, and the child is able to make an independent decision to withdraw the application. UACs who are not nationals or habitual residents of contiguous countries, and who are not eligible to be voluntarily returned, are required to be placed in removal proceedings. Consistent with the TVPRA, a UAC from a non-contiguous country who is encountered at the border is generally issued a Notice to Appear (NTA) and placed in removal proceedings before a Department of Justice (DOJ) Immigration Judge. Like all individuals, UACs are afforded an opportunity to claim asylum, humanitarian relief, or other forms of removal relief consistent with our immigration laws.

Designation as a UAC does not confer lawful immigration status, but UACs are afforded certain procedural safeguards and certain substantive advantages with respect to immigration processing and other benefits, like voluntary departure, that are not available to other aliens, including accompanied minors. For example, the Unaccompanied Alien Child Screening Addendum, known as CBP Form 93, is used to screen UACs for human trafficking indicators – including trafficking by transnational criminal organizations such as MS-13. If a U.S. Border Patrol Agent or U.S. Customs and Border Protection (CBP) Officer suspects that any member of

the group in which the UAC is traveling is involved or complicit in the trafficking act, they will detain all individuals for further processing and interview by U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI), which is the Department's primary investigative arm responsible for the investigation of human smuggling and trafficking.

UAC Encounters and DHS Custody

Typically, UACs are first encountered when presenting themselves to CBP at the border or a port-of-entry. However, ICE may encounter UACs in the interior of the United States during immigration enforcement actions. Although most UACs are age 14 or older – with the vast majority originating from Mexico and the Northern Triangle countries of Guatemala, Honduras, or El Salvador – apprehensions of UACs under the age of 13 have increased in recent years. Upon encounter, the apprehending agency must first determine whether the individual meets the statutory definition of a UAC. Absent exceptional circumstances, once a determination is made that the individual is indeed a UAC, DHS is then required by law to notify HHS of the encounter within 48 hours, and must transfer custody of the child to HHS within 72 hours.

Once HHS notifies ICE that a shelter bed is available, it is ICE's responsibility to quickly and safely transport the UAC to a shelter funded by HHS. ICE transports UACs by ground, commercial air, and ICE charter flights. In order to avoid the potential strain that UAC transfers can place on ICE's resources at times – which occurred during the 2014 influx, for example – ICE has implemented a contract for such transfers, which has alleviated the need for ICE personnel to effectuate such transportation duties and has freed up ICE officers to continue performing essential law enforcement responsibilities.

All 24 ICE Enforcement and Removal Operations field offices have primary and back-up juvenile coordinators, each of whom receive annual, specialized training with respect to the unique vulnerabilities of children. These Field Office Juvenile Coordinators serve as local subject matter experts on the proper processing, transportation, and placement of UACs; monitor operational practices for compliance with regulations, standards, and policies; and are on-call 24 hours a day, seven days a week.

UAC Challenges and Opportunities

When DHS encounters UACs – including known or suspected gang members within the UAC population – biographic information is collected and stored in the electronic systems of record. Biometric information is also collected for certain UACs. This approach allows DHS to readily identify known or suspected gang members or aliens who admit to having a gang affiliation – or other individuals who may pose a threat to public safety. The electronic system collects fingerprint information and runs record checks on these individuals to ensure criminals are prosecuted to the fullest extent of the law. This information is conveyed to HHS and other interagency partners, as appropriate, when a placement request is generated via an HHS intake form. Secure placement will be requested by DHS for any UAC who has a known gang affiliation, but the decision on placement is ultimately made by HHS.

On February 19, 2016, DHS and HHS signed a Memorandum of Agreement (MoA) regarding the care, custody, and transfer of UACs between our respective Departments. The purpose was to continue addressing the needs of UACs; ensure the safe and expedited transfer and placement from DHS to HHS custody; maximize efficiency in the allocation and expenditure of respective program costs; ensure information is transmitted to facilitate appropriate placement

decisions so HHS can promptly place the child in the least restrictive setting that is in the child's best interest until the UAC is released to an appropriate sponsor; continue the statutorily required consultation between Departments with respect to UAC placement determinations; protect UACs in the custody of the United States or released to sponsors from mistreatment, exploitation, and trafficking; and promote effective immigration processing as well as the safe repatriation and/or reintegration of UACs. Since this MoA was signed, DHS has continued to work with HHS to make meaningful improvements to our information sharing arrangements, in line with the Administration's immigration principles and priorities, and in accordance with applicable law.

It is also important to note that UAC designations are not permanent. Permitting individuals to maintain a UAC designation when they are not, or no longer, statutorily qualified enables them and/or their parents and sponsors to exploit U.S. immigration laws and processes. DHS continues to emphasize that UAC designations must only be applied to those individuals who meet – and continue to meet – the statutory definition of a UAC. This not only safeguards the child, it protects the integrity of our immigration system.

DHS Responsibilities During Removal

With regard to removals, the TVPRA requires DHS to ensure that each UAC removal is fully coordinated with host government authorities. Coordination with foreign government officials includes: providing the UAC with an opportunity to communicate with a consular officer prior to departure; repatriating at a designated port-of-entry; and ensuring that a receiving government official or designee signs for custody to record the transfer; in addition to other requirements specific to each country, such as certain hours during which repatriations may be conducted.

Recent UAC Metrics

Finally, it is important to have these discussions within the context of recent UAC flows. Between October 1, 2017 and March 31, 2018, a total of 21,720 UACs were apprehended on the Southwest Border, and an additional 4,605 UACs were deemed inadmissible at U.S. ports-of-entry. Of note, in March 2018, the number of UAC apprehensions and inadmissibility determinations increased by 41 percent compared to February 2018. This upward trend presents serious concerns for border security and public safety, and DHS is working closely with the White House and interagency partners to address it – including but not limited to the recent deployment of the National Guard on our nation's Southwest Border.

Furthermore, it often takes several years to effectuate a UAC removal, when appropriate. For example, while UACs from the Northern Triangle accounted for the vast majority of the 2014 surge, only one-percent of Northern Triangle UACs were repatriated within 90 days – and within three years only three-percent were repatriated versus 54 percent of non-UACs. Many remain stuck in the immigration enforcement lifecycle or simply fail to appear for their proceedings.

The Need for Congressional Action

DHS has worked closely with the Trump Administration and Members of Congress to address existing "loopholes" that allow individuals to exploit our immigration laws. This includes but is not limited to the Administration's repeated calls for (1) amending the TVPRA to treat all UACs the same, regardless of nationality, so that if they are not victims of human trafficking they can be safely returned home or removed to a safe third country; (2) clarifying

that alien minors who do not meet the UAC statutory definition are not entitled to the presumptions or protections granted to UACs; (3) terminating the *Flores* Settlement Agreement by passing legislation stipulating care standards for minors in custody and clarifying corresponding provisions of the TVPRA that supersede the settlement agreement; (4) amending the definition of "special immigrant," as it pertains to juveniles, to require that the applicant prove that reunification with both parents is not viable due to abuse, neglect, or abandonment – and that the applicant is a victim of trafficking; and (5) repealing the requirement that a USCIS Asylum Officer have initial jurisdiction over UAC asylum applications.

Conclusion

DHS takes its role seriously and works with our interagency and foreign counterparts on a daily basis to ensure the humane treatment of UACs while simultaneously enforcing the laws Congress has passed. We fully understand that this responsibility carries great weight. We look forward to continuing our work with Congress, and our other federal partners, to protect UACs from transcontinental smuggling operations, and perhaps most importantly, to improve federal immigration law by eliminating the loopholes that have contributed to some of our immigration challenges. Thank you for the opportunity to testify. I look forward to answering your questions.

Statement of

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

Before the

Permanent Subcommittee on Investigations
Committee on Homeland Security and
Governmental Affairs
United States Senate

April 26, 2018

Chairman Portman, Ranking Member Carper, and members of the Subcommittee, it is my honor to appear on behalf of the Department of Health and Human Services (HHS). I am Steven Wagner, the Acting Assistant Secretary for Children and Families (ACF). In this capacity, I oversee the work of the Office of Refugee Resettlement (ORR), which is responsible for the care and placement of unaccompanied alien children (UAC). In my testimony today, I will describe the current state of the UAC program, and then discuss a number of developments in the program's policies and administration since February 2016.

Current State of the Program

In fiscal year (FY) 2017, 40,810 children were referred to ORR from the Department of Homeland Security (DHS). In FY 2018 (through March), we have had 21,574 referrals. Although March and April of FY 2017 had the lowest referrals since FY 2012, referrals started to slowly increase in May of 2017, and today are significantly higher than just a couple of months ago. To illustrate, in March 2017, ORR had 755 referrals; while in March 2018, ORR had 4,204 referrals.

At this time, we have no temporary facilities open at Department of Defense locations. The last one closed in February 2017. As of March 2018, we are operating one temporary influx facility at a Department of Labor site. ORR now has its largest permanent shelter capacity at over 9,800 beds, and we continue to maintain the majority of our shelter capacity along the southern border.

In FY 2017, 94 percent of ORR's referred children came from Honduras, Guatemala, and El Salvador. So far in FY 2018, the number of children referred from those countries is 93 percent. Teenagers made up 83 percent of referrals in FY 2017 and 87 percent in FY 2018. Children from Guatemala, El Salvador, Honduras, and Mexico who migrate to the U.S. are particularly vulnerable to being exploited by human traffickers en route and at their destination.

In FY 2017, children typically stayed in ORR custody for 51 days and so far in FY 2018 (through March) average length of stay has been 56 days. ORR releases the majority of UAC to sponsors. In FY 2017, ORR released 93 percent of children to a sponsor. Of those, ORR released 49 percent to parents, 41 percent to close relatives, and 10 percent to other-than-close relatives or non-relatives. In FY 2018, we have released 90 percent of children to individual sponsors and of those sponsors, 41 percent were parents, 47 percent were close relatives, and 11 percent were other-than-close relatives or non-relatives.

In FY 2017, ORR performed 3,173 home studies and provided post-release services to 13,381 children, increasing the latter by 27 percent from the previous year.

Program Enhancements Since February 2016

Since February 2016, ORR has made a number of policy enhancements in the areas of sponsor assessments and home studies. Sponsor assessment is the ORR process for evaluating potential sponsors' ability to provide for the child's physical and mental well-being. As part of the determination of whether an individual is a suitable sponsor, ORR requires its case managers to verify a potential sponsor's identity and relationship to the child. Case managers must also:

- interview prospective sponsors;

- require prospective sponsors to complete an "Authorization for Release of Information";
- conduct background checks on all prospective sponsors;
- coordinate fingerprint checks of the Federal Bureau of Investigation (FBI) database for non-parental sponsors, or for parental sponsors where there is a documented risk to the safety of the child, the child is especially vulnerable, or the case is being referred for a mandatory home study;
- coordinate a check of the immigration Central Index System in some cases.
- require sponsors to sign a Sponsor Care Agreement.

In the area of sponsor assessments, ORR has decreased the ability of potential sponsors to use fraudulent documents during the sponsor assessment process. ORR added guidance in January 2016, and further refined it in October and November 2016, on the types of documents ORR accepts as evidence of identity for the potential sponsor, the household members, and any adults listed in a sponsor care plan.[1] The guidance also clarified what constitutes acceptable documents to prove the prospective sponsor's address, the child's identity, and the sponsor-child relationship.[2] ORR also added an alternative method to verify a potential sponsor's address.[3] These changes help to protect children from traffickers, smugglers, and others who may wish to do them harm. If ORR discovers that a sponsor is using fraudulent documents, ORR denies release.[4] ORR reports the cases to the HHS/Office of the Inspector General and to U.S. Immigration and Customs Enforcement's Homeland Security Investigations.

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[1] *ORR Guide: Children Entering the United States Unaccompanied*, § 2.2.4 "Required Documents for Submission with the Application for Release." (November 2016), https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.2.4.
[2] *Id.*
[3] *Id.*
[4] *Id.*

The background check part of the sponsorship assessment varies depending in part on the relationship between the child and the potential sponsor. ORR conducts criminal public records checks and Sex Offender Registry Checks on all potential sponsors. ORR conducts National (FBI) Criminal History Checks, based on digital fingerprints or digitized paper prints, for all potential sponsors, except parents. ORR conducts these checks on parents where there is a documented risk to the safety of the UAC, the child is especially vulnerable, and/or the case is being referred for a home study. In the case of parental sponsors, a documented risk to the safety of the child may be, for example, a drug or alcohol addiction. In those cases, ORR runs an FBI criminal background check and an immigration check. ORR would want to determine if the drug or alcohol addiction led to criminal acts, and obtain a comprehensive assessment of any potential risks to the child. ORR would then assess those results under its policies to determine if release to the particular sponsor is barred. ORR would also assess the severity of the initial, identified safety risk, the length of time that has passed since any events related to the risk, any evidence of rehabilitation, and the parent/child relationship. Each case is unique, and ORR addresses the facts accordingly. ORR also conducts Immigration Status Checks through the Central Index System on all potential sponsors, except parents. Again, ORR conducts these checks on parents where there is a documented risk to the safety of the UAC, the child is especially vulnerable, and/or the case is being referred for a home study. In addition, ORR conducts Child Abuse and Neglect Checks on all unrelated sponsors. ORR conducts these checks on parents or other relatives if the case requires a home study or a special concern has been identified.

In April 2016, ORR clarified that its criteria for background checks represent minimum standards in terms of checking potential sponsors' public records.[5] Additionally, ORR may require enhanced checks for sponsors in any category where there are any unresolved issues or questions related to a child's well-being.[6]

In assessing a sponsor's suitability, ORR not only evaluates the sponsor's ability to provide for the child's physical and mental well-being, but also the sponsor's ability to ensure the child's presence at future immigration proceedings. Potential sponsors are expected to attend the Legal Orientation Program for Custodians (LOPC), which the Executive Office for Immigration Review (EOIR) in the Department of Justice presents to inform sponsors of their responsibilities for their child's appearance at all immigration proceedings. To emphasize the importance of a child's attendance at immigration proceedings, in December 2017, ORR made attendance at the LOPC a criteria in the sponsor assessment process.[7]

In the area of home studies, ORR made two significant policy changes in March 2016. A home study is an in-depth investigation of the potential sponsor's ability to ensure the child's safety and well-being. The process includes background checks of the sponsor and adult household members, home visits, in-person interviews of the proposed sponsor and possibly interviews with other household members, and post-release services. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008) mandates home studies in

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[5] *ORR Guide: Children Entering the United States Unaccompanied*, § 2.5.1 "Criteria for Background Checks." (April 2016), https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.5.1.
[6] *Id.*
[7] *ORR Guide: Children Entering the United States Unaccompanied*, § 2.4.1 "Assessment Criteria." (December 2017), https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.4.1.

certain situations, but the March 2016 policy changes led to an increase in discretionary home studies, which are home studies that are not required by law.[8] One of these policy changes focused on tender age UAC. ORR began requiring home studies for all UAC 12 years of age and younger being released to non-relative sponsors.[9] The other change underscored the need for case managers and case coordinators, who have direct contact with UAC, to recommend home studies, even if not required by the TVPRA of 2008, if they think a home study would provide additional information required to determine that the sponsor is able to care for the health, safety, and well-being of the child.[10]

Post-release

Another step in improving the safety of releases is to contact the child and the sponsor shortly after release, which is a critical adjustment period. To accomplish this, ORR initiated safety and well-being calls.[11] A case manager contacts the child and the sponsor 30 days after release. The case manager confirms that the child is still residing with the sponsor, is enrolled in school, is aware of upcoming court dates, and, most importantly, is safe. If the case manager, or any other ORR grantee or contractor that has contact with a released child, has a concern about the child's safety or well-being, they are required to take steps under ORR's new "post-release reporting system for notifications of concern."[12] Under the system, they must report all concerns to appropriate investigative agencies, and notify ORR of immediate dangers to a child's safety or

[8] *ORR Guide: Children Entering the United States Unaccompanied*, § 2.4.2 "Home Study Requirement." (March 2016), https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.4.2.
[9] *Id.*
[10] *Id.*
[11] *ORR Guide: Children Entering the United States Unaccompanied*, § 6.1 "Summary of Resources and Services Available After Release from ORR Care." (June 2016), https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-6#6.1.
[12] *Id.*

well-being.[13] To remove children from unsafe situations, ORR reports notifications of concern to local law enforcement.

In addition, ORR has expanded the services of its National Call Center, which was stood up in September 2014. The National Call Center is a resource for all children and sponsors post-release.[14] It is available 24 hours a day, seven days a week,[15] and provides referrals to community assistance and other guidance to sponsors and children seeking help, including those with safety concerns.[16]

From October to December 2017, ORR attempted to reach 7,635 UAC and their sponsors. Of this number, ORR reached and received agreement to participate in the safety and well-being call from approximately 86 percent of sponsors. From these calls, ORR learned that 6,075 UAC remained with their sponsors. Twenty-eight UAC had run away, five had been removed from the United States, and 52 had relocated to live with a non-sponsor. ORR was unable to determine with certainty the whereabouts of 1,475 UAC. Based on the calls, ORR referred 792 cases, which were in need of further assistance, to the National Call Center for additional information and services.

I understand that it has been HHS's long-standing interpretation of the law that ORR is not legally responsible for children after they are released from ORR care. However, considering the

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[13] *Id.*
[14] *ORR Guide: Children Entering the United States Unaccompanied*, § 6.4 "ORR National Call Center." (July 2016) https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-6#6.4.
[15] *Id.*
[16] *Id.* "The Call Center offers the following assistance to children released from ORR care: Locate resources in the sponsor's community, such as: Legal service providers, Educational support, Medical care, Emotional support, *Juvenile justice*, Substance abuse treatment, *Safety support*." (emphasis added)

importance of the post-release period, we are taking a fresh look at that question as a matter of both legal interpretation and appropriate policy. Specifically, we are exploring the question of ORR's responsibilities in relation to children who are released to sponsors, and whether the level of responsibility would differ depending on the child's relationship to his or her sponsor. Based on what we have learned so far, if ORR were to remain legally obligated for the welfare of UAC after their release to a sponsor, or took on additional protective measures even if not legally obligated, those procedures would require a significant expansion of the current program structure and an increase in resources, and possibly additional legal authorities to further clarify ORR's role.

Interagency Communication

ORR continues to develop its interagency communication efforts. In particular, I note that ORR shares information with its Federal partners as an additional means of reinforcing the safety of UAC as well as their participation in immigration proceedings. For example, ORR provides EOIR with monthly UAC data, which EOIR uses through its Legal Orientation Program for Custodians of UAC.

Second, ORR is working to enhance its day-to-day consultations with DHS. Under the current process, 24 hours before ORR releases a UAC from custody, it notifies DHS of the sponsor's identity, location, and relationship to the UAC, and ORR asks for DHS input regarding the safety of the release for the UAC and for the community. ORR notifies DHS again 24 hours after the minor's release.

Third, ORR and DHS are continuing to draft the Joint Concept of Operations (JCO). The agencies intend for the JCO to lead to increased communication and more efficient program implementation.

Closing

Thank you for this opportunity to update you on ORR's efforts in the UAC program, and for your commitment to the safety and well-being of unaccompanied alien children. I look forward to working with you on our continued enhancement of policies and procedures, and all facets of the UAC Program. I would be happy to answer any questions.

United States Government Accountability Office

Testimony

Before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate

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UNACCOMPANIED CHILDREN

DHS and HHS Have Taken Steps to Improve Transfers and Monitoring of Care, but Actions Still Needed

Statement of Kathryn A. Larin, Director
Education, Workforce, and Income Security

GAO-18-506T

GAO Highlights

Highlights of GAO-18-506T, a testimony before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate

April 26, 2018

UNACCOMPANIED CHILDREN

DHS and HHS Have Taken Steps to Improve Transfers and Monitoring of Care, but Actions Still Needed

Why GAO Did This Study

ORR is responsible for coordinating and implementing the care and placement of unaccompanied children—that is, children who enter the United States with no lawful immigration status. The number of these children taken into custody by DHS and placed in ORR's care rose from about 6,600 in fiscal year 2011 to nearly 57,500 in fiscal year 2014, many coming from Central America. Though declining somewhat, the number has remained well above historical levels. In fiscal year 2017, DHS referred 40,810 such children to ORR.

This testimony discusses efforts by DHS and HHS to improve the placement and care of unaccompanied children in four key areas: (1) the process by which unaccompanied children are transferred from DHS to ORR custody; (2) how ORR monitors the care of unaccompanied children in its custody; (3) how ORR identifies and screens sponsors before children are transferred to their care; and (4) what is known about services these children receive after they leave ORR custody.

This testimony is based primarily on the findings from two prior GAO reports: a 2015 report on actions needed to ensure unaccompanied children receive required care in DHS custody; and a 2016 report on further actions HHS could take to monitor their care. This testimony also includes updated information on the progress agencies have made in implementing GAO's recommendations, and more recent statistics from publicly available sources.

View GAO-18-506T. For more information, contact Kathryn A. Larin at (202) 512-7215 or larink@gao.gov.

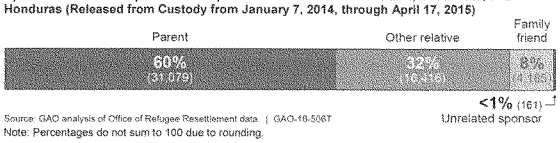
What GAO Found

The Department of Homeland Security (DHS) and Department of Health and Human Services (HHS) have agreed to establish a joint collaborative process for the referral and placement of unaccompanied children, but the process has not yet been implemented. In 2015, GAO reported that the interagency process for referring unaccompanied children from DHS to HHS's Office of Refugee Resettlement (ORR) shelters was inefficient and vulnerable to error, and that each agency's role and responsibilities were unclear. GAO recommended that DHS and HHS jointly develop and implement an interagency process with clearly defined roles and responsibilities, as well as procedures to disseminate placement decisions, for all agencies involved. In February 2018, HHS officials told GAO that the agency was reviewing a draft of the DHS-HHS joint concept of operations.

ORR has reported taking steps to improve monitoring of grantees that provided services to unaccompanied children. In 2016, GAO reported that ORR relied on grantees to document and annually report on the care they provide for unaccompanied children, such as housing and educational, medical, and therapeutic services, but documents were often missing and ORR was not able to complete all of its planned visits. GAO recommended that ORR review its monitoring program to ensure that onsite visits are conducted in a timely manner, that case files are systematically reviewed, and that grantees properly document the services they provide. Since 2016, ORR has reported that its grantee monitoring has improved, with more timely completion of on-site monitoring of all its grantees.

ORR relies on grantees to identify and screen sponsors before placing children with them. In 2016, GAO reported that most unaccompanied children from certain Central American countries were released to a parent or other relative, in accordance with ORR policy (see figure).

Sponsors' Relationship to Unaccompanied Children from El Salvador, Guatemala, and Honduras (Released from Custody from January 7, 2014, through April 17, 2015)



Source: GAO analysis of Office of Refugee Resettlement data. | GAO-18-506T
Note: Percentages do not sum to 100 due to rounding.

In 2016, GAO reported that limited information was available on the services provided to children after they leave ORR care, and recommended that HHS develop processes to ensure its post-release activities provide reliable and useful summary data. Subsequent data from ORR indicate that the percentage of children receiving these services has increased, from about 10 percent in fiscal year 2014, to about 32 percent in fiscal year 2017. Also, in August 2017, ORR officials said that new case reporting requirements had been added to ORR's policy guide; however, further steps are needed to ensure the systematic collection of these data to provide useful information on post-release services across agencies, as GAO recommended.

Chairman Portman, Ranking Member Carper, and Members of the Subcommittee:

Thank you for the opportunity to discuss efforts by the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) to improve the process of placing and providing care for unaccompanied children—that is, children who enter the United States with no lawful immigration status.[1] The number of unaccompanied children apprehended by DHS officials and subsequently placed in the care of HHS's Office of Refugee Resettlement (ORR) increased from nearly 6,600 in fiscal year 2011 to nearly 57,500 in fiscal year 2014. In particular, the number of unaccompanied children from three countries—El Salvador, Guatemala, and Honduras—increased dramatically over this time.[2] While the number of children DHS placed in ORR's care declined through much of fiscal year 2015, it subsequently began increasing again and has remained well above historical levels. More recent data from the U.S. Border Patrol suggest that DHS apprehended nearly 60,000 unaccompanied children at the southwest border in fiscal year 2016 and more than 41,000 in fiscal year 2017.[3] Also, according to ORR data, DHS referred 40,810 unaccompanied children to ORR in fiscal year 2017,[4] and in the first 6 months of fiscal year 2018, DHS apprehended nearly 22,000 unaccompanied children.

