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EXAMINING THE FAILURES OF THE TRUMP ADMINISTRATION'S INHUMANE FAMILY SEPARATION POLICY

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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EXAMINING THE FAILURES OF THE TRUMP ADMINISTRATION'S INHUMANE FAMILY SEPARATION POLICY

THURSDAY, FEBRUARY 7, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:33 a.m., in the John D. Dingell Room 2123, Rayburn House Office Building, Hon. Diana DeGette (chair of the subcommittee) presiding.

Members present: Representatives DeGette, Schakowsky, Kennedy, Ruiz, Kuster, Castor, Sarbanes, Tonko, Clarke, Peters, Pallone (ex officio), Guthrie (subcommittee ranking member), Burgess, McKinley, Griffith, Brooks, Mullin, Duncan, and Walden (ex officio).

Also present: Representatives Cárdenas, Veasey, Barragán, and Soto.

Staff present: Mohammed Aslami, Counsel; Kevin Barstow, Chief Oversight Counsel; Jacquelyn Bolen, Professional Staff Member; Jesseca Boyer, Professional Staff Member; Jeffrey C. Carroll, Staff Director; Waverly Gordon, Deputy Chief Counsel; Tiffany Guarascio, Deputy Staff Director; Zach Kahan, Outreach and Member Service Coordinator; Chris Knauer, Oversight Staff Director; Jourdan Lewis, Policy Analyst; Perry Lusk, GAO Detailee; Kevin McAloon, Professional Staff Member; Joe Orlando, Staff Assistant; Kaitlyn Peel, Digital Director; Tim Robinson, Chief Counsel; Andrew Souvall, Director of Communications, Outreach, and Member Services; C. J. Young, Press Secretary; Jen Barblan, Minority Chief Counsel, Oversight and Investigations; Mike Bloomquist, Minority Staff Director; Adam Buckalew, Minority Director of Coalitions and Deputy Chief Counsel, Health; Jordan Davis, Minority Senior Advisor; Brittany Havens, Minority Professional Staff Member, Oversight and Investigations; Samuel Kanusher, Minority Intern, Oversight and Investigations; Peter Kielty, Minority General Counsel; Ryan Long, Minority Deputy Staff Director; Brannon Rains, Minority Staff Assistant; Zack Roday, Minority Director of Communications; and Peter Spencer, Minority Senior Professional Staff Member, Energy.

Ms. DEGETTE. The committee will come to order.

Good morning. This is the first hearing of the Oversight and Investigations Subcommittee of Energy and Commerce for the 116th Congress.

I want to start out by thanking all of the new members of the Oversight Subcommittee, which has a grand tradition in this Congress. I also want to thank our brand-new ranking member, Congressman Guthrie, for joining us today. This committee has a long history of bipartisan work on many, many issues affecting this country. I know we are going to work together to do true bipartisan oversight. I look forward to working with everyone on this subcommittee on bipartisan investigations and finding solutions to ultimately improve our Government.

Mr. Guthrie, I would like to yield to you for a minute, if you would like to make any brief remarks.

Mr. GUTHRIE. Thank you very much for being here.

And I want to congratulate you on your being the chair and using the gavel. You have got a good start to it. So, it is good to have you here.

I wasn't on this subcommittee before, but my understanding is it has always tried to work, where they can, on a bipartisanship basis. And you are one of my good friends here in Congress. And so, I look forward to the opportunity to work with you——

Ms. DEGETTE. Thank you.

Mr. GUTHRIE [continuing]. And work together with the committee.

Ms. DEGETTE. Thanks, Mr. Guthrie.

Today the Subcommittee on Oversight and Investigations is holding a hearing entitled, "Examining the Failures of the Trump administration's Inhumane Family Separation Policy". The purpose of today's hearing is to examine the Department of Health and Human Services' response to the administration's zero-tolerance policy, efforts to reunify children separated from parents, as well as the health and well-being of those children.

The Chair now recognizes herself for the purposes of an opening statement.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Today we take a look at the Trump administration's ill-conceived and, frankly, shameful family separation policy that led to thousands of children being separated from their parents at the border. It has been now nearly a year since this cruel policy was put in place, and we still have many unanswered questions. To be clear, what happened to these children should never happen in this country.

On behalf of the American people, we are here today to understand exactly what happened, why it happened, and what needs to be done to make sure that it never happens again. We also want to know the extent of the harm that these separations may have caused these children and families.

When we talk about family separations, it is important to keep in mind that these are real kids. These are real families who were forcibly torn apart and they were kept apart by our Government. Because of a policy put in place by this administration, unnecessary long-term harm may have been inflicted on thousands of children.

We know from decades of research that childhood trauma such as family separations can have serious and longstanding consequences for children. This research demonstrates that the toxic stress that comes from separating a child from their parents can cause irreversible harm to children. It can literally disrupt their brains and other biological systems. We also know that separating kids from their parents can cause a host of other long-term mental and physical health problems.

As noted by the American Psychological Association, quote, "These problems can include severe psychological distress, including PTSD, sleep disturbances, withdrawal, substance use, aggressive behavior, and decline in educational achievement. The longer the parent and child are separated, the more severe some of these symptoms may become."

Like many Members of Congress, I visited some of the facilities where these separated children were being housed. It was heartbreaking. I will never forget what I saw that day. I will never forget the looks in the mothers' eyes when they told me that they had no idea where their children were. I will never forget the children who had no idea where their mom or dad were. All I could think of when I was standing there was, as a nation, we are so much better than that. And that is why we are here today.

Part of the failure of this administration's tragic separation policy was not only its cruelty, but its incompetent implementation. For example, despite the fact that the Office of Refugee Resettlement, known as ORR, would be responsible for caring for a huge influx of separated children, the Government Accountability Office found that key officials within the agency were apparently given no advance knowledge of the now-infamous April 2018 zero-tolerance memo, which led to thousands of separations, and therefore they didn't plan for the sudden influx that was about to come. As a result, ORR, tasked with a challenging mission, suddenly found itself inundated with thousands of forcibly separated children with no place to accommodate them at all.

By the summer of 2018, things got even worse. After a Federal judge ordered that thousands of children be unified with their parents, the Department of Health and Human Services was forced to pull together over 100 staff to manually pore through the thousands of case files and endless databases to try to identify which children and parents had been separated. It is as if nobody ever discussed how reunifications would happen before this plan was launched, and it probably didn't happen.

In addition to this emergency HHS team, the administration also sought the help of NGOs, like the ACLU and KIND, to locate families that had been separated, including parents that had already been deported without their children.

Then, the HHS Office of Inspector General released a new report last month that found that thousands more children may have been separated from their parents than previously reported in an influx that began in early 2017, before the administration's zero-tolerance policy was announced.

Now, while I understand this family separation policy didn't originate at HHS, that doesn't relieve the Department from having to answer some key questions. For example, we need to know what

role HHS leaders played in formulating this policy, whether they made any effort to stop it, and whether they raised any concerns about the harm it would do to the children who were separated. There is no evidence that HHS leaders ever tried to stop this abhorrent policy.

As the agency dedicated to health and welfare of children, we need to know why. One could argue that it was HHS's duty to stop this harmful policy. And some wonder how much longer this would have gone on if it weren't for the action of many NGOs that became active on this matter, including some who will testify today. We want to know exactly how many kids this administration has separated from their families, and we need to know what is being done to reunify each and every one of these families.

Commander White, I want to say to you, I have got enormous respect for the mission of ORR and for you. I think the facilities around the country are dedicated to serving vulnerable children, and they are trying to provide high-quality care. I know our ORR has a difficult mission, and the many charitable organizations that work with ORR to take care of unaccompanied children do important work.

But you are going to hear some harsh comments today. And I am sorry that Secretary Azar is passing the buck to you, when we asked him to be right here in your seat today. The bottom line is the administration's policy of separating children from their parents at the border, and the chaos it unleashed, has left scars that will never heal. We need to know how this policy was created, and we need to know what you plan to do about it.

We are a nation of immigrants. We are a nation that offers care to the needy, and we are a nation of compassionate people. We are not a nation that rips families apart, and we need to stop this for once and for all and get these kids back with their parents.

[The prepared statement of Ms. DeGette follows:]

PREPARED STATEMENT OF HON. DIANA DEGETTE

Today, we take a look at the Trump administration's ill-conceived—and, frankly, shameful—family separation policy that led to thousands of kids being separated from their parents at the border.

It has been nearly a year since this cruel policy was put in place, and we still have many unanswered questions.

To be clear, what happened to these children should never have happened in this country.

On behalf of the American people, we are here today to understand exactly what happened, why it happened, and what needs to be done to make sure it never happens again.

We also want to know the extent of the harm that these separations may have caused these children and families.

When we talk about family separations, it's important to keep in mind that these are real kids, and real families, who were forcibly separated and kept apart by our Government.

Because of a policy put in place by this administration, unnecessary long-term harm may have been inflicted on thousands of children.

We know from decades of research that childhood trauma such as family separations can have serious and long-lasting consequences for children.

This research demonstrates that the "toxic stress" that comes from separating a child from their parents can cause irreversible harm to children. It can literally disrupt their brains and other biological systems.

We also know that separating kids from their parents can cause a host of other long-term mental and physical health problems.

As noted by the American Psychological Association [quote], "These problems can include severe psychological distress, including PTSD, sleep disturbances, withdrawal, substance use, aggressive behavior and decline in educational achievement. The longer the parent and child are separated, the more severe some of these symptoms may become."

Like many Members of Congress, I visited some of the facilities where these separated children were being housed.

It was heartbreaking. I'll never forget what I saw that day. I'll never forget the look in those mothers' eyes as they told me they had no idea where their children were. I'll never forget the children who had no idea where their mom or dad were. All I could think while I was there was that we, as a nation, are better than this.

And, that's why we are here today.

Part of the failure of this administration's tragic family separation policy was not only its cruelty, but its incompetent implementation.

For example, despite the fact that the Office of Refugee Resettlement—known as ORR—would be responsible for caring for a huge influx of separated children, the Government Accountability Office found that key officials within that agency were apparently given no advanced knowledge of the now-infamous April 2018 "zero tolerance" memo, which led to thousands of separations, and therefore didn't plan for the sudden influx that was about to come.

As a result, ORR, already tasked with a challenging mission, suddenly found itself inundated with thousands of forcibly separated children—with no plan in place to accommodate them all.

By summer of 2018, things got even worse.

After a Federal judge ordered that thousands of children be reunified with their parents, the Department of Health and Human Services was forced to pull together over 100 staff to manually pore through thousands of case files and endless databases to try to identify which children and parents had been separated. It's as if nobody discussed how reunifications would occur before this plan was launched.

In addition to this emergency HHS team, the administration also sought the help of NGOs such as the ACLU and KIND to locate families that had been separated, including parents who had already been deported without their children.

Then the HHS Office of Inspector General released a new report last month that found thousands more children may have been separated from their parents than previously reported, in an influx that began in early 2017—before the administration's "zero-tolerance" policy was announced.

While I understand that this family separation policy didn't originate at HHS, that doesn't relieve the Department from having to answer to some key questions.

For instance, we need to know what role HHS leaders played in forming this policy, whether they made any effort to stop it, and whether they raised any concerns about the harm it would do to the children who were separated.

There is no evidence that HHS leaders ever tried to stop this abhorrent policy. As the agency dedicated to the health and welfare of children, we want to know: Why?

One could argue that it was HHS's duty to stop this harmful policy. And some wonder how much longer this would have gone on if not for the action of many of the NGOs that became active on this matter, including some who you will meet on the second panel.

We want to know exactly how many kids this administration has separated from their families. And we need to know exactly what's being done to reunify each and every one of them.

Commander White, I have respect for the mission of ORR, and the facilities around the country that are dedicated to serving vulnerable children and providing high-quality care. ORR has a difficult mission and the many charitable organizations that work with ORR to take care of unaccompanied children do critically important work.

But you are going to hear some angry comments today, and it is disappointing that Secretary Azar is passing the buck to you, when it should be him in your seat right now.

The bottom line is this: This administration's policy of separating children from their parents at the border—and the unmitigated chaos that it unleashed—has likely left scars that may never heal. We need to know how this policy was created, and whether problems—such as the agency's apparent inability to track which children were separated from a parent at the border—remain unresolved.

We are a nation of immigrants. We are a nation that offers care to the needy and helps the most vulnerable. We are nation of compassionate, caring people.

We are not a nation that rips families apart just to send a message to the rest the world—and we must ensure that we never allow ourselves to become such ever again.

Ms. DEGETTE. At this time, the Chair will recognize the ranking member of the subcommittee, Mr. Guthrie, for purposes of an opening statement.

OPENING STATEMENT OF HON. BRETT GUTHRIE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. GUTHRIE. Thank you, Chair DeGette, for holding this hearing. And again, congratulations on being chair of Oversight and Investigations. As you know, this committee has a history of working together on important investigations, and often on a bipartisan basis. I am sure we will find areas we can do that as we move forward.

But, as we begin the hearing on family separation policy at the border, I want to be clear. I support strong enforcement of our Nation's borders, but I do not support separating children from their parents. Between the violence they face in their home country and on their harrowing journeys to the U.S., these children face severely traumatic experiences even before arriving here. And under no circumstances should we add to that trauma by separating them from their parents.

This committee's oversight over the care and treatment of unaccompanied alien children by the Department of Health and Human Services, as well as the sponsorship process for unaccompanied children, extends back to 2014 with the first major influx of children and family units coming across our southern border.

This overwhelmed the previous administration and resulted in children being placed with traffickers within the United States. Because of the work done by this committee and others, reforms were made to the Office of Refugee Resettlement program, including improving the medical care available to children while in HHS care and custody.

In June, following reports that the administration had adopted a zero-tolerance policy for immigrants entering the U.S. and was separating children from their parents, all of the Republican members of this committee sent a letter to HHS expressing our belief that children should not be arbitrarily separated from their parents, and that all children in HHS care should be properly cared for.

We agree with the majority that there are questions for the administration regarding the creation and implementation of zero-tolerance policy. But I would point out that the Justice and Homeland Security Departments are best positioned to speak directly to the policy itself.

As noted by the extensive oversight this committee has conducted over 5 years, we deeply care about the health and well-being of these children. And that is why we invited HHS to be here today to testify on the first panel regarding the agency's role in caring for affected children.

Commander Jonathan White is a career civil servant and has long experience working with unaccompanied children in the Office

of Refugee Resettlement. After the announcement of the zero-tolerance policy, and subsequent ruling from a Federal district court judge ordering the reunification of children separated from their parents, HHS officials, including Commander White, worked tirelessly to reunify the children that were separated from their parents, all while they continued to care for and work on placement of thousands of traditional unaccompanied children through the standard sponsor process.

While we have important questions for HHS with respect to the challenges and ramifications of a policy that was created by the Department of Justice and implemented by the Department of Homeland Security, I want to underscore that HHS did not separate a single child. Their sole role and responsibility was to care for the children while they were in their custody and work to reunify children with the parents from whom they were separated. If that was not possible due to a risk of the child's safety or the wishes of the parent for their child to remain in the United States, HHS worked to place the child with the most appropriate sponsor.

Without the other departments here, we simply cannot have a full conversation about the creation of, planning for, and implementation of the zero-tolerance initiative with the witnesses before us today.

We also invited Bethany Christian Services to testify on the second panel. Bethany is a subgrantee that provides direct care for unaccompanied children in HHS custody. They also care for 108 children who were separated as a result of the zero-tolerance policy. Because of their role in caring for unaccompanied children, Bethany has practical insight into the care for both traditional unaccompanied children and those who were separated, and can speak to the trauma these children have endured in home country on their journey to the U.S., as well as the effects of zero-tolerance policy.

I thank our witnesses for being here today and being part of this important discussion.

And I yield to the Chair.

[The prepared statement of Mr. Guthrie follows:]

PREPARED STATEMENT OF HON. BRETT GUTHRIE

Thank you, Chair DeGette, for holding this hearing. Congratulations on becoming chair of the Oversight and Investigations Subcommittee. This subcommittee has had a longstanding tradition of working on important investigations, often on a bipartisan basis, and I look forward to working with you in this new role and hopefully continuing that tradition.

As we begin this hearing on family separation policy at the border, I want to be clear: I support strong enforcement of our Nation's borders, but I do not support separating children from their parents. Between the violence they face in their home country and on their harrowing journeys to the U.S., these children face severely traumatic experiences before even arriving here—and under no circumstances should we add to that trauma by separating them from their parents.

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We agree with the majority that there are questions for the administration regarding the creation and implementation of the zero-tolerance policy, though I would point out that the Justice and Homeland Security Departments are best positioned to speak directly to the policy itself. As noted by the extensive oversight this committee has conducted for over 5 years, we care deeply about the health and well-being of these children, and that is why we invited HHS here today to testify on the first panel regarding the agency's role in caring for affected children. Commander Jonathan White is a career civil servant, with long experience working with unaccompanied children at the Office of Refugee Resettlement.

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I thank our witnesses for being here today and being part of this important discussion. I yield back.

Ms. DEGETTE. The gentleman yields back. The Chair will now recognize the chairman of the full committee, Mr. Pallone, for 5 minutes for purposes of an opening statement.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you. Thank you, Madam Chair, and thank you for being our chair, because I know about how effective you have been as the ranking member and will be even more effective in this position.

The committee today is finally holding the Trump administration accountable for one of its worst failures. Yesterday marked 10 months since the Trump administration's cruel family separation policy was put into action. We all heard the horror stories of how children were ripped away from their parents and have seen the unforgettable images of crying children standing alone and mothers unable to be with their children. These images and stories were devastating.

And 10 months later, we still do not know fully how this all happened. We do not have a full understanding of how this policy was created within the administration, who provided input, and what kind of planning took place. Most importantly, it will take years for us to know what long-term consequences these actions will have on the thousands of children and families affected by this policy. These children and families are the ones we should keep in mind today, because most of us cannot imagine what they have gone through.

Now, the failures of the Trump administration's family separation policy were twofold. First, the policy itself was a failure because it was inhumane on a fundamental level. As we will hear from the child welfare experts on the second panel, family separations can never be done humanely. There are decades of research demonstrating that parental protection is critical for child development and that forced separations have debilitating effects and long-term consequences. This includes post-traumatic stress, depression, aggression, and long-term psychological and mental health problems. And these problems particularly affect young children.

Now, to be clear, it appears the Trump administration policy was created by the Departments of Justice and Homeland Security. However, we still don't know what role, if any, HHS leaders played in its creation. Since HHS is tasked with caring for these children and ensuring their health and welfare, were HHS's leaders consulted when this policy was being considered? We need to know the answer to that question.

The second failure of the policy was its execution. Even after the Trump administration decided to intentionally and forcibly separate children from their families, it was implemented with incompetence and confusion. The independent watchdogs on our first panel will testify about how the administration did not plan for this policy, and, frankly, it showed. GAO found that the agency had no procedures for reunifying families and had to make processes up on the spot, often with chaotic results. In some cases, the ORR shelter caring for the children only learned a child had been separated when the child told them.

Now I am speaking from somewhat personal experience in all this because, on Father's Day, many of us, myself and some of the New York delegation, went to the Elizabeth Detention Center, which was a detention center near my district in New Jersey that was for fathers. It was only for men. But we met with four fathers on that day. It took us 2 or 3 hours to get in because they didn't want to let us in. It was one of those contracted, private facilities.

And when we finally met with them, no one knew where the kids were, right? In other words, I talked to the guards. I talked to the people in charge of the facility. The fathers had no communications with their kids. They didn't know where the kids were. They had no processes, and the people in charge admitted there was no procedure for them to communicate with their kids or tell them where their kids were. And they were all separated in the middle of the night by surprise. They didn't even know that it was going to happen.

But the worst thing of all—and I don't know if we are going to get into this today—was that the fathers in many cases were being

accused of being abusive. And I felt that the people in charge were convinced that, just because they had brought their daughters or their sons—most of the cases, it was daughters—over the border meant that they were somehow bad people that were trafficking or they were abusing their kids, just because they had brought them over the border.

And so, that is one of my concerns today. I don't know if it is going to be answered here today, but we need to get to the bottom of it. Does this family separation policy continue because, when someone comes over the border—I will use a father with his daughter, but we can use others—that it is just automatically assumed that somehow they are bad and they should be separated? Because separation, you think that somehow the parent is not doing a good job. That just can't be done willy-nilly as if it is OK because they are a bad person because they brought their kid in, because then you have all these negative consequences from the separation that inured just because someone has made that decision. And so, I am very concerned about what is happening now, not just what happened in these particular cases at the time of the zero-tolerance policy.

Now, finally, Madam Chair, I have to note that the HHS witness today is not the person we asked to be here. I respect Commander White and the work he has done in response to this crisis. And our aim here today is not to tarnish ORR or the career staff who dedicated themselves to their mission of serving children. But I personally invited Secretary Azar to be here today because this committee has questions that only he can answer. And I am disappointed he declined our request to testify. However, I can announce that Secretary Azar has committed to coming before this committee in the coming weeks on the President's budget, and this will provide us an opportunity to ask questions about the role he played in the creation and implementation of the family separation policy.

Thank you, Madam Chair.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Today, this committee is finally holding the Trump administration accountable for one of its worst failures. Yesterday marked 10 months since the Trump administration's cruel Family Separation Policy was put into action. We all heard the horror stories of how children were ripped away from their parents and have seen the unforgettable images of crying children standing alone, and mothers unable to be with their children.

These images and stories were devastating. And 10 months later we still do not fully know how this all happened. We do not have a full understanding of how this policy was created within the administration, who provided input, and what kind of planning took place. Most importantly, it will take years for us to know what long-term consequences these actions will have on the thousands of children and families affected by this policy. These children and families are the ones we should keep in mind today, because most of us cannot imagine what they have gone through.

Every parent has experienced a sudden moment of fear: in the grocery store, or at the mall, when you turn around and your child isn't there. For most of us, we're lucky enough to turn the corner and find our child again, and that second of panic dissipates.

But for thousands of families who were the victims of the Trump administration's family separation policy, they were forced to live their worst nightmare for months, with long-term traumatic consequences that we are only beginning to understand.

The failures of this policy were twofold. First, the policy itself was inhumane on a fundamental level. As we will hear from the child welfare experts on the second panel, family separations can never be done humanely.

There are decades of research demonstrating that parental protection is critical for child development, and that forced separations have "debilitating effects" and long-term consequences. This includes post-traumatic stress, depression, aggression, and long-term psychological and mental health problems. These problems particularly affect young children.

When you walk into the lobby of the HHS headquarters here in Washington, there is a quote on the wall from Hubert H. Humphrey. It says, in part, "the moral test of government is how that government treats those who are in the dawn of life—the children." Well, it is indisputable that this policy failed that test. This administration failed the children.

To be clear, it appears this policy was created by the Departments of Justice and Homeland Security. However, we still don't know what role, if any, HHS leaders played in its creation. Since HHS is tasked with caring for these children and ensuring their health and welfare, were HHS's leaders consulted when this policy was being considered? We need to know this answer.

The second failure of this policy was in its execution. Even after the Trump administration decided to intentionally and forcibly separate children from their families, it was implemented with incompetence and confusion. The independent watchdogs on our first panel will testify about how the administration did not plan for this policy—and it showed.

GAO found that the agencies had no procedures for reunifying families, and had to make processes up on the spot, often with chaotic results. In some cases, the ORR shelter caring for the children only learned a child had been separated when the child told them.

Efforts to reunify children with their parents were so chaotic that the administration had to call in HHS's emergency response agency, the Assistant Secretary for Preparedness and Response (ASPR). This is the agency dedicated to providing healthcare coordination in response to disasters like hurricanes. It is telling that the administration had to use them to clean up the mess after this self-created disaster.

Finally, I must note that the HHS witness today is not the person we asked to be here. I respect Commander White and the work he has done in response to this crisis. Our aim here today is not to tarnish ORR or the career staff who dedicate themselves to their mission of serving children. They do important work and we thank them.

But I personally invited Secretary Azar to be here today, because this committee has questions that only he can answer. I am disappointed he declined our request to testify. However, I can announce that Secretary Azar has committed to coming before this committee in the coming weeks on the President's budget. This will provide us an opportunity to ask questions about the role he played in the creation and implementation of the family separation policy.

Let there be no doubt that the decision by this administration to cruelly separate children from their parents is a stain on our country. We must find out how this administration allowed this to happen so we can ensure it is never repeated again.

I yield back.

Ms. DEGETTE. The Chair will now recognize the ranking member of the full committee, Mr. Walden, for 5 minutes for the purposes of an opening statement.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Thank you, Madam Chair, and congratulations on becoming chair of this very important subcommittee. I enjoyed working with you over the years on this subcommittee when we were both involved in it directly, and I know you will do a great job. I am glad you are doing this hearing.

Since 2014, the committee has conducted rigorous oversight of issues related to unaccompanied alien children and the system put in place to care for these children by the Department of Health and Human Services' Office of Refugee Resettlement. In 2014, it was the first major influx of unaccompanied alien children and family

units crossing into the United States. As a result of this committee's oversight then, improvements were made to the UAC program, but questions remain and we have more work to do.

The immigration issue is complex and one that Congress and the country have been grappling with for decades. While I support strong enforcement of our Nation's borders, I want to make something very clear: I support keeping families together. Last summer, I voted to ban family separation, and I strongly believe that children should not be separated from their parents, period.

That is why I and every Republican on this committee sent a letter to HHS last June expressing our belief that children should not be separated from their parents. In addition, our letter sought information from HHS to ensure that children who are in ORR's custody, whether they cross the border as unaccompanied alien children or because they cross the border with a family member and were subsequently separated, are properly cared for while they are in ORR's care.

So, I would like to ask the Chair for unanimous consent that the June letter be entered into the hearing record.

Ms. DEGETTE. Without objection.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. It is also why I led a bipartisan delegation of this committee down to McAllen, Texas in July to visit and tour part of the Southwest border, a port of entry, a central processing facility operated by the U.S. Customs and Border Protection, a U.S. Immigration and Customs Enforcement detention facility, and an ORR shelter. It is also why committee staff has since visited an additional five Office of Refugee Resettlement facilities, including the temporary influx ORR shelter in Tornillo, Texas, that has since closed.

I would also like to ask unanimous consent, Madam Chair, that a memo drafted by the Republican staff about the facilities our bipartisan delegation visited last July be entered into the record.

Ms. DEGETTE. Without objection.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. While the committee has conducted oversight over the UAC program and/or our facilities over the past 5 years, it is critical to today's hearing to acknowledge that the Office of Refugee Resettlement and the role that it plays in caring for UACs is a vital but small part of our overall immigration process. ORR's and HHS's responsibility is to care for the children that have been transferred to their custody from the U.S. Department of Homeland Security and then work to reunify or vet and place children with a safe and appropriate sponsor.

For the children who are separated from their parents, those separations happen because of immigration enforcement decisions made by the Department of Justice and carried out by the Department of Homeland Security. The majority's stated objective is to assess HHS's preparation and response to the zero-tolerance policy and its efforts to reunify children with their families. Given HHS's role in caring for and reunifying the children that were separated, as well as their role in caring for traditional unaccompanied alien children, we felt it was important to invite them to testify as one of our minority witnesses for the first panel.

Commander, we are glad you are here.

We greatly appreciate all of the witnesses and the work that you all are doing. We appreciate you appearing before us today.

With that said, in order to adequately examine the zero-tolerance policy that led to family separations, it is critical that the Department of Justice and the Department of Homeland Security also be part of this conversation.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Thank you, Chair DeGette, for holding this important hearing today.

Since 2014, this committee has conducted rigorous oversight of issues related to Unaccompanied Alien Children (UAC) and the system put into place to care for UACs by the Department of Health and Human Services' (HHS) Office of Refugee and Resettlement (ORR). 2014 is when the first major influx of UAC and family units crossing into the United States occurred. As a result of this committee's oversight, improvements were made to the UAC program, but questions remain and we have more work to do.

The immigration issue is complex, and one that Congress and the country have been grappling with for decades. While I support strong enforcement of our Nation's borders, I want to make something very clear—I support keeping families together, and strongly believe that children should not be separated from their parents. That is why I, and every Republican member of this committee, sent a letter to HHS last June expressing our belief that children should not be separated from their parents. In addition, our letter sought information from HHS to ensure that children who are in ORR's custody—whether they crossed the border as an unaccompanied alien child or because they crossed the border with a family member and were subsequently separated—are properly cared for while in ORR's care. I'd like to ask the Chair for unanimous consent that the June letter be entered into the hearing record.

It is also why I led a bipartisan delegation of Members down to McAllen, Texas, in July to visit and tour part of the Southwest border, a port of entry, a central processing facility operated by U.S. Customs and Border Protection (CBP), a U.S. Immigration and Customs Enforcement (ICE) detention facility, and an ORR shelter. It is also why committee staff have since visited an additional five ORR facilities, including the temporary influx ORR shelter in Tornillo, Texas, that has since closed. I would also like to ask for unanimous consent that a memo drafted by Republican staff about the facilities our bipartisan delegation visited last July be entered into the record.

While the committee has conducted oversight over the UAC program and ORR facilities for the past 5 years, it is critical to today's hearing to acknowledge that ORR, and the role that it plays in caring for UACs, is a vital but small part of our immigration process. ORR and HHS's responsibility is to care for the children that have been transferred to their custody from the U.S. Department of Homeland Security (DHS) and then work to reunify or vet and place children with a safe and appropriate sponsor. For the children who were separated from their parents, those separations happened because of immigration enforcement decisions made by the Department of Justice and carried out by DHS.

The majority's stated objective is to assess HHS' preparation and response to the zero-tolerance policy and its efforts to reunify children with their families. Given HHS' role in caring for and reunifying the children that were separated, as well as their role in caring for traditional UACs, we felt it was important to invite them to testify as our one minority witness for the first panel of today's hearing.

We greatly appreciate the witnesses that are here appearing before us today. That said, in order to adequately examine the zero-tolerance policy that led to family separations, it is critical that DOJ and DHS be part of the conversation as well.

Thank you, and I yield back.

Mr. WALDEN. With that, I would yield to the gentleman from Texas, Dr. Burgess, the remaining.

Mr. BURGESS. Thank you, Mr. Chairman.

And I think it is important for contextual purposes for us to at least acknowledge that the United States accepts over 1.1 million

people per year into the country on a legal basis, has done so for as long as I have been in Congress, which is over 15 years, and that number has actually increased in the first 2 years of the Trump administration. This makes the United States the most welcoming country to immigrants of all the countries in the world.

In 2012, President Obama announced the Deferred Action for Childhood Arrivals. Shortly after that, the word on the street in Central American countries was that, if you can get to the border and arrive across the border, you can get a slip of paper called a "permiso," and you will be allowed to stay and, ultimately, the President will give you amnesty. And that brought the onslaught in 2013–2014. I first became aware of this problem in 2014. I didn't even know the Office of Refugee Settlement existed before 2014, but I have made multiple trips down there.

And let me just say, this subcommittee has a history of oversight that has benefitted the people who are in the custody of ORR. No doctor was on the staff before this subcommittee—this subcommittee—had a briefing from the Department. This committee is responsible for the mental health checks that children get in these facilities, and this committee is responsible for the fact that children are given an opportunity for followup after they leave the facility and are placed with a family.

I was horrified when I went down there that the children were just sent off to wherever, whoever identified themselves as a family member. In a different hearing, in a different committee, we learned that children are sometimes trafficked by family members.

So, this subcommittee has a significant history of improving things for the children who are placed under the custody of ORR.

Commander White, thank you for being here today.

[The prepared statement of Mr. Burgess follows:]

PREPARED STATEMENT OF HON. MICHAEL C. BURGESS

When the current immigration crisis began in 2014 under the Obama administration, few people knew about or understood the role of the Office of Refugee Resettlement within Health and Human Services. While Democrats seek to place blame for the "zero-tolerance" of immigration law violations, all Energy and Commerce Republicans signed a letter supporting enforcement of our Nation's borders AND keeping families together. HHS is not responsible for and does not have jurisdiction over immigration policy. The Office of Refugee Resettlement has been on the receiving end of immigration enforcement policies from the beginning.

This subcommittee has a history of being involved in the care of Unaccompanied Alien Children. Our oversight resulted in the establishment of a Division of Health for Unaccompanied Children and the employment of medical staff at facilities to test for and treat communicable diseases.

Children are now being screened for medical, dental, and mental health, in addition to sexual abuse and vulnerability to trafficking. Previously these cases were identified through self-admission and children were provided a letter indicating their eligibility for services. In 2015, ORR implemented a 30-day follow-up call and established a national call center for sponsors and children.

With the improvements in ORR care spearheaded by this subcommittee, HHS is better serving the children referred to it by DHS and continues to diligently place all eligible children with their parents or appropriate sponsors. I look forward to advancing this continuum of care.

Mr. BURGESS. I yield back.

Ms. DEGETTE. The gentleman yields back.

I ask unanimous consent that Members' written opening statements be made part of the record. Without objection, they will be entered into the record.

I ask unanimous consent that Energy and Commerce members not on the Subcommittee on Oversight and Investigations, of which we have many joining us today—and I welcome you—be permitted to participate in today's hearing. Without objection, so ordered.

I now would like to introduce panel 1 of our witnesses for today's hearing. Ms. Kathryn Larin, who is the Director of Education, Workforce, and Income Security for the General Accounting Office; Ms. Rebecca Gambler, Director of Homeland Security and Justice, Government Accountability Office; Ms. Ann Maxwell, Assistant Inspector General for Evaluation and Inspections, Office of Inspector General, Department of Health and Human Services, and Commander Jonathan White, United States Public Health Service Commissioned Corps, U.S. Department of Health and Human Services.

Thanks to all of you for appearing before this subcommittee today.

Now I am sure you are aware the committee is holding an investigative hearing, and when doing so, has the practice of taking testimony under oath. Does anyone have any objections to testifying under oath?

Let the record reflect the witnesses have responded no.

The Chair then advises you that, under the rules of the House and the rules of the committee, you are entitled to be accompanied by counsel. Do you desire to be accompanied by counsel during your testimony today?

Let the record reflect the witnesses have responded no.

If you would, please rise and raise your right hand, so that you may be sworn in.

[Witnesses sworn.]

You may be seated.

Let the record reflect that the witnesses have now responded affirmatively, and you are now under oath and subject to the penalties——

Mr. DUNCAN. Madam Chairman?

Ms. DEGETTE [continuing]. Set forth in Title 18, Section 1001, of the United States.

For what purpose does the gentleman from South Carolina seek recognition?

Mr. DUNCAN. I believe the oath was incorrect and incomplete.

Ms. DEGETTE. This is the oath we use, and that is the oath we are going to use today.

It is now time for Members to have the opportunity to ask questions, and I will recognize myself for 5 minutes. Let me just start. I have very limited time. So I would appreciate a yes-or-no answer to any of the questions.

Ms. Maxwell, let me start with you. OIG recently concluded that thousands of additional—oh, opening statements from the witnesses. Sorry, this is my first time. So everybody has to bear with me.

Ms. Larin, let's have a 5-minute opening statement from you.

STATEMENTS OF KATHRYN A. LARIN, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, GOVERNMENT ACCOUNTABILITY OFFICE; ANN MAXWELL, ASSISTANT INSPECTOR GENERAL, OFFICE OF EVALUATION AND INSPECTIONS, OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND JONATHAN WHITE, COMMANDER, UNITED STATES PUBLIC HEALTH SERVICE COMMISSIONED CORPS, DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT OF KATHRYN A. LARIN

Ms. LARIN. Chair DeGette, Ranking Member Guthrie, and members of the subcommittee, Ms. Gambler and I appreciate the opportunity to be here today to discuss efforts of the Departments of Health and Human Services and Homeland Security to plan for and respond to family separations that occurred during the spring of 2018 at the Southwest border.

According to officials, the increased separations resulted from a memo issued by the Attorney General on April 6, 2018, regarding criminal prosecutions of immigration-related offenses, known as zero tolerance. On June 26th, a Federal judge ordered the Government to reunify certain separated families.

Today, my testimony will cover three key issues. First, I will discuss planning efforts by HHS and DHS related to the April 2018 memo. According to HHS and DHS officials we interviewed, the Departments did not plan for family separations or for an increase in the number of children transferred to HHS because they were not aware of the memo until its public release. However, HHS officials also told us that in the year prior to the April 2018 memo, they saw a tenfold increase in the number of children known to have been separated from their parents.

Two things likely contributed to the increase. A memo issued by the Attorney General in April 2017 prioritized enforcement of certain immigration-related offenses, and an initiative in the El Paso Border Patrol sector increased criminal prosecution of such offenses, including those parents who arrived with minor children.

In November 2017, HHS officials told us they asked DHS officials about the increase in child separations and was told there was no official policy of separating families. When separations continued, HHS's Office of Refugee Resettlement considered planning for continued increases in separated children but were advised by HHS leadership not to engage in such planning, given that DHS did not have a policy of separating families.

Second, I will discuss systems for indicating children were separated from parents. At the time of the Attorney General's April 2018 memo, there was no single database with reliable information on family separations. Data systems maintained by Customs and Border Protection and by the Office of Refugee Resettlement did not include a designated field to indicate a child had been separated from a parent. Both HHS and DHS updated their data systems by the summer of 2018, but, at least initially, there were indications that data was not consistently being shared between the agencies.

It's too soon to know whether these data system changes, when fully implemented, will consistently indicate when children have been separated or will help with reunifications. Further, these changes do not address broader coordination issues that we identified in our prior work. We recommended that the agencies improve the process for referring and transferring custody of children from DHS to HHS. That recommendation has not yet been fully addressed.

Third, I will briefly summarize Federal actions to reunify families in response to the June court order. First, to create a list of children covered by the court reunification order, HHS and DHS officials told us that they deployed an interagency task team to identify and locate children and parents. HHS manually reviewed about 12,000 electronic case files of children in its care.

Once HHS had identified eligible children, the process of reunifying them with parents evolved over time, based on multiple court hearings and orders, which presented challenges for HHS staff who were facilitating reunifications. For example, HHS started by using DNA testing to determine parentage for young children. But, on July 10th, the court approved the use of DNA testing only when necessary to verify a legitimate concern about parentage or to meet a reunification deadline. Similarly, the process for determining whether the parent is fit or presents a danger also evolved over time, based on court orders. Finally, procedures for physical reunification varied, depending on whether parents were in the custody of ICE or had been released.

This concludes my statement. I'm happy to answer any questions you might have.

[The prepared statement of Ms. Larin follows:]

United States Government Accountability Office

Testimony

Before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

For Release on Delivery
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UNACCOMPANIED CHILDREN

Agency Efforts to Identify and Reunify Children Separated from Parents at the Border

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

Rebecca Gambler, Director, Homeland Security and Justice

GAO-19-368T

GAO Highlights

Highlights of GAO-19-368T, a testimony before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

February 7, 2019

UNACCOMPANIED CHILDREN

Agency Efforts to Identify and Reunify Children Separated from Parents at the Border

Why GAO Did This Study

On April 6, 2018, the Attorney General issued a memorandum on criminal prosecutions of immigration offenses. According to HHS officials, this resulted in a considerable increase in the number of minor children whom DHS separated from their parents after attempting to cross the U.S. border illegally. On June 20, 2018, the President issued an executive order directing that alien families generally be detained together, and on June 26, 2018, a federal judge ordered the government to reunify separated families. DHS is responsible for the apprehension and transfer of UAC to HHS. HHS is responsible for coordinating UAC placement and care.

This testimony discusses DHS and HHS (1) planning efforts related to the Attorney General's April 2018 memo, (2) systems for indicating children were separated from parents, and (3) actions to reunify families in response to the June 2018 court order. It is based on a report GAO issued in October 2018. This testimony also includes updated data reported by the government on the number children separated from their parents subject to the court's reunification order and the number of those children in ORR custody as of December 11, 2018.

What GAO Recommends

GAO recommended in 2015 that DHS and HHS improve their process for transferring UAC from DHS to HHS custody. DHS and HHS concurred and have taken action, but have not fully implemented the recommendation.

View GAO-19-368T. For more information, contact Kathryn A. Larin at (202) 512-7215 or larink@gao.gov or Rebecca Gambler at (202) 512-8777 or gamblerr@gao.gov.

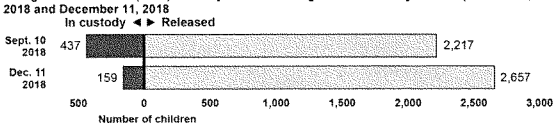
What GAO Found

Department of Homeland Security (DHS) and Department of Health and Human Services (HHS) officials GAO interviewed said the agencies did not plan for the potential increase in the number of children separated from their parent or legal guardian as a result of the Attorney General's April 2018 "zero tolerance" memo because they were unaware of the memo in advance of its public release. The memo directed Department of Justice prosecutors to accept for criminal prosecution all referrals from DHS of offenses related to improper entry into the United States, to the extent practicable. As a result, parents were placed in criminal detention, and their children were placed in the custody of HHS's Office of Refugee Resettlement (ORR). DHS and ORR treated separated children as unaccompanied alien children (UAC)—those under 18 years old with no lawful immigration status and no parent or legal guardian in the United States available to provide care and physical custody.

Prior to April 2018, DHS and HHS did not have a consistent way to indicate in their data systems children and parents separated at the border. In April and July 2018, U.S. Customs and Border Protection's Border Patrol and ORR updated their data systems to allow them to indicate whether a child was separated. However, it is too soon to know the extent to which these changes, if fully implemented, will consistently indicate when children have been separated from their parents, or will help reunify families, if appropriate.

In response to a June 26, 2018 court order to quickly reunify children separated from their parents, HHS determined how many children in its care were subject to the order and developed procedures for reunifying these families. As of September 2018, the government identified 2,654 children in ORR custody who potentially met reunification criteria, which does not include separated children released to sponsors prior to the June 2018 court order. On July 10, 2018, the court approved reunification procedures for the parents covered by the June 2018 court order. This July 10, 2018 order noted that ORR's standard procedures used to release UAC from its care to sponsors were not meant to apply in this circumstance, in which parents and children who were apprehended together were separated by government officials. Since GAO's October 2018 report, the government identified additional children separated from parents subject to the court's reunification order and released additional children from its custody (see figure).

Number of Possible Children of Potential Class Members Who Were Released from Office of Refugee Resettlement (ORR) Custody and Remaining in ORR Custody as of September 10, 2018 and December 11, 2018



Source: Ms. L v. ICE , No. 18-0428 (S.D. Cal. Sept. 13, 2018 and Dec. 12, 2018) (joint status reports). | GAO-19-368T

Note: GAO did not independently verify the accuracy of these data.

February 7, 2019

Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee:

Thank you for the opportunity to discuss the efforts of the Department of Homeland Security (DHS) and Department of Health and Human Services (HHS) to plan for and respond to family separations that occurred during the spring of 2018 at the southwest border. On April 6, 2018, the Attorney General issued a memorandum on criminal prosecutions of immigration offenses, which officials said resulted in a considerable increase in the number of minor children whom DHS separated from their parents or legal guardians after attempting to cross the U.S. border illegally.[1] On June 20, 2018, the President issued an executive order directing that alien families generally be detained together,[2] and on June 26, 2018, a federal judge ordered the government to reunify certain separated families.[3]

My statement today will focus on (1) DHS and HHS planning efforts related to the Attorney General's April 2018 memo, (2) DHS and HHS systems for indicating children were separated from parents, and (3) DHS and HHS actions to reunify families in response to the June 2018 court order. My statement is based on the findings from our October 2018 report, which provides a detailed description of our methodology.[4] To obtain updated data on the number of children affected by the federal court order to reunify families, we reviewed the December 12, 2018 joint

[1]*Memorandum for Prosecutors Along the Southwest Border. Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a). Office of the Attorney General.* April 6, 2018 (referred to in this testimony statement as the "April 2018 memo"). Specifically, the memo directed "each United States Attorney's Office along the Southwest Border—to the extent practicable, and in consultation with DHS—to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a)." See GAO, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, GAO-19-163 (Washington, D.C.: October 9, 2018) for more information on 8 U.S.C. § 1325(a).

[2]Exec. Order No. 13841, 83 Fed. Reg. 29,435 (June 25, 2018). Although the executive order was announced on June 20, 2018, it was not published in the Federal Register until June 25, 2018.

[3]Ms. L. v. U.S. Immigration & Customs Enforcement (*Ms. L. v. ICE*), No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction).

[4]GAO, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, GAO-19-163 (Washington, D.C.: October 9, 2018).

status update. 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.

Background

Family Separations at the Southwest Border

According to DHS and HHS officials, DHS has historically separated a number of children from accompanying adults at the border and transferred them to HHS custody, but these separations occurred only in certain circumstances. For example, DHS might separate families if the parental relationship could not be confirmed, if there was reason to believe the adult was participating in human trafficking or otherwise a threat to the safety of the child, or if the child crossed the border with other family members such as grandparents without proof of legal guardianship. HHS has traditionally treated these children as unaccompanied alien children (UAC)—children who (1) have no lawful immigration status in the United States, (2) have not attained 18 years of age, and (3) have 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.[5]

The Attorney General's April 2018 memorandum, also referred to as the "zero tolerance" policy, directed Department of Justice (DOJ) prosecutors to accept all referrals of all improper entry offenses from DHS for criminal prosecution, to the extent practicable. According to DHS officials, in implementing the April 2018 memo, DHS's U.S. Customs and Border Protection (CBP) began referring a greater number of individuals apprehended at the border to DOJ for criminal prosecution, including parents who were apprehended with children.[6] In these cases, referred parents were placed into U.S. Marshals Service custody and separated from their children because minors cannot remain with a parent who is

[5]6 U.S.C. § 279(g)(2).

[6]When we use the term "children," we are referring to minor children under the age of 18. When we use the term "parent," we are referring to parents and legal guardians.

arrested on criminal charges and detained by U.S. Marshals Service.[7] In cases where parents were referred to DOJ for criminal proceedings and separated from their children, DHS and HHS officials stated they treated those children as UAC. In such cases, DHS transferred these children to the custody of HHS's Office of Refugee Resettlement (ORR) and ORR placed them in one of their shelter facilities, as is the standard procedure for UAC.

The President's executive order issued on June 20, 2018, directed, among other things, that the Secretary of Homeland Security maintain custody of alien families during any criminal improper entry or immigration proceedings involving their family members, to the extent possible. This order stated that the policy of the administration is to maintain family unity, including by detaining alien families together where appropriate. In addition, on June 26, 2018, a federal judge ruled in the Ms. L. v. ICE case that certain separated parents must be reunited with their minor children (referred to in this testimony statement as the "June 2018 court order").[8] In this case, the American Civil Liberties Union filed a federal lawsuit on behalf of certain parents (referred to as class members) who had been

[7]While DOJ and DHS have broad authority to detain adult aliens, children, whether accompanied or unaccompanied, must be detained according to standards established in the Homeland Security Act of 2002 (Pub. L. No. 107-296, tit. IV, subtit. D, § 441, 116 Stat. 2135, 2192) the Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. No. 110-457, 112 Stat. 5044), and the 1997 Flores v. Reno Settlement Agreement (Flores Agreement) (Stipulated Settlement Agreement, Flores v. Reno, No. 85-4544 (C.D. Cal. Jan. 17, 1997)).

[8]For parents covered by the June 2018 order, the court ruled that the government may not detain parents apart from their minor children, subject to certain exceptions; that parents must be reunited with their minor children under 5 years of age within 14 days of the order; and parents must be reunited with their minor children age 5 and over within 30 days of the order. The order required these reunifications unless there is a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child. Ms. L. v. U.S. Immigration & Customs Enforcement (*Ms. L. v. ICE*), No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction).

separated from their children.[9] As of September, 10, 2018, the government had identified 2,654 children of potential class members in the Ms. L. v. ICE case, which we discuss in greater detail later in this statement. As of January 31, 2019, this litigation was ongoing.

Care and Custody of Unaccompanied Alien Children (UAC)

Under the Homeland Security Act of 2002, responsibility for the apprehension, temporary detention, transfer, and repatriation of UAC is delegated to DHS,[10] and responsibility for coordinating and implementing the placement and care of UAC is delegated to HHS's ORR.[11] CBP's U.S. Border Patrol (Border Patrol) and Office of Field Operations (OFO), as well as DHS's ICE, apprehend, process, temporarily detain, and care for UAC who enter the United States with no lawful immigration status.[12] ICE's Office of Enforcement and Removal Operations (ERO) is generally responsible for transferring UAC, 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 (TVPRA), UAC in the custody of any federal department or agency, including DHS, must be transferred to ORR within 72 hours after determining that they are UAC, except in exceptional circumstances.[13] In addition, the 1997 Flores v. Reno Settlement Agreement (Flores Agreement) sets standards of care for UAC while in DHS or ORR

[9]This case was filed as a class action—class referring to individuals with a shared legal claim who are covered by the lawsuit. Ms. L. v. ICE, No. 18-0428 (S.D. Cal. March 9, 2018) (amended complaint). The court certified the following class: "All adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by the DHS, and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody, absent a determination that the parent is unfit or presents a danger to the child." Ms. L. v. ICE, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting in part plaintiffs' motion for class certification). In that order, the court also noted that the class "does not include migrant parents with criminal history or communicable disease, or those who are in the interior of the United States or subject to the [June 20 executive order]."

[10]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.

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

[12]Border Patrol agents apprehend UAC between official U.S. ports of entry, and Office of Field Operations officers encounter these children at ports of entry. ICE apprehends UAC within the United States at locations other than borders or ports of entry.

[13]8 U.S.C. § 1232(b)(3).

custody, including, among other things, providing drinking water, food, and proper physical care and shelter for children.[14]

In 2015 and 2016, we reported on DHS's and HHS's care and custody of UAC, including the standard procedures that DHS follows to transfer UAC to ORR.[15] ORR's UAC policy guide states that the agency requests certain information from DHS when DHS refers children to ORR, including, for example, how DHS determined the child was unaccompanied.[16] Depending on which DHS component or office is referring the child to ORR, DHS may provide information on the child in an automated manner directly into ORR's UAC Portal—the official system of record for children in ORR's care—or via email.[17]

ORR has cooperative agreements with residential care providers to house and care for UAC 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.[18] In addition, these care providers are 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 the child leaves ORR custody.[19] Release to a sponsor does not grant UAC legal

[14]Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997).

[15]GAO, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521 (Washington, D.C.: July 14, 2015) and GAO, *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care*, GAO-16-180 (Feb. 5, 2016: Washington, D.C.).

[16]Office of Refugee Resettlement, *ORR Guide: Children Entering the United States Unaccompanied*, accessed August 23, 2018, *https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied*.

[17]As of August 2018, not all DHS offices were entering information directly into ORR's UAC Portal. CBP officials also told us that its officials included biographical information and details regarding the apprehension of the alien, in packets provided to ORR when UAC are transferred to ORR custody. In cases in which the information is sent via email, the ORR Intakes Team must manually enter it into the UAC Portal. The ORR Intakes Team is made up of ORR headquarter staff who receive referrals of UAC from federal agencies and make the initial placement of these children in ORR facilities.

[18]ORR is required to promptly place UAC in its custody in the least restrictive setting that is in the best interest of the child. 8 U.S.C. § 1232(c)(2)(A).

[19]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. See 8 U.S.C. § 1232(c)(3).

immigration status. Children are scheduled for removal proceedings in immigration courts to determine whether they will be ordered removed from the United States or granted immigration relief.[20]

Once at the shelter, shelter staff typically conduct an intake assessment of the child within 24 hours, and then are to provide services such as health care and education. According to ORR's UAC policy guide, shelter staff are responsible for meeting with the child to begin identifying potential sponsors, which can include parents. To assess the suitability of potential sponsors, including parents, ORR care providers collect information from potential sponsors to establish and identify their relationship to the child.[21] For example, the screening conducted of potential sponsors includes various background checks and in June 2018, ORR implemented increased background check requirements that were outlined in an April 2018 memorandum of agreement with DHS. These changes required ORR staff to collect fingerprints from all potential sponsors, including parents, and all adults in the potential sponsor's household and transmit the fingerprints to ICE to perform criminal and immigration status checks on ORR's behalf. ICE was to submit the results to ORR, and ORR used this information, along with information provided by, and interviews with, the potential sponsors, to assess their suitability.[22] However, in December 2018, ORR revised its background check policy to limit criminal and immigration status checks conducted by ICE to the potential sponsor, unless concerns about other adult household members are raised via a public records check, there is a documented risk to the safety of the child, the child is particularly vulnerable, or the case is referred for a home study.

[20]There are several types of immigration relief that may be available to these children, for example, asylum or Special Immigrant Juvenile status. For more information, see GAO-16-180.

[21]According to an HHS official, ORR's process for placing UAC with sponsors is designed to comply with the 1997 Flores Agreement, the Homeland Security Act of 2002, and TVPRA. For more information on ORR's process for identifying and screening sponsors, see GAO-19-163.

[22]ORR conducts other additional background checks, such as the child abuse and neglect checks, as part of its screening process.

HHS and DHS Planning for Family Separations

According to HHS and DHS officials we interviewed, the departments did not take specific steps in advance of the April 2018 memo to plan for family separations or a potential increase in the number of children who would be referred to ORR because they did not have advance notice of the memo. Specifically, ORR, CBP, and ICE officials we interviewed stated that they became aware of the April 2018 memo when it was announced publicly.