[1]In this statement, we refer to unaccompanied alien children as unaccompanied children because this is the term used by the Department of Health and Human Services (HHS). The term "unaccompanied alien child" refers to a child who (1) has no lawful immigration status in the United States, (2) has not attained 18 years of age, and (3) has no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g)(2). Children traveling with related adults other than a parent or legal guardian—such as a grandparent or sibling—are still deemed unaccompanied. While these children may have parents or guardians already in the United States, if the parent or guardian is unable to provide immediate care, the child is considered unaccompanied.

[2]For information on the causes of migration of unaccompanied children from these three countries, see GAO, *Central America: Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras*, GAO-15-362 (Washington, D.C.: Feb. 27, 2015). For a review of U.S. efforts to address the causes of migration, see GAO, *Unaccompanied Alien Children: Improved Evaluation Efforts Could Enhance Agency Programs to Reduce Migration from Central America*, GAO-16-163T (Washington, D.C.: Oct. 21, 2015).

[3]Data publicly available from U.S. Customs and Border Protection at: https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017.

[4]Data publicly available from the Office of Refugee Resettlement at: https://www.acf.hhs.gov/orr/about/ucs/facts-and-data.

My statement today will focus on efforts made by DHS and HHS to improve the placement and care of unaccompanied children in four key areas: (1) the process by which unaccompanied children are transferred from DHS to ORR custody; (2) how ORR monitors the care of unaccompanied children in its custody; (3) how ORR identifies and screens sponsors before children are transferred to their care; and (4) what is known about services and the status of removal proceedings for children after they leave ORR custody. My statement is based primarily on the findings from two prior GAO reports: a 2015 report on actions needed to ensure unaccompanied children receive required care in DHS custody;[5] and a 2016 report on further actions HHS could take to monitor their care.[6] For detailed descriptions of the methodologies used, see our prior reports. Additionally, we obtained and analyzed information and documentation on actions DHS and HHS have taken to address our recommendations in these prior two reports. The work upon which this statement is based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Under the Homeland Security Act of 2002, responsibility for the apprehension, temporary detention, transfer, and repatriation of unaccompanied children is delegated to DHS;[7] and responsibility for coordinating and implementing the care and placement of unaccompanied children is delegated HHS's Office of Refugee Resettlement (ORR).[8] U.S. Customs and Border Protection's U.S. Border Patrol and Office of Field Operations (OFO), as well as U.S. Immigration and Customs Enforcement (ICE), apprehend, process, temporarily detain,

[5]GAO, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521 (Washington, D.C.: July 14, 2015)

[6]GAO, *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care*, GAO-16-180 (Washington, D.C.: February 5, 2016)

[7]Pub. L. No. 107-296, tit. IV, subtit. D, § 441, 116 Stat. 2135, 2192 (codified at 6 U.S.C. § 251). Repatriation is defined as returning unaccompanied children to their country of nationality or last habitual residence.

[8]Pub. L. No. 107-296, tit. IV, subtit. D, § 462, 116 Stat. 2135, 2202 (codified at 6 U.S.C. § 279).

and care for unaccompanied children who enter the United States with no lawful immigration status.[9] ICE's Office of Enforcement and Removal Operations is generally responsible for transferring unaccompanied children, as appropriate, to ORR, or repatriating them to their countries of nationality or last habitual residence. Under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Trafficking Victims Protection Reauthorization Act), unaccompanied children in the custody of any federal department or agency, including DHS, must be transferred to ORR within 72 hours after determining that they are unaccompanied children, except in exceptional circumstances.[10]

ORR has cooperative agreements with residential care providers to house and care for unaccompanied children while they are in ORR custody. The aim is to provide housing and care in the least restrictive environment commensurate with the children's safety and emotional and physical needs. In addition, these residential care providers, referred to here as grantees, are also responsible for identifying and assessing the suitability of potential sponsors—generally a parent or other relative in the country—who can care for the child after they leave ORR custody.[11] To do this, grantees collect information from potential sponsors and run various background checks. In cases in which there are questions about the ability of the sponsor to meet the child's needs and provide a safe environment, and for children included in specified categories under the Trafficking Victims Protection Reauthorization Act, a home study is also conducted. In certain circumstances ORR may also arrange for post-release services for the child.

Release to a sponsor does not grant unaccompanied children legal immigration status. Children are scheduled for removal proceedings in

[9]Border Patrol apprehends unaccompanied children at U.S. borders between ports of entry, and OFO encounters these children at ports of entry. ICE apprehends unaccompanied children within the United States at locations other than borders or ports of entry. According to U.S. Customs and Border Protection officials, OFO encounters unaccompanied children instead of apprehending them because the children have not technically entered the United States at ports of entry until OFO officers have processed them. However, for the purposes of this statement, we use the term "apprehend" to include actions taken by all DHS entities responsible for unaccompanied children—Border Patrol, OFO, and ICE.

[10]8 U.S.C § 1232(b)(3).

[11]Qualified sponsors are adults who are suitable to provide for the child's physical and mental well-being and have not engaged in any activity that would indicate a potential risk to the child.

immigration courts to determine whether they will be ordered removed from the United States or granted immigration relief. There are several types of immigration relief that may be available to these children, for example, asylum or Special Immigrant Juvenile status.[12]

A Joint Collaborative Process for the Referral and Placement of Unaccompanied Children Has Not Yet Been Implemented

In response to a recommendation in our 2015 report, DHS and HHS have agreed to establish a joint collaborative process for the referral and transfer of unaccompanied children from DHS to ORR shelters, but the process has not yet been implemented. It will be important to ensure that, once implemented, this process has clearly defined roles and responsibilities for each agency, as we recommended.

In 2015, we reported that the interagency process to refer unaccompanied children from DHS to ORR shelters was inefficient and vulnerable to error.[13] For example, as of April 2015, DHS and ORR relied on e-mail communication and manual data entry to coordinate the transfer of unaccompanied children to shelters because each agency used its own data system and these systems did not automatically communicate information with one another. These modes of communication made the referral and placement process vulnerable to error and possible delay in the transfer of these children from DHS to ORR. Each DHS component also submitted shelter requests to ORR in a different way. We reported that the roles and responsibilities of DHS components were not consistent during the referral and placement process, and DHS points of contact for ORR varied across Border Patrol sectors and ICE and OFO areas of operation. Further, we noted that the inefficiencies in the placement process for unaccompanied children had

[12]Asylum may be granted to people who have suffered past persecution or have a well-founded fear they will suffer future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1158(b)(1)(B). In addition, eligible unaccompanied children may petition for Special Immigrant Juvenile status, which is designed to help foreign children who have been abused, abandoned, or neglected obtain a green card. To be eligible, a state court must decide that a child is a dependent of the court or legally place the child with a state agency, a private agency, or a private person; that it is not in the best interests of the child to return to his or her home country; and that the child cannot be reunited with a parent due to abuse, neglect, abandonment, or a similar basis found under state law. 8 U.S.C. § 1101(a)(27)(J), 8 C.F.R. § 204.11. Unaccompanied children also may be eligible for other types of immigration relief. For example, "T nonimmigrant status" allows victims of severe forms of human trafficking to remain in the United States to assist in an investigation or prosecution of such cases.

[13]GAO-15-521.

been a long-standing challenge for DHS and ORR. Therefore, we recommended that DHS and HHS jointly develop and implement a documented interagency process with clearly defined roles and responsibilities, as well as procedures to disseminate placement decisions, for all agencies involved in referring and placing unaccompanied children in ORR shelters.

The agencies agreed with this recommendation and in response, DHS and HHS finalized a memorandum of agreement (MOA) in February 2016. The MOA provides a framework for coordinating each agency's responsibilities and establishing procedures, shared goals, and interagency cooperation with respect to unaccompanied children. The MOA states that DHS and HHS agree to establish a joint concept of operations. According to the MOA, this joint concept is to include, among other things, standard protocols for consistent interagency cooperation on the care, processing, and transport of these children during both steady state operations, as well as in the event the number of unaccompanied children exceeds standard capabilities and existing resources. In February 2018, HHS officials told us that the agency is reviewing a draft of the DHS-HHS joint concept of operations. To fully address our recommendation, DHS and HHS will need to ensure that this joint concept, once finalized and implemented, includes a documented interagency process with clearly defined roles and responsibilities, as well as procedures to disseminate placement decisions, as we recommended.

ORR Reports Taking Steps to Improve Monitoring of Grantees' Provision of Services

In response to a recommendation in our 2016 report, ORR reported taking steps to improve monitoring of its grantees, including reviewing its monitoring protocols and ensuring all grantees were monitored over a 2-year period. These steps should increase the timeliness, completeness, and consistency of ORR's monitoring; however, ORR needs to ensure that its updated processes and protocols are fully implemented and in use.

In 2016, we reported that ORR relies on grantees to provide care for unaccompanied children, such as housing and educational, medical, and therapeutic services, and to document in children's case files the services they provide.[14] Grantees are required to provide these services and to

[14]For a more detailed discussion of the care and services provided to children by grantees, see our 2016 report, GAO-16-180.

document that they did so. However, in our 2016 report, we found that documents—such as legal presentation acknowledgment forms,[15] records of group counseling sessions, or clinical progress notes—were often missing from the 27 randomly selected case files we reviewed. In addition, we identified several cases in which forms that were present in the files were not signed or dated. We found that although ORR used its web-based data system to track some information about the services children received, and grantees reported on the services they provided in their annual reports, the documents contained in case files were the primary source of information about the services provided to individual children. We concluded that without including all of the documents in case files, it was difficult for ORR to verify that required services were actually provided in accordance with ORR policy and cooperative agreements.

In our 2016 report, we noted that ORR's most comprehensive monitoring of grantees occurred during on-site visits, but that onsite visits to facilities were inconsistent. Prior to fiscal year 2014, project officers were supposed to conduct on-site monitoring of facilities at least once a year. However, we found in our review of agency data that many facilities had not received a monitoring visit for several years. For example, ORR had not visited 15 facilities for as many as 7 years. In 2014, ORR revised its on-site monitoring program to ensure better coverage of grantees and implemented a biennial on-site monitoring schedule. Nevertheless, ORR did not meet its goal to visit all of its facilities by the end of fiscal year 2015, citing lack of resources. In our 2016 report, we concluded that without consistently monitoring its grantees, ORR cannot know whether they were complying with their agreements and that children were receiving needed services. We recommended that the Secretary of HHS direct ORR to review its monitoring program to ensure that onsite visits are conducted in a timely manner, case files are systematically reviewed as part of or separate from onsite visits, and that grantees properly document the services they provide to children. HHS concurred with this recommendation and stated that it had created a new monitoring initiative workgroup to examine opportunities for further improvement.

Since our 2016 report, ORR has reported achieving more timely and complete monitoring. In May 2017, ORR issued a summary of its fiscal year 2016 monitoring showing that monitoring of all of its 88 grantees was

[15]Our 2016 report noted that ORR contracted with nonprofit organizations to provide Know Your Rights presentations, which provided basic legal information to children. See GAO-16-180.

completed over the 2-year period of fiscal years 2015 and 2016. As a result of this monitoring, the agency reported issuing 786 corrective actions, almost all of which were closed within 90 days.[16] The most common corrective actions were related to incomplete case file documentation and inconsistent implementation of some of ORR policies and procedures, according to ORR. Subsequently, for the 2-year period of fiscal years 2017 and 2018, ORR reported that as of April 2018, it had completed monitoring of 65 grantees and planned to complete monitoring of all of its remaining 39 grantees by the end of the fiscal year.[17]

In addition, ORR has reported that it is taking steps to ensure its monitoring processes and protocols are more systematic and uniform. During 2016, ORR announced a new Monitoring Initiative with the goal of establishing a comprehensive system of monitoring for all ORR-funded programs; HHS reported that it had conducted three trainings for ORR Project Officers and was in the process of adding two to three additional Project Officer positions to the unaccompanied children program. In April 2018, HHS reported that ORR was in the process of reviewing and revising its monitoring tools, and planned to have final versions of these tools completed by the end of fiscal year 2018. Once ORR completes its review of its monitoring tools and fully implements its revised protocols, these steps, along with its more timely monitoring, should help ensure an improved monitoring program.

ORR Relies on Grantees to Identify and Screen Sponsors for Unaccompanied Children

In 2016, we reported that ORR grantees that provide day-to-day care of unaccompanied children are responsible for identifying and screening sponsors prior to releasing children to them. During children's initial intake process, case managers ask them about potential sponsors with whom they hope to reunite. Within 24 hours of identifying potential sponsors, case managers are required to send them a Family Reunification Application to complete. The application includes questions about the sponsor and other people living in the sponsor's home, including whether anyone in the household has a contagious disease or criminal history. Additionally, the application asks for information about who will care for

[16]ORR reported that as of May 1, 2017, all corrective actions resulting from its fiscal year 2016 monitoring were closed.

[17]According to HHS officials, the number of grantees fluctuates throughout the fiscal year. As of April 2018, ORR reported funding 102 grantees.

the child if the sponsor is required to leave the United States or becomes unable to provide care.[18]

Grantees also ask potential sponsors to provide documents to establish their identity and relationship to the child, and they conduct background checks. The types of background checks conducted depend on the sponsor's relationship to the child (see table 1). In certain circumstances prescribed by the Trafficking Victims Protection Reauthorization Act or ORR policy, a home study must also be conducted before the child is released to the sponsor.[19] Additionally, other household members are also subjected to background checks in certain situations, such as when a documented risk to the safety of the unaccompanied child is identified, the child is especially vulnerable, and/or the case is being referred for a mandatory home study.

[18]ORR does not require that a sponsor be a citizen or lawful permanent resident of the United States.

[19]The Trafficking Victims Protection Reauthorization Act requires that before placing a child with a sponsor, HHS must first determine whether a home study is necessary. The Act requires a home study be conducted for: a child who is a victim of a severe form of trafficking; a special needs child with a disability; a child who has been a victim of physical or sexual abuse that has significantly harmed or threatened the child's health or welfare; or a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence. 8 U.S.C. § 1232(c)(3)(B). ORR policy also requires a home study before releasing a child to a non-relative sponsor who is seeking to sponsor multiple children, or who has previously sponsored a child and is seeking to sponsor additional children.

Table 1: Required Background Checks Conducted by Office of Refugee Resettlement (ORR) Grantees, by Sponsor Category, as of February 2016

	Public records check	National (FBI) criminal history check based on digital fingerprinting[a]	Immigration status check conducted through the Central Index System (CIS)	Child abuse and neglect check[b]
Category 1: Parent or legal guardian	●	◑	◑	◑
Category 2: Close relative	●	●	●	◑
Category 3: Distant relative or unrelated adult	●	●	●	●
Category 4: No potential sponsor	(These instances are rare, but when they occur, children remain in ORR facilities or are placed in ORR's long-term foster care.)			

Legend: A full-circle indicates that the background check is required in all cases. A half-circle indicates that the background check is only required in cases in which there is a documented risk to the safety of the unaccompanied child, the child is especially vulnerable, and/or the case is being referred for a mandatory home study.

Source: ORR Policy Guide. | GAO-18-506T

Note: There are other potential checks that might occur, such as state criminal history repository and/or local police checks.

[a]The FBI identification index name/descriptor check may be used *in lieu* of fingerprint background checks in the case of unidentifiable fingerprints or in extenuating circumstances if: the sponsor/household member has submitted fingerprints, release paperwork and decision making is otherwise complete, there are no concerns about the sponsor and the sponsor does not require a home study, and there is a delay in receiving the prints results. ORR approval is required.

[b]Child abuse and neglect checks are obtained on a state-by-state basis to determine whether a potential sponsor has a record of child abuse or neglect in any of the localities in which they have resided over the previous 5 years.

In our 2016 report, we found that between January 7, 2014, and April 17, 2015, nearly 52,000 children from El Salvador, Guatemala, or Honduras were released to sponsors by ORR. Of these children, nearly 60 percent were released to a parent. Fewer than 9 percent of these children were released to a non-familial sponsor, such as a family friend, and less than 1 percent of these children were released to a sponsor with whom their family had no previous connection (see table 2). Historically, most of these unaccompanied children have been adolescents 14 to 17 years of age, but about a quarter of the children from these three countries in 2014 and early 2015 were younger.

Table 2: Sponsors' Relationship to Unaccompanied Children from El Salvador, Guatemala, and Honduras (Released from Office of Refugee Resettlement Custody from January 7, 2014, through April 17, 2015)

Relationship	Number	Percent
Parent	**31,079**	**60%**
Other relative	**16,416**	**32%**
Aunt/uncle	6,925	13%
Sibling	6,251	12%
First cousin	1,221	2%
Grandparent	739	1%
Other relative	1,280	3%
Family friend	**4,185**	**8%**
Unrelated sponsor	**161**	**<1%**
Total	**51,841**	**100%**

Source: GAO analysis of Office of Refugee Resettlement data. | GAO-18-506T

Note: Percentages do not sum to 100 due to rounding.

ORR Reports Creating New Data Collection Guidance on Post-Release Services

In response to a recommendation in our 2016 report, ORR reported taking various steps to collect additional information on the services provided to unaccompanied children after they are released from ORR custody. We welcome this progress, but continue to believe that further steps are needed to fully address our recommendation.

In 2016, we reported that limited information was available about post-release services provided to children and their sponsors. Post-release services include such things as guidance to the sponsor to ensure the safest environment possible for the child; assistance accessing legal, medical, mental health, and educational services for the child; and information on initiating steps to establish guardianship, if necessary. The Trafficking Victims Protection Reauthorization Act requires ORR to provide post-release services to children if a home study was conducted,

and authorizes ORR to provide these services to some additional children.[20]

Our 2016 report noted that ORR was in a position to compile the data it collects on post-release services, and to share the data internally and externally with other federal and state agencies to help them better understand the circumstances these children face when they are released to their sponsors. ORR was already collecting some information from its post-release grantees on services provided to children after they left ORR custody, and its newly instituted well-being calls and National Call Center would allow it to collect additional information about these children. However, at the time, ORR did not have processes in place to ensure that all of these data were reliable, systematically collected, and compiled in summary form to provide useful information about this population for its use and for other government agencies, such as state child welfare services.[21] As a result, in our 2016 report, we recommended that the Secretary of HHS direct ORR to develop a process to ensure all information collected through its existing post-release efforts are reliable and systematically collected, so that the information could be compiled in summary form to provide useful information to other entities internally and externally. HHS concurred and stated that ORR would implement an approved data collection process that would provide more systematic and standardized information on post-release services and that it would make this information available to other entities internally and externally.

At the time of our 2016 study, a relatively small percentage of unaccompanied children who had left ORR custody were receiving post-release services. Officials said ORR's responsibility typically ended after it transferred custody of children to their sponsors. We found that slightly less than 10 percent of unaccompanied children received post-release services in fiscal year 2014, including those for whom a home study was

[20]8 U.S.C. § 1232(c)(3)(B). The statute uses the term "follow-up services," which we refer to as "post-release services" In this statement. ORR officials noted that this statutory mandate to provide post-release services to children for whom home studies were conducted implies responsibility to check on the well-being of these children after their release from ORR custody. According to ORR officials, the agency is generally not required by law to track or monitor the well-being of all children once they are released to sponsors. These services can also include providing information about or referrals to resources available in the community. Post-release services are limited in nature and typically last a relatively short time.

[21]Federal internal control standards require that an agency have relevant, reliable, and timely information to enable it to carry out its responsibilities. See GAO-14-704G.

conducted.[22] However, the percentage of unaccompanied youth receiving post-release services has increased in recent years. According to publicly available ORR data, approximately 31 percent of unaccompanied youth received such services in fiscal year 2015, 20 percent in fiscal year 2016, and 32 percent in fiscal year 2017.

In addition, during 2015, ORR had taken steps to expand eligibility criteria for post-release services. According to ORR officials, these changes included making all children released to a non-relative or distant relative eligible for such services. ORR also began operating a National Call Center help-line in May 2015. Children who contacted ORR's National Call Center within 180 days of release and who reported experiencing (or being at risk of experiencing) a placement disruption, also became eligible for post-release services, according to ORR officials. Additionally, our 2016 report noted that in August 2015, ORR had instituted a new policy requiring grantee facility staff to place follow-up calls, referred to as Safety and Well Being follow-up calls, to all children and their sponsors 30 days after the children are placed to determine whether they were still living with their sponsors, enrolled in or attending school, and aware of upcoming removal proceedings, and to ensure that they were safe. ORR's policy required grantees to attempt to contact the sponsor and child at least three times.

In August 2017, ORR told us that the agency had created new guidance on case reporting, records management, retention, and information-sharing requirements for post-release service provider, and that it had collected data on Safety and Well Being follow-up calls that had been made to children and their sponsors. For example, ORR told us that during the first quarter of fiscal year 2016, its grantees reached 87 percent of unaccompanied children and 90 percent of sponsors by phone within 30 to 37 days after the child's release from ORR care. In the second quarter of fiscal year 2016, these figures were 80 percent and 88 percent, respectively. ORR also said that the agency had developed a plan for collecting and analyzing National Call Center data. However, as of April 2018, ORR officials noted that case management functionality had not yet been built into ORR's web-based portal. Further, ORR officials told us that the agency planned to create uniform data collection reporting forms for grantees providing post-release services, but as of

[22]According to ORR data, in fiscal year 2014, home studies were conducted in approximately 2 percent of all cases in which a child was released.

April 2018, it had not developed these forms. ORR's steps represent progress towards systematically collecting information that can be used internally and shared, as appropriate, with external agencies; however, to ensure our recommendation is fully addressed, ORR will need to complete its data collection and reporting efforts.

With respect to unaccompanied children's immigration proceedings, we reported in 2016 that several different outcomes are possible, and that the outcomes for many children had not yet been determined. An unaccompanied child who is in removal proceedings can apply for various types of lawful immigration status with DHS's U.S. Citizenship and Immigration Services (USCIS), including asylum and Special Immigration Juvenile status. Alternatively, an unaccompanied child who has not sought, or has not been granted, certain immigration benefits within the jurisdiction of USCIS, may still have various forms of relief available to him or her during immigration proceedings. For example, an immigration judge may order the child removed from the United States, close the case administratively, terminate the case, allow the child to voluntary depart the United States, or grant the child relief or protection from removal. Moreover, a judge's initial decision does not necessarily indicate the end of the removal proceedings. For example, cases that are administratively closed can be reopened, new charges may be filed in cases that are terminated, and children may appeal a removal order. In addition, in cases involving a child who receives a removal order *in absentia*, and a motion to reopen the child's case has been properly filed, the child is granted a stay of removal pending a decision on the motion by the immigration judge. In our 2016 report, we found that according to ICE data on final removal orders from fiscal year 2010 through August 15, 2015, ICE removed 10,766 unaccompanied children, and about 63 percent of these children (6,751) were from El Salvador, Guatemala, or Honduras.

Chairman Portman, Ranking Member Carper, and Members of the Subcommittee, this concludes my prepared remarks. I would be happy to answer any questions that you may have.

GAO Contacts and Staff Acknowledgments

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Written Testimony of Allison E. Herre, Esq.
Permanent Subcommittee on Investigations
Homeland Security and Governmental Affairs Committee
April 26, 2018

Overview of Services provided by Catholic Charities of Southwestern Ohio

Catholic Charities of Southwestern Ohio (Catholic Charities) is a non-profit social service agency located in Cincinnati, Ohio. Catholic Charities is the charitable arm of the Archdiocese of Cincinnati serving the entire Greater Cincinnati community regardless of our clients' religious affiliation. We provide numerous services to immigrant and refugee populations through our federally recognized Refugee Resettlement Program, the Su Casa Hispanic Center, the Immigration Legal Services Department, and the Behavioral Health Department.