Though they did not receive advance notice of the April 2018 memo, ORR officials stated that they were aware that increased separations of parents and children were occurring prior to the April memo. According to ORR officials, the percentage of children referred to ORR who were known to have been separated from their parents rose by more than tenfold from November 2016 to August 2017 (0.3 to 3.6 percent). In addition, the ORR shelter and field staff we interviewed at four ORR facilities in Arizona and Texas told us they started noticing an increase in the number of children separated from their parents in late 2017 and early 2018, prior to the April 2018 memo. The DHS officials we interviewed stated that, in some locations across the southwest border, there was an increase in the number of aliens CBP referred to DOJ for prosecution of immigration-related offenses after an Attorney General memo issued in April 2017.[23] This memo prioritized enforcement of a number of criminal immigration-related offenses, including misdemeanor improper entry. In addition, CBP officials stated that there may have been an increase in children separated from non-parent relatives or other adults fraudulently posing as the child's parents.[24]

According to ORR officials, in November 2017, ORR officials asked DHS officials to provide information about the increase in separated children. In response, DHS officials stated that DHS did not have an official policy to separate families, according to ORR officials. A few months prior to the April 2018 memo, ORR officials said they saw a continued increase in separated children in their care. ORR officials noted that they considered planning for continued increases in separated children, but HHS leadership advised ORR not to engage in such planning since DHS

[23]*Memorandum for All Federal Prosecutors. Renewed Commitment to Criminal Immigration Enforcement.* Office of the Attorney General. April 11, 2017.

[24]In June 2018, DHS issued a press release noting an increase in the number of aliens using children to pose as family units to gain entry into the United States in 2017 and 2018.

officials told them that DHS did not have an official policy of separating families.

From July to November 2017, the Border Patrol sector in El Paso, Texas conducted an initiative to address an increase in apprehensions of families that sector officials had noted in early fiscal year 2017. [25] Specifically, Border Patrol officials in the sector reached an agreement with the District of New Mexico U.S. Attorney's Office to refer more individuals who had been apprehended, including parents who arrived with minor children, for criminal prosecution. Prior to this initiative, the U.S. Attorney's Office in this district had placed limits on the number of referrals it would accept from Border Patrol for prosecution of immigration offenses.[26] According to Border Patrol officials, under this initiative, the U.S. Attorney's Office agreed to accept all referrals from Border Patrol in the El Paso sector for individuals with violations of 8 U.S.C. § 1325 (improper entry by alien) and § 1326 (reentry of removed aliens), consistent with the Attorney General's 2017 memo directing federal prosecutors to prioritize such prosecutions.[27] For those parents placed into criminal custody, Border Patrol referred their children to ORR's care as UAC. According to a Border Patrol report on the initiative, the El Paso sector processed approximately 1,800 individuals in families and 281 individuals in families were separated under this initiative. Border Patrol headquarters directed the sector to end this initiative in November 2017, and Border Patrol officials stated that there were no other similar local initiatives that occurred prior to the Attorney General's 2018 memo.

[25]Border Patrol divides responsibility for border security operations geographically among sectors.

[26]According to a November 2017 Border Patrol memo, on July 6, 2017, the District of New Mexico, Acting United States Attorney removed all restrictions imposed on referrals from Border Patrol's El Paso Sector.

[27]According to Border Patrol, all individuals apprehended, referred, and accepted for prosecution were generally prosecuted for criminal immigration violations such as improper entry by alien (8 U.S.C. § 1325) and illegal reentry of removed aliens (8 U.S.C. § 1326). According to a DHS press release issued on June 15, 2018, parents prosecuted for illegal entry were transferred to DOJ custody for criminal proceedings, then subsequently transferred to ICE for immigration proceedings. The press release states that any individual subject to removal from the United States may seek asylum or other protections available under the law, including children who, depending on the circumstances, may undergo separate immigration proceedings.

DHS and HHS Systems for Indicating When Children Were Separated from Parents

When the April 2018 memo was released, there was no single database with easily extractable, reliable information on family separations. DHS and HHS subsequently updated their data systems in the spring and summer of 2018, but it is too soon to know the extent to which these changes, if fully implemented, will consistently indicate when children have been separated from the parents or will help reunify families, if appropriate. Specifically, prior to April 2018, CBP's and ORR's data systems did not include a designated field to indicate that a child was unaccompanied as a result of being separated from his or her parent, and ORR officials stated that such information was not always provided when children were transferred from DHS to HHS custody. According to agency officials, between April and August 2018, the agencies made changes to their data systems to help notate in their records when children are separated from parents.

Regarding DHS, CBP's Border Patrol and OFO made changes to their data systems to allow them to better indicate cases in which children were separated from their parents; however, ORR officials told us in September 2018, that they had been unaware that DHS had made these systems changes.

- According to Border Patrol officials, Border Patrol modified its system on April 19, 2018, to include yes/no check boxes to allow agents to indicate that a child was separated from their parent(s).[28] However, Border Patrol officials told us that information on whether a child had been separated is not automatically included in the referral form sent to ORR. Rather, agents may indicate a separation in the referral notes sent electronically to ORR, but they are not required to do so, according to Border Patrol officials. While the changes to the system may make it easier for Border Patrol to identify children separated from their parents, ORR officials stated ORR may not receive information through this mechanism to help it identify or track separated children. Prior to this system modification, Border Patrol agents typically categorized a separated child as an unaccompanied child in its system and did not include information to indicate the child had been separated from a parent.

[28]Border Patrol maintains the E3 data system, which Border Patrol agents use to transmit and store data collected when processing and identifying individuals apprehended at the border, including children who are unaccompanied due to separation from a parent.

- CBP's OFO, which encounters families presenting themselves at ports of entry, also modified its data system[29] and issued guidance to its officers on June 29, 2018, to track children separated from their parents.[30] OFO officials have access to the UAC Portal but typically email this information to ORR as part of the referral request.[31] According to OFO officials, prior to that time, OFO designated children separated from their parents as unaccompanied.

ORR updated the UAC Portal to include a check box for indicating that a child was separated from his or her parents. According to ORR officials, ORR made these changes on July 6, 2018, after the June 20 executive order and June 2018 court order to reunify families. According to ORR officials, prior to July 6, 2018, the UAC Portal did not have a systematic way to indicate whether a child was designated as unaccompanied as a result of being separated from a parent at the border. The updates allow those Border Patrol agents with direct access to the UAC Portal to check this box, and Border Patrol issued guidance on July 5, 2018, directing its agents to use the new indicator for separated children in the UAC Portal and provide the parent's alien number in the UAC Portal when making referrals to ORR as of July 6, 2018.[32] However, ORR officials also said that DHS components with access to the UAC Portal are not yet utilizing the new check box consistently.

Staff at three of the four shelters we visited in Arizona and Texas in July and August of 2018 said that in most, but not all cases during the spring of 2018, DHS indicated in the custody transfer information that a child had been separated. Staff at one shelter estimated that for approximately 5 percent of the separated children in its care there was no information from DHS indicating parental separation. In these cases, shelter staff said they

[29]OFO uses the Secure Integrated Government Mainframe Access system to collect information about individuals in its custody.

[30]Families presenting themselves at ports of entry would typically not be in violation of 8 U.S.C. § 1325(a), which establishes criminal penalties for improper entry into the United States. Rather, OFO officials stated that, both before and after the April 2018 memo, they separated parents and children due to circumstances such as a parent's criminal history or if the parent presents a potential danger to the child.

[31]As of August 2018, OFO officials stated they had taken a phased approach to training OFO officers on the UAC Portal, and that they had ongoing efforts to ensure OFO officers make referrals to ORR directly in the UAC Portal.

[32]DHS and ORR officials told us that DHS components provide information on children referred to ORR through various mechanisms such as via email to ORR's Intakes Team or by entering the information into the ORR's UAC Portal directly.

learned about the separation from the child during the shelter's intake assessment. Staff at the same shelter, which cares for children ages 0 to 4, noted that intake assessments for younger children are different from intake for older children, as younger children are unable to provide detailed information on such issues as parental separation.

While the updates that OFO and ORR have made to their data systems are a positive step, they do not fully address the broader coordination issues we identified in our previous work. Specifically, we identified weaknesses in DHS and HHS's process for the referral of UAC. In 2015, we reported that the interagency process to refer and transfer UAC from DHS to HHS was inefficient and vulnerable to errors because it relied on emails and manual data entry, and documented standard procedures, including defined roles and responsibilities, did not exist.[33] To increase the efficiency and improve the accuracy of the interagency UAC referral and placement process, we recommended that the Secretaries of 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 the referral and placement of UAC in HHS shelters. In response, DHS officials told us DHS delivered a Joint Concept of Operations between DHS and HHS to Congress on July 31, 2018, which provides field guidance on interagency policies, procedures, and guidelines related to the processing of UAC transferred from DHS to HHS. DHS submitted the Joint Concept of Operations to us on September 26, 2018, in response to our recommendation. We are reviewing the extent to which the Joint Concept of Operations includes a documented interagency process with clearly defined roles and responsibilities, as well as procedures to disseminate placement decisions, for all agencies involved in the referral and placement of unaccompanied children, including those separated from parents at the border, in HHS shelters. Moreover, to fully address our recommendation, DHS and HHS should implement such interagency processes.

[33]GAO-15-521.

DHS and HHS Actions to Reunify Families in Response to the June 2018 Court Order

DHS and HHS took various actions in response to the June 26, 2018, court order to identify and reunify children separated from their parents. The June 2018 court order required the government to reunite class member parents with their children under 5 years of age within 14 days of the order, and for children age 5 and over, within 30 days of the order.[34] HHS officials told us that there were no specific procedures to reunite children with parents from whom they were separated at the border prior to the June 2018 court order. Rather, the agency used its standard procedures, developed to comply with the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), to consider potential sponsors for unaccompanied children in their custody; if a parent was available to become a sponsor, reunification with that parent was a possible outcome.

DHS and HHS Efforts to Identify Potential Class Members. To create the list of potential class members (that is, those parents of a separated child covered under the lawsuit) eligible for reunification per the June 2018 court order, DHS and HHS officials told us that they generated the list based on children who were in DHS or HHS custody on that date. As a result, DHS and HHS officials told us that a parent of a separated child would only be a class member if his or her child was detained in DHS or HHS custody on June 26, 2018. After developing the class list, DHS and HHS officials told us that they next determined whether class members were eligible for reunification, as a class member could be determined ineligible for reunification if it was determined that the parent was unfit or presented a danger to the child.

Parents of children who were separated at the border but whose children were released by ORR to sponsors prior to the June 2018 court order were not considered class members, and according to HHS officials, the department was not obligated to reunite them with the parent or parents from whom they were separated. Further, HHS officials told us that they

[34]Ms. L. v. ICE, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction). The court certified the following class: "All adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by the DHS, and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody, absent a determination that the parent is unfit or presents a danger to the child." Ms. L. v. ICE, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting in part plaintiffs' motion for class certification). In that order, the court also noted that the class "does not include migrant parents with criminal history or communicable disease, or those who are in the interior of the United States or subject to the [June 20 executive order]."

do not know how many such children separated from parents at the border were released to sponsors prior to the order and that the court order does not require the department to know this information.

Because there was no single database with information on family separations, HHS officials reported using three methods to determine which children in ORR's custody as of June 26, 2018, had been separated from parents at the border:[35]

1. **Data Reviewed by an Interagency Data Team.** An interagency team of data scientists and analysts—led by HHS's Office of the Assistant Secretary for Preparedness and Response with participation from CBP, ICE, and ORR—used data and information provided by DHS and HHS to identify the locations of separated children and parents, according to HHS officials.[36]
2. **Case File Review.** HHS reported that more than 100 HHS staff reviewed about 12,000 electronic case files of all children in its care as of June 26, 2018 for indications of separation in specific sections of each child's case file, such as the phrases "zero tolerance," "separated from [parent/mother/father/legal guardian]," and "family separation."
3. **Review of Information Provided by Shelters.** According to HHS officials, shelter staff were asked to provide lists of children in their care who were known to be separated from parents based on the shelter's records.

On the basis of its reviews, as of September 10, 2018, the government had identified 2,654 children of potential class members in the Ms. L. v. ICE case.[37] Of the 2,654 children, 103 were age 0 to 4 and 2,551 were age 5 to 17. As previously discussed, the number of children of potential class members does not include those who were separated from parents but released to sponsors prior to the June 2018 court order or the more

[35]For additional information on the three methods used by HHS to determine which children had been separated from parents, see GAO-19-163.

[36]HHS officials said the Interagency Data Team was initially formed after the June 20, 2018 executive order, but shifted its focus to respond to the June 26, 2018, court order.

[37]Ms. L. v. ICE, No. 18-0428 (S.D. Cal. Sept. 13, 2018) (joint status report). According to the status report, filed September 13, 2018, the data presented reflects approximate numbers maintained by ORR as of at least September 10, 2018. We did not independently verify the accuracy of these data. For the purposes of this report, we use the term "government" to refer to the defendants in the *Ms. L. v. ICE* case.

than 500 children who were reunified with parents by CBP in late June 2018, because these children were never transferred to ORR custody.[38]

As of September 10, 2018, 2,217 of the 2,654 identified children had been released from ORR custody, according to a joint status report filed in the Ms. L. v. ICE case.[39] About 90 percent of the released children were reunited with the parent from whom they were separated and the remaining children were released under other circumstances. Children released under other circumstances could include those released to another sponsor such as a parent already in the United States, another relative, or an unrelated adult, or children who turned 18. Staff at one ORR facility we visited told us they planned to release some children under these circumstances. As of December 11, 2018, the government had identified additional possible separated children of potential class members for a total of 2,816. It had released 2,657 and 159 remained in ORR custody.[40] However, the government has also reported that 79 of the children it initially identified as separated had not been separated from

[38]Parents of children who were separated at the border but whose children were released by ORR to sponsors prior to the June 2018 court order were not considered class members, and according to HHS officials, the department was not obligated to reunite them with the parent or parents from whom they were separated. Additionally, according to CBP, following issuance of the June 2018 executive order, the agency began reunifying children in its custody with parents, and by June 23, 2018, the agency had completed reunification of 522 children with parents. CBP officials also reported that the agency had reunified children and parents in its custody after the April 2018 memo and before the June executive order. According to officials, these reunifications occurred when parents completed court proceedings and returned to Border Patrol stations where children were still located because HHS had not yet been able to place them.

[39]Ms. L. v. ICE, No. 18-0428 (S.D. Cal. Sept. 13, 2018) (joint status report). According to the status report, the data presented reflects approximate numbers maintained by ORR as of September 10, 2018.

[40]Ms. L. v. ICE, No. 18-0428 (S.D. Cal. Dec. 12, 2018) (joint status report). The government determined that eight of these 159 children were children of *Ms. L.* class members.

a parent.[41] Excluding those 79 children from the 2,816 total would bring the total number of children separated to 2,737.[42]

Plan for Reunifying Children with Class Member Parents Within and Outside ICE's Custody. The process used to reunify separated children with their class member parents in the Ms. L. v. ICE case evolved over time based on multiple court hearings and orders, according to HHS officials.[43] After the June 2018 court order, HHS officials said the agency planned to reunify children using a process similar to their standard procedures for placing unaccompanied children with sponsors. However, according to agency officials, the agency realized that it would be difficult to meet the court's reunification deadlines using its standard procedures and began developing a process for court approval that would expedite reunification for class members. As a result, from June 26, 2018 to July 10, 2018, the reunification process was refined and evolved iteratively based on court status conferences, according to HHS officials. ORR field and shelter staff we interviewed noted the impact of the continually changing reunification process; for example, staff at one shelter told us there were times when they would be following one process in the morning but a different one in the afternoon.

On July 10, 2018, the court approved reunification procedures for the class members covered by the June 2018 court order.[44] In the July 10, 2018 order that outlined these procedures, the court noted that the

[41]Ms. L. v. ICE, No. 18-0428 (S.D. Cal. Nov. 29, 2018) (joint status report).

[42]See also HHS Office of Inspector General (OIG) Issue Brief, *Separated Children Placed in Office of Refugee Resettlement Care* (January 2019, OEI-BL-18-00511) (reporting a total of 2,737 separated children). A motion was filed on December 14, 2018 to clarify the scope of the *Ms. L.* class to include parents who were separated from children who were released from ORR custody prior to June 26, 2018. Ms. L. v. ICE, No. 18-0428 (S.D. Cal. Dec. 14, 2018) (notice of motion and motion to clarify scope of the *Ms. L.* class). In its recent report, the OIG found that thousands of children may have been separated prior to the zero-tolerance policy during an influx that began in 2017, before the accounting required by the court, and HHS has faced challenges in identifying separated children. HHS OIG Issue Brief, *Separated Children Placed in Office of Refugee Resettlement Care* (January 2019, OEI-BL-18-00511).

[43]For more information on reunifying children and parents separated after the June 2018 court order, see GAO-19-163.

[44]See Ms. L. v. ICE, No. 18-0428 (S.D. Cal. July 10, 2018) (order following status conference); see also Ms. L. v. ICE, No. 18-0428 (S.D. Cal. July 13, 2018) (defendants' status report regarding plan for compliance and order following status conference); Ms. L. v. ICE, No. 18-0428 (S.D. Cal. July 15, 2018) (notice from defendants).

standard procedures developed by ORR pursuant to the TVPRA were meant to address "a different situation, namely, what to do with alien children who were apprehended without their parents at the border or otherwise" and that the agency's standard procedures were not meant to apply to the situation presented in the Ms. L. v. ICE case, which involves parents and children who were apprehended together and then separated by government officials.[45] The reunification procedures approved in the Ms. L. v. ICE case apply only to reunification of class members with their children and included determining (1) parentage and (2) whether the parent is fit to take care of the child or presents any danger to the child.[46] Specifically:

1. **Determining Parentage.** Before July 10, 2018, to determine parentage for children ages 0 to 4, HHS officials said they initially used DNA swab testing instead of requiring documentation, such as birth certificates, stating that DNA swab testing was a prompt and efficient method for determining biological parentage in a significant number of cases. On July 10, 2018, the court approved the use of DNA testing "only when necessary to verify a legitimate, good-faith concern about parentage or to meet a reunification deadline." HHS officials told us that at that point, to determine parentage, ORR relied on the determinations made by DHS when the family was separated and information ORR shelter staff had already collected through assessments of the children in their care. Unless there were specific doubts about the relationship, ORR did not collect additional information to confirm parentage, according to HHS officials.
2. **Determining Fitness and Danger.** To reunify class members, HHS also followed the procedures approved by the court on July 10, 2018 for determining whether a parent is fit and whether a parent presents a danger to the child. HHS used the fingerprints and criminal background check of the parent conducted by DHS when the individual was first taken into DHS custody rather than requiring the

[45]See Ms. L. v. ICE, No. 18-0428 (S.D. Cal. July 10, 2018) (order following status conference). As previously discussed, the June 2018 court order required the government to reunite class member parents with their children under 5 years of age within 14 days of the order, and for children age 5 and over, within 30 days of the order, absent a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child. Ms. L. v. ICE, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction).

[46]The specific reunification procedures varied depending on whether the parents were inside or outside of ICE custody. For more information on DHS and HHS reunification procedures for class members, see GAO-19-163.

parent and other adults living in the household to submit fingerprints to ORR, as potential sponsors were typically required to do for unaccompanied children.[47] According to HHS officials, ORR personnel also reviewed each child's case file for any indication of a safety concern, such as allegations of abuse by the child. HHS did not require fingerprints of other adults living in the household where the parent and child will live. HHS also did not require parents to complete an ORR family reunification application as potential sponsors are typically required to do for unaccompanied children.

The specific procedures for physical reunification varied depending on whether the parents were inside or outside of ICE custody. DHS and HHS took steps to coordinate their efforts to reunify children with parents who were in ICE custody, but experienced challenges. Generally, for parents in ICE custody, DHS transported parents to a detention facility close to their child and HHS transported the child to the same facility. At the facility HHS transferred custody of the child to ICE for final reunification. HHS officials said that in some instances children had to wait for parents for unreasonably long amounts of time and parents were transported to the wrong facilities. In one case, staff at one shelter told us that they had to stay two nights in a hotel with the child before reunification could occur.

According to HHS officials, for families in which the parent was released into the interior of the United States, the reunification process involves ORR officials and shelter staff attempting to establish contact with the parent and determining whether the parent has "red flags" for parentage or child safety. These determinations are based on DHS-provided criminal background check summary information and case review of the child's UAC Portal records. In cases where no red flags are found, HHS transports the child to the parent or the parent picks the child up at the ORR shelter. For more information on DHS and HHS reunification procedures for class member parents inside and outside ICE custody, see GAO-19-163.

[47]As noted, in December 2018, ORR revised its background check policy to conduct criminal and immigration status checks of adults in the potential sponsor's home only in certain circumstances.

Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee, this concludes our prepared remarks. We would be happy to answer any questions that you may have.

GAO Contacts and Staff Acknowledgments

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Individuals who made key contributions to this testimony include Kathryn Bernet (Assistant Director), Elizabeth Morrison (Assistant Director), David Barish (Analyst-in-Charge), Andrea Dawson, Jason Palmer, and Leslie Sarapu. In addition, key support was provided by Susan Aschoff, James Bennett, Sarah Cornetto, Michael Kniss, Sheila R. McCoy, Jean McSween, Jan Montgomery, Heidi Nielson, and Almeta Spencer.

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Ms. DEGETTE. Thank you, Ms. Larin.

Ms. Gambler, I understand you are here to support Ms. Larin's testimony and you won't have an opening statement.

Ms. GAMBLER. That's correct.

Ms. DEGETTE. Ms. Maxwell, you are recognized for 5 minutes.

STATEMENT OF ANN MAXWELL

Ms. MAXWELL. Good morning, Chair DeGette, Ranking Member Guthrie, and other distinguished members of the subcommittee.

Thank you for inviting me to discuss OIG's review of the number of children impacted by family separations. Our review provides three key insights about what is known and not known about children who are separated from their parents by immigration agents and referred to the Department of Health and Human Services for care. Generally speaking, HHS provides these children with temporary shelter and care before releasing them to sponsors in the U.S. to await their immigration hearings.

Our first insight is that more children over a longer period of time were separated than is commonly understood. The public discussion regarding the number of separated children has largely been tightly focused around the *Ms. L* v. *ICE* class action lawsuit that requires the Government to reunify certain separated children. Specifically, the case covers children separated from their parents that were still in HHS care on the date of the court order, June 26, 2018. The required reporting on these children is a matter of public record and, as such, the 2,737 children covered by the case became the de facto count of separated children.

But, if you widen that focus for a more comprehensive view, as we did in this study, you see these children only represent a subset. Exactly how many more children were separated is unknown. This is because there is no integrated data system that reliably tracks children who are separated by the Department of Homeland Security and then referred to HHS for care.

Now, based on informal records, HHS officials estimated it potentially received and released thousands of separated children prior to the June 2019 court order. These separated children were part of a significant increase in the number of separated children that started approximately a year or so before the court order. Prior to this increase, HHS staff reported that receiving separated children was quite rare and the increase strained its ability to place these often very young children in shelters equipped to address their needs.

The second point is that the Government struggled to identify which children in its care were covered by the court order. To respond to the court's reunification order, the Government, led by HHS, had to first engage in an extensive, labor-intensive effort to identify children who had been separated from their parents. This included analyzing more than 60 datasets and manually reviewing 12,000 case files. And even with these extensive efforts, HHS later identified additional separated children that were covered by the court's reunification order. This, again, speaks to the challenges of accounting for separated children in the absence of reliable data about their circumstances. In this case, it also impacted timely reunification.

The third important item to note is that HHS continues to receive separated children. At this point, separation should only be occurring where there are concerns for a child's safety, as has historically been done. However, DHS immigration agents provided HHS with limited information about the reasons for these separations. For example, the most common reason DHS reported these more recent separations is a parent's criminal history. But HHS didn't receive specifics about the criminal history, and these specifics are important because, from a child welfare perspective, not all criminal history rises to a level that would imperil a child's safety or preclude release back to their parents.

In conclusion, limited information about separations means we cannot account for the full impact of family separations on children. Further, the limited data about recent separations impedes HHS's ability to put children's needs at the center of its decision-making.

In response to these challenges, HHS has taken several steps to improve its monitoring of separated children. However, it's not yet clear whether these changes will be sufficient, as monitoring systems are only as good as the information put into them. As such, we encourage HHS and DHS to look for opportunities to improve communication and data sharing in the interest of better serving separated children.

Thank you for the opportunity to present this information. I'm happy to address any questions that you have.

[The prepared statement of Ms. Maxwell follows:]

Testimony Before the
United States House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

"Examining the Failures of the Trump Administration's Inhumane Family Separation Policy"

Testimony of:

Ann Maxwell
Assistant Inspector General
Office of Evaluation and Inspections
Office of Inspector General
U.S. Department of Health and Human Services

February 7, 2019
10:30 a.m.
Location: Rayburn House Office Building, Room 2123

Testimony of:
Ann Maxwell
Assistant Inspector General for Evaluation and Inspections
Office of Inspector General, U.S. Department of Health and Human Services

Good morning, Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee on Oversight and Investigations. I am Ann Maxwell, Assistant Inspector General for Evaluation and Inspections for the Office of Inspector General (OIG), U.S. Department of Health and Human Services (HHS or Department). I appreciate the opportunity to appear before you to discuss OIG's recent issue brief addressing the number of separated children in Office of Refugee Resettlement (ORR) care.

OIG is charged with overseeing all HHS programs and operations. OIG works to combat fraud, waste, and abuse in those programs; promote their efficiency and effectiveness; and protect the beneficiaries they serve. To accomplish this, OIG employs an array of tools, including audits, evaluations, and investigations.

Since responsibility for unaccompanied children was transferred to HHS by the Homeland Security Act of 2002, OIG has provided oversight of the Unaccompanied Alien Children (UAC) Program, which is administered by the ORR within HHS's Administration for Children and Families (ACF). OIG's work in this area has been broad and multi-faceted. For example, we have audited grantee expenditures and assessed their internal controls for administering UAC program funds; we have also examined whether ORR grantees met safety standards for the care and release of children in their custody. All of these oversight efforts have one unifying purpose: to promote the protection of children in the Department's care.

In 2018, numerous stakeholders raised serious concerns about the health and safety of immigrant children at HHS-funded facilities. Given the urgency of this situation, and OIG's independent oversight role, we launched a series of reviews examining a variety of safety issues, including the background screening of facility staff that work with children, the challenges care facilities face in ensuring children are safe, and the physical security of the care facilities. We are also examining the challenges that ORR-funded care provider facilities face in meeting children's physical and mental healthcare needs. These reviews will be issued over the next year.

As part of this initiative, we are paying particular attention to the subset of children who were separated from a parent or guardian by the U.S. Department of Homeland Security (DHS) and referred to HHS for care. Consistent with that focus, in our recently published issue brief, *Separated Children Placed in Office of Refugee Resettlement Care*, we sought to confirm the number and status of children in ORR care who had been separated from a parent or guardian by immigration authorities.

In short, OIG found that more children, over a longer period of time, were separated by immigration authorities and referred to ORR for care than has been commonly discussed. In fact, the true number is unknown.

Pursuant to a June 26, 2018, Federal District Court order, HHS has thus far identified 2,737 children who had been separated from their parents and were in ORR care as of that date.[1] However, prior to that Court order, HHS was not required to identify or track separated children. HHS officials estimated that thousands of additional children may have been separated from a parent or guardian during an influx that began in 2017, but were released from ORR care prior to the official accounting required by the Court. Further, ORR has continued to receive children who have been separated since the June Court order, and DHS has provided limited information to ORR about those separations.

Limited Data Complicated HHS's Efforts to Identify Separated Children To Be Reunited With Their Parents as Required by a June 2018 Court Order

On June 26, 2018, in ruling on a class action lawsuit, *Ms. L v. ICE,* a Federal District Court ordered HHS to identify and reunify children who were in ORR care as of that date and who had been separated from a parent by immigration authorities.[2] Historically, such separations had been rare and were typically done for reasons related to the child's best interest, such as a parent's injury or illness or a DHS determination that the parent was a danger to the child. However, during a recent period of increased enforcement of immigration laws, large numbers of families were separated, with parents taken into Federal custody to await prosecution for immigration offenses and their children transferred to ORR care.

Prior to the Court order, HHS had never been required to identify, categorize, or track separated children as distinct from any other children entering ORR care. No integrated HHS-DHS data system existed to comprehensively identify and track separated children, nor did either agency independently maintain data about them.

The absence of data about separated children severely complicated HHS efforts to comply with the Court order, and led to the development of a three-step process for identifying every child who had been separated from a parent and was in ORR care as of June 26, 2018:

- First, an HHS-led data team (with support from DHS sub-agencies) mined more than 60 HHS and DHS databases to identify indicators of possible separation, such as an adult and child with the same last name apprehended on the same day at the same location.
- Additionally, ORR and other HHS staff, including agency officials and senior leadership, manually reviewed case files for each of the approximately 12,000 children in ORR care.
- Finally, ORR asked all HHS-funded shelters to attest to any separated children they reasonably believed to be in their care.

This effort resulted in an initial list of 3,600 potentially separated children, i.e., children for whom HHS found any information in any data source indicating that the child may have been separated from a parent. On July 11, 2018, after conducting additional reviews, ORR certified a

[1] See *Ms. L v. Immigration and Customs Enforcement (ICE)*, (S.D. Cal. June 26, 2018 (Order Granting Plaintiffs' Motion for Classwide Preliminary Injunction).
[2] Subject to certain exceptions, such as when the class member parent is unfit, poses a danger to the child or if the parent voluntarily declines to be reunited.

list of 2,654 children that it believed met the Court's criteria. ORR determined that the remaining 946 children (from the original list of 3,600) did not meet all of the Court's criteria. Of the 946 children, approximately 300 were not included on the certified list because they had been released through standard processes between the date of the Court order and the date the list was certified by ORR. The remaining children were excluded because: (1) they had been separated from a nonparent relative; (2) the adult with whom they traveled was determined to have made a fraudulent claim of parentage; or (3) the information in the child's case file was unclear, and the ORR Director determined that the balance of evidence did not support including the child on the certified list.

HHS Has Revised the Number of Separated Children Who Meet the Court's Criteria Several Times

Even as the initial list of 2,654 was being certified, some HHS staff believed that 50 to 100 additional children should have been included. At the same time, ORR began to receive new information (for example, from parents' legal representatives contacting ORR) suggesting that some children excluded from the list had, in fact, been separated. In the following months, HHS revised its initial number several times:

- In October 2018, HHS added 13 children (all of whom were still in ORR care at that time) to the list, for a new total of 2,667.
- In November 2018, HHS reported to the Court that 79 of the children previously reported as separated had not, in fact, been separated from a parent. This reduced the count of separated children to 2,588.
- In December 2018, HHS added 149 children to the list, bringing the number of separated children identified under the Court order to 2,737. These 149 children had been in ORR custody on the date of the Court order and then discharged before being identified as separated.[3]

In a December 2018 Court filing, HHS reported that only eight separated children eligible for reunification under *Ms. L v. ICE* remained in ORR care and that it was working towards their reunification or other appropriate discharge.

Many Separated Children are Not Covered by the Court Order and Have Not Been Counted

The June 2018 Court order required HHS to identify only those separated children who were in ORR care as of June 26, 2018. However, HHS officials estimated that thousands of additional children were separated by DHS, referred to ORR care, and released through standard ORR processes prior to that date.

[3] In most cases, they were released to a parent, guardian, or relative. Nine had been released to distant relatives or unrelated adults, five had been voluntarily repatriated to their country of origin, and one had turned 18 in ORR's care (which means the individual aged out of the UAC program and typically results in transfer to DHS custody).

HHS officials based this estimate on ORR staff observations and informal monitoring. Specifically, in the summer of 2017, ORR noticed a steep increase in the number of separated children being referred by DHS. Overall, ORR staff noted that the proportion of separated children (relative to all children) entering ORR care rose from approximately 0.3 percent of all intakes in 2016 to 3.6 percent in August 2017, a more than tenfold increase.

The increase in separated children posed operational challenges for the UAC program. In a November 2017 email that OIG reviewed, an ORR official stated that separated children were often very young, that these younger children required placement at specially licensed facilities, and that "the numbers of these very young UAC resulting from separations has on some dates resulted in shortfalls of available beds."

HHS was not able to provide a more precise estimate than thousands because, as previously noted, ORR did not have formal tracking systems in place that consistently identified separated children. HHS similarly could not provide information on placements of separated children—as distinct from other unaccompanied children—who were discharged from ORR care prior to the June 2018 Court order (e.g., the number who were released to relatives vs. nonrelatives or foster care).[4]

DHS Has Provided ORR With Limited Information About the Reasons for Recent Separations, Which May Impede ORR's Ability To Appropriately Place Children

In addition to requiring reunification of separated families who meet certain criteria, the June 2018 Court order preliminarily enjoined the Federal Government from continuing to separate families entering the U.S. unless the parent has a criminal history, poses a danger to the child, is otherwise unfit or consents to the separation. According to ORR tracking documents, ORR received at least 118 children separated by DHS from July 1 through November 7, 2018.[5, 6] This number includes only children identified by DHS as separated at the time the child was transferred to ORR. The proportion of separated children relative to all referrals increased every month during this period, from 0.47 percent in July to 0.91 percent in the first week of November. Overall, separated children made up 0.69 percent of referrals to ORR during this period, a proportion that is more than twice the rate that ORR observed in 2016, but far lower than the rate ORR staff observed in the summer of 2017.

As described earlier, DHS sometimes separates children from parents for the child's safety and well-being. DHS reported to ORR that 65 of the 118 children were separated because the parent had a criminal history, although the nature of the criminal history was not always specified. Other reasons provided to explain a separation included the parent's gang affiliation, illness or hospitalization, or immigration history only. In some cases, little detail was provided to ORR by DHS.

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[4] HHS told OIG that it has no plans to retroactively identify these children, explaining that any effort to do so would divert limited resources from ORR's primary focus on children currently in care.

[5] The newly separated children ranged in age from under 1 year old to 17 years old. Of the 118 children, 82 were under the age of 13 when transferred to ORR care, including 27 who were under the age of 5.

[6] In its comments to our report, HHS provided updated information about new separations, reporting that ORR had received a total of 218 separated children between June 26 and December 26, 2018.

Incomplete or inaccurate information about the reason for separation, and a parent's criminal history in particular, may impede ORR's ability to determine the appropriate placement for a child. When a proposed sponsor (including a parent) has a criminal history, ORR policy is to evaluate the severity and type of crime and the length of time that has passed since the criminal act, along with any mitigating factors. ORR officials and staff noted that, from a child welfare perspective, not all criminal history rises to a level that would preclude a child from being placed with his or her parent. ORR officials stated that when DHS provided insufficiently detailed explanations for a child's separation, ORR staff would contact DHS for followup information. However, the tracking document we reviewed indicated that DHS did not always respond to such followup requests.

ORR Has Taken Steps To Improve its Ability To Track Separated Children

At the time of the Court order, ORR had no reliable means of determining whether specific children in its care were separated. To address this challenge moving forward, ORR has taken several steps to improve its ability to identify and track these children. First, in July 2018, ORR modified its online case management system to include a "checkbox" that can be used to indicate whether a child was separated before referral to ORR care. The checkbox is accessible to both DHS and ORR staff. Additionally, the online referral DHS completes in order to transfer a child to ORR care now includes a "notes" section where DHS staff can enter information about a separated adult associated with a child; this information can also be entered into a "parent/relative" section of the referral. Finally, in August 2018, ORR developed a tracking spreadsheet that draws information about separated children from its online case management system, enabling staff to produce a consolidated list of these children.

Improved Tracking and Communication Will Better Enable ORR to Provide Appropriate Care and Placements for Separated Children

Although HHS has taken several significant steps to better track separated children, it is not yet clear whether these recent changes will be sufficient to ensure that HHS can accurately identify these children in the future. Further, there is still no integrated data system to account for separated families across DHS and HHS.

Therefore, OIG encourages continued efforts to improve communication, transparency, and accountability for the identification, care, and placement of separated children. Maintaining accurate and comprehensive information about separated children would improve ORR's ability to ensure that they receive the most appropriate care and placement. ACF agreed that improvements are always warranted and has committed to look for opportunities to improve inter-departmental data-sharing and operations with DHS.

Conclusion

In conclusion, the total number of children separated from a parent or guardian by U.S. immigration authorities and transferred to HHS for care is not known. According to HHS officials, it is certainly more—likely thousands more—than the 2,737 who meet the criteria of the *Ms. L v. ICE* court order. Moreover, because HHS cannot provide details specifically about

children who were separated, transferred to ORR custody, and released prior to the lawsuit, whether these children were reunified with their parents remains an open question.

The issue brief discussed in my testimony is one in a series of reports that OIG will release in 2019 related to the care and well-being of children in ORR-funded facilities. In the coming months, we will issue a report examining challenges that HHS and care facilities faced in reunifying separated children. In addition, OIG is engaged in multiple reviews that will assess HHS-funded facilities' efforts to protect all children in their care from harm, as well as facilities' provision of physical and mental health services, including efforts to address trauma. We have already released an early alert from this body of work, *The Tornillo Influx Care Facility: Concerns about Staff Background Checks and Number of Clinicians on Staff*, which highlighted two significant vulnerabilities we identified during our review of the Tornillo influx facility, operated by BCFS Health and Human Services: (1) required Federal Bureau of Investigation fingerprint background checks were not conducted for staff, and (2) insufficient number of staff clinicians to provide adequate mental health care for UAC. Taken as a whole, this work reaffirms OIG's goal of ensuring that children in ORR facilities receive appropriate care and protection.

Thank you for the opportunity to testify today on this important topic.

Ms. DEGETTE. Thank you very much, Ms. Maxwell.

And now Commander White, for 5 minutes.

STATEMENT OF JONATHAN WHITE

Mr. WHITE. Good morning. Chair DeGette, Ranking Member Guthrie, honored members of the subcommittee, it's my honor to appear on behalf of the Department of Health and Human Services.

My name is Jonathan White. I'm a career officer in the United States Public Health Service Commissioned Corps. I'm a clinical social worker and an emergency manager. And I've served in HHS under three administrations. I'm presently assigned to the Office of the Assistant Secretary for Preparedness and Response, and I previously served as the Deputy Director of ORR for the unaccompanied alien children program.

And in my testimony today, I do want to discuss aspects of the ORR program's policies and the administration that I have been involved in since February of 2016. In my time at HHS, I have had the privilege of helping to oversee and support the grantees that provide the actual care for children as well as the process of placing children with sponsors. And more recently I served as the Federal health coordinating official, that is, as the HHS operational lead, for the interagency mission to reunify children who were in ORR care as of June 26th, 2018, who were separated from their parents at the border by the U.S. Department of Homeland Security.

I am proud of the work of our team on the reunification mission, and I'm also proud of the care that's provided every day in the UAC program to children. And I will say, these are some of the most vulnerable children in our hemisphere.

ORR is responsible for the care and temporary custody of UAC who are referred to ORR by other Federal agencies. ORR does not apprehend migrants at the border, and we do not enforce immigration laws. Those functions are performed by DHS and the U.S. Department of Justice.

The Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 govern the ORR program as amended. So do certain provisions of the Flores Settlement Agreement. As defined by the Homeland Security Act, if a child under the age of 18 with no lawful immigration status is apprehended by another Federal agency and there's no parent or legal guardian available in the U.S. to provide care and custody of the child, he or she is considered a UAC and is transferred to ORR for care and custody.

And in our shelters, we provide housing, nutrition, routine medical care, mental health services, educational services, and recreational activity. These shelters provide an environment that is very much on par with facilities in the child welfare system that houses U.S. citizen children. The facilities are operated by nonprofit grantees and are licensed to provide care to children by the State licensing authorities of the State where they're housed.

The exception is ORR's temporary hard-sided influx care facility in Homestead, Florida, which is not required to obtain State licensure because it's located on federally owned property. However, the

children who reside at that location generally receive the same level of care and services as UAC at a State-licensed facility.

The UAC bed program capacity has expanded and contracted over the years, driven by fluctuations in the number of children referred and the average time children remain in ORR care. To respond to these fluctuations, we developed processes for bringing both permanent and temporary UAC housing capacity online. In fiscal year 2018, 49,100 children were referred to ORR by DHS. In fiscal year '19, through December, we received approximately 13,948 referrals.

The President issued Executive Order 13841 on the 20th of June, 2018, and the U.S. District Court for the Southern District of California, in *Ms. L* v. *ICE*, issued its preliminary injunction and class certification orders on June 26, 2018. On June 22nd, the Secretary of HHS directed ASPR to help ORR comply with the President's Executive Order. And to execute that direction from the Secretary, we formed an incident management team, which at its largest included more than 60 staff working at headquarters and more than 250 field response assets from ACF, from ASPR, from the U.S. Public Health Service Commissioned Corps, and contractors.

Shortly after the *Ms. L* court issued its orders, the Secretary directed HHS, and our IMT in particular, to take all reasonable actions to comply. We faced a formidable challenge at the start of this mission. On the one hand, ORR knew the identity and location of every one of the more than 11,800 children in our care on that date. We could access individualized biographical and clinical information regarding any one of those children at any time. But we did not always know which of them were separated.

We received information from DHS regarding any separation of an individual child through the ORR portal on an ad hoc basis for use in ordinary program operations. We had never before conducted a forensic data analysis to satisfy the new requirements set forth in the court order. So we worked closely with DHS to try to identify all the parents of children in ORR care who potentially met the court's criteria for class membership. This required us to analyze more than 60 sets of aggregated data from CBP and ICE, as well as the individualized case management records for children on the portal. And collectively, hundreds of HHS personnel reviewed the case management records for every child in care as of June 26.

We also required every one of the more of 110 residential shelter programs to provide a certified list to us, under penalty of perjury, of the children in that program's care that they had identified as separated, as potentially separated. And that's what led us to come up with our additional list of 2,654 children in ORR care who were potentially separated from a parent at the border by DHS.

Going forward, ORR continued to amass new information about the children in ORR care through the case management process. And the new information that ORR amassed between July and December 2018 led us to conclude that 79 of the possible children of potential class members were not, in fact, separated at the border by DHS, and that led us to conclude that a total of 162 other children were.

It's important to understand that we always knew the location and the status of every child in our care. We did not lose any children at all. But we did have to recategorize some who were potentially separated. We also had to effect the reunifications of children.

Working with close partnership with colleagues in ICE, DOJ, and the Department of State, we first worked to reunify children with parents in ICE custody, and this was an unprecedented effort, requiring a novel process which we had to develop and which the *Ms. L* court approved.

Under the compressed schedule required by court order of 15 days for children under the age of 5 and 30 days for children between the ages of 5 and 17, we reunified 1,441 children with parents in ICE custody, all of the children of eligible and available *Ms. L* class members in ICE custody in that timeframe.

Absent red flags——

Ms. DEGETTE. Commander, if you can sum up?

Mr. WHITE. Yes, ma'am.

Ms. DEGETTE. If you can sum up?

Mr. WHITE. We were tasked with the reunification of all of the children of parents in the *Ms. L* class where it was safe to do so. And as of this date, there are, of the 2,816 children that we were able to identify as separated that were in our care on the 26th of June, only six—only six—remain who might potentially still be reunified. None of those are operationally reunifiable today. They will need either a change in the parent's status or change in the direction from the parent out of the country through the ACLU to effect their reunification. The other children are all either reunified, appropriately discharged, or are in care but won't be reunified.

I'm glad to answer further questions about that. Thank you, Ma'am.

[The prepared statement of Mr. White follows:]

Statement of
Jonathan White
Commander
United States Public Health Service Commissioned Corps
U.S. Department of Health and Human Services

Before the

Energy and Commerce Committee
Subcommittee on Oversight and Investigations
United States House of Representatives
February 7, 2019

Chairwoman DeGette, Ranking Member Guthrie, and members of the subcommittee, it is my honor to appear on behalf of the Department of Health and Human Services (HHS).

My name is Jonathan White. I am a career officer in the U.S. Public Health Service Commissioned Corps, a clinical social worker and emergency manager, and I have served in the Department of Health and Human Services in three administrations. I am presently assigned to the Office of the Assistant Secretary for Preparedness and Response (ASPR), and previously served as the Deputy Director of the Office of Refugee Resettlement (ORR) for the Unaccompanied Alien Children's (UAC) Program.

In my testimony today, I will discuss aspects of the ORR program's policies and administration that I have been involved in since February 2016.

In my time at HHS, I have had the privilege of helping to oversee and support the grantees that provide the actual care for children, as well as the process of placing children with sponsors.

More recently, I served as the Federal Health Coordinating Official (that is, the HHS operational lead) for the interagency mission to reunify children in ORR care as of June 26, 2018 who were separated from their parents at the border by the U.S. Department of Homeland Security (DHS).

I am proud of the work of our team on the reunification mission, and of the care provided every day in the UAC Program to unaccompanied alien children, who are some of the most vulnerable children in our hemisphere.

About the Program

ORR is responsible for the care and temporary custody of UAC who are referred to ORR by other federal agencies. ORR does not apprehend migrants at the border or enforce the immigration laws. Those functions are performed by DHS and the U.S. Department of Justice (DOJ).

The Homeland Security Act of 2002 (HSA) and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) govern the ORR program, as amended. So do certain provisions of the *Flores* Settlement Agreement (FSA).

As defined by the Homeland Security Act, if a child under the age of 18 with no lawful immigration status is apprehended by another federal agency, and no parent or legal guardian is available in the United States to provide care and custody of the child, he or she is considered a UAC and is transferred to ORR for care and custody.

UAC shelters provide housing, nutrition, routine medical care, mental health services, educational services, and recreational activities such as arts and sports. They provide an environment on par with facilities in the child welfare system that house U.S. citizen children. The facilities are operated by nonprofit grantees, which are licensed to provide care to children by state licensing authorities responsible for regulating such facilities housing children.

The exception is ORR's temporary hard sided influx care facility in Homestead, Florida, which is not required to obtain state licensure because it is located on federally owned property. However, children who reside at this location generally receive the same level of care and services to UAC as a state-licensed facility.

The UAC program bed capacity has expanded and contracted over the years, driven by fluctuations in the number of children referred and the average time children remain in ORR care. To respond to these fluctuations, HHS has developed processes for bringing both permanent and temporary UAC housing capacity online as needed. HHS has a bed capacity framework with grant and contract mechanisms that provide standard permanent bed capacity, with the ability to quickly add temporary beds, which provides the capability to accommodate changing flows.

The fluctuations in the numbers of children in care are significant. Currently, HHS maintains about 13,000 beds. This is up from 6,500 beds on October 1, 2017, but down from more than 15,800 beds on November 15, 2018. HHS continues to update its bed capacity planning to account for the most recently available data, including information from interagency partners, to leverage available funds to be prepared for changing needs.

HHS cares for all UAC until they are released to a suitable sponsor, almost always a parent or close relative, while they await immigration proceedings. These children also leave HHS care if they return to their home countries, turn 18 years of age, or gain legal immigration status.

Current State of the Program

In fiscal year (FY) 2018, 49,100 children were referred to ORR by DHS. In FY 2019 (through December), ORR received approximately 13,948 referrals.

In FY 2018, 92% percent of ORR's referred children came from Honduras, Guatemala, and El Salvador. Children who migrate to the United States from these three countries and Mexico are particularly vulnerable to exploitation, such as forced labor or sex trafficking by human traffickers en route to the United States. Teenagers made up 85% percent of referrals in FY 2018.

In FY 2018, children typically stayed in ORR custody for 60 days; so far, in FY 2019, the average length of care has been 89 days, although we expect this average to decline throughout the remainder of the fiscal year. In FY 2018, ORR released 86% percent of children to a sponsor: 42% percent were parents; 47% percent were close relatives such as an aunt, uncle, grandparent, or adult sibling; and 11% percent were more distant relatives such or non-relatives such as a family friend. In FY 2019, of those children discharged from ORR custody, 89% percent of children were released to individual sponsors and of those sponsors: 46% percent were parents, 45% percent were close relatives, and 9% percent were more distant relatives or non-relatives.

Operational Implementation of Executive Order (EO) 13841 and the *Ms. L.* Court Orders

The President issued EO 13841 on June 20, 2018, and the U.S. District Court for the Southern District of California in *Ms. L v. ICE*, No. 18-cv-428 (S.D.Cal.) issued its preliminary injunction and class certification orders on June 26, 2018.

On June 22, 2018, the Secretary of HHS directed the Office of the Assistant Secretary for Preparedness and Response (ASPR), to help ORR comply with EO 13841. To execute this direction from the Secretary, we formed an Incident Management Team (IMT), which at its largest included more than 60 staff working at HHS headquarters in Washington DC, and more than 250 field response personnel from ACF, ASPR (including its National Disaster Medical System Disaster Medical Assistance Teams), the U.S. Public Health Service Commissioned Corps, and contractors.

Shortly after the *Ms. L.* Court issued its orders, the Secretary directed HHS—and the IMT in particular—to take all reasonable actions to comply. The orders require the reunification of children in ORR care as of June 26, 2018, with parents who are *Ms. L.* class members. In general, *Ms. L.* class members are parents who were separated from their children at the border by DHS, and who do not meet the criteria for exclusion from the class. For example, parents who have a communicable disease or a criminal history, or who are unfit or present a danger to the child, are excluded from the class.

The IMT faced a formidable challenge at the start of this mission. On the one hand, ORR knew the identity and location of every one of the more than 11,800 children in ORR care as of June 26, 2018, and could access individualized biographical and clinical information regarding any one of those children at any time by logging onto the ORR UAC portal and pulling up the child's case management record. ORR sometimes received information from DHS regarding any separation of the individual child through the ORR UAC portal, on an *ad hoc* basis, for use in ordinary program operations.

On the other hand, ORR had never conducted a forensic data analysis to satisfy the new requirements set forth in the Court's orders, much less aggregated such rigorous, individualized data analyses into a unified list. As a result, our first task was to identify and develop a list of the children in ORR care who were possible children of potential *Ms. L.* class members.

Identification of possible children of potential Ms. L. class members

HHS worked closely with DHS, including U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), to try to identify all parents of children in ORR care who potentially met the Court's criteria for class membership. The determination of class membership involves inter-agency collection and analysis of facts and data to verify parentage, assess the health of the parent, determine the location of DHS apprehension and separation, determine parental fitness, and evaluate whether reunification would present a danger to the child. Moreover, class membership is dynamic and can change with the facts on the ground (for example, a parent who is excluded from the class based on a communicable disease could be cured after receiving medical treatment).

The interagency data team analyzed more than 60 sets of aggregated data from CBP and ICE, as well as the individualized case management records for children on the ORR UAC Portal. Collectively, hundreds of HHS personnel reviewed the case management records for every child in ORR care as of June 26, 2018, looking for any indication of possible separation. ORR also required every one of its approximately 110 residential shelter programs to provide a certified list, under penalty of perjury, of the children in that program's care that shelter staff had identified as potentially separated. The reconciliation of those three data sources by the interagency data team resulted in the identification and compilation of a list of 2,654 children in ORR care who were potentially separated from a parent at the border by DHS.

The data analysis that yielded the initial list of 2,654 possible children of potential class members was dependent on the information that was available at the time of the analysis.

Going forward, ORR continued to amass new information about the children in ORR care through the case management process. The new information that ORR amassed between July and December 2018 led us to conclude that 79 of the possible children of potential class members were not, in fact, separated from a parent at the border by DHS.

Similarly, the new case management information that ORR amassed between July and December 2018 led us to conclude that a total of 162 other children who were in ORR care as of June 26, 2018—but who we did not initially identify as potentially separated—should be re-categorized and added to the list of possible children of potential class members reported to the *Ms. L.* Court.

As a result of the addition of 162 total children through re-categorization, the current reporting of 2,816 possible children of potential *Ms. L.* class members to the *Ms. L.* Court is accurate. That is, we have fully accounted for such children who were in ORR care as of June 26, 2018. To be clear, the count of 2,816 children does not include children who were discharged by ORR before June 26, 2018. Nor does it include children referred to ORR care after that date.

It is important to understand that ORR knew the identity, location, and clinical condition of all 162 re-categorized children at all times during their stays with ORR. The re-categorizations were for the *Ms. L.* litigation, not clinical reasons. They did not affect the care the children received from ORR.

Indeed, HHS did not "lose" *any* children at all. The HHS Inspector General found no evidence to the contrary. ORR can determine the location of every child in care at any moment by accessing the UAC Portal case management system. We always know where every child in the care of ORR is.

Reunification of Ms. L. class members with their children

Generally, ORR has a process for releasing UAC to parents or other sponsors that is designed to comply with the HSA, the TVPRA, and the FSA. This process ensures the care and safety of UAC referred to ORR by DHS. Notably, HHS modified and expedited its ordinary process for *Ms. L.* class members and their children as required by the *Ms. L* Court.

Working in close partnership with colleagues in ICE, DOJ, and the Department of State, we first worked to reunify children with parents in ICE custody. This was an unprecedented effort, requiring a novel process which we developed and which the *Ms. L.* Court approved. Under the compressed schedule required by court order of 15 days for children under the age of 5, and 30 days for children between the ages of 5 and 17, we reunified 1,441 children with parents in ICE custody—all of the children of eligible and available *Ms. L.* class members in ICE custody.

Absent red flags that would lead to specific doubts about parentage or about child safety, adults in ICE custody were transported to reunification locations run by ICE, where deployed field teams from HHS interviewed them. During the interviews, HHS sought verbal confirmation of parentage and the desire to reunify, and after that, HHS transported the child for physical reunification with the parent in ICE custody. Some reunified family units remained in ICE family detention, while others were released by ICE to the community, after connecting them with nonprofits serving immigrant families.

For children whose parents had been in ICE custody but had been released to the interior of the United States, we implemented an expedited reunification process, confirming parental relationship in any case where we had doubts about parentage, addressing any "red flags" for child safety, and then transporting the child for physical reunification with the parent.