In the realm of unaccompanied alien children (UAC), Catholic Charities is the sub-grantee on two direct service grants provided by the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS). Through the FY2018 Foster Care and Safe Release Support Grant, under which Catholic Charities serves as a sub-grantee of Lutheran Immigration and Refugee Services (LIRS), Catholic Charities provides Safe Release Support services, which includes assisting sponsors in completing the Family Reunification Packet and capturing sponsor and household member fingerprints for transfer to the Office of Security and Strategic Information (OSSI) under HHS. Annually, we assist approximately 500 sponsors in Cincinnati and the surrounding area through the Safe Release Support program. Since first receiving the grant in 2016, Catholic Charities has served 954 individuals through the Safe Release Support Grant to date.

Through the U.S. Conference of Catholic Bishops (USCCB), Catholic Charities serves as a sub-grantee of the Safe Passages II Home Study and Post-Release Services for Unaccompanied Children Program. Under this grant, social workers at the Su Casa Hispanic Center complete ORR-mandated home studies for potential sponsors of UACs and provide ORR-mandated post-release services to UACs and their sponsors. Home studies consist of an interview with the UAC in shelter and the sponsor, a home visit to assess the health and safety of the living accommodation, and an extensive report on the findings including a recommendation. Post-release services include: assisting the family in enrolling the UAC in school; connecting the families to services within Catholic Charities, such as legal services for the UAC's immigration court case, health fairs to access medical screenings, and bilingual mental health therapists; and, connecting the families to services outside of Catholic Charities, such as St. Vincent de Paul for clothing and furniture needs.

Beyond the federal grants, Catholic Charities provides a host of other services to UACs, including pro bono legal representation in immigration-related cases as well as mental and behavioral health services, such as school-based counseling and out-patient psychiatric care.

Need for Increased Family Reunification Services

Since receiving the Safe Passages II grant, Catholic Charities has served 73 UACs, including conducting 15 home studies, supporting an average of 24 UACs per month with post-release services, and maintaining an active caseload of 25 UACs. These services promote child safety, reduce instances of human trafficking, and may reduce the burden on local child welfare agencies.

Through case examples, the Su Casa social workers report on the importance of pre-release home studies and the post-release support services for UACs and their sponsors. Case examples include:

1. A 16-year-old female UAC was safely reunited with her parents and sisters. The UAC has a history of suicidal ideation and significant abuse in her home country. When the sponsor found out that the UAC was being bullied at school in the U.S., she immediately sought mental health services for the UAC. The sponsor is in the process of transferring the UAC to a new school. At the 14 Day home visit, the UAC reported feeling "a little strange" living with her parents, since she had been separated from them almost her whole life. At the 60 Day home visit, the UAC reported feeling more comfortable with her family and her mother was actively getting her enrolled in counseling services and advocating for her to get her into a school that fits her needs.
2. The social worker, Linea, has been working with a 17-year-old Guatemalan female who was recently resettled with her maternal aunt as her sponsor. The UAC gave birth to her first child while in an ORR shelter in Arizona. When the baby was born the baby was signed up for Medicaid in Arizona. After the UAC and her child were resettled in Ohio, the Medicaid benefits did not transfer to Ohio. Linea helped the UAC cancel her baby's Medicaid in Arizona and then establish Medicaid here in Ohio. The UAC's case was going to close soon because she was only given 90 days of case management service. Shortly before closing the case the UAC reported that she was pregnant again, four months in, and she had not been to a doctor since arriving in Cincinnati. Linea and her supervisor, Patrick, discussed this case with our contacts at USCCB and advocated for continued services. ORR granted an extension until the UAC's 18th birthday. While, it is not a lot more time, it will give Linea time to get the UAC set up with medical care for herself and her baby.
3. Linea has been working with a recently arrived UAC, aged 12, from Guatemala. The child is currently living with his sponsor, who is his maternal aunt. The child reported to Linea that he was interested in speaking with a mental health counselor upon their initial visit. The sponsor did not agree and denied services. Over the course of months, it was reported at school that the child has wet his bed numerous times and has been struggling at school. Since he is enrolled at a local elementary school, the UAC was able to connect with Sarah, who is a Catholic Charities' school-based therapist. Linea and Sarah have been working to educate the sponsor on the value of counseling services.

This story illustrates the importance of integrated and wraparound services, including psychoeducation about mental health to parents and guardians.

4. A 16-year-old Guatemalan female was referred from Office of Refugee Resettlement for post release services because she experienced symptoms of PTSD while in ORR care. In the shelter, the UAC was prescribed medication and offered counseling. She was recently released to a sponsor, who is a family friend. Upon visiting the UAC and sponsor, the case manager educated the family on services accessible through Catholic Charities, including immigration legal services, mental health counseling, and health promotion. The UAC appeared to be adjusting well to her new home and appeared to be getting along well with the sponsor. Linea has helped Sam enroll in school and she will start classes soon.

While the UACs receiving services through Catholic Charities exemplify the benefits of providing pre-release home studies and post-release services, less than thirty-two percent of UACs released from ORR receive these family reunification services. The story of Anabel (name changed to protect her identity) highlights the need for more children to receive services.

Story of Anabel:

Anabel is a 17-year-old Honduran girl, who entered the United States as an unaccompanied alien child (UAC) in 2016. She was apprehended by Customs and Border Patrol (CBP), who released her to the Office of Refugee Resettlement (ORR). ORR found Anabel's mother in Cincinnati, Ohio and released Anabel to her mother. Anabel's mother did not receive a home study before Anabel was released from ORR, and Anabel did not receive post-release services. Before reunifying with her mother, Anabel had not seen her mother in over 10 years.

Shortly after reuniting with her mother, Anabel enrolled in high school and began to learn English. Anabel's school-based therapist, who is a social worker for Catholic Charities, reports that Anabel does well in school, has a strong attendance record, and has been a model student.

For reasons unclear, Anabel's mother kicked Anabel out of the house approximately 5 months after Anabel was released to her care by ORR. Anabel was forced to move-in with an uncle, who provided Anabel with very little supervision. Anabel continued to attend school and received straight A's.

Meanwhile, Anabel's mother, not being content with Anabel living in the United States, called the local police department to report Anabel as a drug addict and a runaway. The allegations of being a runaway have triggered a juvenile court dependency action against Anabel. Anabel's mother has commented to the Catholic Charities school-based therapist that she just wants Anabel to be deported back to Honduras.

While an extreme example, Anabel's story highlights the problems that arise for many UACs released by ORR without a cursory check of the living arrangement. In my legal practice, I see many examples of UACs released to sponsors who force the children to work instead of attend

school, who fail to provide any means for the children to attend immigration court proceedings, and who prove to be completely unreliable protectors of these very vulnerable children.

In order to continue the much-needed services for UACs provided by Catholic Charities and organizations like it, it is essential that Congress robustly fund programs and services for these children. Specifically, for Fiscal Year 2019, we urge Congress to maintain level ORR funding for the program at $1.3 billion.

Essential Protections under the TVPRA

Under U.S. law, the custody, care, and release of UACs is governed by the *Flores* Settlement Agreement of 1997, the Homeland Security Act of 2002, and the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008. The TVPRA, in particular, seeks to protect unaccompanied children, who are the most vulnerable immigrants arriving in the United States. Such protections include: automatic transfer of UACs into HHS custody within 72 hours of determining that an immigrant child is unaccompanied, providing the least restrictive means of detention while a UAC is in federal custody, providing access to legal counsel to UACs in removal proceedings, and screening children from contiguous countries for evidence of trafficking or risk of trafficking and a credible fear of returning to the home country.

According to the TVPRA, "any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child." See 8 USC 1232(b)(3). This automatic transfer of UAC custody from any federal department or agency to HHS is a vital protection against harm befalling children in federal custody. This protection is essential to children arriving at the border; however, it is also an important protection for children made unaccompanied by immigration enforcement activities within the interior of the country. Any proposed legislation that seeks to limit or curtail the legal obligation of federal departments and agencies to transfer UACs to HHS custody places vulnerable children directly in the path of danger.

Allowing children in removal proceedings to access counsel provides a child with an opportunity to pursue a legal protection against deportation. However, providing meaningful access to counsel requires more than merely handing the child a paper with a list of pro bono organizations located at the border and unable to represent children released to sponsors in other localities. Meaningful access to counsel requires that actual counsel be available and that UACs and their sponsors know about the pro bono services in their area.

In our service area, which includes Hamilton County, Ohio, two non-profit organizations accept UAC cases pro bono. The Legal Aid Society of Greater Cincinnati places approximately 30-40 cases per year with pro bono lawyers. My department at Catholic Charities accepts approximately 6-10 cases per year for direct representation. As the county with the highest

number of UACs in Ohio (817 children released in Hamilton County since FY14), most UACs living in Hamilton County must rely upon costly private counsel or no counsel to represent them in removal proceedings, which are conducted 250 miles away at the Immigration Court in Cleveland, Ohio. For any immigrant in removal proceedings, the likelihood of receiving relief from deportation increases by five times when the immigrant is represented by counsel according to "Access to Counsel in Immigration Court," 2016 report issued by the American Immigration Council.

My youngest UAC clients in removal proceedings, who have been in the United States for three years, are currently 4-years-old and 6-years-old. While these children came to the United States with a mother who has abandoned them here, at the Immigration Court in Cleveland, Ohio, I have witnessed children as young as seven, who made the journey from Central America to the United States without a parent or legal guardian. These innocent youths do not understand the invisible line at the border that separates them from us; they cannot comprehend the complexities and subtle nuances of our immigration laws.

Impact of Family Separation at the Border

Finally, at Catholic Charities, we are deeply concerned by reports of children being ripped from the arms of their parents by Customs and Border Patrol (CBP) agents at the US/Mexico border. While there exist instances in which the separation of an adult from a child may be appropriate due to abuse or trafficking concerns, through our Catholic Charities networks we have learned of many cases in which such concerns did not exist but families were separated nonetheless.

Apart from being a barbaric and inhumane (and arguably unconstitutional) practice, the forced separation of children from a parent traumatizes children in ways that has a long-term impact on a child's development. According to the Center for Disease Control and Prevention's Kaiser Permanente study of adverse childhood experiences (ACEs) from 1995-1997, childhood trauma affects brain development. The traumatic practices of forcibly separating a child from his parent renders children susceptible to significant problems later in life, such as mental illness, inadequate coping skills, drug and alcohol abuse, susceptibility for exploitation and criminal victimization, and early death.

Additionally, young children arriving with a parent may not know or fully understand the reasons for fleeing the home country. Even if a child does have some understanding of the violence she experienced at home, child-victims of trauma do not express themselves in ways that neatly package the facts into an arguable legal case. While working with children on asylum cases, I routinely question the child's adult sponsor for details and insights into the trauma the child experienced as a means of better developing the legal arguments. For children separated from a parent at the border, no such means of case development exists. In instances where children are afforded a credible fear interview separate from the parent, a child with a real, credible fear of returning to the home country may fail to express that fear adequately and

be sent back to a truly dangerous situation. In short, separating parent from child deprives children of meaningful access to due process.

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Written Statement by

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On

"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"

Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

April 26, 2018

Mr. Chairman, Senator Carper, Subcommittee members, thank you for the opportunity to provide written testimony on the matter of Unaccompanied Immigrant Children in Ohio.

My name is Jessica A. Ramos and I am an attorney for Advocates for Basic Legal Equality, Inc. or ABLE. ABLE is a non-profit legal services provider dedicated to assisting eligible low-income individuals achieve self-reliance, and equal justice and economic opportunity. I am a member of ABLE's Agricultural Worker and Immigrant Rights Practice Group, and have been representing unaccompanied immigrant children throughout the entire state of Ohio since 2009. I have worked on more than 400 Unaccompanied Immigrant Children (UAC) cases and have represented children from as young as a few months old, to teenagers and young adults.

I have been asked to share my experience working with these vulnerable children since the Department of Health and Human Services (HHS) made certain policy changes two years ago aimed at preventing labor trafficking of unaccompanied immigrant children to avoid tragedies like the Ohio egg farm case, from being repeated. My observations in Ohio during the last two years are very similar to those in previous years – HHS and the Office of Refugee Resettlement (ORR) expend little to no resources on UACs reunified with sponsors in Ohio, although when utilized, ORR resources can have a profound effect on the safety and wellbeing of these children. Many of my experiences have been echoed by colleagues across the country.

The Absence of Services in Ohio

By the time I meet with most of our child clients, ORR has already abdicated all responsibility for them. The good and caring sponsors will sometimes tell me of the steps they had to complete to retrieve the child from ORR custody, which usually include submitting paperwork, such as copies of identification documents or birth certificates, and getting their fingerprints taken. This is all done to ensure the child is being released to a safe home. But in all my years of representing UACs in Ohio, I have had only a handful of clients who received home studies or any post-release services. Those few children who received home studies and post-release services greatly benefited from those programs; however, I believe many more children suffer without these services.

Home studies and post-release services can make an immense difference to a child. For example, one client, who I will call Andrés, was placed with a "category 3" sponsor, which means a sponsor who is not related to the child, and received extensive services from ORR both pre- and post- release. He had been severely neglected for many years before coming to the United States with barely any language skills at the age of five. Now, he is thriving – he loves playing soccer and is one of the chattiest students in his class. In the process of vetting potential sponsors by conducting home visits and background checks, several initial sponsors who would not have been able to provide Andrés with the care he needed were dropped from consideration until ORR could find an appropriate sponsor to care for him during the pendency of his immigration court proceedings.

Even children such as Andrés, who initially receive post-release services, have many challenges after those short-term services end. Once these ORR post-release services ended, Andrés' family has struggled to identify the qualified mental health care providers that he needs. In many parts of rural Ohio, like the community where Andrés lives, there are few resources available for undocumented children who may not speak English. Even if there were a mental health counselor and interpreter who could work with Andrés, they would likely have little to no understanding of the complex issues UAC children face and the differing cultural competency components of care that are vital to providing proper and appropriate treatment. When post-release services are provided by ORR, specialists may travel from urban areas to assist with treatment. And despite having received post-release services, Andrés' caregiver was unaware that ORR was the agency providing the services and that additional services may be available.

While the situation is challenging for children like Andrés, it can be even more challenging for children who are not provided post-release services, which is true for the majority of cases in Ohio. When these services are not provided, in my experience, the child is exposed to increased risk. Many of our clients have suffered through horrible tragedies and hardships, and some arrive traumatized from their experiences. The effects of these problems on the children, however, may not manifest themselves immediately. Rather, in children, effects of trauma may present themselves months or years later and in many different ways: behavior, eating, sleeping, school work, etc. I understand that ORR assesses whether a child needs post-release services while the child is still in ORR custody. Therefore, a child whose needs arise after release is left to navigate a complex system, hopefully with the help of a supportive sponsor, but with no other outside monitoring or assistance. The lack of availability of post-release services for UACs who

were not initially identified as needing those services is a huge deficit area, one which can be compounded when the child is placed with a sponsor who is not providing safe and appropriate care.

The Need for Continued Monitoring of UACs Post-Release

Such was the case with my client Mayra, who arrived when she was 15. She was released to her uncle who was married and had children. However, not long after Mayra arrived, her uncle started making sexual advances towards her. She felt afraid and uncomfortable and decided to run away. The only other person she knew was an aunt who would allow Mayra to move in with her, but only if Mayra paid for all her own living expenses. Mayra started working three days a week and only attended school the other two days. Her job was across the river in a neighboring state, but she did not have a car or a driver's license, so she had to pay a 45-year-old man to drive her to and from work across state lines. She worked at a warehouse, filling mail orders for a major corporation and made minimum wage. Eventually she stopped going to school all together because she was not making enough money to pay the rent and buy her food and her aunt was threatening to kick her out. The school threatened to file truancy charges and withdraw her enrollment. They eventually withdrew her from school, but never referred her for truancy charges, even after we requested it as a possible way for the system to pay attention to Mayra. After a year of this, her aunt decided that Mayra was not contributing enough to the household. The aunt and her family moved out of the apartment they had shared with Mayra and left her all alone. Now she was solely responsible for the rent and utilities. Mayra sought help from ABLE, and as her attorneys, we took her to juvenile court and asked a magistrate to order Children's Services to take her into custody. However, the magistrate said she did not have the power to force Children's Services to provide her shelter and care. Children's Services told the magistrate that because all of Mayra's basic needs were being met, albeit through her own efforts working without authorization and not attending school as mandated by law, she did not need their protection.

We discussed the options with Mayra. We told her that maybe ORR would take her back, but that would mean she would be placed in another state. She was willing to consider it. Having never made any contacts with ORR, I called the national office in Washington, D.C. and left a message. Someone returned my call saying that the only way ORR would take a child back into custody was if a federal agency, such as Immigration and Customs Enforcement (ICE), referred the child back to ORR. The agency representative said I should contact the Enforcement and Removal Operations (ERO) juvenile coordinator at my local ICE field office. Upon calling the field office, at first, no one was able tell me the name of the juvenile coordinator. Finally, after reaching the juvenile coordinator, he said he had never heard of referring a child to ORR, so he would have to talk to his boss, but that this did not seem like something they would do. After all, having nowhere to live and no one to care for Mayra was not their concern. I never heard from the juvenile coordinator again and none of my other messages were ever returned. The Trafficking Victims Protection and Reauthorization Act (TVPRA) already grants ORR the authority to provide care and assistance to post-release UACs; it is simply not happening based on my experiences.

Meanwhile, Mayra continued to survive on her own. We were her lifeline. We helped her get food vouchers and continued representing her before the juvenile court and the Immigration Court. Mayra continues working and caring for herself. She turned 18 and the juvenile court dismissed her case, but not before issuing an order stating that someone should have cared for this child and that she had no one else. Mayra's immigration case is still pending.

I would like to be able to say that Mayra's case was an anomaly, but the truth of the matter is that for a small percentage of unaccompanied children, their caretakers – be it "category 3" sponsors or even parents – do not adequately care for them. And the state welfare systems do not always step up or see it as their job to provide safety for these children. I have seen cases where Child Protective Services has intervened in the lives of unaccompanied children and have gone above and beyond to act in the best interest of those children, regardless of their immigration status. But Mayra's case is not the only case where I have had Children's Services refuse to accept an unaccompanied immigrant child. In one instance, I walked my client Nayeli into the local Children's Services office with her suitcase after my client said she could no longer stay with her abusive 19-year-old brother. Children's Services did not believe her, despite physical evidence of battery, and sent her back to live with her brother. As was the case with one of the Ohio egg farm children, the sponsor brother turned social services away when they later came to the home and Children's Services closed the case, despite my client's repeated requests to keep it open and her continued plea for help. Case workers later told me that it would just be best if she went back to El Salvador, without knowing anything about what her previous home life situation had been there. There was a high risk that Nayeli could have fallen into a predator's hands, and we should all be thankful it did not happen. Nayeli recently received her green card. She has been my client for more than seven years and I have watched her grow up. Crying, she hugged me and said that I was the closest thing that she had ever had to a mother. This was with me seeing her twice a year in person and speaking with her on the phone maybe a half a dozen times a year. But I was there for her. I made sure she did not fall completely off the grid. When she was couch-surfing and I did not know where she was, I would drive three hours from my office to her school and friends' houses and look for her. No one else did these things – just her lawyer.

The Importance of Legal Representation

In these cases, we attorneys are the only ones paying attention. Even some Immigration Judges have expressed their concern about the safety and well-being of their Respondents given the lack of resources available and are at a loss as to where to refer the children for help. Without us, these children are left untethered – vulnerable to predators and potential trafficking. As demonstrated in Mayra's case, even with our intervention, attorneys are not always able to solve all the issues UACs face, but at least we can minimize the risk and try to ensure that these children do not slip through the cracks. In the late summer of 2014, when the number of unaccompanied immigrant children began to spike in Ohio, several non-profit immigration legal service providers and pro bono attorneys banded together to respond to the overwhelming need. Thanks to these efforts, and additional financial support received from various sources - including the now defunct justice AmeriCorps program through the Department of Justice - Ohio developed a robust system of pro bono representation. With our partners, Catholic Charities of Cleveland, we run a "Friend of the Court" system where every child is screened and assisted with their first court hearing. From there, cases are placed with pro bono attorneys or

organizations like ABLE and Su Casa. Because of these pro bono efforts and the efforts of paid private attorneys, 70% of unaccompanied children in Ohio are represented in their immigration proceedings. However, that still leaves 30% of children unrepresented, a number that is growing. This is not a fair system of justice.

Legal representation is vital to ensuring that unaccompanied children are well-cared for, that they comply with the legal process, such as attending court hearings and ICE check-ins, and that their due process rights are respected by the ever-aggressive enforcement agencies and the courts. Assistant Chief Immigration Judge Jack Weil testified in 2016 that he had "taught immigration law literally to 3-year-olds and 4-year-olds. It takes a lot of time. It takes a lot of patience. They get it. It's not the most efficient, but it can be done." I have a hard time making my three-year-old nephew understand bedtime, let alone a complex area of law that takes years to master.

As Immigration Judge Dana Leigh Marks stated in 2014, immigration cases can often have life or death consequences, especially in asylum cases. However, Immigration Court essentially hears "what amount to death penalty cases heard in traffic court settings." So, to combine these two statements made by Immigration Judges themselves, having a child confront the adversarial immigration court system alone without legal guidance is akin to asking a child to perform delicate neurosurgery. That certainly serves no one's best interests – not the child, the court, the government, or the country. Legal representation for children provided by the government is one small step toward equalizing the situation for these children.

Attorneys also assist in keeping children from being exploited financially. For example, in Ohio, the Immigration Court is located in Cleveland, in the northeast corner of the state. However, according to ORR statistics, the largest population of UACs in the state reside in Cincinnati in the southwest corner – about four hours away from Cleveland. With no reliable means of public transit, many children are forced to pay unscrupulous drivers to transport them to Cleveland for their hearings. Routinely, children are paying upwards of $400 per trip to comply with their court appearances. However, once represented, attorneys routinely file motions for telephonic appearances, which are normally granted by the Immigration Judge.

Statistics show that represented children are far more likely to attend their court hearings than unrepresented children. And continued contact with children by their attorneys means that someone, other than sponsors who may or may not be reliable and most of whom have not been vetted through home studies, is watching out for the children. It is worth pointing out that none of the victims of the egg farm trafficking case were represented by an attorney. Universal representation of children in legal proceedings is one way to protect them from falling victim to predators and those who do not have their best interest at heart. It also protects their due process rights and assists the Immigration Courts with processing their cases more effectively than when dealing with pro se children.

The Competing Interests of Enforcement and Child Safety and Welfare

But attorneys can only do so much. Increasingly, even with representation, a number of draconian enforcement measures put children further at risk. Throughout Ohio, we have had reports of ICE showing up at prospective sponsors' homes before a child has been placed there. ICE proceeds to accuse the potential sponsor of smuggling the unaccompanied child who identified the potential sponsor. Some of these potential sponsors have even been detained and placed in removal proceedings because they stepped forward to act as a potential sponsor. When asked about this new tactic, a district deputy director for ICE ERO in Detroit told me that it had always been ICE's policy to target sponsors, however this was not our experience in Ohio until recently.

Another former UAC client of mine named Ester found herself in this situation. Ester had recently married and had a baby when ICE unexpectedly showed up at her house. Her application for relief is still pending (as it has been for more than four years now), so she did not expect ICE to be there for her. Her husband already had a green card, so they should not be looking for him either, she thought. The ICE officers immediately began to threaten to arrest her and separate her from her newborn baby. They told her she would be deported. They asked her how much she had paid to bring her sister to the United States. Confused, Ester told the officers she did not have any sisters in the U.S. Unbeknownst to her, one of her younger sisters had just presented herself at the border. Ester frantically explained that she had no idea that her younger sister had left Guatemala to come to the U.S. Eventually, after intervention from community members and begging and pleading from my client, ICE left. But Ester was understandably hesitant to sponsor her sister after that experience. Other children whose sponsors are taken into custody are left looking for more tenuous family connections or friends to sponsor them, and these sponsors are less likely to have the children's best interests at heart, exposing them to potential danger.