For parents who had departed the United States, we developed a different operational plan, which was also approved by the *Ms. L.* Court. First, HHS identified and resolved any "red flags" or—doubts about parentage or child safety and well-being. ORR case managers established contact with the parents in

their home countries, and provided contact information for all the parents to the American Civil Liberties Union (ACLU), which is legal counsel for the *Ms. L* class. The ACLU counseled parents about their options and their rights, and then obtained from the parents their desire for either reunification in their home country, or waiving reunification for the child to undergo standard ORR sponsorship processes. Once we received a parent's desire for reunification, we worked with DOJ and ICE to expeditiously resolve the children's immigration cases, and worked with the consulates and embassies of the child's home country to prepare their return. HHS and ICE coordinated with the ACLU's steering committee for the *Ms. L.* litigation, the government of the home country, and the child's family to ensure safe physical reunification, and then transported the child to his/her country and into the care of his/her parents.

Of the 2,816 children reported to the *Ms. L.* Court, as of this morning we have reunified 2,155 with the parent from whom they were separated. Another 568 children have left ORR care through other appropriate discharges—in most cases, release to a family sponsor such as the other parent, a sibling, an aunt or uncle, a grandparent, a more distant relative, or a family friend.

Of the 2,816 children reported to the *Ms. L.* Court, there are 21 children still in ORR care who were separated but cannot be reunified with their parent, because ORR has made a final determination that the parent meets the criteria for exclusion from the class or is not eligible for reunification. That is, the parent has a criminal history, or the parent is otherwise unfit or poses an unacceptable risk to the safety and well-being of the child, such as when a case file review shows that the child has made credible allegations of abuse by the parent. There are 44 children still in ORR care whose parents are outside the U.S. who have waived reunification, and chosen for their children to remain in the U.S. and go to a sponsor in this country under the ordinary TVPRA process. There are 16 children in care where further review determined that the child was not a separation. There are six children in care where parents are in the U.S. and have waived reunification.

As of this morning, of the 2,816 children reported to the *Ms. L.* Court, there are six children who HHS cannot reunify unless there is either a change in the parent's status, or the parent conveys to us their wishes through ACLU. Specifically, one child has a parent who is in the custody of the U.S. Marshals, and therefore potentially cannot be reunified until the parent exits Marshals' custody. The other five children have parents outside the United States, and the ACLU has not yet advised us as to whether the parents have chosen reunification. In four of those five cases, the ACLU has advised that the resolution of the parent's wishes will be delayed. We cannot reunify those children until their parent's legal counsel allows us to do so.

Like everyone on the team that worked for months to identify and then reunify the separated children, I look forward to the day when we can say that all of those children are back with their families.

As I indicated earlier in my testimony, the 2,816 children reported to the *Ms. L.* Court do not include all children who have ever been separated at the border by DHS and referred to ORR. It is only the number of possible children of potential class members who were in ORR care as of June 26, 2018. It is based on how the *Ms. L.* Court defined the *Ms. L* class.

There were, without any doubt, other children who were separated from their parent(s) at the border by DHS and referred to ORR, and who were discharged to a sponsor pursuant to the TVPRA process before June 26, 2018. Based on ORR's statistics for the UAC program, the vast majority of the sponsors

were probably parents or close relatives. To the extent it is even possible to count such children, HHS has not tried to do so because HHS has only limited resources and such a count would not help HHS fulfill any current UAC program requirements. Moreover, HHS has no jurisdiction over the children once they are discharged to sponsors, and, except in very limited circumstances, intervention by HHS after discharge would not serve a child welfare interest.

In Closing

ORR's UAC Program provides care and services to UAC every day. At HHS, we are proud of the work we do to provide that care to children consistent with laws and court decisions, and consistent with the values of Americans about how we take care of children in crisis. In the case of this distinct population of children separated from their parents following DHS apprehension, and prior to placement at ORR, we in HHS have been working hard on an unprecedented mission to expedite safe reunifications of children with their parents wherever possible.

Our program's mission is a child welfare mission, and we seek to serve the best interest of each individual child. This has guided us also in our work to get each separated child back in his or her parent's arms, or discharged safely to another sponsor where that is the parent's wish or where the parent poses a danger to the child. We have done our best as a department to achieve that goal.

Thank you, and I will be happy to answer any questions you may have.

Ms. DEGETTE. Thank you very much, Commander.

It now is time for Members to ask questions, and I will recognize myself for 5 minutes.

Ms. Maxwell, OIG recently concluded that thousands of additional children, aside from the ones the commander has just identified, may have been separated from their parents or guardians beginning in 2017. Is that correct?

Ms. MAXWELL. That's correct.

Ms. DEGETTE. And, Ms. Larin, months before the Attorney General's April 2018 zero-tolerance policy memo was issued, ORR officials saw a tenfold increase in the number of children who were separated from their parents. Is that correct?

Ms. LARIN. That's correct.

Ms. DEGETTE. Now, Ms. Larin, ORR officials told you that, a few months prior to the April 2018 zero-tolerance memo, they considered planning for continued increases in separated children, but HHS leaders advised them not to engage in that planning. Is that correct?

Ms. LARIN. That's what we were told.

Ms. DEGETTE. Now also, as part of your audit, did you interview the Secretary of HHS to determine whether he had advance notice of the AG's April 2018 memo before it was issued?

Ms. LARIN. We did not interview the Secretary.

Ms. DEGETTE. You did not interview the Secretary?

And, Ms. Maxwell, do you know whether the Secretary was consulted about family separations before the release of the April zero-tolerance memo?

Ms. MAXWELL. Our work looking into the challenges the Department faced in reunifying the children is ongoing, as are interviews with senior HHS officials.

Ms. DEGETTE. So, have you interviewed Secretary Azar about this?

Ms. MAXWELL. We have not.

Ms. DEGETTE. Now, Commander White, do you know whether the Secretary was consulted about family separations before the release of the April memo? Yes or no?

Mr. WHITE. I do not know, ma'am.

Ms. DEGETTE. OK. Now, Commander, I think that you agree that family separations inflicted lasting trauma on thousands of children and families, and it also created widespread chaos within HHS as it attempted to reunify the children. Do you know whether the Secretary or any senior officials at HHS attempted to reach out to DOJ or DHS prior to the release of the zero-tolerance memo to explain how this policy would impact children and strain ORR's ability to take care of them?

Mr. WHITE. Yes, I do agree that separation——

Ms. DEGETTE. No, do you—yes, do you know whether they reached out to senior officials or the Secretary reached out to these other agencies before the order was issued?

Mr. WHITE. I do not know. It's my understanding that the Secretary was not aware of the memo prior to its release.

Ms. DEGETTE. OK.

Mr. WHITE. But I never briefed the Secretary on this issue until we were assigned to the reunification mission.

Ms. DEGETTE. OK. Now, HHS's stated mission is to enhance and protect the health and well-being of the people in this country. Under the law, the administration has to consider the best interest of the child when it makes these decisions. Do you believe that the administration's decision to enact a zero-tolerance policy, which resulted in the forcible separation of thousands of kids from their parents, was in the best interest of the children?

Mr. WHITE. I do not believe that separation of children from their parents is in the best interest of the child, but I did not participate in the discussions regarding the policy.

Ms. DEGETTE. Thank you. Thank you.

Now, we still don't know what role Secretary Azar played in the creation of this policy, but you personally say you did not consult with him? Is that correct?

Mr. WHITE. I had never met Secretary Azar until the day that I was assigned to——

Ms. DEGETTE. Do you know if anybody else consulted with him? Do you know that?

Mr. WHITE. I am not aware of any communication to Secretary Azar about separation prior to the announcement by the Attorney General.

Ms. DEGETTE. OK, but do you know that for a fact? Yes or no?

Mr. WHITE. I am not aware of any communications with the Secretary about this.

Ms. DEGETTE. Now, you've heard both the Office of Inspector General and the GAO testify that there was an uptick in the number of children being removed and put into the custody of ORR even before the April memo. And it could be up to thousands of children. I'm wondering what ORR is doing right now to identify those children and reunite them with their parents.

Mr. WHITE. ORR does not have visibility or authority over children who have exited its care. We never separate—no one in HHS separated a single child from their parent. We have the ability and have pursued reunification for every child who is in ORR's care. The children who have been discharged to a family member are outside our authority. No one in HHS knows—no one in HHS knows—who the children who had been separated from their parents and were referred to ORR and appropriately discharged to family member sponsors before the 26th of June are or how many they are.

Ms. DEGETTE. Well, that's not my question. But my time has expired. So, I know we will be exploring this.

I will recognize the ranking member for 5 minutes.

Mr. GUTHRIE. Thank you, Madam Chair. I appreciate it very much.

And, Commander White, before I get started with my questions, I want to note that I understand that the zero-tolerance policy was created and implemented by other Departments who are not here testifying. So, if you are asked a question or if a question is posed today by me or any Members that is better answered by the Department of Justice or the Department of Homeland Security, please let us know.

That said, I would like to ask you some questions about the role HHS played in the implementation of the zero-tolerance policy, if

any, and about the ORR program. You just testified that you were not involved in creating the zero-tolerance policy nor aware of the Secretary. Are you aware of anyone else at HHS involved in the planning or preparation for the zero-tolerance policy?

Mr. WHITE. So, HHS is not a law enforcement agency. We don't have any authorities or equities in immigration enforcement.

Mr. GUTHRIE. Was anybody involved in the planning of this policy, knowing that you may have children come to your care? Was anybody involved in the planning of the implementation of the policy of HHS that you are aware?

Mr. WHITE. I'm not aware of that. We participated and I also participated in discussions about potential policy scenarios that would result in separation of children from their parents. However, at no time during the time that I was at ORR, and I was there until March 15th of 2018, were we notified that there would be family separation, that that policy was formal. We observed an increase.

Mr. GUTHRIE. When did you become aware of the policy?

Mr. WHITE. I was aware of the formal policy notification when the Attorney General said it on television on April 6th.

Mr. GUTHRIE. You have previously testified that you are involved in discussions about immigration policies that you just talked about that could result in separation of families, as you just said. Could you tell us more about these discussions? And specifically, when did these discussions take place and what concerns did you raise, and what were you told in response?

Mr. WHITE. The first meeting that I attended on this topic on February 14, 2017, and that meeting was at the office of the Commissioner of Customs and Border Prevention. I and a colleague were there for ORR. There were also folks from DOJ's Executive Office of Immigration Review, CBP, and ICE present, as well as, I believe, DHS policy.

At that time, one policy option for implementation of catch-and-release that was discussed was referral of minors as part of family units as unaccompanied alien children to ORR. I subsequently shared that with my own leadership, and on a number of occasions I and my colleagues made recommendations raising concerns not only about what that would mean for children, but also what it would mean for the capacity of the program.

Mr. GUTHRIE. What were you told in response, though, to the concerns you raised?

Mr. WHITE. On the occasions that I raised it, I was advised that there was no policy that would result in the separation of children and parents. And that remained the answer that I received during my entire tenure until I left ORR.

Mr. GUTHRIE. OK. Well, Commander White, as I stated in my opening statement, I do not believe that children should be separated from their parents. In addition, you have previously acknowledged in testimony before the Senate, as well as on weekly phone calls you do with congressional Members and staff, which we greatly appreciate, that separation of minors from their parents involves a risk of severe psychological trauma. And that is important to note, that almost all of these children have sustained quite severe

traumatic exposures before their journey and on their journey to the U.S.

It is my understanding that ORR has always been a very trauma-informed program. Can you elaborate on how ORR has always been a trauma-informed program and what that means in practice?

Mr. WHITE. The children that we receive—and I'm speaking now of the vast majority of children in care who are true unaccompanied alien children—the children that we receive, 90 percent of whom come from the three Northern Triangle countries of Central America, often have extraordinarily severe histories of traumatic exposures and adverse childhood experiences. They come from communities that are confronted with severe poverty and food insecurity, as well as severe violence. And often, they have been victims of violence or an extortion by gangs. Their lifetime exposure to violence and sexual assault is very high.

For this reason, the program has always had a trauma-informed focus. This includes providing every child with a licensed mental health clinician.

Mr. GUTHRIE. That was my next question. I have about 25 seconds. So, what medical care and mental healthcare do you provide? Now you just got started on that. Would you just discuss that?

Mr. WHITE. Every minor receives routine and emergent healthcare, including an initial medical evaluation, age-appropriate vaccinations, and healthcare. Every child receives individual or group modality mental health services commensurate with their needs.

Mr. GUTHRIE. So, in my final 5 seconds, would you have advised DOJ or DHS to implement the policy of zero tolerance, if they had asked?

Mr. WHITE. Neither I nor any career person in ORR would ever have supported such a policy proposal.

Mr. GUTHRIE. Thank you. And I yield back.

Ms. DEGETTE. Thank you. The Chair now recognizes the chairman of the full committee, Mr. Pallone.

Mr. PALLONE. Thank you. And I apologize, I had to go to the other hearing on net neutrality, so I missed a lot of your statements.

But I wanted to ask Commander White, if I could, I know that when you walk into the HHS's headquarters—and, of course, we went there for a briefing after the zero-tolerance policy was put in effect—there is a quote on the wall from former Vice President Hubert Humphrey, who the building is named after. And it says, "The moral test of a government is how that government treats those who are in the dawn of life, the children; the twilight of life, the elderly; and the shadows of life, the sick, the needy, and the handicapped." And today, we are focusing on the first part of that quote, how this administration treated those who are in the dawn of life, the children.

So, Commander White, do you believe that this policy passed the moral test that Hubert Humphrey spoke of?

Mr. WHITE. I'm really not an expert on such things. I, however, have said previously, and will say again, that separating children from their parents poses significant risk of traumatic psychological injury to the child. And separations for cause that are necessary to

protect children have always been part of this program. I think the national discussion, including the discussion for legislators, is specifically, what are the legitimate criteria for separation?

Mr. PALLONE. And again, this kind of goes back to what I said in my opening statement, which is that I understand that there may be occasions when it is justified. But if you have to weigh it in balance and say that you are separating kids and all the terrible things that result from that, I think you have to be really careful not to separate kids whenever possible.

And that is why I mentioned, when I went to the detention center in New Jersey on Father's Day, I just got the impression that, oh, you know, there was no real criteria for deciding, even today, when we do this. And it shouldn't just be assumed that somehow the parents are bad because they are taking the kids over the border and therefore they should be separated. So, that is the concern I have.

But, Commander, in March 2017, the then-Secretary of Homeland Security, John Kelly, publicly stated that DHS was considering separating children from their parents at the border. And at the time, child advocates sounded the alarm on the negative effects separation would have. I understand when you testified before the Senate Judiciary Committee that you personally raised concerns about the policy. I know you have said something about this, but could you get specific? What specifically were the concerns you had and who did you raise them with, if you could?

Mr. WHITE. The concerns which I expressed were two: first, that this would be inconsistent with our legal requirement to act in the best interest of the child and would expose children to unnecessary risk of harm; second, that it would exceed the capacity of the program. Issues of bed capacity are very important to ORR because it constitutes our ability to provide a safe and appropriate environment to every child.

I should add, I emphasized that not only would this likely exceed our capacity, but it would particularly exceed our capacity that was specifically licensed for what we call tender-aged children, which is to say children under the age of 12, and especially children under the age of 5, since those are separate licensed facilities, and a facility that's appropriate for care to a 16-year-old cannot easily flex to provide care to a 4-year-old.

Mr. PALLONE. Did you say, or maybe you were going to say, who you raised these concerns with? That was part of my question.

Mr. WHITE. I raised these concerns within my own—to my own leadership.

Mr. PALLONE. Specifically?

Mr. WHITE. That would be the Director of ORR, Scott Lloyd; the Acting Assistant Secretary of ACF, Steven Wagner; and the Counselor to the Secretary for Human Services, Maggie Wynne. These were the superiors who I made recommendations to and identified these concerns to.

Mr. PALLONE. Do you know what any of those people did in response to the concerns you raised?

Mr. WHITE. We participated together in modeling and discussions. Additionally, I think it is important to note that Secretary Kelly, to whom you just alluded, then-DHS Secretary Kelly, subse-

quently made a public announcement that there would not be separation, and that announcement was referenced in the subsequent communications to me when we revisited this later, that there wasn't a separation policy.

Mr. PALLONE. All right. Thank you so much.

Ms. DEGETTE. Thank you. I now recognize the ranking member, Dr. Burgess, for 5 minutes.

Mr. BURGESS. I appreciate the recognition and the advancement in status. I am not the ranking member of the full committee.

However, let's talk just for a moment. The title of this hearing is "Examining the Failures of the Trump Administration's Inhumane Family Separation Policy." The difficulty—and, Commander White, let me just focus here for a minute—the difficulty was because of the numbers of people and unaccompanied children that were coming across the border through not just the Trump administration, the beginning of the Obama administration, and continued to the Trump administration. Is that a fair statement?

Mr. WHITE. It is absolutely a fair statement that one of the most fundamental challenges we face every day in the UAC program is the number of minors who come in as unaccompanied and the fluctuations in the number of minors who come in as unaccompanied.

Mr. BURGESS. And let's talk about that for just a minute, because the fluctuations are important. I have made at least nine trips to not just the Texas border, other places on the border, primarily the Texas border because it is my home State. I also made a trip to the Northern Triangle countries this August, tried to get a delegation to go. Mr. Pallone had a cruise or something, and he couldn't go with me.

I thought it was important that we understand what is going on here. The fluctuations that you described, August of 2016, I was down in the Lower Rio Grande Valley sector, and the number of people who were coming across in August 2016 was high. In fact, when I went down to the border with the Border Patrol, they in fact encountered a group of people, about five or six women, some small children, some teenaged boys, that had just been left there by coyotes. Hot sun, out in the brush, cotton clothing on, flip-flops for shoes. I mean, they were no way equipped to handle a trip across the desert or across the brush country to try to get to civilization. They were just left there by the traffickers.

And I asked Customs and Border Patrol, I said, "This is a pretty serious situation. Do you encounter this often?" "All the time. In fact, sometimes we bring buses down to the border, and 40, 50 people will get on the bus and go off to a processing center." So, it was a big deal.

Now, in May of 2017, I went back down to that same sector on the border, and it was vacant. The holding facility, the processing facility, no one there. "What happened that changed this?" And they said, "Well, the inauguration of President Trump. The word went out that he's going to build a wall, and nobody came."

Well, Secretary Kelly at the time was Homeland Security Secretary. He visited just a week or so before I did and had made the statement publicly, according to the papers, that the numbers are down but if Congress does not fix the problems with the laws that

are inconsistent, we can expect this problem to reignite. So, Congress must act. And Secretary Kelly was exactly correct.

So, a year later and we are facing another influx. But, again, it is not the only time in our history that we have faced large numbers of people coming into our country where it has become a management problem. An online publication, "Moments in Diplomatic History," quoting Deputy Secretary of State John Bushnell in April of 1980, the Mariel boatlift. You may have heard about it. It was a big problem, and the Carter administration had to deal with it.

There were, of course, some difficulties. Humans landed up and down the Florida Keys, in Miami, by the thousands, not relatives, not related to people that were there. None had visas. Most had no documents. Republicans started causing problems for President Carter, saying you couldn't control your borders.

So, here is Secretary Bushnell describing this: "I remember sitting in a windowless conference room of the National Security Council with Secretary of State Edmund Muskie, the Chief of Naval Operations, the Director of the CIA, head of the Coast Guard, head of the INS, and several other senior officials, debating how to stop this flow of Cubans. National Security Advisor Zbigniew Brzezinski chaired until President Carter came in. There was a long discussion of how the Coast Guard and Navy ships might physically stop the Cuban boats. We asked the admirals, how can we do this? It was suggested the boats could be rammed or shot." Wow, that seems even harsher than a zero-tolerance policy, shooting the boats at sea. But, again, you have a vast number of people coming into your country, and you do have an obligation, the Government has an obligation to control that flow.

Bill Clinton, when he ran against George Herbert Walker Bush, just derided George Herbert Walker Bush for his blockade of Haitians coming by boat. And Bill Clinton said during the campaign, "By golly, if I win this election, the Statue of Liberty will again be open for business and we will not turn those Haitians back at sea."

What did President Clinton have to do before he took office? He had to go on Voice of America, tell the Haitians not to come by boat because so many were projected to die at sea on that perilous journey. Bill Clinton started a zero-tolerance policy——

Ms. DEGETTE. The gentleman's time has expired.

Mr. BURGESS [continuing]. Before he was inaugurated.

I yield back my time.

Ms. DEGETTE. The Chair now recognizes the gentlelady from Illinois, Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you very much, Congressman DeGette, for this hearing.

I am going to try and hold it together because this has been such a traumatic experience for so many Americans watching what has been happening. I have been to the border. I have been to shelters, both in McAllen, Texas, and in Chicago, where people are getting very good care. The children are getting good care.

But can anybody here on this panel challenge this? The United States does not know how many children have been separated from their parents. No one?

Does anyone know how many are still separated from their parents? Nobody knows.

And now we know that those in ORR custody, that there is no way to know how to divide out those children that have been separated. Is that right, Commander?

Mr. WHITE. Ma'am, no. I want to be very clear. Children in ORR custody, children who have been in ORR custody who were in ORR custody on the 26th of June, we have laboriously worked to identify them.

Ms. SCHAKOWSKY. No, I understand, but you——

Mr. WHITE. The challenge is those who exited ORR custody, because——

Ms. SCHAKOWSKY. OK.

Mr. WHITE [continuing]. HHS did not receive from DHS any list or any indication of the complete set of separated children.

Ms. SCHAKOWSKY. Thank you.

Mr. WHITE. In partnership with them, we worked hard to identify every one of those kids from those who were in care.

Ms. SCHAKOWSKY. Thank you.

Mr. WHITE. Yes, ma'am.

Ms. SCHAKOWSKY. I just feel like what has been happening is more than irresponsible and sloppy. But I really think that what we are talking about is state-sponsored child abuse, and I would go as far as to say kidnapping of children.

Ms. Maxwell, I want to ask you, what, if any, criteria have been shared with HHS regarding how determinations are currently made to separate children from their family and what, if any, process exists for HHS or attorneys for the families to dispute these?

My experience when I went to McAllen was a whole courtroom of people, these immigrants coming across, these refugees coming across, were declared guilty of crossing the border illegally. So, is that a criteria? They are criminals? How do we know?

And, Ms. Larin, you mentioned that there was no real criteria of who is, then, unfit and who should be separated.

Ms. MAXWELL. Yes, to be clear, there is no Federal statute that dictates the circumstances under which families must be separated at the border. That is a discretion made by enforcement, immigration enforcement agents.

As it pertains to children who are newly separated, we do note in our report that there is information coming about the cause of the separations, but there lacks a level of specificity to determine whether or not the separations that are currently happening meet the spirit of the preliminary injunction, as well as allow ORR to have the information necessary to care for the children.

Ms. SCHAKOWSKY. Let me ask, Ms. Larin, do you want to comment on that, or is that accurate?

Ms. GAMBLER. I'll address that for GAO, if that's OK, ma'am.

Ms. SCHAKOWSKY. OK.

Ms. GAMBLER. We understand from DHS that, under certain circumstances, children could be separated from their parents at the border, and those circumstances include things like if the parent is unfit or represents a danger to the child, if they have a criminal history, or if they have——

Ms. SCHAKOWSKY. Criminal history, how is that defined, however? Are these people criminals because they crossed the border?

Ms. GAMBLER. According to what was laid out in the court order for that population to be eligible for reunification, the court determined that, to be eligible for unification, that it would be, in determining fitness, it was if the parent, a consideration of if the parent was involved in possible criminal violations, but not including improper entry, misdemeanor improper entry.

Ms. SCHAKOWSKY. OK. Do we know how many children have been separated from their parents for a reason that was given? Do we have a number?

Ms. GAMBLER. So, ma'am, GAO actually has ongoing work right now for the House Homeland Security Committee where we're looking at how the Department of Homeland Security is addressing families that are encountered at the border. We are planning to report out on that work later this year.

Ms. SCHAKOWSKY. OK. I just want to say that my constituents—I was hearing from parents, regardless of party, who were so, and are so, upset at this child separation. A number of them said this is not rocket science. What about a hospital bracelet put on a parent with a matching one for a child to identify them? It is so shocking that we do not know how many. I hope this hearing can get to some at least knowing what we need to know.

I yield back.

Ms. DEGETTE. The gentlelady yields back. The gentleman from West Virginia, Mr. McKinley, is now recognized.

Mr. MCKINLEY. Thank you, Madam Chairman.

A few quick questions to understand. The media and some folks here in Congress continue to talk about the children being put in cages. Commander, I haven't heard anyone talk about that yet. So, I would like to hear how you react when you hear that ORR is putting children in cages. How do you react to that?

Mr. WHITE. Well, of course that's false. I mean, this is actually—there are so many things about this issue that are complex, and this is not one. The images that have been in the media are actually images of border stations.

But the easiest, I think that the best answer for this is come and see. Come and see an ORR shelter. And I know that many Members of Congress have toured them and we have that process.

But ORR shelters are licensed by the State in which they're housed to be a residential care setting for children. They are not detention facilities.

Mr. MCKINLEY. OK.

Mr. WHITE. In many States, they have no locked doors to the outside because that's not permitted under State law.

Mr. MCKINLEY. Thank you.

Mr. WHITE. We do not put children in cages.

Mr. MCKINLEY. Thank you.

Mr. WHITE. In fact, that's why we do influx sheltering. It's because, for their mission, appropriate for their mission, border stations are a detentional holding setting. We don't have those.

Mr. MCKINLEY. OK. Thank you, Commander.

I would also try to get a grasp—I am from West Virginia. We are not seeing the influx or the problems that some of the other folks are, but we follow the media. I am trying to get an understanding for the American public to understand like, for the minors, the ac-

companied minors, what is the age? What would you say the average age for an accompanied minor would be?

Mr. WHITE. So——

Mr. MCKINLEY. Yes, just a range maybe.

Mr. WHITE. So, unaccompanied alien children can be any age, although the greatest majority of them are teenagers. Those minors who were separated, the demographic is younger because, after all, they were traveling with parents. They have a different set of needs and a different demographic picture than true UACs. Most UACs are teenagers. Sometimes we do get much younger children, typically, who were traveling with like a teenaged brother or sister.

Mr. MCKINLEY. Commander, if you could, again, just if you could get back, I would like to understand. I can compartmentalize it better if you give me an average age. If you can get back to me on the short answer if the average age is 8½ or the average age for the unaccompanied minor might be 14, I would just like to know what that is.

Mr. WHITE. The greatest number of unaccompanied alien children is 16 and 17.

Mr. MCKINLEY. My last question, Commander, or whomever would like to answer, there are so many misrepresentations about—you just heard it here that this is state-sponsored—I don't even want to finish the sentence. I would like for you to just walk through with me, please, give me a day in the life—day one, when you first get a child, let's just say one of the minors, that they come into your presence. Could you walk through what they begin with?

Because I was told one of the first things they do is vaccinate the children to make sure that they are healthy. I am told that they have access to doctors, that there's a mental health individual that they can be counseled with. Can you walk through what a day is like as compared to what others are talking about—they're put in cages? Give me, just in the remaining time, a minute and a half——

Mr. WHITE. Sure. So, every——

Mr. MCKINLEY. What is an average day, first day?

Mr. WHITE. So, every child who enters ORR care, part of their first hours in ORR care will include a comprehensive psychosocial assessment and risk assessment to determine their needs. They also go through a process we call IME, which is initial medical evaluation. That's a complete medical workup. And then, we begin the process of their age-appropriate vaccinations, which we do to CDC standards. This is all part of every child's first day, along, then, with the beginning of the process of their know-your-rights and legal screening process and their orientation to the program they're going to be in.

Mr. MCKINLEY. And mental health, because mental healthy, they may have begun to have problems based on what life was like back in their village or community. And then, they went through the ordeal, the trauma of a lengthy march through Mexico to come up. What kind of mental health treatment are they receiving?

Mr. WHITE. So, every minor in ORR care has a licensed clinician, and we have a specified ratio of clinicians to children. Children receive individual and group modality clinical services. Some children are diagnosed as having more significant behavioral health needs

and would receive a higher acuity care or be moved to a higher acuity setting consistent with those needs. I actually feel, I am very proud of the work that we do for the health and safety of children in care.

Mr. MCKINLEY. Thank you very much. I yield back my time.

Ms. DEGETTE. The Chair now recognizes the gentleman from California, Dr. Ruiz, 5 minutes.

Mr. RUIZ. Thank you very much, Chairwoman.

Let's be very clear. We all know that ORR did not do the separation of children. We know that CBP and ICE separated children. Let's be very clear that it was CBP and ICE that detained children in cages. Let's be very clear with that.

This is an outrage. Morally, it is a stain in our conscience as individuals, and every mother and every father that loved any of their children should feel the compassion and the hurt that these children and their parents went through when this happened.

And I understand by the look in your eyes, Commander White, that you understand that. And as healthcare professionals, you understand the experience of having to go through and witness that as well.

And yet, since it was one of the most intentional, hurtful experiences in our Nation's recent history that our Federal Government has done to any population, this committee held no hearings on the topic while it was ongoing. This committee had no legislation that we marked up except for this resolution of inquiry, and it was not passed with favorable sentiment to be voted on on the floor. We were simply asking to have a hearing to get questions answered, simply asking for a resolution of inquiry that Congress is saying we want more information, and that was denied by this committee in the last cycle.

Commander White, do you understand the effects of toxic stress on children?

Mr. WHITE. I have professional training that does indicate that toxic stress—that's an accepted scientific reality—has consequences, both for children's behavioral health and their physical health, and those consequences are frequently lifelong.

Mr. RUIZ. So, this problem is not over, even after they unify the child with the family, right?

Mr. WHITE. The consequences of separation for many children will be lifelong.

Mr. RUIZ. Yes. In March 2017, the American Academy of Pediatrics published a public policy statement opposing the separation of mothers and children at the border, stating, quote, "Federal authorities must exercise caution to ensure that the emotional and physical stress children experience as they seek refuge in the United States is not exacerbated by the additional trauma of being separated from their siblings, parents, or other relatives and caregivers."

You mentioned a tender age, Commander White, children under 5 or children under 12. In your opinion, were they retraumatized by our Federal Government when we separated them from their mothers?

Mr. WHITE. So, I've previously testified before the Senate——

Mr. RUIZ. Yes or no, do you feel that they were retraumatized by being separated from their parents?

Mr. WHITE. Separation of parents is a traumatic event and has the potential for having those psychological consequences, as a matter of fact.

Mr. RUIZ. So, let's be clear. Is there a nullification of retraumatized or is this an additional trauma that adds additional stress and additional harm to a child after they experience the difficulties that they experienced in their home country, going through the long trek? Did we add additional retraumatization to that child?

Mr. WHITE. For many children, that is——

Mr. RUIZ. Yes.

Mr. WHITE [continuing]. Consequence, yes.

Mr. RUIZ. My understanding is yes.

So, when you voiced your concern to your leadership, when Ms. Maxwell mentioned that you, that the Department of Health and Human Services knew that there was a surge of family separations, and folks were aware and they were questioning, did you voice your concern and did you say these need to—how were you treated when you voiced your concern?

Mr. WHITE. I received a respectful hearing. I was advised that there was no policy to result in family——

Mr. RUIZ. Did you feel like that was a way to tell you don't bring it up any further, this was not official, so don't mention it anymore to anybody else?

Mr. WHITE. No.

Mr. RUIZ. OK.

Mr. WHITE. That was not how I took it.

Mr. RUIZ. And did you advise that HHS should take a little more proactive step to stop these separations?

Mr. WHITE. That is the recommendation I give to anybody——

Mr. RUIZ. And did it occur?

Mr. WHITE. It did not, in fact, occur, but——

Mr. RUIZ. OK. In the intake, you said that you, that the ORR did not distinguish which children were separated and which children were not separated, correct?

Mr. WHITE. That's correct because, historically——

Mr. RUIZ. So, let me ask you a question. Were you able—was there anything preventing you from asking the question during the intake, ORR to say, "Was this child separated from their parent?," knowing that that was going on?

Mr. WHITE. So, that is now part of intake——

Mr. RUIZ. Yes, but you were not denied or you weren't told, "You can't ask that question." And you failed, the Department of ORR failed to ask that question during the intake of the child.

Mr. WHITE. No, we routinely ask and have asked for years.

Mr. RUIZ. At that time, you said that you were not able to determine if they were separated or not separated. A social worker, a case manager would simply ask, "Was this child separated?" to determine a full history and context to provide the adequate treatment for toxic stress. Did that occur? And were you proud that it did not occur?

Mr. WHITE. We did attempt to identify for the——

Mr. RUIZ. Well, earlier mentioning——

Ms. DEGETTE. The gentleman's time has expired. We are going to have to——

Mr. RUIZ [continuing]. You said that you didn't.

Mr. WHITE. No, I actually was very specific. What we did not have is a single comprehensive list because the reality is many children who we have identified as separated, there is nothing in their initial assessment to indicate their separation, even when they're asked a question specifically. So, that's not an exhaustive list.

Mr. RUIZ. So, those questions——

Ms. DEGETTE. The gentleman's—I'm sorry——

Mr. RUIZ [continuing]. Were asked specifically?

Mr. WHITE. Yes, sir.

Ms. DEGETTE. The gentleman's time has expired. The gentlelady from Indiana, Ms. Brooks, is recognized.

Mrs. BROOKS. Thank you, Madam Chairwoman DeGette, and to Ranking Member Guthrie. Thank you for holding this important hearing today.

I would like to remind the committee that, during an important debate over the passage, during the Energy and Commerce Committee debate on the Pandemic and All-Hazards Preparedness Act, we did accept an amendment offered by Representative Luján and Representative Blackburn, to require ORR and the Department of HHS to provide us weekly reports. And so, this committee did—in clarification of my friend, the gentleman, Dr. Ruiz—this committee did address that, actually, during the Pandemic and All-Hazards Preparedness Act debate. And it was included and, in fact, has been voted on by the House, has passed out of the House twice, once in the last Congress, and I am proud to say that Congresswoman Eshoo and I already have gotten it out of the House once again.

And in that bill about pandemic and all-hazard preparedness, we addressed this issue in requiring the Department to provide weekly updates and to provide the Department to deal with this issue. And so, just—I wanted to clarify for the record that our committee did address this. We have actually passed it in the House, although people might not have realized. It was a very important bill having to do with pandemic and all-hazard preparedness with vaccines and preparedness for public medical emergencies.

I would also like to share that I, too, have visited not only the border and visited the Brownsville facility and saw—which overwhelmed me—the Southwest Key facility, where I saw 1,379—I will never forget that number because it was on the board as I walked in—1,379 boys, ages 11 to 17. I, like others, saw that they were incredibly well cared for.

I was overwhelmed at the numbers of children at that point in time—this was in July of 2018—the vast number of unaccompanied children. Some may have been some of those who had been separated and were in the process of being reunited with their families. But I think, until I saw that, I really had not the full understanding of the massive numbers that our country has been dealing with since 2014, and the massive numbers of children who were separated from their parents in their home countries, smugglers and coyotes who were paid to bring those children. So, these chil-

dren have been experiencing toxic stress for a very, very long time, including these unaccompanied children, as well as those that we separated. And for the record, I, too, was opposed to the separation of families and separation of children.

I want to talk very briefly about one of the facilities. And, Commander White, there have been media reports about the variation of care, the tent city that we saw, Tornillo. It is my understanding it has since closed. Is that correct?

Mr. WHITE. The temporary influx facility, the Tornillo site has been closed. It's no longer necessary.

Mrs. BROOKS. And so, can you please talk with us, and I think this has to do with the fluctuations. And this has to do with what I would call a crisis that we have been handling, but not handling incredibly well, since 2014. We still have thousands of children. In December, there were about—I have the numbers—about 4,000 unaccompanied children that came each month in October, November, and December. Do you know what the numbers were in January? How many unaccompanied children do we have?

Mr. WHITE. I don't have with me monthly numbers, although, as a reminder, we do provide those to Congress monthly. I can tell you that, thus far this fiscal year, we've received just under 14,000 referrals, and that last fiscal year we received 49,100 children in care. Over recent years, the fluctuation has been between 40,000 to 60,000 children a year that come into the care of ORR.

Mrs. BROOKS. And we are at 14,000 now?

Mr. WHITE. Thus far this fiscal year.

Mrs. BROOKS. Thus far? And do you have any way of predicting what is coming for the next three months?

Mr. WHITE. So, we have to use bed capacity modeling to anticipate how many beds we're going to need. But the most honest answer to your question is no one can predict how many kids will cross the river tomorrow.

Mrs. BROOKS. And because of that challenge—and my time is up—because of that challenge, I will be submitting some questions in writing relative to the future planning.

Since we have absolutely no idea how many thousands upon thousands of unaccompanied children in addition to—and God forbid there are any further separations—but the unaccompanied children, our country has not dealt with this problem yet. And they continue by the thousands, and these are children who are coming to our country with no adults.

And I yield back.

Ms. DEGETTE. The gentlelady yields back. The gentlelady from New Hampshire, Ms. Kuster, is now recognized.

Ms. KUSTER. Thank you.

Like my colleague, Ms. Schakowsky, I will try to keep it together. I am a mother. I have been an adoption attorney for 25 years. I am very, very well versed, to quote the commander, and I want to thank you for your courage today, for your honesty, and for your compassion.

The consequences of separation of children from their parents will be lifelong. I have been to McAllen, Texas. I have been to Brownsville. And I want to be very clear to my colleague, Mr. McKinley. I have seen the cages. I have walked through the cages.

I have seen the children crying. I have been with the mothers who had no idea where their children were taken. We were all crying. It was a group of women, Members of Congress, mothers and grandmothers ourselves, weeping in the arms. The guards were weeping. I met two women breastfeeding their babies that were taken by the Government of the United States of America, breastfeeding their babies.

So, I understand that you did not make that happen, but we are all citizens of the country that made that happen. And with all due respect to my colleague, Ms. Brooks, who is a friend and a colleague, yes, they faced trauma in their home country, and we need to do more. Yes, they arrive with trauma at our border, and we need to do better and open our arms with compassion. But we have inflicted additional trauma on each and every one of those children, and we need not forget until we get to the bottom of this. And I appreciate all of your professionalism in helping us to do just that.

Now what I want to focus on is the children who are separated in your jurisdiction. I have great respect for the care that they are receiving. But they are being placed into child placement agencies, and they were sent at that time around this country, while their parents, mothers and fathers, were sent to detention facilities thousands of miles away. They had no contact. The women that we spoke to couldn't make a phone call. Then, they were charged for the phone call. They had no money.

And I want to focus on the legality. My colleagues are doctors, I am a lawyer. Help me understand how those children's rights are being protected, and promise me, please, that not a single child has had parental rights terminated against that parent's will on grounds of abandonment or neglect because the United States of America separated that parent.

Mr. WHITE. Let me look at the pieces of your question. First of all, ORR has no authority, this Congress has never provided authority to ORR to terminate parental rights. That is not something we do. We also——

Ms. KUSTER. Sorry to interrupt.

Mr. WHITE. Yes?

Ms. KUSTER. But can you promise me that there's no agency across this country where ORR has placed a child that has somehow slipped into a State court, a county court, and urged the termination of parental rights because this child was, quote, "abandoned at the border"?

Mr. WHITE. So, as it happens, our grantees are prohibited by program regulations from attempting to intervene in custodial matters in court. And indeed, in previous years where there have been isolated cases where someone attempted that, we have fought against that. So, I can be very clear about that. We do not allow that.

But I need to talk, because I think this is also very important that people understand this, about what discharge to a sponsor means. Because I hear in the media all the time talk about discharge to sponsor, like that's some kind of crypto adoption. Sponsors are members of the child's family overwhelmingly.

Let me give you the exact statistics for the year, because it's very important. Because when we talk about the children who transited ORR care and were discharged to sponsors before the court's order,

let's talk about those children in the context of what that population looks like.

So, in 2018, 86 percent of the children in our care were released to an individual sponsor, and 42 percent of them went to parents, 47 percent of them went to close relatives. That means an aunt, an uncle, a grandparent, or a sibling. And 11 percent went to a more distant relative, like a cousin, or a nonrelative that's a family friend generally identified by the parent in home country.

Ms. KUSTER. Commander, I am sorry to interrupt.

Mr. WHITE. And that's important.

Ms. KUSTER. My time is up. I agree with you that is important, and I would far rather have those children in a loving home with a parent, a grandparent, someone who will care for them, than to have them separated and placed in an agency. So, I appreciate that.

Ms. DEGETTE. The gentlelady's time has expired. The gentleman from Virginia, Mr. Griffith, is recognized for 5 minutes.

Mr. GRIFFITH. I thank our chairman very much, and am pleased to welcome you to that chair, and look forward to working with you over the next several years in that capacity.

Let me just make it clear that the question earlier was, Could somebody slip into a state court? As a former practicing attorney in that arena, and with a spouse who is a juvenile and domestic relations district judge in the Commonwealth of Virginia, you can't guarantee somebody won't commit an improper act, but it would be a fraud on the court to indicate that a child had been abandoned when that child came into this country with a parent.

But the bigger question for all of this is all those thousands of children. How many did you say it was last fiscal year that came across who were unaccompanied when they came to the border?

Mr. WHITE. So, the total number referred last year was—excuse me—I believe 47,000. I had it in front of me a moment ago. I'm sorry.

Mr. GRIFFITH. I believe you said the average over the last several years had been between 40 and 60. So, 47 would be on track.

Mr. WHITE. Right.

Mr. GRIFFITH. If not exactly accurate, it would be consistent with the average, is that correct?

Mr. WHITE. Right. If I take my glasses off, I should be able to give you the number. Yes, last year, in fiscal year '18, it was 49,100 children. Over the last several years, it has fluctuated between 40,000 and 60,000 children a year.

Mr. GRIFFITH. And when they come across unaccompanied, you all take charge of them, as we heard earlier, make sure they get some medical attention, both physical and mental health, is that correct?

Mr. WHITE. Yes, they're referred to us by another Federal agency, and only a Federal agency can refer. We cannot lawfully take children directly, nor can State entities refer them. DHS refers them. And then, we designate which of our facilities is right for the child and has a bed for that child. And DHS brings the child to that facility. That's where we begin to provide services.

Mr. GRIFFITH. And for those who come unaccompanied in the first place, the 40,000-some predominantly, you all then try to find

someplace for them, whether it's with family or with an agency, a placement agency, is that correct?

Mr. WHITE. So, we are required by TVPRA and the Homeland Security Act to place the child in the least restrictive setting. That means, almost invariably means, an individual sponsor, and we work with the family to identify that individual sponsor. But I really want to emphasize this. Children do not go out into the State adoption systems. That does not happen. And if we cannot find a family member, if we can't find a sponsor, working with the family, that can meet the emotional and financial needs of the child, and that can get through our vetting process for child safety, that child remains in ORR care, and can remain in ORR care in some cases until their 18th birthday.

Mr. GRIFFITH. And it's also a fact that there's lots of children who cross the border that you don't how many that is because they never are placed into any agency's hands at all and they don't come to your referral, and they're just in the country? Isn't that also true?

Mr. WHITE. Certainly. The majority of apprehended children are children who are a part of family units. That's what all of the separated kids were. But, ordinarily, family units are managed by ICE and the children don't come to ORR. Then, of course, also, there's some children who enter the country without status and they're not apprehended. We don't know, we don't have this ability on any of them.

Mr. GRIFFITH. And as a part of all this, of the 49,000 last year, roughly 2,800 were people who came across with a parent or with somebody in the family, and then they were separated, of which I also was opposed. And you all have placed all, I think you said, but six of those or determined that they can't be placed and are putting them through the standard process? Is that correct, yes or no? My time is running out on me.

Mr. WHITE. The 2,816 are the potential children of *Ms. L* class members.

Mr. GRIFFITH. OK. And *Ms. L* is a court case that the court said that you have to deal with these children in an expedited manner and get them back to their parents.

Mr. WHITE. Right.

Mr. GRIFFITH. I am going to have to move this along because I am running out of time.

You have six cases left, but my understanding is that five of those, under the *Ms. L* case, the ACLU is playing a role, and that five of those have been delayed resolutions because you have been notified by the ACLU that there is something going on that they want to take a look at. Is that not correct?

Mr. WHITE. So, of the six children who might potentially still be reunified, one has a parent in custody. I don't mean ICE custody. I mean criminal custody.

Mr. GRIFFITH. OK. I need to know, are the five being held up by the ACLU?

Mr. WHITE. And the other five, I would not say they're being held up by the ACLU.

Mr. GRIFFITH. OK.

Mr. WHITE. I'm saying that we are awaiting an indication from the ACLU what the parent's final decision is regarding the child.

Mr. GRIFFITH. What the parent's decision is regarding the child?

Mr. WHITE. Right.

Mr. GRIFFITH. There's some question whether they want the child, as tragic as that is?

Mr. WHITE. Whether the parents wish to have the child reunified within, them in home country or stay in ORR care. There are five that we are awaiting that notification.

Mr. GRIFFITH. And that would create toxic stress, too, if your parent says, "I don't want you back."? The answer is, it answers itself.

I yield back.

Ms. DEGETTE. The Chair now recognizes the gentlelady from Florida, Ms. Castor.

Ms. CASTOR. Thank you, Chairwoman DeGette.

I want to associate myself with the remarks of my Democratic colleagues who have expressed outrage over the Trump administration's family separation. And it was entirely frustrating that the Republican majority refused to allow us to have a real oversight hearing. And I want the public to know what did happen. Rather than have an oversight hearing, they marched us over to HHS. And so folks understand, that is right next door. And the HHS leadership could have come here across the street, so that the public could understand and hear questions being asked in front of everyone. But, fortunately, we have rectified that here today.

Commander White, we know that the Trump administration started this routine family separation well before it was announced, formally announced, in May of 2018. You have testified here today that you did express concern over family separations. How did you express that? You said you had conversations. Did you also put it in emails or write any memos to that effect?

Mr. WHITE. It's important to distinguish two different points in time. First, the discussion of this as a potential policy option, that began in February of 2017 and went through spring of 2017.

Ms. CASTOR. Did you write any memos before, during that time?

Mr. WHITE. Yes, I produced memos, emails, and I raised it in meetings.

Ms. CASTOR. OK. And then, after the policy was announced in 2018, did you write additional memos and emails expressing concern over the——

Mr. WHITE. No, because I was not in ORR at that time. The subsequent period of discussion about this was regarding our informal observation within ORR that we were receiving a number of children who appeared to be separated in much greater numbers than——

Ms. CASTOR. Did anyone, after the policy was announced in May 2018, did anyone within ORR tell HHS leaders that family separations should be stopped?

Mr. WHITE. I was not working in ORR at the time.

Ms. CASTOR. But do you know of any? Have you seen any memos or emails, any written documentation?

Mr. WHITE. I have not seen memos or emails. The concerns that I had about separation were shared by every career member of my team. So, I'm confident that they continued to make those——

Ms. CASTOR. After the separations began taking place, are you aware of anyone from HHS attempting to tell DOJ or DHS that the separations should be halted?

Mr. WHITE. I'm not aware of that, but that doesn't mean it didn't occur.

Ms. CASTOR. You haven't seen any emails or memorandum from HHS to other agencies along those lines?

Mr. WHITE. No, but I'd——

Ms. CASTOR. How about to the President? Or the President's Chief of Staff.

Mr. WHITE. Yes, I would not know.

Ms. CASTOR. If HHS leaders didn't know that separations were under consideration, they were willfully blind. If they did know and they didn't speak up, they were complicit in the trauma that was inflicted on the children. And at the very least, when it became clear that separations were taking place, as the top health officials in the country, Secretary Azar and HHS leaders should have put their foot down and stood up for the children.

Mr. WHITE. Secretary Azar——

Ms. CASTOR. There is little doubt that this administration failed that moral test. This administration failed the children.

So, Ms. Larin, thank you for the work of the Government Accountability Office here.

ORR officials told you that they were not given advance notice of the Attorney General's April 2018 zero-tolerance memo. It strikes me as inconceivable that the agencies that would be most affected and would be responsible for separating children and caring for them were not given any advance notice.

Based on your expertise of looking into the operations of numerous Government agencies, wouldn't you expect all of the agencies that would be responsible for carrying out this policy to have been part of interagency discussions?

Ms. LARIN. Yes. One of the key things that we look at when we're assessing agency performance is whether they have appropriate internal controls. And by that, I mean, do they have a structure in place to achieve agency objectives?

Ms. CASTOR. Including impact of family separations on the health and well-being of children?

Ms. LARIN. A key principle of internal controls is operating on the basis of reliable and accurate information, including information both internal and external to the agency.

Ms. CASTOR. And we still don't know if Secretary Azar or Secretary Nielsen were given advance notice of the April 2018 memo. However, if they weren't, once they became aware of the chaos that ensued, the trauma being inflicted on the children, the huge burden on ORR, would it have been reasonable for Secretary Azar to have reached out to DOJ and DHS to at least raise concerns about the harm the policy was causing?

Ms. LARIN. So, GAO has reported on the importance of interagency coordination, and that that is key to planning, the involvement of stakeholders——

Ms. CASTOR. Did you come across any memos along the lines I asked Commander White of anyone at HHS expressing concern to DHS, DOJ, the President, or the President's Chief of Staff?

Ms. LARIN. We did not get any evidence that that consultation occurred.

Ms. CASTOR. Did you ask for it then?

Ms. LARIN. We asked if there was any consultation, and we were told there was none.

Ms. DEGETTE. The gentlelady's time has expired. The Chair now recognizes Mr. Duncan from South Carolina for 5 minutes.

Mr. DUNCAN. Thank you, Madam Chair. Thanks for allowing us to delve into the issue of children apprehended at the southern border when they cross illegally into this country.

The gentlelady from Illinois, Ms. Schakowsky, just asked Commander White from HHS, "Do we know how many kids are currently separated from their parents at the southern border in this country?" Let me ask this: Do we know how many children were brought into this country by coyotes and sold into the sex slave market to be violated primarily by men in towns like Chicago or Atlanta? The answer is no, we don't. Because we don't know how many people, children or otherwise, cross our southern border annually.

We are investigating today the separation of kids when apprehended at the border and what we, as a nation, when apprehending unaccompanied or accompanied children illegally entering this country, working to assess their situation—is that a family member they are with or is it a coyote, somebody that is wanting to traffic that child? What is their physical condition? What is their health? A lot of them come with a lot of problems. We need to assess, do they have immunization or are they bringing in something that may affect the children within our communities where they are relocated? That is the absolute appropriate thing to do in this Nation, to find out the health of these children before they are turned over to loved ones.

That takes a little time to do DNA tests on who they were accompanied with and that child to see is that a family member, to make sure that we are not allowing that child to go with a human trafficker to be sold into the sex slave market. Super Bowl weekend, 169 individuals were arrested in a sex sting operation. Eighteen victims were freed.

I am wearing this "X" because today is Human Slavery Awareness Day. Forty million people in this world are currently in the slave market, are currently enslaved. Seventy percent of those are women, and 1 in 4 in the world are children—children. It is right that we are shining light on this issue at the southern border of these children. It is right that our Nation is trying to do right by these children, to make sure that they don't end up in the sex slave market or end up in the slave market working for someone in their household, to make sure that they are reunited with family members here or reunited with family members back in their country.

Because let me remind this committee that they have entered this Nation illegally. Right or wrong, whether they are sent north by their families from Guatemala, Honduras, El Salvador, or other places, to try to, hopefully, make a better life for that child, or

whether they are accompanied with a parent coming across the border—right, wrong, indifferent, whatever the issue is—we, as a nation, need to make sure that we are doing right by the children.

And so, I want to urge this committee and this Congress to not just focus on this issue of children at the border and what HHS and ORR are trying to do, because I believe you are trying to do the right thing. And there are laws on the books about what we are supposed to do. But to also focus on the issue of what is a reality for many children that enter this country and enter the slave market, whether it is the sex trade or others, all over the globe, we have the power in this Congress to do that.

And, look, I am for a border wall because, according to a DHS special agent, we need to build the wall for the children. This is an article that is dated January the 29th that I would ask to include in the record, Madam Chair.

It is great that we are focused on this issue, Madam Chairman. It is important that we make sure that our Nation is doing right by those that want to come into this country, and that we are doing right by American citizens, where those that do come into this country are immunized and are healthy and are reunited with loved ones, and all that. But let's focus also on this "X" and the human trafficking that is going on all over the globe and is a big issue on our southern border, that we failed as a committee and as a Congress to address as part of this issue.

And with that, I will yield back.

Ms. DEGETTE. Without objection, the gentleman's Fox News submission is entered into the record.

[The information appears at the conclusion of the hearing.]

Ms. DEGETTE. The Chair now recognizes the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Madam Chair.

Later today, we will hear about the chaotic attempts to reunify children with their parents from child welfare experts outside of this administration. We will hear shocking stories of how children were ripped away from their parents and the effect that this trauma will have on the rest of their lives.

Before we have that dialog, however, I think it is important to understand from this panel how we got to that place. So, Ms. Larin, the very first line in your report states, and I quote, "The agencies did not plan for the potential increase in the number of children separated from their parent or legal guardian as a result of the Attorney General's April 2018 zero-tolerance memo." Is that correct?

Ms. LARIN. That's correct.

Mr. TONKO. OK. And then, further, Ms. Larin, is it also true that CBP and ICE and ORR officials told you that they did not take specific planning steps because they did not have an advance notice of the AG's memo and only became aware of it when it was announced publicly?

Ms. LARIN. That's correct.

Mr. TONKO. So, then, further, Ms. Larin, did GAO speak with anyone in the Secretary's office at HHS about the awareness of the AG memo?

Ms. LARIN. We did not talk to the Secretary.

Mr. TONKO. If not, as you are indicating, is it possible that they had some awareness of that situation?