One additional theme that has become more apparent in this age of increased enforcement is the desperate need for more coordination amongst agencies on both sides. As was demonstrated in Mayra's case, ORR and ICE do not have consistent policies or procedures to coordinate care and protection for UACs, as mandated under the TVPRA. Additionally, ORR does not adequately promote the availability of post-release services when needs arise outside of detention. Having an agency that is tasked with coordinating care and follow-up with these children, such as ORR, would be one step towards ensuring that the risks of endangerment are minimized.

DHS also routinely resists recognizing the protections afforded to unaccompanied children under the TVPRA. DHS' narrowing interpretations of eligibility for relief, aggressive tactics of stripping UAC status from children, and opposing all motions in court leave more children vulnerable to exploitation. DHS' tactics lengthens children's time in legal limbo as we must fight determinedly for simple things like obtaining a continuance in court.

DHS' aggression can even interfere with accomplishing its own mission, and the agency's actions often serve no government interest. This was the case for my former client Mario from Honduras who wanted to take Voluntary Departure and return to Honduras. Because his parents were missing, he was unable to secure a travel document on his own. I inquired with ERO about

effectuating Voluntary Departure at no cost to the him as provided by the TVPRA. For months, my messages and inquiries went unanswered. Eventually, Mario turned 18 and DHS immediately filed to terminate his UAC status to avoid having to assist him with Voluntary Departure at no cost, despite my attempts to secure this for well over six months. My client agreed that he would buy his own ticket, but he still needed to obtain a travel document. I contacted DHS to see if they would at least assist him with this because individuals must be 21 before Honduras will issue a passport without both parents' signatures. The Assistant Field Office Director told me "it's not our job to help people ma'am." He said that my client would just have to take a deportation order, at which point, DHS could assist him in getting a travel document.

Closing

This prioritization of enforcement over humanity is endangering the welfare and safety of children. My clients, despite having been born in another country and not speaking English, are still, above all things, children. Children who deserve to be safe from harm. Children who deserve a chance, just like our own children. Children, like my four-year old client Oscar, who could only talk to the Immigration Judge about his Spiderman shirt and his shoes that light up, and not about his legal defense to stay in this country. Once in government custody, ORR has a responsibility and a legal mandate to ensure these children safety while their claims are processed. I believe more coordination is needed to effectively guarantee these protections. Legal representation for children is another way to safeguard the security of these children. I appreciate the dedication of Chairman Portman and this committee for protecting the well-being of my clients and holding ORR accountable. Thank you for allowing me to testify today and I would be happy to answer any questions.

WRITTEN STATEMENT BY

Kelsey R. Wong, Program Director

Shenandoah Valley Juvenile Center

Permanent Subcommittee on Investigations

Committee on Homeland Security and Governmental Affairs

United States Senate

April 26, 2018

Chairman Portman, Ranking Member Carper and members of the subcommittee:

Thank you for your invitation and the opportunity to discuss the services the Shenandoah Valley Juvenile Center (SVJC) provides to unaccompanied children for the Office of Refugee Resettlement (ORR). My name is Kelsey Wong and I am the Program Director for the unaccompanied children program at the SVJC. I have been working with this population for almost six years and have witnessed the evolution of ORR throughout this time.

SHENANDOAH VALLEY JUVENILE CENTER

The SVJC is a secure 58-bed residential facility for youth in local, state and federal custody. The SVJC is owned and operated by the SVJC Commission, which is comprised of the counties of Augusta, Rockbridge, and Rockingham, and the cities of Harrisonburg, Lexington, Staunton and Waynesboro in the Commonwealth of Virginia. The SVJC operates three distinct programs: 1) pre-dispositional detention program for its surrounding localities; 2) post-dispositional Virginia Department of Juvenile Justice programs (Community Placement Program, Re-Entry Program and Direct Intake Program); and 3) an unaccompanied children program for the ORR. The SVJC serves approximately 300 male and female youth from the ages of 12 to 17 each year with an average daily population of 46.

Since 2009, the SVJC has been providing residential services to ORR. At this time, we provide secure services to 34 unaccompanied children, 30 males and 4 females. These services include, but are not limited to, case management, education, group and individual counseling, medical, mental health, nutrition, recreation, religious, acculturation and vocational services. The SVJC delivers secure residential care and all required child welfare-related services in a state-licensed secure detention facility. The SVJC serves approximately 92 unaccompanied children per year with an average daily population of 25. Our goal with the unaccompanied children program is to provide high quality secure services and facilitate each youth's safe and timely release from our care.

SECURE PLACEMENT

The SVJC is one of three facilities that provides secure services to unaccompanied children in the United States. ORR places unaccompanied children in a secure setting when he or she:

- Has been charged with, may be chargeable, or has been convicted of a crime; or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; and assesses whether the crimes or delinquent acts were:
    - Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person, or the use or carrying of a weapon (e.g., breaking and entering, vandalism, DUI, status offenses, etc.); or
    - Petty offenses which are not considered grounds for a stricter means of detention in any case (e.g., shoplifting, joy riding, disturbing the peace).
- Has committed, or has made credible threats, to commit a violent or malicious act while in ORR custody;
- Has committed, threatened to commit, or engaged in serious, self-harming behavior that poses a danger to self while in ORR custody;
- Has engaged in conduct that has proven to be disruptive of the normal functioning of a staff secure facility in which the youth is placed such that transfer may be necessary to ensure the welfare of the UAC or others;
- Has reported gang involvement or displays gang affiliation while in care;
- Has self-disclosed violent criminal history or gang involvement prior to placement in ORR custody that requires further assessment; or
- Has a history of or displays sexual predatory behavior, or has engaged in inappropriate sexual behavior[1].

Secure placement is the most restrictive setting within the ORR network.

The majority of unaccompanied children in a secure setting have histories of repeated and various forms of abuse and neglect; life-threatening accidents or disasters; and interpersonal losses at an early age or for prolonged periods of time. Typically, these youth have difficulty forming attachments with caregivers and self-regulating emotions. For unaccompanied children, this often plays a role in the legal and behavioral problems that bring them in contact with law enforcement, the juvenile justice system and a secure placement. While the number of unaccompanied children requiring a secure setting is small, we believe that this population should be a high priority for the federal government.

PRIORITIZING SECURE CASES

Prioritizing unaccompanied children in a secure placement requires the federal government to improve its referral process, internal network capacity and decision-making on individual cases.

Referral Process

Prioritizing unaccompanied children in secure placement begins at the referral process. Recently, we have received several referrals of unaccompanied children that were previously placed in ORR custody. Some of these youth were living with their biological parent or sponsor prior to being placed into our

[1] Please see ORR Guide *1.2.4 Secure and Staff Secure Care Provider Facilities* at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.2.4

care. Prior to placement, DHS and ORR should gather the necessary information to ensure that the individual youth is unaccompanied.

In addition, we have received a number of referrals of youth that have been labeled gang-involved individuals with little evidence or self-reported membership. We do a disservice to unaccompanied children when they are mislabeled as gang-involved individuals. Youth that are mislabeled as gang-involved individuals may be unnecessarily placed in a secure environment and it affects their long-term case plan. Therefore we recommend that referring agencies, DHS and ORR, thoroughly vet the youth prior to their placement into custody, including their status as an unaccompanied individual and possible gang-involvement.

Internal Network Capacity

Within the secure unaccompanied children population, there are a number of youth that have been evaluated by our mental health staff or providers recommending placement in a residential treatment center. However, residential treatment centers in the ORR network are unable to accept some of our youth into their care due to the severity of the mental illness, behavioral issues while in ORR care, and disclosures of significant violent or criminal history. In these circumstances, the unaccompanied child remains in a secure placement. As a secure care provider, we are unable to provide the services of a residential treatment center or hospital. In order to appropriately respond to the high needs of this small population in secure care, we recommend that ORR prioritize expanding its internal network capacity to better address the needs of unaccompanied children with severe mental illness, significant behavioral issues and disclosures of violent or criminal histories.

Decision-Making Process

The biggest challenge working with the secure unaccompanied children population is the length of time it takes for ORR to provide a decision, approvals or denials, on family reunification cases and step downs to lower security level settings. The length of time it takes ORR to decide on a case extends the unaccompanied child's length of stay and may have a negative impact on their general functioning. Given the unaccompanied child's placement in the most restrictive setting within the network, ORR should prioritize secure cases so that the youth and their family can make decisions with respect to their case plan. In order to reduce the length of stay for unaccompanied children in a secure setting, we recommend the following:

1) Streamline and expedite the decision making process for unaccompanied children in a secure setting;
2) Provide a dedicated field staff for each secure care provider in network given the complexity and high needs of the secure unaccompanied children population; and
3) Fund legal service providers to provide representation during Flores/Saravia hearings and to work with unaccompanied children pending release decisions so that they may make progress on their legal case while they are in care.

CONCLUSION

At SVJC, we understand the importance of our role serving the unaccompanied children population. We look forward to continuing to work with this Committee and ORR in order to set these young people up for success whether it is here in the United States or their country of origin. We also welcome the

subcommittee members to tour our facility in the beautiful Shenandoah Valley. Thank you again for the opportunity to discuss our services and I hope that the information provided has been helpful to you. I am also happy to answer any questions you may have.

The Indian River School District is made up of 16 schools; eight elementary schools, three middle schools and 2 high schools. IRSD also houses three other schools; G.W. Carver Academy, Southern Delaware School of the Arts, and the Howard T. Ennis School. Three other education programs that are funded under the IRSD and occupy real estate in the district are the kindergarten center, TOTS program and the APELL program. The population in Sussex County has grown and continues to grow; IRSD is proving to be pro-active by addressing the growth in a recent IRSD newsletter publication, October 2015:

IRSD: Planning for Future Growth

The Indian River School District reached a historic milestone this fall when its total enrollment in Grades PreK-12 exceeded 10,000 students for the first time ever in 2015.

The district's current official enrollment for the 2017-2018 school year is 10,753 students. This represents an increase of 1,967 since 2010. The district's total enrollment has grown by an average of 4 percent per year during the past decade. With a total growth rate of 22 percent since 2005, Indian River is now the fifth-largest public school district in the State of Delaware.

Total District Enrollment

2005 - 7,885 **2010** - 8,786 **2015** - 10,171 **2020** - 11,826 *(projected)*

The demographic of Sussex County is changing and recently has become more diverse as the population has grown. This is a similar reflection in the demographic growth in the community; families moving to Sussex County settle and then enroll their children in schools within their

attendance area. The following chart will depict the ethnic groups enrolled within the Indian River School District:

Current Building	Am. Ind/AK (Total)	African Amer (Total)	Caucasian (Total)	Asian (Total)	Native Hawaiian/Pac. Islander (Total)	Hispanic Ethnicity (Total)	Multi-Race (Total)	GRAND TOTAL
Report Totals:	**77**	**1,369**	**5,163**	**127**	**8**	**3,080**	**340**	**10,164**
	0.76%	13.47%	50.80%	1.25%	0.08%	30.30%	3.35%	

IRSD Federal Codes 2015

The break down of ethnic groups can be found in the IRSD balanced score card; this information is located on the district website; irsd.net. Specific school ethnic group data can be found in the specific school balanced scorecard extracted from the Endsight tool in e-school.

A unique population of students exists within the Indian River School District, IRSD. The unaccompanied youth ages 14-20 years of age are enrolling with the Indian River School District at a very rapid pace. The District houses two high schools, Sussex Central High School in Georgetown, Delaware and Indian River High School in Frankford, Delaware. The unaccompanied youth is also referred to as a "newcomer" to indicate that they are enrolling from out of country to a US school for the first time. Because so many unaccompanied youth resettle in Georgetown, Delaware, SCHS has seen a majority of growth in the newcomer student demographic. This school year SCHS has enrolled 91 unaccompanied youth and I registered 10 new students in the last 4 days. We will continue to enroll students until the end of the year even though they will not be able earn any credit at this time. The benefit is that we ensure that we are

exposing them to the educational environment, the expectations, the target English language and that we are connected them to services that the need to be successful academically. The negative side to enrolling at various times of the year is the lack of instruction to be successful or the lack of time enrolled to earn credit. Latino Youth make up approximately 38 percent of the total student population and a sub group of 15 percent are ELL students with the newcomer status. We have approximately 267 ELL students.

An unaccompanied youth student registering at SCHS has a distinct profile that makes the registration process complicated for the student to navigate alone. Many of the newcomer/unaccompanied youth are arriving to Delaware from border States via previous detention with paperwork indicating that they have been detained, vaccinated, supervised, educated, processed and release by the Office of Refugee and Resettlement, ORR. Paperwork from ORR indicates the name, DOB, photo and arrest of the student with a release form to an identified and willing sponsor who provides the name, relationship, address and phone number and it is documented on the student ORR release document. Once the document is signed, the sponsor agrees to support the student by providing shelter, relocation and care and to register them in school to avoid the human and labor trafficking of unaccompanied youth. The Office of Refugee and Resettlement does not contact the school or any other government agency that the student has been released to the identified sponsor. Once the verification of release form is signed and approved by ORR, the unaccompanied youth is released to the sponsor. If a sponsor moves or if the youth is then given to another unidentified sponsor to care for, the ORR should be contacted prior to moving or change of sponsorship, however, I am not sure how often sponsors or students comply with this policy/best practice. It is my opinion that the lack of

accountability in this area puts our unaccompanied youth at risk for human trafficking, labor trafficking or worse.

Other profile characteristics of an unaccompanied youth student at SCHS include:

- Male and Female students ages 14-20 years of age
- The average age of the student is enrolling to a US public school for the first time is 17 years old +
- Latino heritage
- A large cross section of students are born in Guatemala
- Speak one of 21 dialects from various regions of Guatemala; also, the dialects are not a written language but only spoken. Indigenous and tribal students are illiterate in their native language; students with some formal education still present with very low literacy and math skills
- Are registered as English Language Learners and qualify for ELL services
- Economically disadvantaged
- Little to no exposure to formal education and educational environment and expectations
- Long and short term gaps in education from home country and arriving to Delaware
- Students with formal education from Guatemala are exposed to Substandard curriculum and academic preparedness in comparison to other Central American countries and significantly lower in comparison to more socioeconomically developed countries like China and Japan
- Documentation of formal education may be current or have gaps of time indicating the last year of instruction

- The student may or may not know the sponsor. The sponsor can be biologically related with degrees of separation from biological parents, siblings, uncles/aunts, cousins of various degrees of separation and friend of the family.
- The sponsor is often not educated, also illiterate, also undocumented, also economically disadvantaged, also not able to successfully navigate the resources to model for the student
- Lack of verification of student identify, authentication of birth certificates are sometimes suspect
- The address of the sponsor is not verified by ORR as a safe and suitable home with adequate room/space/privacy for the student and there is no employment verification of the sponsor to identify that the sponsor can financially support the student in their care

When unaccompanied youth register with Sussex Central High School they are asked to complete the standard enrollment papers. Almost Always the student and the sponsor also provide all documents provided from ORR to aid in the registration process. As standard protocol, we make a copy of the verification of release form from ORR to help us identify identity of the student and to match the sponsor's name and address for registration. A copy of any medical/vaccinations and educational notes are also copied and kept in the student cumulative folder if the documents are provided at the time of registration.

Students and their sponsor then meet with the ELL School Counselor to be interviewed with a short questionnaire to verify the living arrangements and to learn more about the dynamics of the relationship. The student is then SLIFE, Student with Limited and or Interrupted Formal Education interview tool. This tool gives a chronological time line of formal education and

family background, family academic history and literacy. The student is then administered a language screener on a digital platform using the WIDA Screener test to determine English literacy and fluency. If the student scores less than a 1.5 out of a total of 6 points and data from SLIFE indicates two or more years of a gap in education services, they are enrolled and tracked to participate in the Accelerated Pre Literate English Language Learner Program. The APELL program provide curriculum designed to accelerate the acquisition of the basic literacy and math skills to prepare the SLIFE student for high school content level curriculum. Student enrolled in the APELL program spend 60 percent of their day receiving ELL services while also enrolled in integrated CTE or Elective class.

Full time ELL students are scheduled for content level courses required to graduate and are scheduled for one the following levels of language courses based on their annual ACCESS score: Beginner, Novice, Intermediate, Advanced and Academic Reading and Writing. The language acquisition courses that follow the TSOL standards and the content level courses are taught by content level teachers trained in Sheltered Instructional Strategies or team-taught with a certified ELL teacher in the classroom. The ELL department works to close the literacy gap, improve language acquisition and cross collaborate with the content level teachers. I have observed that the students who are self-motivated and have been educated in their native language have been able to acquire literacy and fluency in English quickly. Higher literacy skills and learned self advocacy skills help our students develop higher order thinking skills and help to develop confidence to ask higher order questions when they are put in difficult or complicated scenarios. Higher oral fluency allows students to understand and be able to speak in English to ask for the help that they need. Higher literacy allows our students the ability to read and write on the documents they need to navigate resources for their future.

Once a newcomer is registered and enrolled at Sussex Central High School there are a list of obstacles that come up as barriers for the student:

- Students enrolled at the age of 17 + are challenged to complete a 4 year course of study to successfully graduate with the DE graduation requirements before aging out at age 21. It is mathematically impossible for a 17+ year old student to graduate with all required graduation requirement and language acquisition classes offered in 3 years.
- Students reveal in the interview that they have completed high school in their country but told by their case manager in the detention center and the judge at time of release by ORR that they have to go to a US high school even though job training or post-secondary or ESL opportunities may be more appropriate
- A 17 + year old who enrolls in a US public school for the first time is enrolled as a 9th grader with true 14 year old native born students. I have had the scenario where a 19 year old date a student who is 14 and has been arrested because of age of consent law but we created that environment for the relationship to happen.
- If the student is weeks away from turning 18 years old they may be eligible for the Adult Education model to learn English. There are only two registration windows for these classes; Summer and January. It is not the rolling admissions model like the comprehensive public school model, thus they enroll in the public high school to show compliance to ORR.
- Immigration lawyers representing the students have consulted them and indicated that the Adult ed model is not considered full time and encourage them to register with a comprehensive public school.

- Unaccompanied youth and their sponsors are not enrolling the kids at Sussex Tech or SAAS; they are registering at Sussex Central high because of the high volume and saturation of Guatemalen resettlement in Georgetown, DE.
- Lack of language to navigate resources in the school, on the bus, in the community
- May complete paper work incorrectly and not be eligible for free or reduced lunch. No Universal document or program in place in State to indicate free and reduced lunch.
- Many students work full time jobs with papers obtained with an alternate identity that the student assumes. Often these jobs are labor intensive in the agriculture industry.
- Working second or third shift does not allow for a healthy balance of sleep and self-care needed to then attend school full time.
- Students who work have attendance issues that affect their alertness and ability to learn while at school or they miss school to provide self-care or attend court/legal appointments. District attendance policy (16 UAC) is violated and their credits are denied for the year, thus putting the student at greater risk for dropping out by withdrawing from the program or to no longer show up without notifying the school.
- There is a lack of consistent follow up, support from the sponsor to prioritize education and school because basic needs for student survival are not met; money is needed for room rent, legal fees, debt at home country or family debt
- Medical compliance…students test positive for TB are required to take medication. If they drop out before completing medication they are at risk. They can test positive for TB at work, but if they work under a different alias…they may be treated at work and at school and taking a dangerous dose of meds.

- Lack of health care and treatment before arriving to the US or being detained. Medical review will indicate need for dental and vision care.
- Lack of mental health and counseling for trauma from migration, trauma while in detention, trauma in new home
- Duplicating and re-establishing corruption, crime and social systems in the schools and community that keep the student stuck in the loop of victimization and exploitation
- Cultural predators and predatorial systems exists amongst their sponsors, peers and employers that teach them short cuts for employment and survival that
- Transient living arrangements. ORR requires the sponsor to notify them if they move or change sponsorship. The school is only required to have the sponsor show new proof of residence with a lease or a notarized document. I can only remind them to register with ORR, but there is no compliance
- Unaccompanied youth who cannot navigate the immigration/legal system. It is convoluted and inconsistent. Some legal representation is in Baltimore or Philadelphia and students have to pay someone to take them to the hearing but are typically independently navigating the court and the process alone.
- Unaccompanied youth are ineligible for Driver's license without permanent residency or work permit to document. If a sponsor does not claim the unaccompanied youth for 2 years, they also cannot be eligible for a driving privilege card. Students who are working cannot claim taxes as the alias to establish two years of taxes to qualify for a driving privilege card.
- Survival by employment or victimization puts the unaccompanied youth at high risk of drop out.

- Illiterate students have significant literacy challenges with no formal education they are eligible for the pre-literae program for one year. Students demonstrate gains in oral language however are not successful and lack academic endurance, literacy skills and background knowledge to be able to pass 9th grade content level course work and be promoted to the next grade level.
- Certificate level job training programs require documentation because they are federally funded and our students are not eligible
- Lack of employment training or opportunities force students to work in the poultry industry, in the fields and be subjected to criminal activity because they do not have work permits, ITIN numbers or social security numbers for upward mobility
- Significant withdraw rate from programs due to employment or moving
- Significant withdraw rate after the student turns 18 years old which signifies to the sponsor and the student that they are technically of adult age and do not have to attend high school which in return affects graduation rate
- Significant attendance rate and violation of the attendance policy resulting in denial of credit and no shows
- Significant number of students enroll the first year and then after the summer do not notify the school that they have moved and sponsor or family does not contact the school to withdraw resulting in Unexcused Absence to Class, UAC, eventually creating a case

for dismissal from student cohort. This school year there were approximately 40 ELL student no shows.

- If a student withdraws before the end of the school year they do not earn the credits for the course work, therefore, if they do not register in another school or they re enroll the following year they will repeat the same grade and course work

- Students withdrawing to move out of the attendance area can withdraw and if there is not request for records from the other school, that student file is archived with us and there is no follow up for the school to know or identify where the student is

- Students will turn 18 and declare independence of the sponsor using school policy documentation, McKinney Vinto Act and paper work is filed within the school but nothing is filed with ORR or family court or consent from parents out of country to verify and validate the declaration of independence.

- Lack of affordable and safe housing for students

- Lack of public transportation for legal and medical follow up

- Lack of personal advocacy and understanding of self-care and navigation of resources to ensure safety and follow through

- Agencies and schools are over loaded with the case load numbers of unaccompanied youth
- Lack over incentives for students and families/sponsors doing the right thing.

- Lack of government follow through on the quality of life and care the students have after release from detention

- Lack of universal "hub" for information and support for the sponsor who is doing the right thing and wants the student to thrive and succeed

- Duplication of services through agencies across the State to provide assistance in areas of literacy, advocacy, prevention and legal services. Compartmentalization within each of the agencies vs. cross pollination of resources to assist the community

- Lack of follow through protocol for the sponsor or the unaccompanied youth to complete once registered in school. Lack of literacy level and skill by sponsor. Lack of exposure to high frequency word and expanded word bank in heritage and target language to allow for higher order questioning

- Lack of bilingual and documented sponsors registering students

- Lack of bilingual mental health therapist to deal with trauma associated with migration, detention

- High rate of teen pregnancy

- Sponsors registering multiple students throughout the school year. ORR has even released unaccompanied youth to current students enrolled at SCHS that are 18 or older

- Racial discrimination from native born bilingual students

- Disproportionate number of male students enrolling vs. female students at various times of the school year

- High rate of domestic abuse witnessed or endured by unaccompanied youth

- High rate of sexual abuse, chemical dependence and high risk behavior of unaccompanied youth

- Lack of accountability for education, health, immigration and basic needs by the student if the sponsor does not prioritize the welfare of the student

- Ignorance of resources and agency support in the community. Lack of utilization of agency support due to fear of being reported resulting in deportation. Lack of awareness to systems of education and assistance in the US/Delaware is due to a lack of the systems from the home country and not being familiar with how to access systems or personnel for help

- Lack of community awareness, there is misinformation that sponsors are provided a stipend to sponsor an unaccompanied youth like a foster child/foster parent model

- This age group is at high risk of being taken advantage of because lack of advocacy, the lack of mobility to earn money legally and can be easily coerced to work with fake documents or be enticed by predators to work underground and be exposed to criminal activity.

- High risk of being abused and then repeating the abuse to other victims; Victim becomes the predator because of personal experience

It is important to mention that many of the unaccompanied youth students suffer from mental emotional trauma from the migration and border experience and are forced to acculturate in the US with members of their family or unknown sponsors that make the transition to the US and their journey more complex. The stories of survival from to detention center to current living and working arrangements have forced me to build off of the resources from the community and to try to replicate them in the school for the ELL population at SCHS. By building and improving resources in house and with the cross collaboration with outside agency networking we have designed an infrastructure for programs to support the ELL needs. However, when basic needs are not being met,or fulfilled by the sponsor/family member the academic endurance required by an unaccompanied youth is not sustained and the need to survive financially takes precedent.

It is important to understand why migration is happening in Delaware and not ignore that the employment from the agriculture business can benefit from migrant labor. Halina Saphead's (2014) study reveals " three main factors immigrants flow into certain areas of the country and they are (1) economics integration and employment factors (2) social integration factors, family connections and (3) human capital factors, such as education and language and overall immigrant satisfaction with their settlement experience" (p. 891). When interviewing students during the registration process, every student reveals they were seeking employment opportunities a reconnection with family or education or a combination of all three as the top reasons for moving to Delaware. The agriculture industry is sustainable in Sussex County if we have the labor to sustain the industry and migrant work. The missing piece is the documentation that gives

immigrant students the ability to be employed legally. In many cases, it is easier to obtain fake documents to work rather than wait for an employment authorization document or social security number to allow them to work legally. The students have shared stories that they are often recruited by "coyotes" in their own communities in Guatemala that promise them work and a new life if they are willing to migrate to the US by following their instructions and usually paying a debt as a result of agreeing to migrate. The migration pattern has directly affected the population and education for the Indian River School District. "Most illegal immigrants come to the United States to get better-paying jobs. Like most Americans, they pursue the American dream of a better life than they left behind. Education is the key to fulfilling this dream" (Drachmann, 2006, p. 91). However, the hands of an unaccompanied youth are tied without the proper documents and permission to work which forces them to find work through illegal channels.

In San Antonio Texas, Representative Henry Cuellar (2014) stated, "Every night, there are about 300 to 400 kids that come in without parents. This is just in the lower Rio Grande Valley. About 1,100 are being housed temporarily at a facility at Lackland Air Force Base." Elizabeth Kennedy (2014) also contributes that "half of them are fleeing for their lives. Their decision is, 'Do I face possible death in migrating or sure death in staying?" The number of kids caught by the ICE at the border is expected to triple as drafted by reviews made by Homeland Security. As many as 90,000 kids from El Salvador, Guatemala and Honduras have been relocated after capture and detainment by US border control agents. The surge of unaccompanied youth is a result of fleeing from drugs, violence and poverty from their home countries. Upon capture at the border many of the children have endured health problems because of the dangerous journey and many of them contract health problems while in the

detention centers because of the crowded close quarters. The migration experience the unaccompanied students experience has a direct impact on their social emotional health and is an indirect contribution to the success of the learning process for the students as they manage the travel, the process of acculturation, anxiety and self-esteem during the school day. Perez, Espinoza, Ramos, Coronado, & Cortes (2009) "for immigrant children, migration is one of the most radical transitions and life changes an individual or family can endure. The migration experience to a new country fundamentally reshapes their lives as familiar patterns and ways of relating to other people dramatically change." (p. 2)

The teachers at SCHS are aware of the myriad of issues surrounding the unaccompanied youth demographic and do work to promote learning by adapting their instruction and by being sensitive and relating to the sociocultural factors of the students; like knowing each of their background stories, knowing their names and monitoring academic and background progress. SCHS is invested in the background stories of the unaccompanied youth to try to connect background knowledge and content knowledge to promote language acquisition and relationships that promote trust and oral and written literacy to help them graduate with diplomas and without limiting beliefs. SCHS follows through with students to ensure they are educated, safe and supported.

As the ELL school counselor and coordinator at Sussex Central High School, I have been appointed to address the academic, personal and social/emotional areas of all of the ELL/ESL students enrolled at SCHS and am identifying the deficiency of those outreach services within the school and the community. As their school counselor, I would like to protect, preserve and even enhance the unaccompanied youth's culture, heritage and language while giving them access to education through language acquisition, literacy and fluency. By providing a

customized program of studies that is developmentally and age appropriate SCHS we are creating a pathway for students to have a free and equitable education. I am proud to say that the graduation cohort for the unaccompanied youth demographic has increased year to year since SCHS had to vision to create a position for an ELL counselor/coordinator in the fall of the 2015 school year. In 2016 we graduate 12 students. In 2017, we graduated 34 students. This school year we have 53 students eligible to graduate with diplomas but more importantly, they have shown growth in language acquisition and literacy and have been exposed to the education system that teaches them about democracy, diplomacy and gives them an identity and a sanctuary to feel safe and experience success. Even with the success we have experienced at SCHS, there is a lot of work to be done in education and the Delaware Department of Education must explore how to address the academic needs and rights to education. Policy and funding for ELL students must be revised and updated to meet the unique needs of the growing ELL student population.

References and data shared can be available upon request

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April 24, 2018

The Honorable Senators Rob Portman & Tom Carper
United States Senate
Committee on Homeland Security & Governmental Affairs
Permanent Subcommittee on Investigations
Washington, DC 20510-6250

Re: Protection of Unaccompanied Alien Children

Dear Senators Portman and Carper:

Thank you for the opportunity to testify before the United States Senate, Permanent Subcommittee on Investigations, regarding efforts by the Department of Health and Human Services ("HHS") and Department of Homeland Security ("DHS") to protect Unaccompanied Alien Children ("UAC") from human trafficking and abuse.

I serve as the Deputy Director and Managing Attorney of the Immigration and Medical-Legal Partnership Programs at Community Legal Aid Society Inc. ("CLASI") in Delaware. CLASI provides free immigration legal services throughout the State of Delaware to particularly vulnerable immigrants, including foreign-born survivors of domestic violence, sexual assault, child abuse and neglect, and other serious crimes. Specifically, CLASI provides consultation and representation on the following types of victim-based immigration petitions:

1. U Non-immigrant Status, or the "U Visa," created by the Trafficking Victims Protection Act of 2000 (TVPA),[1] available to non-citizen, injured victims of serious crime in the United States, who demonstrate that they were, or are, cooperating with the authorities on the investigation of the crimes committed against them;

2. T Non-immigrant Status, or the "T Visa," also created by the TVPA,[2] available to non-citizen victims present in the United States due to severe trafficking in persons, who demonstrate that they have cooperated with the authorities on the investigation regarding the human trafficking;

3. Special Immigrant Juvenile Status, or "SIJS," created in 1990 and amended in 2008 by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)[3], available to non-citizen youth found by a state juvenile court to have been abused, abandoned, neglected, and/or dependent by one or both of their parents, and in whose best interest it is to remain in the United States in the care of the state court-appointed agency or individual; and

1 The Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).
2 *Id.*
3 INA § 101(a)(27)(J), added by § 153 of the Immigration Act of 1990, and amended most recently by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, P.L. No. 110-457, 122 Stat. 5044 (2008).

4. Various forms of relief through the Violence Against Women Act[4], available to non-citizen spouses and children of United States Citizens or Lawful Permanent Residents, who have subjected the non-citizen to battery, abuse, and/or extreme cruelty.

All of these forms of relief are available to non-citizen minors. The most common form of relief CLASI seeks on behalf of non-citizen minors in Delaware is SIJS, as by definition all of the UACs placed in Delaware have no parent or legal guardian in the United States available to provide care and physical custody.[5] Between October 2016 and February 2018, ORR placed 272 UACs with sponsors in the State of Delaware.[6] Based on CLASI's experience working with and representing UACs placed in Delaware, CLASI is concerned that the release and post-release services, particularly legal orientation and referral services, provided to UACs and their sponsors by ORR are insufficient; these concerns are also raised in the Subcommittee's report entitled *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*. CLASI has identified the following three areas related to the release and post-release services which have presented detriment to UACs placed with a sponsor in Delaware:

1. Sponsors are often unaware that they are not the legal guardian of the UAC, and are provided with no resources which refer them to agencies which may assist them with the legal custody or guardianship process;

2. Sponsors often lack information and understanding regarding the venue and importance of the UAC's hearings in Immigration Proceedings; and

3. Sponsors are often unaware and/or lack understanding regarding the UAC's ability to seek and obtain employment in the United States.

With regards to CLASI's first concern, many sponsors with whom UACs are placed speak limited English, and may not be literate in English. When the UAC is released to the sponsor, ORR indicates on the discharge paperwork, which is in English, that the sponsor must seek legal guardianship of the minor, but fails to indicate how, or where, the sponsor can begin that process in their state. The ORR discharge paperwork provided to the sponsor also indicates that a legal services referral list is enclosed, but most sponsors in Delaware have indicated that they have not received a Delaware-specific list of legal service providers. Thus many sponsors are unaware that they are not the legal guardian of the UAC placed in their care by ORR, causing issues with medical, educational, and legal decision-making. Furthermore, because of this lack of awareness, many sponsors do not know to file for guardianship of the child in the State Family Court, causing the UAC to miss a window of opportunity to petition for and obtain SIJS.

4 Violent Crime Control and Law Enforcement Act of 1994; Title IV, Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994), amended in 1996, 2000, 2006 and 2013.
5 6 U.S.C. § 279(g)(2).
6 Office of Refugee Resettlement, Unaccompanied Alien Children Released to Sponsors By State, at https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state

Moreover, because sponsors and UACs are typically unable to effectively navigate the State Family Court and immigration systems *pro se*, and are not provided with referral information to agencies where they may obtain advice and/or legal representation, many UACs are unable, or simply do not, seek immigration relief for which they are eligible in order to remain in the United States with lawful status. A lack of legal representation has a detrimental impact on the UAC's ability to successfully seek status and remain in the United States. A recent study by the University of Syracuse found that over half of the children appearing in immigration court are *pro se*, and that represented children have a 73% success rate in immigration court, as compared to only 15% of unrepresented children.[7] Furthermore, the study found that the vast majority of children represented by lawyers appear for their hearings in immigration proceedings.[8] In other words, represented UACs are more likely to appear, and are more likely obtain lawful status and remain in the United States in safety. Thus ensuring that sponsors and UACs are aware of available legal services and are effectively referred to them will likely lead to positive outcomes for more UACs in immigration proceedings.

In order to inform and educate sponsors regarding petitioning for legal guardianship and the importance thereof, CLASI recommends that ORR provide both oral and written information and orientation sessions in the sponsor's primary language, indicating that the sponsor should seek legal guardianship in the state juvenile court where they reside, in order to be the recognized decision-maker regarding the care and custody of the UAC. Likewise, CLASI recommends that ORR provide the sponsor with a referral list of state-specific agencies which may provide advice and representation to the sponsor and UAC on such matters. Finally, CLASI requests that ORR consider creating a policy that requires ORR to communicate with a designated state agency, indicating that a UAC has been placed in the state, and with whom, in order to ensure state-side follow-up on the UAC and their legal situation.

Second, sponsors often lack information and understanding regarding the venue and importance of the UAC's hearings in Immigration Proceedings. Again, given the language and literacy barriers faced by many sponsors and UACs, the sponsors may not understand that one of their principal tasks is to ensure the UAC's appearance at immigration proceedings.

Furthermore, many UACs are held in ORR custody at an ORR facility that is a great distance from the sponsor, and the UAC is placed into immigration proceedings at the Immigration Court based upon their ORR placement location. Often, once the UAC is released from ORR custody to a sponsor located in a different state, the venue of the UAC's immigration proceedings must be changed. In many cases, ORR does not orient regarding or assist with the filing of a motion to change venue with the Immigration Court from the jurisdiction where the child was held by ORR, to the jurisdiction to which child was released to their sponsor. This often results in missed court appearances or extremely onerous travel for the UAC and their

---

7 University of Syracuse, *TRAC Immigration Data*, at http://trac.syr.edu/immigration/reports/359/include/about_data.html.
8 *Id.*

sponsor to appear at the hearing in the original venue. For example, in a recent case, a Delaware sponsor was advised by ORR that the location of the UAC's immigration hearing was changed from the Immigration Court in Chicago, Illinois, where the UAC was held in ORR custody, to the area to which the minor moved – the Immigration Court in Philadelphia, Pennsylvania, which has jurisdiction over UACs residing in the State of Delaware. However, this information was incorrect, and the UAC and the sponsor had no way of knowing that the venue was not changed, or how to motion the court to change the venue on their own, until receiving consultation and representation at CLASI.

In order to inform and educate sponsors and UACs regarding the venue and importance of the UAC's hearings in Immigration Proceedings, CLASI again recommends that ORR provide both oral and written information and orientation sessions in the sponsor's primary language, indicating the importance and logistics of the UAC's Immigration Proceedings. Likewise, CLASI recommends that ORR provide the sponsor with a referral list of state-specific agencies which may provide advice and representation to the sponsor and UAC on such matters.

Third and finally, sponsors often lack information regarding the UAC's ability to seek and obtain employment in the United States. As indicated above, many sponsors face linguistic and literacy barriers that prevent them from fully appreciating the written warning, in English, which they receive from ORR at the time of the UACs release, regarding the UAC's inability to work with in the care of the sponsor. Culturally, many youth expect to work, regardless of their age or immigration ability to do so. Financially, many UACs and their sponsors feel the UAC may need to work in order provide support and payment for their journey to the United States. In order to inform and educate sponsors and UACs regarding the UAC's inability – both based on age and immigration status – to work in the United States, CLASI again recommends that ORR provide both oral and written information and orientation sessions in the sponsor's primary language, explaining why the minor cannot, and should not, work in the United States.

CLASI is grateful for the Subcommittee's willingness to learn about the legal issues and barriers faced by UACs placed with sponsors in Delaware. Thank you again for your time and consideration of this issue.

Respectfully submitted,

Laura Carothers Graham, Esquire
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Managing Attorney – Immigration & Medical-Legal Partnership Program
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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

May 23, 2017

Mr. Scott Lloyd
Director
Office of Refugee Resettlement
Department of Health and Human Services
330 C Street SW, Room 5123
Washington, DC 20201

Dear Mr. Lloyd:

The Committee on Homeland Security and Governmental Affairs is continuing its oversight of how lax border security affects American communities. Tomorrow, the Committee will convene a hearing titled *Border Insecurity: The Rise of MS-13 and Other Transnational Criminal Organizations*. At the hearing, local law enforcement officials from around the country will offer testimony regarding the rise of MS-13 and other transnational gangs stemming from our insecure southwest border.

I recently became aware of Customs and Border Protection (CBP) documents from July 2014—the height of the surge of unaccompanied children (UAC) arriving at our border. These documents appear to indicate that CBP apprehended self-identified MS-13 gang members at the border. I write to inquire about the placement of these UAC gang members and the policies that the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) have in place for the processing and placement of these UACs.

According to a CBP Significant Incident Report dated July 5, 2014, self-identified MS-13 gang members defaced bathrooms at the placement center in Nogales, Arizona. All of these individuals were originally apprehended in Texas.[1] The report reads:

> On July 5, 2014, during the 4pm to 12am shift at the [Nogales Placement Center], several temporary bathrooms were observed to have graffiti markings inside and outside of the bathroom housing. These markings were identified as markings associated with the criminal gang known as Mara Salvatrucha (MS-13). During the graffiti investigation Border Patrol Agents/Customs and Border Protection Officers assigned to the NPC identified multiple admitted MS-13 gang members. The subjects listed below were identified as MS-13 gang members. All identified members listed below freely admitted to Officers and Agents that they were active MS-13 gang members.

[1] U.S. Customs and Border Protection Significant Incident Report, SIR Number 14-TCANGL-070714000166.

> All MS-13 subjects will be processed via notice to appear; their hearings and subsequent proceedings will be expedited.
>
> The ICE Homeland Security (HSI), Ice Enforcement and Removal Operations (ERO) and the Office of Refugee Resettlement (ORR) was contacted and advised of situation.[2]

Another document connected to the detention of these individuals noted that as of July 11, 2014, "all identified gang members at the Nogales Placement Center (NPC) have been placed in the appropriate placement center and are no longer being held at the NPC."[3] According to this document, 16 "identified juvenile gang members" were transferred to placement centers around the country—Shenandoah Valley Juvenile Center, Virginia; Selma Carson Staff Secure, Washington; NOVA Staff Secure, Virginia; SWK-MESA Staff Secure, Texas; Children's Village, New York; and Ft. Sill Army Training Center, Oklahoma.[4] The Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS) is responsible for the care and custody of UACs apprehended by CBP.[5]

A third document indicates that on July 11, 2014, CBP apprehended two other UACs that admitted to being gang members. One individual admitted that he was part of MS-13 and "was boosting to other juveniles in his cell on his gang affiliation and stating he was a drug dealer and stating he would continue to do the same in the United States with his family."[6] The other individual admitted he was affiliated with the Sureno 18 gang and that he was "involved in multiple robberies, assaults and drug dealing" since he joined the gang at 15 years old.[7] Both of these individuals were "separated from the general population and transferred to the holding cells in the Nogales Detention Facilities, where they will remain until being placed."[8]

These documents appear to show that the federal government knowingly moved self-identified gang members from Nogales, Arizona to placement centers in communities across the country. As you know, it is common for UACs to be released from their placement center while awaiting a court date. It is unclear from these July 2014 documents whether any of these self-identified UAC gang members were released.

To assist the Committee in understanding how UACs with known gang affiliations are processed and placed by the federal government, I respectfully request the following information and materials:

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[2] *Id.*
[3] Email from redacted to JOIC-CBP, July 11, 2014.
[4] *Id.*
[5] Dep't of Health & Human Servs., Off. of Refugee Resettlement, Unaccompanied Children's Services, https://www.acf.hhs.gov/orr/programs/ucs.
[6] Email from redacted to JIOC-CBP, July 12, 2014.
[7] *Id.*
[8] *Id.*

1. Please provide an accounting of all UACs who self-identified as gang members or affiliates when they were apprehended at the southwest border since FY 2010. For each UAC, please include their age at the time of apprehension, the date of apprehension, gang affiliation, placement location, state of the sponsor, and date of transfer. Please omit the UACs' name.

    a. For each UAC identified above, please indicate whether the UAC was released from the placement center. If so, please identify the date of release, state of the sponsor, and whether the UAC remains in the United States. Please omit the sponsor's name.

2. Please explain whether HHS received any information from CBP or otherwise about a UAC's past criminal history or gang affiliation prior to referral, during custody, and after the release of the UAC to a sponsor. If any of the above information is received by HHS, please explain how that information was provided to HHS and by whom.

3. Please explain ORR's procedures for processing and placing UACs who self-identify as having a gang membership or affiliation when apprehended at the border.

4. Please explain ORR's policy for releasing a UAC to a sponsor if HHS knows the UAC has a potential or actual gang affiliation.

5. Please provide copies of any Memorandum of Understanding between DHS and HHS regarding the placement and processing of UACs.

6. Who at ORR is responsible for ensuring DHS is sharing the most current information to it prior to making a UAC referral or release?

Please provide these materials as soon as possible, but by no later than June 6, 2017. After reviewing this information, the Committee may seek a staff-level briefing at the appropriate time.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."[9] Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine "the efficiency and economy of operations of all branches and functions of Government with particular references to (i) the effectiveness of present national security methods, staffing, and processes . . . ."[10]

If you have any questions regarding this letter, please ask your staff to contact Kyle Brosnan or Brian Downey of my staff at (202) 224-4751. For purposes of this request, please

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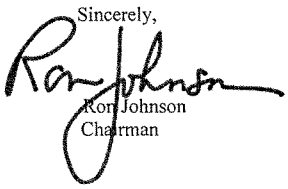
[9] S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).
[10] S. Res. 62 § 12, 114th Cong. (2015).

refer to the definitions and instructions in the enclosure. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

Kevin L. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas Homan
Acting Director
Immigration and Customs Enforcement

Enclosures

Joint Operation nets 24 transnational gang members, 475 total arrests under Operation Matador

For still photos and B-roll for the operation, visit DVIDS.

NEW YORK — Twenty-four were arrested Thursday under Operation Matador, the intelligence driven, unified effort to combat the proliferation of MS-13 and other transnational criminal gang activity in Long Island, the New York City metropolitan area and Hudson Valley. This brings the total arrested under this initiative to 475.

Operation Matador, operating under the U.S. Department of Homeland Security (DHS) Transnational Organized Crime Initiative (DHS TOCI), was launched by U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) New York along with ICE Enforcement and Removal Operations (ERO). This joint initiative is comprised of HSI special agents, ERO deportation officers and the ICE Office of Principal Legal Advisor (OPLA); U.S. Customs and Border Protection (CBP); U.S. Citizenship and Immigration Services (USCIS), and state and local law enforcement partners to include Suffolk County Police Department (SCPD), Nassau County Police Department (NCPD) and the Hempstead Police Department. The DHS TOCI is responsible for identifying, interdicting and investigating a wide variety of transnational border crime with a concentration on MS-13 gang activity.

"Operation Matador sends a clear message to violent street gangs that there are consequences for their actions. Since this operation began last year, we have seen a decrease in the amount of violent crime directly related to MS-13 and other transnational gangs," said ICE Deputy Director Thomas D. Homan. "That is a direct result of the strong partnerships between ICE Homeland Security Investigations, local law enforcement, and our community partners in support of a common goal: targeting and dismantling transnational criminal organizations. We will not rest until our communities are safe and these dangerous individuals are brought to justice."

"U.S. Customs and Border Protection is extremely proud to have assisted in this operation," said Leon Hayward, Acting Director New York Field Office. "It is through our interagency partnerships and collaborative approaches like the one leading to today's arrests, that law enforcement successfully combats modern criminal organizations."

"U.S. Citizenship and Immigration Services' New York District and New York Asylum Offices are proud of the role we played in investigations leading to the arrests of violent gang members who have plagued Nassau and Suffolk Counties," said Thomas M. Cioppa, USCIS New York District Director. "We will continue to support Immigration and Customs Enforcement and our other state and local partners in any issues concerning public safety or national security."

"I would like to congratulate all of the associated agencies and their investigators on their dedication and relentless pursuit to ensure that all of our residents and communities are safe from

the violence that these gangs promote," said Patrick Ryder, Commissioner of Police for NCPD. "The arrests should send a strong message to all gangs that we will not tolerate their unlawfulness and intimidation. Our agencies will continue to collaborate to decrease the violence that is associated with these gangs".

Operation Matador results since May 2017

A total of 475 individuals were arrested during this ongoing enforcement effort, most of which were confirmed as gang members and affiliates. The most prominent gangs with arrests during this operation were MS-13 with 274 arrests and the 18th street gang with 15 arrests. This operation yielded 227 total criminal arrests and 248 administrative arrests.

Of the gang members arrested during this ongoing enforcement action, 80 had additional criminal histories, including prior convictions for assault and weapons charges. 5 are facing serious criminal charges. Others taken into custody during the operation included:

- An MS-13 member from El Salvador who admitted to killing rival gang members at the age of 12 in his home country and assimilated to the gang on Long Island, involved in criminal activity was arrested and deported.
- An El Salvador national wanted, pursuant to an Interpol Red Notice for killing law enforcement in El Salvador.
- An MS-13 member arrested in Brentwood admitted to killing three gang members in El Salvador at the age of 13.
- An 18th Street Gang Member as part of this enforcement operation yielded a handgun that was likely going to be used against a rival gang.

The arrestees, 462 male and 13 female, included nationals from 10 countries – El Salvador (199); Honduras (56); Mexico (31); Guatemala (27); Ecuador (05), Dominican Republic (21) and St. Lucia (1).

Nassau County accounted for 210 arrests, the largest number of arrests during this operation to date, but DHS TOCI personnel conducted enforcement actions in multiple communities throughout Long Island, New York City and the Hudson Valley area.