Ms. LARIN. We're not aware of any awareness.

Mr. TONKO. Commander White, last year in front of the Senate Judiciary Committee, you testified that, while neither you nor anyone who reported to you had any advance knowledge of the Attorney General's memo, they had been in discussions over the previous year about policies that could result in a separation of kids from their family unit. We also know from GAO that ORR considered planning for continued increases in separated children, but HHS leaders advised them not to engage in such planning. During this time, you were the Deputy Director of ORR with responsibility for the unaccompanied children's program. Who specifically within HHS leadership told you not to plan for continued increases in separating children?

Mr. WHITE. I received that from Scott Lloyd and from Maggie Wynne, who were, respectively, at that time the Director of ORR and the Secretary's Counselor for Human Services.

Mr. TONKO. Thank you. And, Commander White, given that you previously testified that you never met Secretary Azar prior to the implementation of the family separation policy, is it possible that discussions occurred amongst HHS leaders prior to implementation without your knowledge or awareness?

Mr. WHITE. I couldn't speculate on what occurred without my knowledge.

Mr. TONKO. But is it possible? I'm not asking you to indicate that it did happen. Is it possible?

Mr. WHITE. Of course it's possible, but I wouldn't be the person to ask because I don't know.

Mr. TONKO. Commander White, did you agree with the decision not to plan for continued increases?

Mr. WHITE. It was my hope that the reason that we were not planning it is that that meant that separation would not occur. I experienced relief at that notification that separation would not occur.

Mr. TONKO. Do you believe ORR would have been better prepared to care for and reunify separated children had it been allowed to plan for continued increases?

Mr. WHITE. We would have been better prepared for the capacity issues. However, to be clear, we were able to successfully reunify thousands of children with their parents because Judge Sabraw in the Southern District of California created a pathway through his orders for us to do that. We could not have effected the reunification of children with their parents in ICE custody absent his providing a way to do that, under our steady-state authorities.

Mr. TONKO. But it took hundreds of HHS staff, did it not?

Mr. WHITE. Well, it absolutely did.

Mr. TONKO. Well, thank you for your responses.

This administration should never have had a family separation policy to begin with, but they made it worse by not even notifying ORR about it, the very agency that would be tasked with caring for these thousands of kids. I just find that totally unacceptable. And as a New Yorker, we are proud of the fact that we border along the bay with the Statue of Liberty and the inscription in-

cluded therein: "Give me your tired, your poor, your huddled masses yearning to breathe free," and not including your children looking to be separated from their parents. I find this whole approach so deplorable on behalf of our kids and the trauma that will follow them for their lives.

With that, I yield back, Madam Chair.

Ms. DEGETTE. The gentleman yields back. The gentleman from Oklahoma, Mr. Mullin, is now recognized for 5 minutes.

Mr. MULLIN. Thank you, Madam Chair. And thank you, everybody, for being here.

Obviously, this is a very emotional topic that people have strong feelings about, which we should. I am a father of five, and two of my beautiful kids are adopted. And every child deserves a home and a loving parent. And there is just not enough homes out there welcoming everybody. Unfortunately, that is what we face.

We do that currently right now. In Oklahoma, there are not enough foster parents out there. There are not enough parents that are willing to adopt that are out there. Yet, we have an influx of children coming across our southern border. The question is, what do we do with them? How do we do it?

Ms. Maxwell, HHS OIG issued an issue brief which found in part that thousands of additional children may have been separated from their adult parents by DHS and referred to ORR. In the context of this report, is it referring to children who may have been separated from a parent or legal guardian only for any specific reason?

Ms. MAXWELL. So, with respect to the agreement, this issue brief is a broader perspective, and separations could have occurred for a myriad of reasons.

Mr. MULLIN. But you said thousands more. You said there are possible thousands more. Where did you come up with that information where you said thousands more?

Ms. MAXWELL. Sure. Thank you for the opportunity to talk a little bit more about that. So, the thousands estimate was provided to us by HHS officials that were running the program and tracking separated children. And it relates to a significant increase in the number of separated children that they noted——

Mr. MULLIN. But you said "possible". How would we not know the exact number? I think Commander White said that, you know, I mean you keep track of every child, is that not correct, that is referred to you?

Mr. WHITE. We absolutely do. However, the question as to how many of the children we received who had been appropriately discharged before the judge's order, how many of them were separated, no one in HHS has a definitive list to work from.

Mr. MULLIN. How long has this separation been going on? Not underneath the current policy, how long has separation from an adult or a parent been going on on the southern border?

Mr. WHITE. So, let me make one bright-line distinction. Separation from parents and legal guardians is legally different from separation from anyone else.

Mr. MULLIN. Well, but we have got to determine if they are actually legally their parent, right?

Mr. WHITE. Correct. Separation——

Mr. MULLIN. But how long has that separation been going on on the southern border?

Mr. WHITE. Some separations have, as I've said elsewhere, have always been part of the program.

Mr. MULLIN. OK.

Mr. WHITE. We have separations for cause.

Mr. MULLIN. So, this was going on during the Obama administration, too?

Mr. WHITE. Separations for cause are distinct from large-scale separation——

Mr. MULLIN. Well, but we still do separation of cause.

Mr. WHITE. Correct.

Mr. MULLIN. There is a large number that is coming into it. We know it is a $2.4 billion human trafficking industry now that the cartels are running. So, there is always a cause for us to have concern about anybody coming across the border when we don't know for sure that it is their parent. And we can't just take the adult's word for it. How long has this separation been going on, though? Was this practice not going on underneath the Obama administration, too?

Mr. WHITE. So, prior to what we saw beginning in July of 2017, separations from parents occurred typically for one of four circumstances. The parent was medically unable; there were doubts about parent——

Mr. MULLIN. But, no, just it's been going on before, though? That is what I am trying to get——

Mr. WHITE. What we have seen over the last few months, however, was not going on prior to July of 2017. However——

Mr. MULLIN. But the separation for the concern of the child has been going on through the Obama administration, too?

Mr. WHITE. Correct.

Mr. MULLIN. OK.

Mr. WHITE. And before.

Mr. MULLIN. Now we have talked about this cage that is a detention holding area that——

Mr. WHITE. Correct.

Mr. MULLIN. We have been talking about this cage. Now there is a picture floating all around the internet of this cage. That cage is from 2014.

Mr. WHITE. The images that I have seen in the media are mostly from the Nogales processing center during the 2014——

Mr. MULLIN. Right. So, 2014. So, that was under the Obama administration, right?

Mr. WHITE. Correct.

Mr. MULLIN. Yes, correct.

Mr. WHITE. Yes, I worked——

Mr. MULLIN. So, my colleagues on the other side want to say that this is the Trump separation, the family separation, but the separation was going on prior to this. And all it is, is about the safety of the children. Now, if we can't agree on anything, let's not make a political point out of this and start pointing fingers at each other. It is about the children. It is about the children.

I know some of you guys have opened your homes up to kids, but how many of you have actually opened your homes to kids? Right

now, I have six living with me. Three are biological. So, you want to talk about opening your family and talk about the kids? Then get off your butt and do it yourself. Do you want to really be compassionate about it? Then open your house up. Oh, wait, just make a political point: "I am OK with just sitting here. I am OK with just saying we need to do something." Well, do more than just say something. Now, there are some colleagues of mine on both sides of the aisle that have been great, that have opened their houses up, but there are few. But everybody wants to make a political point.

The fact of the matter is, at the end of the day, it is about taking care of the kids. And if we can get away from the political rhetoric and just focus on the kids, then we might actually be able to get something done. But, as long as we dig in and point fingers, we are going to be right here 2 years from now, too.

I yield back.

Ms. DEGETTE. The gentleman yields back. The Chair now recognizes the gentleman from California, Mr. Peters, 5 minutes.

Mr. PETERS. Thank you, Madam Chairman. Thank you. Thank you, Madam Chairman.

And thank you to the witnesses. I have found your testimony so far to be very forthright and helpful.

I will just say that families coming to the United States seeking refuge and asylum are expected to be met with American welcome, and I think, in the style that Mr. Mullin might have wanted, but this administration chose to go against decades of immigration policies that kept families together and court rulings that establish protections for migrant children. And when we talk about separating kids for cause, it is because it is for cause in those individual circumstances where the evidence suggests that that would be the right thing for the child. It wasn't this wholesale separation that took place under the Trump administration. I think that is what is new and that is what concerns a lot of members of this committee.

As a San Diegan, I know the border is part of our identity and our culture, and San Diego and Tijuana are inextricably linked. The border we see as an opportunity, not as a threat. And ripping terrified children from their parents' arms is not the policy of neighbors.

We must acknowledge the lasting trauma that these children may face for the rest of their lives. It is horrific to know that our Government causes pain, and we, as a Congress, have a duty to provide support and resources to assist separated families.

I do want to acknowledge the work of the court system as an institution that has stepped in and made a difference here, partly because it was the court in my home district, the Southern District of California. It was Judge Sabraw, who I actually practiced law with a long time ago. And he is one of many Federal judges. He happened to be a Republican appointee who takes his job of providing justice very seriously in an impartial and nonpolitical way.

Commander White, in a recent court filing, you stated the statistics suggest that, if a separated child who ORR discharged before June 26th, 2018, remains in the United States, then he or she is, quote, "probably with their family." In considering what we know about the challenges HHS has faced in identifying separated chil-

dren, what level of confidence do you have that these separated children were placed with their family?

Mr. WHITE. Thank you, sir. So, let me clarify this. While we do not know because it was never provided to us in HHS, while we do not have a list of every kid who was referred to us as separated, we absolutely do know to whom we have discharged every child who's been in our care. So, when we speak about those children who were separated and referred to us and appropriately discharged before Judge Sabraw's decision on the 26th of June, we can speak with certainty about what happens to children in that process.

So, the answer is—and I alluded to the statistics earlier—is, during that year, 86 percent of children in our care went to an individual sponsor. Ninety percent of the time that's to a parent, sister, brother, aunt, uncle, or grandparent, and the remaining 10 to 11 percent of the time, it's to a cousin or their distant relative or a family friend. So, while I don't know which of the kids were separated, because I haven't been given that list, I do know what happens to children who exit ORR care. And indeed, if someone cared to give us that list, we could walk through it. But that is the answer to that question. That's why I said probably they're with family members, because that is to whom we discharge the vast majority of children.

Mr. PETERS. And in your recent court filing, you stated that you believed ORR would face significant hurdles if it tried to collect information from separated children who were discharged before June 25th.

Mr. WHITE. Yes, sir.

Mr. PETERS. And that you believe that attempting to reunify them with separated parents would present, quote, "grave child welfare concerns". Can you explain why you think that that would be a grave concern?

Mr. WHITE. Yes, sir. I think it's helpful if you look at the whole paragraph in the declaration. So, here's what I said about grave child welfare concerns. And what I said was that, is that, in some instances, the sponsor, that family member, might not wish to have the child, or the child might not wish to come back into Federal custody, so we could go through this legal process.

And since in ORR there is no capacity to go and take children into custody, what would that actually look like? And I really want this understood. What that would actually look like is ICE agents or other Federal law enforcement going into an immigrant family's home to forcibly remove that child and put them back in Federal custody.

So, yes, I believe that has a very significant risk of retraumatizing a child who's already been traumatized in many cases by separation, and I stand behind the truth of what I said in that declaration.

Mr. PETERS. But you agree——

Mr. WHITE. That's not how it's appeared in the papers, but that's what I said.

Mr. PETERS. But you do agree that we should try to determine where children went, who they are separated from, make sure their parents and guardians know where they are?

Mr. WHITE. I think we are eager to comply, as we have thus far, with whatever Judge Sabraw determines that we need to do. And I think it's very important that people know the full story. But I want to be clear, we will not have at our disposal the same tools to identify children in care, nor will we have the same capacity for children who are no longer in care. It's just a completely different ball game.

Mr. PETERS. All right. Thank you.

I yield back.

Ms. DEGETTE. The Chair now recognizes the gentleman from Massachusetts, who I am delighted to say will serve as the vice chair of this subcommittee for the 116th Congress, Mr. Kennedy, for 5 minutes.

Mr. KENNEDY. Well, thank you, Madam Chair.

I want to thank our witnesses here for your testimony and for your service to our country.

A couple of points, right off the bat. One, I think if I am hearing everybody correctly, Commander White, you indicated that there was a policy put in place on a memo signed by the Attorney General of the United States of America that directly impacted individuals would be or should be in your care, and you didn't know about it until it was announced on television. And when asked, it was denied that that policy existed. Is that right?

Mr. WHITE. So, my questions about separation preceded the policy announced, based on observations that we were seeing above what we would expect to see in terms of the ordinary separations for cause.

Mr. KENNEDY. So, the second point, my colleagues have pointed out how good a job a number of agencies are doing on the border and trying to address this and a number of other concerns, which they have gone to great lengths to explain that this is being well addressed and well taken care of, which I do hope that the lawyers from the White House are looking at that, as they contemplate an emergency declaration for immigration, for potential immigration moves, depending on what happens next week.

Third, Commander, you had mentioned a number of folks who raised concerns about what was taking place, but that that didn't change. Do you have any idea why your concerns weren't heeded?

Mr. WHITE. I elevated to my leadership, my immediate leadership, my concerns that separations were occurring, and that if we saw larger-scale separations, it would exceed our capacity, and additionally that separating children from family units was inconsistent with the best interest of the child.

Mr. KENNEDY. Understood, sir, and I apologize to cut you off. You have been forthcoming. I just don't have that much time.

You never got additional—but you well entered those concerns, and were you ever told why they weren't going to do anything about it?

Mr. WHITE. I was told that family separation wasn't going to happen. And I have no reason to doubt the veracity of their statements. I think that's what the people who told me that also believed.

Mr. KENNEDY. I appreciate that.

There is testimony that is coming on the second panel that indicates that children are still being separated from their parents at the border. And while these reasons for separation are not often clear, it is evident that separations are occurring at elevated levels compared to past years. Ms. Abbott I believe will testify to those words.

Ms. Maxwell, you testified to the fact that ORR has continued to receive children who have been separated from a parent or guardian. Do you know whether those separations are still at an elevated level?

Ms. MAXWELL. Indeed, the separations that have occurred after the preliminary injunction are about twice the level as they were in late 2016. It's still significantly less than the peak that we saw in the summer of 2017, but the average is a little less than 1 percent.

Mr. KENNEDY. And, Commander, do you have any concern that those separations are coming for anything other than good cause, given the four strict limited categories of good cause that you enumerated earlier?

Mr. WHITE. So, we strive to identify the reasons for separations. That is part of the information that we've added to the portal. But, to answer your question, Congressman, there is no specification in law from you all in Congress about the permissible grounds for separating a child from a parent. And I would submit that, if you want to see that, that's on you all.

Mr. KENNEDY. I appreciate that, sir.

Moving from the children to the facilities, I visited a number of them as well. I want to ask specifically, though, about some reports that have come to my attention that the Trump administration is working to house detained children on land that was owned, or is owned, by the Department of Defense that is not currently being used because it is contaminated with toxic chemicals, including lead, arsenic, mercury, PFAS, and perchlorate. Even for an administration that seems to go out of its way to treat immigrants as less, this seems a new low. We know that children are vulnerable for toxic waste and that even low levels of exposure can result in permanent health damage, as if, given the testimony that we've heard, these kids have not already gone through enough.

So, Mr. White, can you detail for the committee any discussions that HHS or ORR has had with DoD regarding the use of the land that might contain toxic chemicals?

Mr. WHITE. Thank you. We actually got your letter yesterday, and you allude to two military installations. Let me be clear. One of them is a military installation we did use in 2016 to shelter 8,800 children. That's Fort Bliss. As a reminder, Fort Bliss is 1½ times the land area of the State of Rhode Island.

We do not—I really want to be as clear as I can be about this—we do not set up temporary influx shelters on sites that pose an environmental health risk to children. In fact, we have ruled out sites in the past specifically on that basis that were otherwise suitable. We vet hundreds of potential sites that sister agencies identify. The sites that you identify in your letters are ones that had already been precluded by HHS. We had already ruled them out

before we even got to the environmental health assessment because there were other things that made them unsuitable.

Mr. KENNEDY. And, sir, just briefly, because I am running out of time here. I appreciate that feedback.

A facility in Homestead, Florida, was not required to obtain State licensure because it is located on federally owned property. That begs a question as to whether recent efforts to identify more Federal property to house these children is in an effort to circumvent some of those State licensing requirements. Do you have any knowledge as to any effort to do so?

Mr. WHITE. So, I have worked on every single influx sheltering mission in the history of this program. And I'll tell you something that goes back. I would love it if they were State-licensed. The life of every career person and every ORR official who works on that would get tons easier. But the reality is, it's not that we get around licensure, it's they're licensure-exempt.

We are not appropriated with enough funds to maintain a steady capacity that accounts for the real surges we see. So there are times when we must use temporary influx facilities because the alternative is border stations, and we've heard conversations today about why border stations, although they are absolutely suitable for law enforcement, are not suitable for child welfare.

I am very proud of the work that I have done and my colleagues have done in influx shelters and the way that we maintain program standards under incredibly difficult time situations with fluctuations in the numbers of children we get.

Ms. DEGETTE. The gentleman's time has expired.

Mr. KENNEDY. I appreciate it, sir. Thank you.

Ms. DEGETTE. The gentlelady from California, Ms. Barragán, is recognized for 5 minutes.

Ms. BARRAGÁN. Thank you, Madam Chair.

And thank you all for being here today and, Commander, for some of your responses.

I actually have visited an ORR facility down in San Diego with several of my colleagues. So, one of my colleagues on the other side of the aisle asked, what's a day in the life, you know, what is it like, a day in the life? And let me tell you, when I went to go visit this facility, and talking to some of my other colleagues that have visited other facilities, what we saw were children, children who were very quiet, children who were not playing and happy and interactive like kids should be. And what we saw was the impact of trauma that was happening, kids that were crying for their parents, kids that wanted to be with their parent.

And I heard an official say, "Oh, the kids have it really good here. They've got a bed. They can play." And one of them even said, "They have it better than my own kids do at home." And I was shocked. Well, your kids at home get to be with you. And to indicate and to just even say that a child has it well off here, when they are separated from their family, I think just shows just a complete ignorance of the trauma that is felt by these kids.

And we have heard report after report of kids being reunited with their parents, feeling like they were abandoned by them, not recognizing them, not wanting to go back to them. I think it is so critical.

Now, I have introduced a bill, a mental health bill, to making sure that we provide ongoing medical treatment for kids, even after they have left these facilities, because I don't think they are getting that care. And this trauma goes on for a very long time.

Now, one of my questions was going to be about where can a Member of Congress actually find a standard that is being used to say that a parent is unfit and should be separated from their child. But what I think I have just heard you say is, there is no place a Member could look because there is no standard, and that is upon us in Congress to do. Is that correct?

Mr. WHITE. So, it is a question for DHS, the criteria that they use to effect separations for cause. But, to be clear, there is nothing in law which either precludes arbitrary separation or defines the terms for separations. Neither is there anything in law that gives us in the ORR program the authority to say that child is not separated after all and refuse a placement.

Ms. BARRAGÁN. And equally speaking, there is no process for a parent to actually say, "Well, that's not true" or to appeal a finding that they should be separated from their child. Is that correct?

Mr. WHITE. So, there is no process.

Ms. BARRAGÁN. OK. Thank you.

One of the other mind-boggling parts of this whole aspect on this separation has been on how difficult it has been for the administration to reunite families and the lack of a tracking system. I read the January 17th, 2019, HHS OIG report. And from my reading of it, it says—the report is still not clear that ORR, HHS, and DHS can track separated families across agencies even today. Is that true, Ms. Maxwell?

Ms. MAXWELL. Yes. Both agencies have stated they've made improvements to their tracking systems. We do have ongoing concerns with the quality of the data being input into those systems. As I mentioned, current separations, information about them is being sent to ORR, but not always at the level of specificity and sometimes even limited information as to the reason of the separation. For example, while most of them are separated and the indication is for criminal history, we did note that some separations were, the reason given was immigration offense only. And some reasons were just given as "other."

So, given that lack of transparency about the reasons for current separations, we made a referral to the DHS OIG to look into this, because we think the quality of the information in those systems is as critical as having those systems.

Ms. BARRAGÁN. So, Ms. Larin, maybe you can also chime in here. What needs to happen so that we can make sure that these data systems have the proper information-sharing and that vulnerabilities could be addressed?

Ms. LARIN. As I mentioned in my testimony, both agencies have made changes to their systems. Prior to the court order, neither one of them had a way to consistently indicate whether a child had been separated. Now each of them have a checkbox. But, initially, it was not clear that data was consistently being shared between the agencies. So, we have not assessed since then whether the systems are working to identify every child who's been separated.

Ms. BARRAGÁN. OK. And then, Commander, when my colleague from Oklahoma was asking the question about how long separations have been going on, I think you tried to at least explain that they were not going on like this prior to the zero-tolerance policy. Would that be accurate?

Mr. WHITE. There have always been separations for cause throughout the history of the program. That is different from wholesale separation.

Ms. BARRAGÁN. Commander, I am already over my time. There has been a change, hasn't there been?

Mr. WHITE. There has been a change. That's why we're talking.

Ms. BARRAGÁN. Yes. So, just so everybody knows, I sit on Homeland Security as well. Secretary Nielsen came in, said there was no separation policy. She's lied before. But, then, of course, she starts mincing words, and when you really find out what is happening, it is they started prosecuting parents and that resulted in the separation of children. So, it is this administration's zero-tolerance policy. It is this administration that started this from happening, was trying to hide it. And now Congress is trying to make sure we provide that oversight, and we will continue to do so.

I yield back.

Ms. DEGETTE. The gentlelady yields back. The gentleman from Florida, Mr. Soto, is recognized for 5 minutes.

Mr. SOTO. Thank you, Madam Chairwoman.

So, as far as I could tell, the timeline, we saw a Draconian immigrant family separation order come down without prior planning, coordination, or advice, from the White House, leading to absolute chaos. And for that, I am sympathetic to those of you who had to implement that, because you weren't given any advice on that.

And we saw a population of separated children skyrocket. My colleague Mr. Kennedy mentioned the Homestead facility that I had the unfortunate honor of having to go to, after being blocked initially from being able to go. And there at the Homestead facility, the second largest that we had, 1,179 teenagers were at this facility made for 500. And that was the first clear point for me that there was no preparation for this, much to do with the fact that the White House didn't give anybody advance notice and just threw it out there.

The bottlenecking of these kids was caused by several policies like zero tolerance, but another one was the fingerprinting of entire adult members in the household that was an HHS decision in the Tornillo influx care facility and in other facilities.

Commander White, did HHS implement the extra vetting process in 2018 to include all members of the household, in addition to parents or potential sponsors? Yes or no, because we will go into——

Mr. WHITE. I apologize. Could you say—I had a hard—I didn't actually hear you. I'm sorry.

Mr. SOTO. Did HHS implement extra vetting processes in June 2018 to include all members of the household, in addition to the parents or potential sponsors?

Mr. WHITE. We expanded our biometric background check in 2018, and subsequently we had a change in operational policy to waive some of those requirements again. We have been iteratively

changing our review process in response to oversight from Congress, as well as our own lessons learned, since 2014.

Mr. SOTO. And, Commander, we will get into some of those things. Did HHS consider this new policy would affect the increase of the number of children under ORR's care and whether you all had the resources to meet those needs at that time when you implemented that additional fingerprinting?

Mr. WHITE. The two main variables that drive the number of kids in care at any time are the number referred each day on average and the number discharged each day on average. So, among the variables that we looked at in modeling scenarios was a continued decline in discharge rate that did occur.

Mr. SOTO. And then we saw later HHS announce that it would no longer require the additional vetting, determining, quote, "Additional steps required to fingerprint all household members has had an impact on timely release of UAC without demonstrating benefit to the safety of children after they're released from ORR care." And we saw HHS Assistant Secretary Johnson state that adding anything to the protection or safety for these kids through the extra vetting was accomplished without those means.

Going into sort of our next question, within a month of the actual vetting policy reversal, the last of the children held at the Tornillo influx care facility were gone. Did HHS conduct an analysis of this fingerprinting policy prior to or after its implementation?

Mr. WHITE. So, both. So the right way of understanding this is that we iteratively are constantly looking at our release processes for safe and timely discharge. And I want to be clear with you, Congressman. Safe discharge and timely discharge have some friction between them.

Mr. SOTO. Sure.

Mr. WHITE. The safer you make a review process for a sponsor, the longer the average length of care. Our motivations were to increase child safety. That particular operational change, after we were able to see how it rolled out in practice, it burdened discharge rate more than it benefitted safety, and that is why Assistant Secretary Johnson made the announcement that she did. We continue to strive, and will continue to strive, to make changes as we need to, to find the optimal ratio between safety and timeliness in discharge.

Mr. SOTO. So, given the fact that it caused more of a delay than actually kept children safe and led to more mushrooming of the population, you all determined ultimately it wasn't in the best interest of the child to do that?

Mr. WHITE. That's right. All of our decisions in the ORR program must be guided by the best interest of the child, but they're also bounded by the appropriated resources we receive.

Mr. SOTO. Thank you.

Ms. DEGETTE. The gentleman yields back. I have extended the courtesy to the ranking member for an additional around of questioning.

Mr. GUTHRIE. Thank you very much.

And, Commander White, it was mentioned that you had unaccompanied children at Fort Bliss, ORR had at Fort Bliss. I understand Fort Bliss is a massive place. I am sure you didn't put them

in the parts of Fort Bliss that they don't belong. But you also said that was 2016?

Mr. WHITE. Correct. We——

Mr. GUTHRIE. I want you to verify that was 2016.

Mr. WHITE. We operated a temporary influx shelter in 2016 at the Dona Ana Range Complex on Fort Bliss. We sheltered nearly 9,000 children there. And because of that, we were also able to safely evacuate children out of the path of a hurricane from Florida and to prevent a backup in the border stations. I am proud of what we did at Fort Bliss. I'm proud of what we did over two administrations in every one of our influx missions.

Mr. GUTHRIE. OK. And that was previous to President Trump's administration?

Mr. WHITE. Yes, sir.

Mr. GUTHRIE. I just want to ask this question, and then I will finish up because I know we have got another panel coming.

But just kind of putting where we are now is where I am getting at. So, has ORR's accounting and tracking of children—separated children—changed since the zero-tolerance policy? Are you receiving the proper information from DHS to properly have the information you need about children that are separated, not unaccompanied, but separated for cause? And if not, what can Congress do—or, overall, let me finish—what can Congress do to make your job more effective?

Mr. WHITE. So, we have added—essentially, it's a box in the referral, the electronic referral system, that DHS personnel use and CBP personnel use to refer a child into ORR care, for the referring agency to indicate if this child has been separated and, if so, the circumstances of the separation, right. So, that is an improvement we've made electronically.

We, additionally, have added more robust procedures in our own intakes process to identify and notify up if there are minors that the program that's providing care to the child believes are separated, so that we can more comprehensively track them.