Nassau County	210
Suffolk County	177
Queens	36
Brooklyn	12
Bronx	18
Spring Valley	19

Other States	3

Area Arrest Totals

Ninety-nine individuals arrested during this operation crossed the border as unaccompanied minors, all of which were confirmed as MS-13 gang members. 64 individuals arrested during this operation obtained Special Immigrant Juvenile Status (SIJ) after entering the country, all of which were confirmed as MS-13 gang members. Of the 99 UACs, 64 had SIJ status.

Of those arrested during this ongoing operation, 65 have been ordered released from ICE detention by an immigration judge. 4 have been re-arrested for local criminal charges.

It is important to note that not all evidence is presented before an immigration judge for a detention hearing. Some evidence is withheld in order to safeguard the integrity of law enforcement's investigative techniques and protect concurrent or future investigations.

Some of the individuals arrested during the enforcement action will be presented for federal prosecution for re-entry after deportation, a federal felony. Those not being criminally prosecuted will be processed for removal from the country. Individuals who have outstanding orders of deportation, or who returned to the United States illegally after being deported, are subject to immediate removal from the country on federal charges. The remaining arrestees are entered into immigration proceedings and will go before an immigration judge.To date, a total of 70 have received a final order of removal issued by an immigration judge and have been removed from the United States to their home countries.

Partnerships are key to this ongoing effort in combating transnational gangs. Special thanks to the Hempstead Police Department, New York National Guard (NYNG) Counter Drug Taskforce, Drug Enforcement Administration's (DEA) Long Island District Office, U.S. Border Patrol Westchester County District Attorney's Office, Rockland County Sheriff, Rockland County Intelligence Center, Piermont Police Department, Ulster County Sheriff, and Sullivan County Sheriff.

Operation Matador in New York is conducted under the auspices of the national gang enforcement effort, Operation Community Shield.

About Operation Community Shield and MS-13

As part of Operation Community Shield, HSI has effected nearly 5,000 criminal arrests and more than 3,200 civil immigration arrests of MS-13 leaders, members and associates, including criminal arrests for Racketeering Influence Corrupt Organizations (RICO), Violent Crime in Aid of Racketeering (VICAR) and gang conspiracy violations investigated by HSI New York, HSI Long Island, HSI Baltimore, HSI DC, HSI Charlotte, HSI Newark, HSI Boston, HSI San Francisco, HSI San Jose, HSI Los Angeles, HSI Detroit, HSI Nashville, HSI Houston, and our state and local law enforcement partners.

In October 2012, HSI worked with the U.S. Department of Treasury's Office of Foreign Assets Control to designate MS-13 as the first transnational criminal street gang as a TCO. As a result of the designation, any property or property interests in the United States, or in the possession or control of U.S. persons in which MS-13 has an interest, are blocked.

HSI's National Gang Unit

HSI's National Gang Unit oversees HSI's expansive transnational gang portfolio and enables special agents to bring the fight to these criminal enterprises through the development of uniform enforcement and intelligence-sharing strategies.
To report suspicious activity, call ICE's 24-hour toll-free hotline at: 1-866-DHS-2-ICE or visit www.ice.gov.

Last Reviewed/Updated: 04/03/2018

Related Information

Media Inquiries

For media inquiries about ICE activities, operations, or policies, contact the ICE Office of Public Affairs at (202) 732-4242.

Related Web Features:

HSI continues transnational gang fight in 2017
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For still photos and B-roll for the operation, visit DVIDS.

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Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE
Thursday, November 16, 2017

22 MS-13 Members and Associates Charged Federally in ICE's MS-13 Targeted 'Operation Raging Bull' Which Netted a Total of 267 Arrests

53 arrested in El Salvador, 214 arrested across the United States

U.S. Department of Justice and U.S. Department of Homeland Security (DHS) officials today announced the results of stepped up efforts by U.S. Immigration and Customs Enforcement (ICE) and the department to target and dismantle MS-13 – culminating in the arrest of 267 in the United States and overseas.

"Operation Raging Bull" was led by ICE's Homeland Security Investigations (HSI) with support from federal, state, local and international law enforcement partners, and was conducted in support of the Department of Justice's renewed prioritization of the violent transnational gang.

"With more than 10,000 members across 40 states, MS-13 is one of the most dangerous criminal organizations in the United States today," said Attorney General Jeff Sessions. "President Trump has ordered the Department of Justice to reduce crime and take down transnational criminal organizations, and we will be relentless in our pursuit of these objectives. That's why I have ordered our drug trafficking task forces to use every law available to arrest, prosecute, convict, and defund MS-13. And we are getting results. So far this year, we have secured convictions against more than 1,200 gang members and worked with our partners in Central America to arrest and charge some 4,000 MS-13 members. I want to thank the Department of Homeland Security, our federal law enforcement agents and prosecutors from the U.S. Attorneys' Offices and the Criminal Division's Organized Crime and Gang Section as well as Treasury, BOP, DOJ's OCDETF task force members, and all of our state and local law enforcement partners for their hard work. These 267 arrests are the next step toward making this country safer by taking MS-13 off of our streets for good."

"MS-13 has long been a priority for ICE. However we are now combating the gang with renewed focus and an unprecedented level of cooperation among DHS's components and our domestic and international partners," said Thomas Homan, ICE Deputy Director and Senior Official Performing the Duties of the Director. "ICE has the ability to pursue complex criminal cases using our statutory authorities and to prevent crime by using our administrative arrest authorities to remove gang members from the country. We will not rest until every member, associate, and leader of MS-13 has been held accountable for their crimes, and those in this country illegally have been removed."

The operation was conducted in two phases, targeting dangerous gang members and their global financial networks. The first phase of the operation which was announced previously, netted 53 arrests in El Salvador at the conclusion of an 18-month investigation in September. The second phase was conducted across the United States from Oct. 8 to Nov. 11, and concluded with 214 MS-13 arrests nationwide.

HSI received significant operational support, including intelligence sharing and collaboration, from ICE's Enforcement and Removal Operations (ERO), U.S. Customs and Border Protection (CBP), U.S. Border Patrol, U.S. Citizenship and Immigration Services (USCIS), the U.S. Department of Treasury, U.S. Department of Justice's Bureau of Prisons (BOP), as well as state, local, federal, and international law enforcement partners. The Organized Crime and Gang Section of the Justice Department's Criminal Division, with funding from the Organized Crime Drug Enforcement Task Forces, along with the U.S. Attorneys' Offices in the Districts of Arizona, Maryland, Massachusetts, Northern District of California, Southern District of Iowa and Southern District of Texas, and are prosecuting the cases.

"Securing the homeland is a critical piece of the USCIS mission," said USCIS Director L. Francis Cissna. "We are committed to supporting and providing intelligence to our law enforcement colleagues on public safety initiatives like Operation Raging Bull. We will bring all of our agency's resources to bear in helping protect the American public from violent crime, and in the pursuit of those who seek to endanger the security of our nation."

"This joint effort is not new. It is something we all do as law enforcement," said Border Patrol Deputy Chief Scott Luck. "I look forward to continue working with my partners here at Headquarters as well as the field to address not just this threat but all threats."

"The Bureau of Prisons is proud to have supported our local, state, and federal law enforcement partners in this successful effort to enhance public safety," said Assistant Director Frank Lara for the Federal Bureau of Prisons Correctional Programs. "The Bureau of Prisons will continue to work collaboratively to combat the threat violent gangs pose inside prisons and in the community."

Of the total 214 arrests made in the United States, 93 were arrested on federal and/or state criminal charges including murder, aggravated robbery, Racketeering Influenced Corrupt Organization (RICO) offenses, Violent Crime in Aid of Racketeering (VICAR) offenses, narcotics trafficking, narcotics possession, firearms offenses, domestic violence, assault, forgery, DUI and illegal entry/reentry. The remaining 121 were arrested on administrative immigration violations.

Sixteen of the 214 arrested were U.S. citizens and 198 were foreign nationals, of which only five had legal status to be in the United States. Foreign nationals arrested were from El Salvador (135), Honduras (29), Mexico (17), Guatemala (12), Ecuador (4) and Costa Rica (1).

Sixty-four individuals had illegally crossed the border as unaccompanied alien children;

most are now adults.

Examples of the federal prosecutions during this operation include:

- In Baltimore, Maryland, the arrest and indictment of four MS-13 members on charges that include violent crimes in aid of racketeering and conspiracy to commit murder in aid of racketeering;
- In Greenbelt, Maryland, the arrest and indictment of eight MS-13 members on charges that include conspiracy to participate in a racketeering enterprise, conspiracy to distribute and possession with intent to distribute controlled substances and conspiracy to interfere with interstate commerce by extortion; and
- MS-13 members and associates were arrested in East Boston and Chelsea, Massachusetts; Falfurrias, Hidalgo and Laredo, Texas; Nogales, Tucson and Yuma, Arizona; Council Bluffs, Iowa; Annapolis, Baltimore, Clinton, Beltsville, Upper Marlboro, Centreville and Jessup, Maryland; and San Jose, California and charged with various federal offenses including illegal alien in possession of a firearm and illegal re-entry after deportation.

Following this operation, ICE has added six MS-13 fugitives to its list of "most wanted" individuals, including one fugitive wanted for homicide in Montgomery County, Texas, and five others wanted for their involvement in the homicide and attempted homicides of El Salvadoran police officers. All are suspected of being somewhere in the U.S.

Individuals are confirmed as gang members if they admit membership in a gang; have been convicted of violating Title 18 USC 521 or any other federal or state law criminalizing or imposing civil consequences for gang-related activity; or if they meet certain other criteria such as having tattoos identifying a specific gang or being identified as a gang member by a reliable source.

Gang associates are individuals who exhibit gang member criteria but who are not formally initiated into the gang. Law enforcement officers encountering these individuals will determine whether indications of gang association are present by referring to the gang membership criteria.

Component(s):
Office of the Attorney General

Press Release Number:
17-1301

Updated November 16, 2017

DEPARTMENT of JUSTICE
ACTION CENTER

CWS Statement to the U.S. Senate Committee on Homeland Security and Governmental Affairs pertaining to its hearing "Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse" on Thursday, April 26, 2018

As a 72-year old humanitarian organization representing 37 Protestant, Anglican and Orthodox communions and 22 refugee resettlement offices across the U.S., Church World Service urges all Senators to recognize the importance of access to protection in combating human trafficking and saving lives. Children, families, women, and men are fleeing violence, gang conscription, human trafficking, and sexual exploitation in the Northern Triangle. Since 2005, in Honduras alone, murders of women and girls have increased by 346 percent, and murders of men and boys have grown by 292 percent.[1] Rather than treating this as a humanitarian crisis, the U.S. government has dealt with it exclusively as a border security issue. The United States has legal obligations under international[2] and U.S[3] law to ensure that individuals seeking protection are not returned to those who seek to exploit them.

HHS is in the best position to ensure children under the protection of the U.S. government are not abused, as it has the child welfare, human trafficking, and refugee resettlement expertise to care for vulnerable unaccompanied children. ORR provides post-release case management services, legal representation, and child advocates for some unaccompanied children to ensure they are released to suitable caregivers. However, due to historic underfunding, ORR's existing resources have been overwhelmed – even before the steep increase in unaccompanied children in 2014.[4] As these services reach only a small fraction of children who are eligible to receive them,[5] robust funding is critical so that all unaccompanied children have access to post-release case management services. We call on Congress to ensure ORR is funded to protect all children's safety, and to provide ORR with contingency funds so that in times of unanticipated arrivals, ORR can adequately provide the full continuum of care. In addition, Congress should require HHS to report on the post-release services provided to children and families.

The United States also has a rigid system for applying for asylum to safeguard U.S. national security. Arriving asylum seekers are subject to mandatory biographic and biometric checks reviewed against various federal databases by well-trained fraud detection officers. Asylum seekers are often placed in immigration detention pending a determination by an asylum officer regarding whether they have a credible fear of persecution as a result of their race, religion, nationality, political opinion, or membership in a particular social group. Those determined to lack a credible fear of persecution are subject to removal. Individuals found to have a credible fear of persecution may be subject to detention while they await further consideration by an immigration judge, or they may be released on a case-by-case basis if they do not pose a security or flight risk. Current law strictly prohibits granting asylum to any person who has engaged in terrorist activity or poses a threat to the security of the United States. The Department of Homeland Security (DHS) denies protection to many asylum seekers who are fleeing brutal regimes and violent persecution.[6] Barriers to protection for vulnerable populations like asylum seekers are unnecessary and dangerously impede our obligations to protect bona fide asylum seekers under international and domestic immigration law.

CWS remains strongly opposed to legislation that would weaken provisions in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA) that provides important procedural protections for unaccompanied children as they navigate the complex immigration process in order to accurately determine if they are eligible for protection[7] Asylum seekers and unaccompanied children have the right to seek protection from persecution and violence[8] and are complying with U.S. law. Weakening existing legal protections would undermine the U.S. government's moral authority as a leader in combating trafficking, and would increase vulnerabilities for trafficking victims by curtailing access to due process, legal representation, and child-appropriate services. CWS urges all Senators to prioritize the protection of children who are seeking safety, and is committed to working with Congress and the administration to develop sustainable solutions for the protection of vulnerable populations.

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[1] Observatory of Citizen Security, La Violencia Contra Las Mujeres, 2012. <http://www.observatoriodeseguridadciudadanadelasmujeres.org/materiales/INFORME_VCM_C.A.,pdf>; Washington Office of Latin America, Three Myths about Central American Migration to the United States, 2014. <http://www.wola.org/commentary/3_myths_about_central_american_migration_to_the_us>.

[2] The Convention on the Rights of the Child, Articles 2, 3, 6 and 22. www.ohchr.org/en/professionalinterest/pages/crc.aspx
The Universal Declaration of Human Rights, Article 14. www.un.org/en/documents/udhr/index.shtml#a14
United Nations General Assembly, Declaration on Territorial Asylum, 14 December 1967, A/RES/2312(XXII). www.refworld.org/docid/3b00f05a2c.html
United Nations High Commissioner for Refugees, A Framework for the Protection of Children www.unhcr.org/50f6cf0b9.html and United Nations High Commissioner for Refugees, Convention and Protocol Relating to the Status of Refugees. www.unhcr.org/3b66c2aa10.html

[3] U.S. Code Title 22: Foreign Relations and Intercourse, Chapter 78: Trafficking Victims Protection; and U.S. Code Title 8: Aliens and Nationality, Chapter 12: Immigration and Nationality, Section 1158: Asylum. http://uscode.house.gov

[4] Lutheran Immigration and Refugee Services, At the Crossroads for Unaccompanied Migrant Children: Policy, Practice, & Protection, July 2015. <http://lirs.org/wp-content/uploads/2015/07.LIRS_RoundtableReport_WEB.pdf>.

[5] Lutheran Immigration and Refugee Services, FAQ: Protecting Unaccompanied Children from Trafficking or Other Harm, 2015. <http://lirs.org/wp-content/uploads/2015/10/LIRS_FAQTraffickingReunificationScreening_1510.pdf>.

[6] DHS Office of Inspector General, *Streamline: Measuring Its Effect on Illegal Border Crossing*, OIG-15-95, 15 May 2015. https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf.

[7] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) § 235. <http://www.state.gov/j/tip/laws/113178.htm>.

[8] Article 14, The Universal Declaration of Human Rights. <www.un.org/en/documents/udhr/index.shtml#a14>; U.S. Code Title 8: Aliens and Nationality, Chapter 12: Immigration and Nationality, Section 1158: Asylum. <http://uscode.house.gov>.

Post-Hearing Questions for the Record
Submitted to James W. McCament
Deputy Under Secretary
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security
From Chairman Rob Portman and Ranking Member Tom Carper

"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"
April 26, 2018

Question#:	1
Topic:	Aged Out UACs
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: When children turn 18 and age out of the Department of Health and Human Service's (HHS) UAC program, the Department of Homeland Security (DHS) can choose to detain them or release them pending completion of their immigration proceedings.

How does Immigration and Customs Enforcement (ICE) make this decision?

Response: U.S. Immigration and Customs Enforcement (ICE) follows applicable statutory standards. ICE cannot further comment on this matter as it involves a matter in active litigation.

Question: Is ICE required to evaluate the circumstances for each release prior to taking custody? If so, what standards does ICE use to evaluate those circumstances?

Response: ICE cannot further comment on this matter as it involves a matter in active litigation.

Question: Are there instances in which this evaluation does not take place prior to a transfer in custody? If so, how often?

Response: ICE cannot further comment on this matter as it involves a matter in active litigation.

Question#:	2
Topic:	Arresting Procedures
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What are DHS's policies and procedures regarding arresting UAC's sponsors at the UAC's court proceedings and schools?

Response: The Department of Homeland Security (DHS) ensures the proper enforcement of our immigration laws against those who—directly or indirectly—facilitate the smuggling or trafficking of any children into the United States. This includes placing sponsors who are removable aliens either into removal proceedings or referring them for criminal prosecution, as appropriate. Within DHS, U.S. Immigration and Customs Enforcement (ICE) has a policy in place for enforcement actions at or focused on sensitive locations, including schools. ICE has a separate policy on civil immigration enforcement actions inside courthouses. ICE Policy Memorandum, *Enforcement Actions at or Focused on Sensitive Locations,* can be found at https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf; ICE Directive 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses,* can be found at https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf.

Question#:	3
Topic:	INA Notices
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Sponsors are required to ensure that a child attends all immigration-related court proceedings. Under the Immigration and Nationality Act, an immigration judge shall issue an in absentia removal order when children fail to appear at a court hearing and DHS establishes that the children received required notice and are removable.

How does DHS determine that a child received the required notice?

Response: In removal proceedings, the immigration judge determines whether an unaccompanied alien child (UAC) received proper notice of the hearing when assessing whether to enter an *in absentia* order. The Department of Homeland Security (DHS) does not confirm receipt of the hearing notice prior to the hearing if (1) the child is not in DHS or Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) custody, and has instead been released to a sponsor who signed an agreement stating they will bring the child to court appearances, or (2) was released with parents who were also issued a Notice to Appear.

It is the responsibility of the immigration court to mail a hearing notice to the UAC's address, as contained in the Notice to Appear (which is the charging document in removal proceedings) or in the Discharge Notification Form (DNF). The DNF is created by ORR and the address, contained therein, is procured directly from the UAC's parent or sponsor before the UAC is released from custody by ORR.

Question: How does DHS work with HHS to ensure that a child is safe if he or she misses court proceedings?

Response: When an UAC is released from ORR custody, ORR notifies the applicable U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Field Office Juvenile Coordinator (FOJC) via a DNF. The DNF includes the sponsor's name, address, telephone number, and relationship to the UAC and is available 24 hours after release from custody. If ICE ERO staff of ICE Office of Principal Legal Advisor (OPLA) attorneys in the immigration courts identify potential trafficking indicators or victimization, they coordinate with investigative authorities, primarily ICE Homeland Security Investigations (HSI) and its victim assistance resources, for follow-up. ICE ERO and OPLA staff also provide this information to ORR. ICE defers to HHS for additional information as to how they ensure a child is safe following notification from ICE that the child has missed court proceedings.

Question#:	4
Topic:	UAC Screening
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: The Trafficking Victims Protection Reauthorization Act permits DHS to bypass referral to the Office of Refugee Resettlement (ORR) of UACs from Mexico and Canada if DHS determines that the child (1) is not a trafficking victim; (2) is not at risk of trafficking upon return to his or her country; (3) does not have a credible fear of persecution; and (4) is able to make an independent decision about returning to his or her home country. This requires DHS to screen all Mexican and Canadian UACs for trafficking, asylum, and capacity concerns. In 2015, the Government Accountability Office (GAO) found that Customs and Border Protection (CBP) failed to consistently conduct these screenings and failed to document the rationale for its decisions. Nearly three years later, CBP has still not finalized the screening tools and trainings recommended by GAO to address this serious lapse in child protection practice. What steps is DHS taking to fulfill these requirements for anti-trafficking and child protection mechanisms in our law?

Response: The Department of Homeland Security takes seriously its responsibility to protect alien children from human smuggling, trafficking, and other criminal actions, while ensuring that our immigration laws are enforced. CBP works diligently to ensure that UAC are continuously, effectively, and appropriately screened for the elements stated above. Specifically, CBP established a working group comprised of representation from all of the CBP operational components, as well as ICE, CRCL, the DHS Blue Campaign, and HHS to examine the GAO's recommendations. CBP recently finalized a revised Form 93 and is working to complete a reference guide that will accompany the form.

Question#:	5
Topic:	Joint Concept of Operations
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: On February 16, 2018, DHS provided unsatisfactory answers to several questions from our staff. We have attached your responses here, and we ask you to provide specific answers to the following questions:

How many rounds of review has the JCO [Joint Concept of Operations (JCO)] gone through?

What are the dates the JCO was sent to or received from HHS?

Who specifically was responsible for working on [the JCO]? What individuals at DHS are currently working on the JCO?

Who at DHS would be the point person for [UAC gang-related initiatives]? (Recognizing that DHS's answer is that multiple people are involved in these initiatives, please provide their names and titles.)

Response: DHS and HHS are currently in the process of completing the JCO. Per your request, representatives from both Departments briefed your staff on June 4, 2018, to further discuss the status of the JCO and to provide a summary of its contents. The briefing was a productive step forward, and we look forward to continuing the conversation with you and your staff. Once we finalize the JCO, we will be able to provide a follow-up briefing, and answer appropriate questions while protecting the privacy interests of our employees.

Question#:	6
Topic:	Collaboration with HHS and DOJ
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: In DHS's February 16, 2018 responses, DHS stated that the JCO will not address the Department of Justice's role in UAC removal proceedings. Please explain how DHS, HHS, and DOJ are collaborating to ensure that UACs appear at their removal proceedings, and, if they do not appear, what all three departments are doing to ensure the UACs' safety.

Response: The concern for UAC safety does not start with failure to appear for court. DHS takes seriously the responsibility to ensure the safety of these children throughout the entire process. On April 13, 2018, HHS, CBP, and ICE entered into a memorandum of agreement (MOA) "Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters." This MOA will help protect children from exploitation and deter criminals by making sure we more thoroughly vet potential sponsors of UACs. The MOA establishes a process to share information regarding potential sponsors of UACs in HHS custody prior to their release, and includes a process for vetting potential sponsors and adult household members. The MOA also provides a process by which HHS will collect fingerprints of potential sponsors, which will be shared with DHS for queries of appropriate law enforcement and immigration databases. HHS will use the results to conduct UAC sponsor suitability assessments prior to UAC placement. MOA partners believe the interagency effort will increase UAC safety and better ensure they and their sponsors are tracked and that court dates are met.

Question#:	7
Topic:	Review of UAC Protection
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Sen. McCaskill asked DHS and HHS to "commit to looking at ways you might be able to notify states and localities [when UACs are placed in communities] so these children will have an extra layer of protection. You and Mr. Wagner committed to undertaking that review.

What is the status of that review?

What steps do you plan to take in the course of that review?

By what date do DHS and HHS plan to complete that review?

Response: During the April 26th hearing, Senator Hassan (not Senator McCaskill) directed a comment/question to Acting Assistant Secretary Wagner, which included the portion of the above-referenced question. After Acting Assistant Secretary Wagner responded to Senator Hassan with an affirmative commitment, Senator Hassan also requested the same from Deputy Undersecretary for Policy James McCament.

According to statute, once UACs are transferred to HHS from DHS custody, it is HHS, not DHS, which administers the care, custody, and sponsorship-referral. While DHS does work with state and local entities, its partnerships are limited by statute, and include, for the most part, immigration enforcement-related functions. For example, DHS has the statutory authority to establish 287(g) agreements with states and localities. These agreements, which provide immigration enforcement training to law enforcement agencies, are currently in force in 20 states.

Under the recently signed Memorandum of Agreement (MOA) "Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters", DHS and HHS have committed to sharing information regarding potential sponsors prior to the UAC's release from HHS custody and to vet potential sponsors and adult household members. The MOA will also ensure HHS collects fingerprints of potential sponsors, which will be shared with DHS for queries of appropriate law enforcement and immigration databases. DHS is confident this MOA will respond to the kind of concerns raised by Senator Hassan regarding UAC protection.

Question#:	8
Topic:	Child Separation
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Sen. Harris asked you to provide DHS's policies, procedures, and training materials with regard to separating immigrant children from their parents. Please provide those materials to the Subcommittee.

Response: CBP looks forward to a follow-up briefing on the policies, procedures, and training material in regards to separating immigrant children and their parents.

Question: Sen. Harris asked you to provide the protocol DHS follows when apprehending a child and separating the child from his alleged family based on suspicion of trafficking. Please provide those materials.

Response: CBP looks forward to providing a follow-up briefing on the protocols in regards to the treatment of UAC.

Question#:	9
Topic:	Child Separation Statistics
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Sen. Harris asked you to provide a series of statistics to the Subcommittee regarding the approximately 700 children DHS separated from their families since October 2017 . Please provide regarding those approximately 700 cases:

How many of those children were separated from their alleged families at the southwest border of the United States?

Response: The U.S. Border Patrol separated 36 juveniles from family groups for the time period of 4/19/18 through 4/24/18. Data prior to 4/19/18 is not available as there were no indicators available to pull such data.

Question: How many of those children were under the age of four?

Response: Four.

Question: How many of those children and their alleged families stated they were seeking asylum?

Response: Specific data for the above cases is currently unavailable.

Question: What was the length of separation in each case?

Response: DHS is unable to determine the length of separation in each case.

Question: How many trafficking charges have been brought against the adults claiming to be parents of those children?

Response: As previously noted, DHS cannot obtain exact details on the underlying 700 cases to determine if/how many trafficking charges are associated with the cases. DHS defers to DOJ to provide information on any cases that resulted in prosecutions.

Question#:	10
Topic:	UAC Increase
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: On May 7, 2018, the Department of Justice announced that the Administration will increase its prosecution of parents crossing the border with children illegally. After their parents are arrested, the children will be treated as UACs.

What are DHS and HHS doing to prepare for the increase in UACs?

Response: U.S. Border Patrol (USBP) has increased collaboration with the U.S. Department of Health and Human Services (HHS) and U.S. Immigration and Customs Enforcement and Removal Operations (ICE ERO). Efforts are being made to relocate unaccompanied alien children in a more expeditious manner by having HHS Administration for Children and Families personnel onsite at four of the busiest sectors.

Question: Where do DHS and HHS plan to place these children?

Response: DHS respectfully defers to HHS Office of Refugee Resettlement (ORR).

Post-Hearing Questions for the Record
Submitted to James W. McCament
Deputy Under Secretary
Office of Strategy, Policy and Plans
U.S. Department of Homeland Security
From Senator Claire McCaskill

"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"
April 26, 2018

Question#:	11
Topic:	GAO Recommendations
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: The Government Accountability Office (GAO) made 13 recommendations to the Department of Homeland Security (DHS) almost three years ago and my understanding is that seven recommendations are still open. For each outstanding recommendation, please describe DHS's plans to implement that recommendation. If DHS has decided not to implement a recommendation, please explain the reason for this decision.

Response: The GAO issued the final report Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody in July 2015 (GAO-15-521). The report contained 13 recommendations, 12 of which were assigned to DHS and its components. Of the 12 DHS recommendations, six remain open; and CBP is responsible for five of the six recommendations. CBP continues to work towards implementing the recommendations issued in this report. In April 2018, GAO closed one recommendation pertaining to annual training and the remaining CBP recommendations have estimated completion dates of June 30, 2018.

Below are the recommendations and offices assigned:

- **Recommendation 1**: To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommended that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to develop and implement TVPRA training for OFO officers at airports who have substantive contact with UAC. Updated training includes both OFO officers and USBP agents. This is ongoing.

- **Recommendation 2**: To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommended that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to revise the Form 93 to include indicators or questions that agents and officers should ask UAC to better assess (1) a child's ability to make an independent decision to withdraw his or her application for admission to the United States and (2) credible evidence of the child's risk of being trafficked if returned to his or her country of nationality or last habitual residence. Per the Secretary's direction, this revision is ongoing.
- **Recommendation 3**: To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommended that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to provide guidance to Border Patrol agents and OFO officers that clarifies how they are to implement the TVPRA requirement to transfer to HHS all Mexican UAC who have fear of returning to Mexico owing to a credible fear of persecution. This is complete.
- **Recommendation 4**: To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommended that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to develop and implement guidance on how Border Patrol agents and OFO officers are to implement the TVPRA requirement to transfer to HHS all Canadian and Mexican UAC who are victims of a severe form of trafficking in persons. This is complete.
- **Recommendation 5**: U.S. Border Patrol: To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommended that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to ensure that Border Patrol agents document the basis for their decisions when assessing screening criteria related to (1) an unaccompanied alien child's ability to make an independent decision to withdraw his or her application for admission to the United States, and (2) whether UAC are victims of a severe form of trafficking in persons. This is ongoing.

Question#:	12
Topic:	UACs Referred
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Between January 1, 2018 and May 1, 2018, how many Unaccompanied Alien Children (UACs) did DHS refer to the Department of Health and Human Services (HHS)? How many of these children were travelling with a parent, family member, or guardian at the time they were encountered by DHS? Please provide the same information for January 1, 2017 through May 1, 2017.

Response: The following table summarizes nationwide CBP encounters (i.e., apprehensions by U.S. Border Patrol and inadmissibility determinations by CBP Office of Field Operations) of UACs for January-April 2017 and 2018, along with a breakout of UACs with initial dispositions of voluntary return or withdrawal of application of admission. Under the TVPRA, all UACs (including those from contiguous countries who do not agree to return or withdraw their application) are, absent exceptional circumstances, required to be referred to HHS.

	2017			2018		
	Total	Return or Withdrawal	Subject to HHS Referral	Total	Return or Withdrawal	Subject to HHS Referral
January	5,089	792	4,297	3,396	793	2,603
February	2,214	632	1,582	3,187	803	2,384
March	1,194	440	754	4,223	1,009	3,214
April	1,161	514	647	4,459	903	3,556
Total	9,658	2,378	7,280	15,265	3,508	11,757

The Department is still working to finalize its methodology for collecting data on the number of children who are encountered in the company of a parent, family member, or guardian and are subsequently referred to HHS.

Question#:	13
Topic:	Border Patrol Supporting
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: To support operations at ports of entry experiencing surges in traffic, I understand that the Border Patrol is sometimes called upon to provide processing space or personnel. Which ports of entry are currently receiving support from the Border Patrol?

Response: U.S. Border Patrol is not providing space or personnel support to the CBP Ports of Entry.

Question: What kinds of support are being provided? What functions, if any, are Border Patrol Agents performing at ports of entry to support operations?

Response: U.S. Border Patrol Agents are providing no support at ports of entry.

Question#:	14
Topic:	Operation Guardian Support RFAs
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: According to an April 18, 2018 Department of Defense (DoD) document, the Secretary of Defense approved two Requests for Assistance (RFAs) from U.S. Customs and Border Protection (CBP) within DHS in relation to Operation Guardian Support. The RFAs were reportedly approved on April 6, 2018 and April 13, 2018. The April 18, 2018 document also stated that DoD expected to receive at least one additional RFA from CBP "in the coming weeks." Please provide copies of all RFAs from DHS/CBP to DoD in relation to Operation Guardian Support.

Response: The response to this question is For Official Use Only/Law Enforcement Sensitive and is on file with the Subcommittee.

Question#:	15
Topic:	Force Laydown
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the current force laydown in support of Operation Guardian Support? At a minimum, please include the number of National Guard personnel and aviation assets that have been deployed by state.

Response: The response to this question is For Official Use Only/Law Enforcement Sensitive and is on file with the Subcommittee.

Question#:	16
Topic:	Securing the Southern Border Report
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: On April 4, 2018, President Trump issued a memorandum titled "Securing the Southern Border of the United States." The memorandum directed the Secretary of Defense and Secretary of Homeland Security, in coordination with the Attorney General, to submit to the President, within 30 days of the memorandum's issuance, a report and action plan detailing resources and actions that are necessary to protect the southern border, including federal law enforcement and United States military resources, along with any other executive authorities that should be invoked to secure the southern border.

Have the Secretary of Defense and Secretary of Homeland Security submitted this report and action plan to the President?

If so, please provide copies of the report and action plan along with any supporting documentation that was submitted.

Response: Yes. The report and supporting documents were submitted to the President on May 26, 2018; however, the report has not yet been authorized for release.

Question#:	17
Topic:	Metrics
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: What performance measures are being used to evaluate the success - or failure - of Operation Guardian Support?

Response: The Border Patrol is currently recording assisted apprehensions, assisted seizures, and flight hours flown for situational awareness.

The Office of Field Operations (OFO) will record assisted arrests and seizures. OFO will measure arrests and seizures for current Fiscal Year and compare them to Fiscal Year 2017. OFO will capture wait times and compare them to Fiscal Year 2017 wait times.

Air and Marine Operations will measure mission success, reliability, aircraft utilization and flight hours return on investment. The data to support these measures, include total flight hours scheduled, compared to executed flight hours, average duration of the mission, and any increase in flight hours.

The Office of Intelligence (OI) currently tracks the number of intelligence reports and intelligence products produced annually. OI will compare its number of reports and products produced before, during, and after the OGS deployments to measure the effect on total output.

Question: For each performance measure, please provide any data DHS and/or CBP have collected to evaluate the effectiveness of the mission.

Response: The response to this question is For Official Use Only/Law Enforcement Sensitive and is on file with the Subcommittee.

Post-Hearing Questions for the Record
Submitted to James W. McCament
Deputy Under Secretary
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security
From Senator Heidi Heitkamp

"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"
April 26, 2018

Question#:	18
Topic:	UAC Tracking
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: One of my largest concerns since digging into the issues of UACs and concern the systems - or lack thereof - that our relative federal agencies have in place for tracking UACs from apprehension through immigration court proceedings and final outcomes. Between apprehension, custody, and immigration court proceedings UACs come in contact with at least three separate cabinet-level agencies - DHS, HHS, and DOJ. Yet it appears that there is no streamlined system of tracking each individual UAC in one common system that each agency has access to - or for that matter any agency could have access to if needed including state|local governments.

Is this an accurate statement - there exists no unified tracking system available to all federal agencies to track a UAC from apprehension through final outcome in immigration court?

Response: DHS believes that this statement is technically accurate. The Department is unaware of any "unified tracking system available to all federal agencies;" however, there are numerous reasons against having a unified system, as detailed in the second portion of this response.

Question: If so, would such a system be helpful in the care, custody, and monitoring of these UACs while they are in this country?

Have there been discussions about creating such a system - why or why not?

Would there be issues or concerns in implementing such a system - if so, what are they?

Response: There are numerous issues and concerns regarding the creation of a unified system that could be utilized by federal, state, and local governments. Statutory authority often limits personally identifiable information of subjects (especially children) in the custody of the Federal Government. For example, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule limits sets standards for the protection of certain health information. Legislation and court settlements are also limiting factors in information sharing. Additionally, with the increasing prevalence of "sanctuary" cities and states, there is no requirement for state and local governments to work with or even notify federal entities of the immigration status of subjects in their care. There have been several instances where state and local authorities have refused to partner with federal immigration entities and numerous instances where they have been disruptive in the process altogether. DHS and HHS have worked on numerous operational agreements and streamlined processes yet an overarching system where federal, state, and local agencies have access to personal information would possibly remove and/or eliminate privacy protections that are required by law.

Question#:	19
Topic:	Joint Concept of Operations
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: The lack of coordination - and in some cases sheer unwillingness to coordinate - the movement and tracking of UACs between federal and state and local agencies is truly stunning and unacceptable. Coordination between Agencies|State & Local Governments. To be clear, it appears one of the overriding concerns that led to the original investigation by this Subcommittee - and now a second hearing on this subject - is the abject failure of DHS and HHS to coordinate and work collaboratively on the long-term care and tracking of UACs who they come in contact with. Additionally, reports, testimony, and anecdotal evidence suggests a lack of coordination or collaboration with state and local governments, schools, and other agencies that could have some role in the long-term care and tracking of UACs once they have been released to a sponsor.

Does your agency care what happens to these children? Honestly?

Do you believe that we should know the location and condition of these children during the entirety of their stay in this country while going through immigration court proceedings?

If so, explain to me why you have failed to produce a Joint Concept of Operations (JCO) that clearly defines each agencies role in the handling and tracking of these children - including the potential return of UACs to federal custody in the event there are identified issues with a sponsor? Asking for a JCO is not some useless exercise as some of your agency staff have suggested - not only will this better facilitate the care and transfer of custody of UACs and clearly define each agencies roles - it should identify potential issues that need to be addressed by Congress and your agencies.

Response: DHS takes seriously its responsibility to protect alien children from human smuggling, trafficking, and other criminal actions, while ensuring that our immigration laws are enforced. There is perhaps no bigger source of frustration for our Department than encountering children who have been exploited or abused by smugglers and traffickers. Unfortunately, DHS encounters these victimized children every day at the border, as judicial rulings have created an incentive for smugglers to traffic children to the United States, while congressional lack of action has allowed these glaring loopholes to remain in place. DHS is also deeply troubled by existing legislative language that fails to clarify the legal responsibilities sponsors assume upon taking custody of a UAC – including but not limited to ensuring UAC appear at scheduled immigration court proceedings, as required by law, after they are released from the Department of Health and Human Services' (HHS) custody. That is why DHS and HHS are working together

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to implement basic fingerprinting and background checks for all UAC sponsors – including parents. In the absence of parental care and custody, the bottom line is that whoever has custody of the child – be it DHS, HHS, or a non-parent sponsor – is ultimately responsible for that child's care while s/he is in their custody.

DHS agrees it is important to know the location and condition of all UAC (and all children for that matter) during the entirety of their stay in this country, including throughout the lifecycle of their immigration court proceedings. Unfortunately, many UAC released to sponsors fail to appear for their court proceedings, either by choice or because their sponsors do not fulfill their commitment to ensure the individual's participation. We strongly encourage all sponsors and released UAC to fulfill their legal obligations – this includes providing necessary updates on the whereabouts of a child to HHS and DHS as well as appearing before an immigration judge when required by law to do so.

The Joint Concept of Operations (JCO) has taken longer than expected to complete. However, as DHS has stated repeatedly to PSI since 2016, both verbally and in writing, the JCO will simply memorialize *existing* processes and procedures in areas where DHS and HHS have joint responsibility that requires coordination. The JCO is not a substitute for legislative action, nor does it change or replace the Department's existing legal authorities and obligations. We recognize the JCO is an important document. Any suggestion that the JCO is a "useless exercise" is inappropriate and does not represent the views of the Department or the Secretary of Homeland Security.

Additionally, we do not need to wait for the JCO to be completed to once again remind Congress, and PSI specifically, of the Department's and Administration's repeated requests to take much needed legislative action to address the very same UAC concerns identified by the Subcommittee. Specifically, DHS implores Congress to:

(i) Amend the TVPRA to treat all UACs the same, regardless of nationality, so that if they are not victims of human trafficking and do not have a credible fear of persecution in their country of nationality or last habitual residence they can be permitted to withdraw their application for admission to the United States;
(ii) Clarify in law that alien minors who are not UACs are not entitled to the presumptions or protections granted to UACs;
(iii) Terminate the *Flores* Settlement Agreement by passing legislation stipulating care standards for minors in custody and clarifying corresponding provisions of the TVPRA that supersede the settlement agreement;

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(iv) Amend the definition of "special immigrant", as it pertains to juveniles, to require that the applicant prove that reunification with both parents is not viable due to abuse, neglect, or abandonment – and that the applicant is a victim of trafficking; and
(v) Repeal the requirement that a USCIS Asylum Officer have initial jurisdiction over UAC asylum applications in order to expedite UAC processing.

For nearly 18 months, we have asked Congress to take action as outlined above. Yet, little has been done by Members of Congress to make meaningful progress. While we acknowledge the JCO is important, it is equally important for Congress to acknowledge that some of our collective concerns can only be alleviated through legislative action. We therefore again request that Congress draft the necessary legislation to address our collective concerns with regard to UACs.

Question#:	20
Topic:	Trafficking Screening
Hearing:	Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: As you know, the TVPRA permits DHS to bypass referral to ORR of UACs from Mexico and Canada if DHS determines that the child (1) is not a trafficking victim; (2) is not at risk of trafficking upon return to her country; (3) does not have a credible fear of persecution; and (4) is able to make an independent decision about returning to her home country. In essence, this requires DHS to screen all Mexican and Canadian UACs for trafficking, asylum, and capacity concerns. In 2015, the GAO found that CBP not only failed to consistently conduct these screenings, but also to document the rationale for their decisions. In a notable example, while CBP's own policy stated that children under 14 should be presumed unable to make an independent decision, CBP repatriated 93 percent of Mexican UACs under 14 who it encountered between 2009 and 2014 without documenting the basis for its decisions. Nearly three years later, CBP has still not finalized the screening tools and trainings recommended by GAO to address this serious lapse in child protection practice.

How does DHS account for this failure to fulfill the most basic requirements of the anti-trafficking and child protection mechanisms in our law?

Response: In accordance with the TVPRA, a UAC encountered at the border who is a national or habitual resident of Canada or Mexico may be permitted to withdraw his or her application for admission and be returned to their country, if no indicators of trafficking exist; there is no credible evidence the child is at risk of being trafficked upon return to the child's country of nationality or of last habitual residence; and there is no indication that the child has a fear of return. In order to permit the UAC to withdraw, CBP must also determine that the child is able to make an independent decision.

The TVPRA does not specify an age by which a UAC is presumptively able to make an independent decision to withdraw. Accordingly, DHS generally screens all UACs to determine whether the child can make an independent decision, and whether the child is a victim of trafficking or has a credible fear of persecution. The results of this documentation inform the placement, status, and repatriation of the child. In cases where UAC cannot be returned immediately, and for all UAC from noncontiguous countries (i.e., countries other than Mexico or Canada), DHS places them in removal proceedings pursuant to Section 240 of the Immigration and Nationality Act, and transfers them to HHS.

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Question: How does the Department expect it could adequately perform such minimal screenings for all children, per its desire to change the law, when it can't fulfill these minimal protections for children from contiguous countries?

Response: The Department complies with all TVPRA requirements.

Specifically, CBP uses the Form 93 screening tool to fulfill the statutory requirements for UAC screening and the Form 93 screening tool is currently being revised.

Post-Hearing Questions for the Record
Submitted to Steven Wagner
Acting Assistant Secretary
Administration for Children and Families
U.S. Department of Health and Human Services
From Chairman Rob Portman and Ranking Member Tom Carper

"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"
April 26, 2018

1. **Sponsors are required to ensure that the unaccompanied alien children (UAC) they host attend all immigration-related court proceedings. Under the Immigration and Nationality Act, an immigration judge shall issue an *in absentia* removal order when children fail to appear at a court hearing and the Department of Homeland Security (DHS) establishes that the children received required notice and are removable.[1] What steps, if any, is the Department of Health and Human Services (HHS) taking to ensure sponsors fulfill their responsibility to ensure UACs appear at their court proceedings?**

HHS provides every sponsor with information about the necessity of making sure that UACs attend all immigration hearings. Every sponsor enters into a Sponsor Care Agreement before the UAC is released to the sponsor. Four of the provisions in the Sponsor Care Agreement address the issue of attendance at immigration court proceedings:

- Attend a legal orientation program provided under the Department of Justice/Executive Office for Immigration Review's (EOIR) Legal Orientation Program for Custodians (Sponsors), if available where he or she resides.
- Depending on where the UAC's immigration case is pending, notify the local Immigration Court or the Board of Immigration Appeals within 5 days of any change of address or phone number of the child (Form EOIR-33). (If applicable, file a Change of Venue motion on the child's behalf. A "change of venue" is a legal term for moving an immigration hearing to a new location.)
- Notify DHS/U.S. Citizenship and Immigration Services within 10 days of any change of address by filing an Alien's Change of Address Card (AR-11) or electronically at **http://www.uscis.gov/ar-11**.
- Ensure the UAC's presence at all future proceedings before the DHS/Immigration and Customs Enforcement (ICE) and the DOJ/EOIR.

HHS provides sponsors with resources to fulfill these responsibilities. Sponsors are provided information about the Office of Refugee Resettlement (ORR) National Call Center that can help

[1] 8 U.S.C. § 1229a(b)(5)(A) (2016).

sponsors understand which forms need filing and where to send them, such as change of address and change of venue notices. HHS also provides sponsors information about the immigration court helpline.

The Legal Orientation Program for Custodians (LOPC) of UAC offers free legal information about the immigration court process and help on finding legal counsel. Sponsors are provided information for LOPCs in a number of cities across the country as well as a phone number and email address for the LOPC Call Center. Case managers at HHS care provider facilities assisting sponsors making appointments for an LOPC presentation. All sponsors should attend a presentation by an LOPC and attendance is one of the factors considered when assessing a sponsor for release.

2. **Describe HHS oversight of secure facilities. Does the Office of Refugee Resettlement (ORR) regularly review data on UAC length of stay of in secure facilities, assess outcomes, and identify potential areas for improvement? If so, what measures does ORR use to evaluate those issues?**

ORR reviews outcomes and length of stay of UACs in secure facilities on a case-by-case basis. ORR assesses the appropriateness of a secure placement every 30 days as mandated by statute. If a UAC is placed in a secure facility for over 90 days, an ORR supervisor must be consulted regarding the placement, and every 30 days thereafter. The reasons for a child's placement in a secure care provider are documented and provided to the child and their attorney or child advocate on demand. Additionally, a UAC may request the ORR Director, or the Director's designee, to reconsider their placement after 30 days in the secure facility.

During the length of a minor's secure placement, ORR assesses the minor's services and mental health needs to ensure there are no gaps in services. ORR will identify a local service provider if the secure facility is unable to meet an identified service need.

3. **Witnesses on the second panel expressed their view that some children placed in secure facilities would benefit from placement in a secure residential treatment facility. Although ORR contracts with a residential treatment facility, it is not a *secure* residential treatment facility and declines to accept referrals from the secure facilities. Does ORR plan to contract with a secure residential treatment facility? If not, why not?**

ORR does not have an operational shelter that is a residential treatment center (RTC) with secure features. A RTC must be able to address both mental health needs and behavioral issues. ORR has yet to open a UAC shelter in a RTC able to address both of these modalities while providing services in a secure setting. ORR continues to work with existing RTCs to ensure that minors in secure facilities have access to needed therapeutic services.

4. **A witness on the second panel expressed concern that ORR does not provide secure facilities policies and procedures tailored to the secure setting, and, instead, provides the same policies and procedures to secure facilities, staff secure facilities, and**

shelters. Does ORR plan to develop procedures tailored to secure facilities? If not, why not?

ORR tailors its policies and procedures to the placement type when appropriate. For example, policies and procedures regarding placement and transfers are tailored to the specific type of setting. Policies regarding services may not be tailored to the placement type because ORR care providers must provide services outlined in the *Flores* settlement agreement which is generally applicable to all programs.

Here is a summary of policies specific to secure programs:

Placement
Specifically, placement policies governing who may be placed in a secure facility are contained in the ORR Policy Guide, section 1.2.4 Secure and Staff Secure Care Provider Facilities. Additionally, policies regarding 30 day case reviews are contained at section 1.4.2 (the title of this policy is due to change from "FAST" to "Thirty Day Restrictive Placement Case Review" in the near future).

Other related policies concerning secure (and staff secure) facilities include:

- Section 1.2.3 Safety Issues. Examining safety concerns for the child that may be incorporated into a placement decision.
- Section 1.2.5 UAC who Pose a Risk of Escape. Reviews escape risk factors.
- Section 1.3.1 Requests for Information from the Referring Federal agency. Concerning how information (for instance criminal history information) is obtained from DHS to make placement decisions.
- Section 1.3.2 Placement Designation. Policies about using referral information to designate placement if necessary in a restrictive placement.
- Section 1.4.7 Requesting Reconsideration of Placement. This policy (procedures pending review) for a UAC placed in secure or RTC to have the review examined by the ORR Director if the UAC challenges their placement designation.

Release
Release policies that are geared towards secure facilities include the following:

- Section 2.7 Recommendations and Decisions on Release, which among other things requires the Director (or designee) to review the release decision for any UAC from a secure or staff secure or previously placed in a secure or staff secure (unless the UAC has been found not dangerous in a Flores bond hearing).
- Section 2.9 Bond hearings for UAC. These policies explain the opportunity UAC have for bond hearings, and that specifically UAC in restrictive settings such as a secure facility be provided affirmative notice of this opportunity.

Services
Service policies for UACs in secure facilities can be broken up into specific notice provisions (providing notice to UACs for the reasons for their placement, see section 3.2 Care Provider Admission and Orientation for UACs).

Additionally, general service policies require that *Individual Service Plans* be geared towards the individualized needs of each child. See, Glossary of Terms; 3.3 Care Provider Required Services. Though these policies have general applicability the service planning for the child is done on a case-by-case basis. Children in secure care are provided specialized services tailored to their needs which may include services geared to addressing the behavioral, substance abuse prevention, psychological, criminal, or other characteristics that make the child a danger.

See also, safety planning requirements. See section 3.3.4 Safety Planning which discusses creating safety plans for children who require them (among the factors for children who require these are UACs with behavioral problems, substance abuse concerns, criminal history or gang involvement, etc.)

Also see 3.3.13 Behavioral Management, which generally requires behavior management policies be made by the individual program, providing all care providers, including secure providers, an opportunity to uniquely tailor their own behavior management techniques in their internal SOPs.

Other secure specific (implicitly in some cases) service policies:

- Section 3.3.11 requiring that care providers prevent gang related symbols from being displayed in custody.
- Use of restraints provisions 3.3.16, 3.3.17.

Program Management and the Cooperative Agreement Addendum
Program management policies have general applicability, but those concerning significant incident reports (SIR) are extremely important for secure care providers. See generally, 5.8 Significant Incident Reporting. 5.9 addresses local reporting of certain releases (though this obligation is on the agency not the care provider). Secure care providers also have a "Secure Addendum" to their Cooperative Agreement which specifies lower staff ratios for those programs.

5. **HHS currently employs one federal field specialist (FFS) who works with the Shenandoah Valley Juvenile Center but also handles other work for HHS in the region.**
    a. **Has HHS assessed the workload of that FFS to determine if HHS should focus her attention on the Shenandoah Valley Juvenile Center?**
    b. **ORR contracts with two other secure facilities nationwide. Do each of them have one or more FFS assigned to them? If so, what other responsibilities do those FFS have?**

a. Each FFS works with an assigned FFS Supervisor to identify the appropriate caseload. FFS that have a specialized caseload, such as a secure facility or a residential treatment center, have a limited caseload that allows the FFS to spend more time on their complex cases. ORR has confidence in the FFS for Shenandoah and their ability to manage their caseload.

b. None of the three secure facilities have more than one FFS assigned to them; however, FFS assigned to a secure facility have a more limited caseload than FFS with traditional shelter populations. FFS oversee care providers to ensure all services, policies, and procedures are properly provided and implemented; and serve as a liaison to local stakeholders, including other Federal agencies, local legal service providers, local communities, Child Advocates, etc. FFS approve transfer and release decisions for UACs.

6. **Sen. McCaskill asked DHS and HHS to "commit to looking at ways you might be able to notify states and localities [when UACs are placed in communities] so these children will have an extra layer of protection. You and Mr. McCament committed to undertaking that review.**
    a. **What is the status of that review?**
    b. **What steps do you plan to take in the course of that review?**
    c. **By what date do DHS and HHS plan to complete that review?**

a. ORR is looking into ways to increase notification to states and localities that receive UACs. ORR provides publicly available information about the number of UACs released by state and by county on its website. Recently, ORR introduced a new policy of notifying law enforcement in the locality where a UAC that resided in a staff secure or secure facility is released. ORR is in the process of implementing that policy. ORR hopes to focus on continuing the review in conjunction with DHS. As the witnesses on the second panel stated, privacy issues are a concern in such notifications and HHS is carefully assessing the issue as we contemplate making such notifications.

b. HHS is considering how to expand local notification beyond the current policy by identifying which local authorities would be appropriate to notify as well as the mechanisms to notify those authorities. As the witnesses on the second panel stated, privacy issues are a concern in such notifications and HHS is carefully assessing the issue as we contemplate making such notifications.

c. The expansion of local notification of a national program is an ongoing process, and the agencies have not designated a completion date.

7. **In response to Sen. Lankford's questioning, you stated that you did not know how often UACs present false documents. Please state how often that happens, and how many times that happened in 2015, 2016, and 2017.**

ORR does not keep information about false documents in a reportable format. DHS may be in the best position to comment on the number of UACs that present false documents.

8. **You testified that after HHS places UACs with sponsors, HHS does not "have a mechanism for tracking the kids down." You also testified that from October to December, 2017, HHS placed wellness check telephone calls to 7,635 UACs and their sponsors. Of those, HHS found that 28 UACs had run away and 52 had relocated to live with a non-sponsor. Additionally, "ORR was unable to determine with certainty the whereabouts of 1,475 UAC." What is HHS doing to develop a mechanism for keeping track of UACs it places with sponsors?**

Our statutory authorities and our annual appropriation do not provide for the surveillance of the UAC population post-release.

That said, ORR recognizes the importance of contact with UACs and sponsors post-release, and therefore, consistent with our statutory authority and our resources, initiated safety and well-being calls, whereby a case manager contacts the UAC and the sponsor 30 days after release to check in. The case manager confirms that the child is with the sponsor, that the child is enrolled in school, and if the child is safe.

HHS also offers post-release services to UACs that may be particularly vulnerable or UACs that HHS has identified as needing assistance. Post release services are case management services that may include assistance accessing community services and legal services, helping the child and sponsor with school enrollment and monitoring, and referrals for family counseling or mental health services. In FY2017, HHS provided intensive post-release services to 31% of the households in which children were placed.

HHS continues to consider how it can expand its role post release to ensure all UACs and their sponsors have the resources they need.

9. **GAO witness Kathryn Larin testified that in 2018 to date, 58 percent of UACs have failed to appear at their immigration court proceedings, and the court has issued an *in absentia* removal order. You testified that learning whether a UAC has appeared for his or her immigration court proceeding is "not part of our protocol for post-release. We don't follow up to ensure that they go to the hearing."**

    a. **Given that failure to appear at an immigration court proceeding could be a warning sign that a UAC is in an unsafe situation, why does HHS not include following up with UACs to ensure they appear at their court proceedings in its post-release protocol?**
    b. **What is HHS doing to enforce sponsor agreements to ensure UACs appear at their immigration court proceedings?**
    c. **What are DHS, HHS, and DOJ doing to coordinate their efforts to improve UAC appearances at their immigration court proceedings?**

HHS does not believe it has the authority or capacity to compel appearance at an immigration court proceeding, beyond the steps we currently take, described in a previous question. Neither does HHS have the ability to predict which UACs will not appear for immigration hearings, and

so cannot consider that as a factor in making placement decisions. HHS provides DHS with full visibility of the placement of the UAC, including identity of the sponsor and place of residence.

10. On May 7, 2018, the Department of Justice announced that the Administration will increase its prosecution of parents crossing the border with children illegally. After their parents are arrested, the children will be treated as UACs.

a. What are DHS and HHS doing to prepare for the increase in UACs?

b. Where do DHS and HHS plan to place these children?

a. After the Department of Justice announced that the Administration would increase its prosecution of parents crossing the border with children illegally, the President issued his Executive Order entitled "Affording Congress an Opportunity to Address Family Separation," and the Court in *Ms. L. v. ICE*, No. 18-cv-0428 (S.D.Cal.) issued its preliminary injunction. DHS referrals of separated children to HHS then declined.

In general, whenever there are demands for additional capacity, HHS will seek out additional bed space to meet increased demand. This is a regular part of HHS operations.

b. The numbers of reunifications and other appropriate discharges of the children of class members in *Ms. L.* have been publicly reported through Joint Status Reports filed with the *Ms. L.* Court. The most recent Joint Status Report is attached. At this point, the majority of children of class members who were in ORR care as of June 26, 2018 have been appropriately discharged.

Post-Hearing Questions for the Record
Submitted to Steven Wagner
Acting Assistant Secretary
Administration for Children and Families
U.S. Department of Health and Human Services
From Senator Heidi Heitkamp

"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"
April 26, 2018

1. **One of my largest concerns since digging into the issues of UACs and concern the systems – or lack thereof – that our relative federal agencies have in place for tracking UACs from apprehension through immigration court proceedings and final outcomes. Between apprehension, custody, and immigration court proceedings UACs come in contact with at least three separate cabinet-level agencies – DHS, HHS, and DOJ. Yet it appears that there is no streamlined system of tracking each individual UAC in one common system that each agency has access to – or for that matter any agency could have access to if needed including state|local governments.**

   a. **Is this an accurate statement – there exists no unified tracking system available to all federal agencies to track a UAC from apprehension through final outcome in immigration court?**

      The Office of Refugee Resettlement (ORR) and the U.S. Department of Homeland Security (DHS) share information about UACs through the ORR portal. U.S. Customs and Border Protection (CBP) pushes referral information on UACs directly into the ORR portal's referral page. U.S. Immigration and Customs Enforcement also enters UAC information directly into the referral page when appropriate. During the case management process, ORR may add information regarding immigration court proceedings to the case management record for the UAC on the ORR portal. Thus, the ORR portal may contain information on a UAC that ranges from referral to immigration court proceedings.

   b. **If so, would such a system be helpful in the care, custody, and monitoring of these UACs while they are in this country?**

      Each agency gathers and shares information based on the mission and obligations of each agency. Any such system would need to include a review Federal immigration IT systems and determine if there are opportunities for enhanced information sharing and integration that do not increase burden and cost, and that are not duplicative of already existing systems.

   c. **Have there been discussions about creating such a system – why or why not?**

As noted, the current ORR Portal contains information from DHS. Additionally, there are existing information-sharing agreements between ORR, DHS and EOIR to share information that pertains to each of our missions.

HHS, DHS, and DOJ are conferring about an inter-agency information-sharing system in compliance with the Court's orders and instructions in *Ms. L. v. ICE*, 18-cv-428 (S.D.Cal.).

d. **Would there be issues or concerns in implementing such a system – if so, what are they?**

Any such system would need to consider burden and costs, and whether it duplicates current information-sharing agreements between departments. Further, if a fully-integrated system includes information not only about UACs, but also about their prospective sponsors or individuals in sponsors' households, there are potential law enforcement sensitivities, civil rights concerns, and confidentiality issues raised by having a unified system.

HHS, DHS, and DOJ are continuing to confer regarding an inter-agency information-sharing system in *Ms. L.* As part of that process, they are continuing to identify and evaluate potential issues or concerns.

2. **The lack of coordination – and in some cases sheer unwillingness to coordinate – the movement and tracking of UACs between federal and state and local agencies is truly stunning and unacceptable. Coordination between Agencies, State & Local Governments. To be clear, it appears one of the overriding concerns that led to the original investigation by this Subcommittee – and now a second hearing on this subject – is the abject failure of DHS and HHS to coordinate and work collaboratively on the long-term care and tracking of UACs who they come in contact with. Additionally, reports, testimony, and anecdotal evidence suggests a lack of coordination or collaboration with state and local governments, schools, and other agencies that could have some role in the long-term care and tracking of UACs once they have been released to a sponsor.**

a. **Does your agency care what happens to these children? Honestly?**

Undoubtedly yes. ORR is made up of a highly qualified staff of professionals who employ their significant experience and knowledge to ensure these children are served to the best of their ability within the statutory framework which you and your congressional colleagues have put in place. These professionals dedicate their careers to serving all children and families including these children—often devoting nights, weekends, and holidays to ensuring the UACs safety and well-being. The vetting of potential sponsors is exhaustive and designed to ensure the safety and well-being of the child. Once placed with a sponsor, the child is no longer in the custody of the UAC program.

b. **Do you believe that we should know the location and condition of these children during the entirety of their stay in this country while going through immigration court proceedings?**

While there may be programmatic reasons for other agencies to know the location and condition of former UACs placed with sponsors, HHS does not have the legal authority and has no programmatic reason to do.

c. **If so, explain to me why you have failed to produce a Joint Concept of Operations (JCO) that clearly defines each agencies role in the handling and tracking of these children – including the potential return of UACs to federal custody in the event there are identified issues with a sponsor? Asking for a JCO is not some useless exercise as some of your agency staff have suggested – not only will this better facilitate the care and transfer of custody of UACs and clearly define each agencies roles – it should identify potential issues that need to be addressed by Congress and your agencies.**

The potential return of UACs into HHS custody requires a new referral from a Federal department or agency as required by statute. As noted above, while there may be programmatic reasons for other agencies to know the location and condition of former UACs placed with sponsors, HHS does not have the legal authority and has no programmatic reason to do so. The Joint Concept of Operations (JOC) was finalized on July 31, 2018, and addresses intersecting responsibilities between ORR and DHS as it relates to transporting, processing, and caring for UACs, including during an influx.

d. **From the testimony I have read from the second panel, GAO reports, and engaging with other advocates in states like Arizona that work with UACs – it is clear there is little to no communication, coordination, or collaboration with state or local governments, schools, and other agencies that would potentially have some role in making sure these UACs are cared for properly and their whereabouts remain known throughout their time in this country.**

   i. **Why does that lack of communication, coordination, and collaboration exist?**

   On October 30, 2017, ORR issued a new policy "Sharing Information with Local Communities." The policy states:

   In order to better protect our communities, and in response to requests for such information, when releasing a UAC from secure or staff secure care, ORR notifies local law enforcement in an unaccompanied alien child's community. In doing so, ORR provides the name and other identifying

information of the UAC, taking care to safeguard personal information. ORR in its discretion may notify local law enforcement when releasing unaccompanied alien children from any level of care if ORR identifies or a community makes ORR aware of special circumstances that would make such a notification advisable.

ORR is continuing to implement the policy.

ii. **Do you need additional guidance from your agency to engage in this manner – or Congressional authority?**

ORR will continue implementation of its policy, Section 5.9 Sharing Information with Local Communities, as referenced above.

iii. **Is it an issue of resources and personnel – if so, have you identified those needs and asked HHS or Congress for those resources and personnel?**

ORR will continue implementation of its policy, section 5.9 Sharing Information with Local Communities, as referenced above.

3. **I am deeply concerned about the post-release services and agency programs available for UACs who are at risk of trafficking. Congress included in the TVPRA 2008 reauthorization the authority for ORR to provide post-release services for children at risk of trafficking.**

   a. **What are the determining factors for whether or not a child is deemed "at risk of trafficking"?**

   ORR requires grantee care providers to assess UACs to identify victims of trafficking and children who are vulnerable to being trafficked. The questions in the UAC assessment tool cover a wide range of indicators of trafficking. These include questions about the UAC's journey, such as whether they have a financial debt for the journey, if they were abused by family in home country, and indicators of coercion, such as threats to the UAC or to the family.

   Care provider staff trained in interviewing techniques for vulnerable children and in the ORR instruments must assess all these factors in order to develop an individual service plan, assess potential sponsors, and determine if a home study and/or post release services are in the best interests of the child or if the post release services are statutorily required (i.e., the UAC meets the TVPRA requirements).

b. Have those requirements changed in the last 15 months?

No, there has been no need for updating.

c. Does every child who ORR determines needs post release services get those services?

All children who are identified as victims of trafficking must be assigned post release services prior to release (ORR must also conduct a home study prior to release to a sponsor). These UACs receive post-release follow-up services until immigration proceedings are terminated or the UAC turns 18 years of age, whichever occurs first.

UACs who have been assigned discretionary post-release services in some cases may not receive the services immediately after discharge due to a pending waitlist.

d. What other resources would ORR need to provide those services for children identified at risk?

In fiscal year 2018, ORR funded 11 service care providers for a total of $30,023,946. The agency continuously reviews how to most effectively use these funds. In FY 2017, ACF began implementation of a multi-year effort to increase the percentage of UACs who receive specific follow-up services (post-release services). The Funding Opportunity Announcement (FOA) for fiscal years 2017-2019 required that grantees have a Budgeted Regional Capacity model to reduce administrative and travel costs, thus increasing the number of UACs who can be served with available budget resources. ACF expects these changes will continue to increase the percentage of UACs able to be served with post-release services. If additional funding were targeted for post release services, HHS would be able to expand the availability of post release providers across the ORR network.

Post-Hearing Questions for the Record
Submitted to Steven Wagner
Acting Assistant Secretary
Administration for Children and Families
U.S. Department of Health and Human Services
From Senator Claire McCaskill

"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"
April 26, 2018

Q. **As you know, the Trafficking Victims Protection Reauthorization Act of 2008 requires the Department of Health and Human Services (HHS) to conduct home studies for certain unaccompanied alien children (UACs), including children with special needs, certain victims of physical or sexual abuse, and children "whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence."** ***See*** **8 U.S.C. § 1232(c)(3)(B).**

Please state whether HHS considers the category of sponsor—particularly Category 3 or non-relative sponsors—in determining whether to conduct home studies for UACs. If HHS does undertake this consideration, please describe in detail how sponsor categories impact HHS decisions regarding the application and prioritization of home study resources.

ORR does not take into account the sponsor's category when evaluating a case for a home study for a TVPRA mandated home study—all potential sponsors who fit this statutory description, regardless of category, will receive a home study.

However, ORR has made a policy decision to require home studies in certain circumstances, including requiring a home study before releasing any child to a non-relative Category 3 sponsor who is seeking to sponsor multiple children, or who has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children. ORR requires a home study for children who are 12 years of age and under before releasing to a non-relative Category 3 sponsor. This policy is found in the ORR Policy Guide at 2.4.2 Home Study Requirement.

Additionally, ORR policy allows the Case Manager and Case Coordinator to recommend a discretionary home study (as approved by a federal field staff supervisor) if they believe additional information is required to determine that a sponsor is capable to care for the health, safety and well-being of the child. This policy is found in the ORR Policy Guide at 2.4.2 Home Study Requirement. A sponsor's relationship to the UAC may be a factor for consideration of a discretionary home study.

Q. **On May 4, 2018, Secretary of Homeland Security Nielsen implemented a policy that will eventually refer all individuals crossing the border illegally for criminal prosecution. This policy will mean that family units crossing the border will be separated when the adults are turned over for prosecution.**

1) **When was HHS informed of this policy change by the Department of Homeland Security?**

HHS became aware of the "Zero-Tolerance Policy for Criminal Illegal Entry" on April 6, 2018, when the Attorney General publicized it. *See* Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry, https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry (April 6, 2018) (last visited March 13, 2019).

HHS personnel received information about the U.S. Department of Homeland Security's potential operationalization of the Zero-Tolerance Policy through the inter-agency process between April 6 and May 4, 2018.

2) **What steps has HHS taken to prepare for a potential influx of UACs that might result from this policy?**

The implementation of the Zero-Tolerance Policy ceased in 2018 after the President issued an Executive Order, and the Court in Ms. L. v. ICE issued a preliminary injunction. So a potential influx of UACs resulting from the Zero-Tolerance Policy is not presently a concern for HHS.

3) **Does HHS have the capacity to care for an additional influx of UACs?**

For the reasons stated above, a potential influx of UACs resulting from the Zero-Tolerance Policy is not presently a concern for HHS.

4) **What steps has HHS taken to reach out to the Department of Justice to ensure that it has appropriate case information for each affected parent?**

HHS field staff and the staff of its grantees work to ensure that every child in HHS care is able to communicate with their parent(s) and/or legal guardian(s). If a parent of a UAC is in the custody of DOJ or DHS, HHS works with those departments to ensure that this communication is taking place.

Post-Hearing Questions for the Record
Submitted to Kathryn A. Larin
Director, Education, Workforce, and Income Security Team
U.S. Government Accountability Office

From Senator Heidi Heitkamp
"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"
April 26, 2018

1. As you know, the TVPRA permits DHS to bypass referral to ORR of UACs from Mexico and Canada if DHS determines that the child (1) is not a trafficking victim; (2) is not at risk of trafficking upon return to her country; (3) does not have a credible fear of persecution; and (4) is able to make an independent decision about returning to her home country. In essence, this requires DHS to screen all Mexican and Canadian UACs for trafficking, asylum, and capacity concerns. In 2015, the GAO found that CBP not only failed to consistently conduct these screenings, but also to document the rationale for their decisions. In a notable example, while CBP's own policy stated that children under 14 should be presumed unable to make an independent decision, CBP repatriated 93 percent of Mexican UACs under 14 who it encountered between 2009 and 2014 without documenting the basis for its decisions. Nearly three years later, CBP has still not finalized the screening tools and trainings recommended by GAO to address this serious lapse in child protection practice.

   Your website indicates that CBP expects to complete revised training modules on screening and processing of UACs, as well as the revision of Form 93, by June. Only then will CBP begin to implement these new trainings and procedures. Stepping back, since GAO issued recommendations in July 2015, CBP has repeatedly delayed the finalization of these revisions and updates.

   a. **What is GAO's understanding of the reason for the repeated delays?**

      Response: In September 2015, in response to our recommendations, the Department of Homeland Security reported that it had organized a working group to examine its screening process for unaccompanied alien children (UAC) and draft guidance for its agents and officers in the field. As of June 30, 2016, U.S. Customs and Border Protection (CBP) officials reported that CBP's Office of Field Operations and U.S. Border Patrol had finalized and routed a revised Form 93—CBP's key UAC screening tool—to the Office of Field Operations then-Executive Assistant Commissioner and U.S. Border Patrol Chief for final approval. Since that time, CBP officials have told us that the revised Form 93 is undergoing internal CBP review.

   b. **Has GAO received any additional updates about the status of these recommendations that are not reflected on the website?**

Response: The information on our website reflects the most recent updates that we have received from CBP on the status of its actions to address our recommendations.

Post-Hearing Questions for the Record
Submitted to Kathryn A. Larin
Director, Education, Workforce, and Income Security Team
U.S. Government Accountability Office

From Chairman Rob Portman and Ranking Member Tom Carper
"Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse"
April 26, 2018

1. **In response to Sen. Lankford, you stated you would get back to the Subcommittee regarding the number of times safety concerns about unaccompanied alien children (UACs) placed with sponsors are reported to local law enforcement. Please provide that information.**

   ORR policy requires that grantees conduct Safety and Well Being follow-up calls to unaccompanied children and their sponsors 30 days after the child is released from ORR custody. If the grantee believes that the child is unsafe, they must comply with mandatory reporting laws, state licensing requirements, and federal laws and regulations for reporting to local child protective agencies or law enforcement. According to preliminary data provided to GAO by ORR in August of 2017, ORR grantees made 50,780 Safety and Well Being follow-up calls in fiscal year 2016. ORR grantees elevated 5,066 cases (approximately 10 percent) for additional services. Of those, the majority of elevated cases (73 percent) were referred to the ORR's National Call Center, which can help children or sponsors find resources or support in their community. Grantees referred 1,274 (25 percent) of elevated cases to ORR federal field specialists. Ninety-two (1.8 percent) elevated cases were referred to child protective services (CPS) or law enforcement. Four cases were referred to a sexual abuse hotline and 11 cases were categorized as an immediate safety concern. According to ORR officials, a case may be elevated in more than one category. Of the 92 cases that were referred to CPS or law enforcement, 21 were for category 1 sponsors (parent or legal guardian), 34 were for category 2 sponsors (other close relative), and 37 were for category 3 sponsors (other sponsor, such as distant relative or unrelated adult). The primary reasons for elevation of a case for additional services included: the child ran away (66 cases) or there was a change of address (52 cases). Other reasons for elevation included: the child was not attending school (9 cases); neglect or abandonment (6 cases); physical abuse (5 cases); sexual abuse (4 cases); human trafficking (3 cases); the child was arrested or criminal activity (3 cases); the sponsor was deported or returned to their country of origin or the child was deported or returned to their country of origin (1 case each). ORR grantees were unable to reach the child or sponsor in 2,603 cases (5.1 percent of cases). For more recent information, GAO suggests contacting ORR directly.