In terms of what Congress can do, it is reasonable to believe that, if there was clear legislative guidance about when a child may be separated from a parent, that would ease the work of both Departments, both our colleagues at DHS who are striving honorably to execute their requirements and us. Additionally, many problems would be prevented if ORR shared with DHS the power to determine who is unaccompanied. As a reminder, we accept all the children who are referred to us. A lot of things might be different if that power were equally shared between the two agencies. That's what Congress could do for us.

Mr. GUTHRIE. Thank you. I appreciate it.

Mr. WHITE. That is only my opinion.

Mr. GUTHRIE. I appreciate that.

And I yield back.

Ms. DEGETTE. Thank you. And Mr. Cárdenas from California has come in. So, I will recognize him for 5 minutes.

Mr. CÁRDENAS. Thank you very much, Madam Chairwoman, and thank you for giving us, the legislative body, an opportunity to shed some light in full view of the American people and the world on how to get down to the bottom of what has been going on with

the—I personally consider it an atrocity that any country would wholesale take action, intended action, of separating babies, children from their parents.

I haven't heard of anybody in the psychological field that has said anything other than that is probably the worst thing that a person, that a society or any individual can do to a young brain, is to give them that experience of that trauma. I have not heard any of them say anything other than that trauma lasts a lifetime. Not only does it have a mental effect on that human being for a lifetime, it actually translates into negative physical effects as well.

So, that having been said, it is alarming to me that earlier, I think it was you, Commander White, was quoted as making a statement along the lines that perhaps you are not even going to be able to reunite all of the children in custody today with their appropriate parents. My point on that is, if in fact that is what you were willing to admit, I thank you for that admission because, until that moment, we were given stories from the administration and from various departments that everything is going to be OK at the end of day, it is not that bad, all the children are going to be just fine.

And nothing could be further from the truth. No offense. Once a child has been traumatized like that, it is never going to be just fine after that fact.

I just want to remind us that the ability of not being able to return every single child to their rightful families eventually, and for us to do anything less than everything that we can do to make that right with that child and their family—anything less than that would be like we are treating them like sweaters left behind in a lost and found. These are human beings. They might not be American human beings, but they are human beings.

With that, I would like to ask some questions. Commander White, with the reports of children crying themselves to sleep at the ORR facilities, did HHS provide any advice or training to CBP on how to minimize trauma for these separated family members, particularly the children?

Mr. WHITE. So that's something we'd have to get back to you on. I do not know if there was any interagency discussion. HHS is a big agency. I did not myself provide any technical assistance to an interagency, but that is a question we'd need to get back to you on.

Mr. CÁRDENAS. OK. If you can provide that to the committee, that would be very important for us to know the answer.

And again, Commander White, I am not here to beat you up. I am actually here to compliment you, because everything that I have heard about your comments have been pretty darn forthright and just straightforward with trying to paint a truthful picture about what happened and what has been going on.

I apologize, I am having a hard time even asking some of these questions because it is just so startling that in the greatest country in the world we actually participated in this, in separating thousands upon thousands of children.

But at what point in time was your Department made aware that there was going to be an increase, a drastic increase, an influx of children that would have to end up in your custody?

Mr. WHITE. I am not aware of any HHS—I have no personal knowledge of any HHS person being advised of ZTP, zero-tolerance policy, prior to its public announcement.

Mr. CÁRDENAS. Because my time is short, thank you.

Did you personally inquire or did you discuss with any of your colleagues at your level, above or below, if they were inquiring to ask if anybody else has heard, or at least——

Mr. WHITE. Because——

Mr. CÁRDENAS. Maybe they were inquiring, but they weren't getting any answers?

Mr. WHITE. Because in many interagency meetings it was clear to me that there were—that the possibility existed that separation was going to happen, indeed, that preparation for that policy possibility was underway, as I've testified previously, I did elevate those concerns to my own immediate leadership.

Mr. CÁRDENAS. But, as far as you know, no direct answers were given, based on the question I just asked earlier?

Mr. WHITE. Again, to my knowledge, no one in HHS knew the zero-tolerance policy. I have never heard an HHS person say to me, "Yes, I knew the zero-tolerance policy was going to happen."

Mr. CÁRDENAS. Thank you for your frankness, Commander White.

Thank you, Madam Chair.

Ms. DEGETTE. The Chair now recognizes the gentleman from Maryland, Mr. Sarbanes, for 5 minutes.

Mr. SARBANES. Thank you, Madam Chair. Thanks for the hearing.

Thanks to our panelists.

Ms. Larin, your inquiry in terms of the GAO's review of all this, was that confined to looking at what was happening in ORR or was it broader than that, looking at the other agencies and how they touched this issue of the zero-tolerance policy?

Ms. LARIN. We looked at planning both by HHS and by DHS.

Mr. SARBANES. DHS? Good.

Ms. LARIN. Or the lack of planning.

Mr. SARBANES. OK. So, I was fascinated when you gave your initial testimony, because you seemed to be describing a situation in which the official policy of the administration was that there would be no family separation, but the unofficial policy, going back to 2017, was that there would be a family separation, which obviously puts the professionals who are trying to do their job well in an incredibly difficult position. They sit in meetings having to interpret coded language or winks and nods, as in our official policy is not to separate families, but, in effect, on the down-low this is what we are really up to. Terribly disrespectful of people who are trying to do the right thing, as I believe, Commander White, you have indicated you were trying to do at every step along the way, and having to tolerate the kind of atmospheric conditions that seemed to be happening in these meetings and gatherings, where you are trying to pull information to allow you to do the right thing.

So, Ms. Larin, I would just like you to expand a little bit on that disconnect. I mean, I have seen the Trump administration issue kind of shoot-from-the-hip policy directives that get carried on cable television before people in the agencies that have to own

those directives even know about it through a combination of incompetence sometimes or other motivations. But this is an interesting case, because this is one where the powers that be seemed to know what they were up to, and they were saying officially, "We're not doing any of that stuff. There's no zero-tolerance policy. There's no policy of separating families," but actually that is what we are doing.

Describe that disconnect to me because you touched on it in your initial comments, and I think it is very telling as to the difficult position that so many people, just trying to do their job and trying to protect the interests of these families and children, were placed in as a result.

Ms. LARIN. So I noted in my testimony that there was an increase in separated children, children who were separated from their parents, between 2016 and 2017. And we were told that there were two different policies that potentially led to that increase. One of those was a memo by the Attorney General that was issued in April 2017, so a year before the April 2018 memo, that prioritized enforcement of certain immigration-related offenses. And there was also an initiative that was specific to the El Paso Border Patrol sector, which, again, increased referrals and prosecutions of immigration-related offenses, including parents of minor children, and that likely resulted in separations. So there were policies that were being implemented that could have led to that increase.

Mr. SARBANES. What is interesting about that is it almost sounds like the administration was finding ways to test this out before they moved into a more official posture on it. One would have thought, based on some of the ripple effects, that those more localized or targeted deployment of this policy would have demonstrated that they would have come back realizing that that was a terrible direction in which to go. But apparently the lesson they drew from it was that they should expand the policy more broadly, with the disastrous and tragic impacts that it has had for these children.

And I yield back.

Ms. DEGETTE. The gentleman yields back.

I just have a couple of final questions for the panel.

Commander, I think you had said, for the children separated before the April order, that it would be very difficult for HHS to now figure out where those kids went because most of them were released into custody, into their parents or whoever, right? Is that right?

Mr. WHITE. The important timeframe is not when they were separated. It's whether they had already been discharged from ORR by the 26th of June. When we looked at the direction of the court in *Ms. L*, every child, every single child who was in care, there was no start date.

Ms. DEGETTE. Right. OK.

Mr. WHITE. The earliest separation of any kid on that list was separated in 2014. We went back as far as they went.

Ms. DEGETTE. But the court order said you had to identify children after the time of the order. Is that right?

Mr. WHITE. There was no start date from when they were separated. What mattered for the order was whether they were in care on or after the 26th of June.

Ms. DEGETTE. I see. So, what you are saying today is—and you painted this Draconian picture of if ICE went back into these homes and took these kids. I don't think anybody is suggesting that that is what we should do. But, if we were going to identify what Ms. Maxwell talked about, the potential thousands of kids who might have been separated—we don't know—it would probably take another court order to do that because of the interagency operations. Is that what you are saying today?

Mr. WHITE. I'm saying that I don't believe that we're capacitated to do—from July of 2017 until the court date, more than 47,000 children moved out of our door.

Ms. DEGETTE. Right. Yes, but——

Mr. WHITE. The best way to get that would be to pose this question to the Department of Homeland Security because, as a reminder, HHS separated zero children.

Ms. DEGETTE. Right. I understand.

Mr. WHITE. We weren't there when it happened.

Ms. DEGETTE. Believe you me, I understand that. But, however—and you don't really have to answer this—but HHS said they couldn't identify those children before, and the court said to do it. So, we are going to hear from our next panel about what they want to do, but this is what we are concerned about, is these thousands of kids that the IG has identified that may or may not be with family members now. So, we will have to explore this further.

There is one other thing. You had mentioned to Congresswoman Castor a memo that you wrote in 2017. Is that right?

Mr. WHITE. I apologize, the Castor memo?

Ms. DEGETTE. No, you had told Ms. Castor you wrote a memo in 2017 to your supervisors.

Mr. WHITE. Yes, I wrote at least multiple memos.

Ms. DEGETTE. OK. So, this is really more a message for your Department, and not for you. But, on January 18th, 2019, Mr. Pallone and I sent a letter to the Secretary asking for a number of documents. That would have been included in those documents. While we have received some documents in this committee, we did not receive that document or many other relevant documents. And so, I am asking you to please communicate to the Department that they do need to comply with this document request.

And I would ask unanimous consent to put our January 18th letter into the record. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. WHITE. And I know HHS is going to fully honor your request, and I've talked to folks. They're working very hard on going through that number of documents.

Ms. DEGETTE. OK.

Mr. WHITE. That will happen.

Ms. DEGETTE. And the last thing I will say is we really do value the efforts that you have made, but we intend to continue this investigation because many of the questions the Members have asked are questions you can't answer because these conversations took place above you.

And I also want to thank all of the other witnesses for participating in this hearing and for your thorough investigations.

Members will submit questions for the record. And I ask that the witnesses respond promptly to the questions.

And with that, the subcommittee will dismiss panel 1.

After the next panel has been set, we will invite them to the table.

[Recess.]

Ms. DEGETTE. The Chair will announce, because people have asked, we are expecting a series of votes between 1:30 and 2 o'clock. And so, we are going to start with testimony from the second panel, and then, we will break when we go for votes. So that if people need to use the restroom or grab a quick bite, they can do that. And then, we will reconvene 15 minutes after the vote ends.

I would now like to introduce our second panel. I don't know where Mr. Gelernt is. He is on his way.

Mr. Lee Gelernt, who is the deputy director of the Immigrants' Rights Project of the American Civil Liberties Union, will be joining us.

Ms. Jennifer Podkul, who is the senior director of policy and advocacy of Kids in Need of Defense.

Welcome, Mr. Gelernt.

Dr. Julie Linton, who is the cochair of Immigrant Health Special Interest Group of the American Academy of Pediatrics.

Dr. Cristina Muñiz de la Peña, who is the Terra Firma mental health director of the Center for Child Health and Resiliency, who is here on behalf of the American Psychological Society.

Dr. Jack Shonkoff, Professor of Child Health and Development and Professor of Pediatrics, of Harvard Medical School.

And Ms. Dona Abbott, the vice president of refugee and immigrant services of Bethany Christian Services.

Ms. Abbott, I am sorry we don't have a name tag yet for you, but we are printing one off. These are the glitches when you have your first committee hearing of the year.

I know all the witnesses are aware we are holding an investigative hearing, and when doing so, we have the practice of taking testimony under oath. Does anyone have any objections to testifying under oath?

Let the record reflect that the witnesses have responded no.

The Chair advises you, then, that under the rules of the House and rules of the committee, you are entitled to be accompanied by counsel. Do you desire to be accompanied by counsel during your testimony today?

Let the record reflect that the witnesses have responded no.

If you would, then, please rise and raise your right hand, so that you may be sworn in.

[Witnesses sworn.]

Ms. DEGETTE. Please be seated.

Let the record reflect that the witnesses have responded affirmatively, and you are now under oath and subject to the penalties set forth in Title 18, Section 1001, of the Criminal Code.

The Chair will now recognize the witnesses for a 5-minute summary of their written statements.

There is a microphone and series of lights in front of you. It turns yellow when you have a minute left and red to indicate your time has come to an end.

Mr. Gelernt, you are now recognized for 5 minutes, and thank you for being with us.

STATEMENTS OF LEE GELERNT, DEPUTY DIRECTOR, IMMIGRANTS' RIGHTS PROJECT, AMERICAN CIVIL LIBERTIES UNION; JENNIFER PODKUL, SENIOR DIRECTOR FOR POLICY AND ADVOCACY, KIDS IN NEED OF DEFENSE; JULIE M. LINTON, M.D., COCHAIR, IMMIGRANT HEALTH SPECIAL INTEREST GROUP, AMERICAN ACADEMY OF PEDIATRICS; CRISTINA MUÑIZ DE LA PEÑA, PH.D., TERRA FIRMA MENTAL HEALTH DIRECTOR, CENTER FOR CHILD HEALTH AND RESILIENCY, ON BEHALF OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION; DONA ABBOTT, VICE PRESIDENT OF REFUGEE AND IMMIGRANT SERVICES, BETHANY CHRISTIAN SERVICES; AND JACK P. SHONKOFF, M.D., DIRECTOR, CENTER ON THE DEVELOPING CHILD AT HARVARD UNIVERSITY

STATEMENT OF LEE GELERNT

Mr. GELERNT. Thank you, Chair DeGette, Ranking Member Guthrie, and the rest of the Members. I apologize I was late.

I am the lead ACLU lawyer in the family separation lawsuit. So, I'm going to talk a little bit from that background, talk a little about the lawsuit, where we are, what I think needs to happen.

I've been working at the ACLU for more than 25 years doing civil rights work in the immigration area. And I feel confident in saying that the family separation practice is the worst thing I have seen in my 25-plus years. No other administration has done anything like this family separation policy. I think the prior panel made it clear that it was very limited in the past, it was for cause. It was not this widespread systemic family separation. And I think, worse still, family separations are still occurring, as the prior panel mentioned.

We filed our lawsuit in March of 2018, and this is before zero-tolerance policy. And at that point, we alleged, based on talking to lots of people all over the country, that there were hundreds of separations. By the time I stood up in court in the beginning of May, the media had recorded roughly 700 separations. I think it now is clear that there may have been many more, but this is even before the zero-tolerance policy.

And when the court ruled on June 26th, the Government reported that there were 2,700 separations. Those 2,700 are not, obviously, the whole story, as this committee has talked about previously with the prior panel. The Government's response now to the HHS report doesn't dispute that there may have been thousands more kids separated and released from ORR before the June 26th date of the court's order.

What I find remarkable is that HHS is saying it may not be worthwhile and just too hard to actually try and find where all these children are and where the parents are, and that it is remarkable that HHS is saying it may be in the child's best interest not to do so.

And Commander White mentioned that it would not be great for ICE to now be showing up at all these children's houses. And I'd like to talk about this more, hopefully during the questions, but we see no reason why that would have to be how it would be done. The information could be provided to social workers, to us, just as it has in the past, and we could find out what the family wants to do. But to say in the United States it's not worth finding children the Government separated seems to us to be an untenable position.

At a minimum, I think we need to find out the full scope of the problem. And I think that the Government really needs to participate in that process. I think one of the things that the committee knows is that there were roughly 400 parents that we know of who were deported without their kids, and at one point the Government stood up in court and said, "Well, if the ACLU wants to find those parents, let them find them." Ultimately, Judge Sabraw put his food down and said no, the Government has to help the ACLU. But I think going forward, that's a lot of time and resources. We're happy to do it, but we certainly need the participation of HHS to help us and for the rest of the agencies.

Let me just sort of conclude by stating five points that I think are critical going forward.

First, as I said, we think the committee should ensure that HHS accounts for these thousands of kids talked about in the report to see how many there are, where they are, and what needs to happen.

The second point is that we think it's critical going forward that there be proper procedures put in place and proper processes going forward, so separations do not occur based solely on a unilateral determination by an untrained CBP officer at the border.

Third, in the extremely limited situation where separations do occur going forward, it's absolutely critical, as the prior panel pointed out, to have an integrated database that allows tracking quickly. And Judge Sabraw was shocked, truthfully, about how bad the tracking system was. He called the separations brutal and offensive, but then, on top of that, he said he was really startled by the lack of any kind of tracking system. And I don't think one is in place at this point.

Fourth, there were many parents deported without their children who were misled or coerced into giving up their own asylum rights. We believe that those parents, if they have legitimate asylum claims and were coerced or misled into leaving without their children, ought to be given a fair opportunity to have an asylum hearing. And some of those parents got on the plane, were told their children will be on the plane with them, only to have the plane take off, and now they're stuck in Central America and their children are here.

Finally, we believe strongly that funds should be allocated for the families that were separated to assist them with obtaining medical and other types of assistance. As was pointed out in the prior panel, and I think is going to be strongly reinforced by the doctors on the panel, these children are suffering real trauma and harm, and they need assistance.

I'd just conclude by saying, when I met with one of our plaintiffs, the mother who had had a 4- and 10-year-old child taken from her

for months, and what she said when they came back was that the 4-year-old still asks her, "Are they going to come and take me away again in the middle of the night?" And I think that's what's going on with these children. Any sense of stability has been shattered, and without real medical assistance, I think it's going to be very difficult for them to recover.

I'll stop there. Thank you.

[The prepared statement of Mr. Gelernt follows:]

Written Testimony of:

Lee Gelernt
Deputy Director, Immigrants' Rights Project
American Civil Liberties Union

Submitted to the
U.S. House Committee on Energy & Commerce
Subcommittee on Oversight and Investigations

For a Hearing on:

"Examining the Failures of the Trump Administration's Inhumane Family Separation Policy"

February 7, 2019

The American Civil Liberties Union ("ACLU") thanks the U.S. House Committee on Energy & Commerce, Subcommittee on Oversight and Investigations, for the opportunity to submit this statement for its hearing addressing the Trump administration's family separation policy.

The ACLU is a nonpartisan public interest organization with 4 million members and supporters, and 53 affiliates nationwide—all dedicated to protecting the principles of freedom and equality set forth in the Constitution. The ACLU has a long history of defending civil liberties, including immigrants' rights. The ACLU vigorously defends the constitutional right of due process for all Americans—both citizens and immigrants—and advocates for policies that protect these rights.

The ACLU is currently litigating the case, *Ms. L. v. ICE*[1], that forced the government to reunify thousands of migrant families it separated at our Southern border and that generally prohibited future separations. We have participated in other litigation over the years concerning the civil liberties of immigrants, and we routinely advocate in Congress and state legislatures for policies that promote due process and protections for immigrants.

I. SUMMARY

I have been working at the ACLU on civil rights issues in the immigration area for more than 25 years. Family separation is the worst practice I have seen during this time, subjecting thousands of children and parents to unbearable hardship and trauma, from which they may never recover. No other administration has implemented a widespread policy to take migrant children away from their parents indefinitely, in a misguided and illegal effort to deter asylum

[1] *Ms. L v. ICE*, No. 18-cv-00428-DMS-MDD (S.D. Cal. Feb. 18, 2018); case page *available at* https://www.aclu.org/cases/ms-l-v-ice.

seekers from coming to our border. Worse still, we know the administration is continuing this practice, going beyond the few limited circumstances in which it is permissible to separate families.

In the fall of 2017, the ACLU began to see reporting[2] and hear from our partners, that separations were occurring in significant numbers, notwithstanding the administration's public pronouncements at the time that there was no family separation policy. When we filed a national class action in San Diego in federal court in March 2018 (the *Ms. L.* case)—well before the "zero tolerance" announcement—we were already aware of hundreds of separated families. By the time the court ruled in late June enjoining family separation, the government reported to the court and the ACLU that there were about 2,700 families who had been separated. The process of reunifying these 2,700 families is still not complete, even as we approach the lawsuit's one-year anniversary.

The family separation crisis was preventable. Although the separation of families began last year,[3] the practice surged after the "zero-tolerance" policy was implemented by the Department of Justice ("DOJ") in May of 2018.[4] The DOJ policy—implemented via referral from CBP—required that all individuals entering the United States between ports be referred for illegal entry or reentry prosecutions.[5] Moreover, and critically, separations also occurred at ports of entry.

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[2] Lomi Kriel, *Trump Moves to End 'Catch and Release', Prosecuting Parents and Removing Children Who Cross the Border*, HOUSTON CHRONICLE (Nov. 25, 2017), https://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-moves-to-end-catch-and-release-12383666.php.
[3] *Id.*
[4] Amrit Cheng, *Fact-Checking Family Separation*, ACLU BLOG (June 19, 2018, 5:30 PM), https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/fact-checking-family-separation.
[5] *Id.* The ACLU has long opposed these federal criminal prosecutions for immigration violations. *See* Letter from National Organizations to Members of Congress (July 11, 2018), http://nipnlg.org/PDFs/community/2018_11Jul_decrim-signatures.pdf; *see also* Letter from National Organizations to Attorney Gen. Loretta Lynch (July 28, 2015), https://www.aclu.org/letter/coalition-letter-attorney-general-171-organizations-end-streamline-prosecutions. Federal

The 2,700 separated families reported by the government in the *Ms. L* case are not the whole story. We have now learned from a recent HHS OIG report that that there may have been "thousands" of additional unreported separated families. The government's response to the OIG report is even more troubling. In a filing on February 1, 2019—just last week—to the *Ms. L* court, HHS candidly admits that it had no adequate database system for tracking the families, and that it would therefore have to identify separated children by manually reviewing individual files. This admission adds to the growing evidence that HHS has not been forthright in its descriptions of its ability to track family separations. As the committee knows, the Secretary of HHS testified before the Senate Finance Committee that "There is no reason why any parent would not know where their child is located."[6] HHS now claims, in response to the OIG report, that it is not worth the resources and effort to do the manual file review needed to identify the thousands of children who may have been separated; and HHS claims it may be better for the children just to leave them in their current placement.

Commander Jonathan White, in a declaration submitted to the court from HHS accompanying the government's filing, stated that removing children from their sponsors to rejoin their parents would present "grave child welfare concerns" and "would destabilize the permanency of their existing home environment."[7] It is remarkable that HHS is now using the

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prosecutions for unauthorized entry have become one of the highest drivers of mass incarceration. Michael Light, The Rise of Federal Immigration Crimes, PEW (March 18, 2014), http://www.pewhispanic.org/2014/03/18/the-rise-of-federal-immigration-crimes/. Michael Light, The Rise of Federal Immigration Crimes, PEW (March 18, 2014), http://www.pewhispanic.org/2014/03/18/the-rise-of-federal-immigration-crimes/. And these prosecutions cost our government an estimated $1 billion per year, which does not include the costs of diverting federal agents, prosecutors, and court resources toward prosecuting these violations. Chris Rickerd, Operation Streamline Issue Brief, ACLU (last visited Aug. 3, 2018), https://www.aclu.org/other/operation-streamline-issue-brief. And Border Patrol's claim that such prosecutions would actually deter people from crossing has been thoroughly debunked. Chris Rickerd, Operation Streamline Issue Brief, ACLU (last visited Aug. 3, 2018), https://www.aclu.org/other/operation-streamline-issue-brief. Moreover, many separated families were asylum-seekers fleeing political oppression, death and torture, or gang violence in their home countries. *Id.*

[6] Sarah Karlin-Smith, *Health secretary: 'No reason' why separated families can't find children,* POLITICO (June 26, 2018, 5:25 PM), https://www.politico.com/story/2018/06/26/azar-separated-families-673186.

[7] *See* Declaration of Jonathan White, Feb. 1, 2019, *Ms. L.*

"best interests of the child" argument to avoid reuniting some children with their real parents or guardians. This refusal to take necessary, remedial steps to bring families back together again—or even to figure out the scope of the problem that the federal government created through its family separation policy—mirrors the response of the federal government in the aftermath of the federal court's injunction, when the Department of Justice incredibly informed the court that it would essentially do nothing to help reunify children in the United States with parents already deported to their countries of origin and that that painstaking work should be done by the ACLU and not-for-profit organizations working on this issue.

Beyond all these past separations, it is critical to understand that separations are still happening. Although the court enjoined the government from systematically separating families, the government has continued to unilaterally declare parents a danger to their child and then take the child away, without any oversight. There is an "overwhelming body of scientific literature" that is "replete with evidence of the irreparable harm and trauma to children caused by separation from their parents."[8] Such separations should almost never occur, according to the American Academy of Pediatrics,[9] and yet from the end of June through December, there have been at least 218 more separations, according to HHS's response to the OIG report.

Going forward, Congress's oversight of HHS and family separation is critical. First, the Committee should ensure that HHS account for the thousands of families identified in the OIG Report. Second, it is critical that proper procedures and standards be adopted so that separations occur only where there is a genuine reason to believe the parent is unfit or presents a danger to

[8] Declaration of Lauren Shapiro, Exhibit 6, *Ms. L.*
[9] Policy Statement, Am. Acad. of Pediatrics, Detention of Immigrant Children, Mar. 2017, http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483.

the child—the traditional child welfare standard.[10] Third, in the extremely limited circumstances where separations must occur, HHS and the other relevant agencies must develop a database and tracking system so families can quickly be reunited. Fourth, parents who were deported without their children and who were misled or coerced into giving up their own asylum rights should be permitted to return to the United States and given an opportunity to seek asylum. Fifth, funds should be allocated for the families that were separated to assist them with obtaining medical and other assistance for the trauma they suffered and continue to suffer even after reunification. It is highly likely that, without meaningful support, children and parents will suffer irreparable harm thanks to our government's family separation policy. As one of our plaintiffs explained after she was reunited with her children, her 4-year-old boy would ask her at night whether people were going to come and take him away from her again. Without help, these children may carry this trauma and fear for the rest of their lives.[11]

II. BACKGROUND OF THE *MS. L.* LITIGATION AND FAMILY SEPARATION PRACTICE

The ACLU initially filed its family separation case in February 2018 on behalf of one mother, Ms. L., a Congolese woman who travelled with her then 6-year-old daughter over months to reach the United States. When she arrived after a brutal journey through many countries, she applied for asylum legally at a port of entry in San Ysidro, California. On the fourth day of detention, she and her daughter were placed into separate rooms. Ms. L was

[10] *See, e.g.*, Declaration of Martin Guggenheim, Exhibit 17, *Ms. L.*

[11] The Trump administration's family separation policy is emblematic of its deeply troubling treatment of immigrants more generally, and encompasses more than just the horrifying separation of families. Through family separation, the public has begun to understand the unchecked power of CBP and ICE: the horrific images of children sleeping on floors under tin-foil blankets, the stories of babies ripped from their mothers' arms, the audio of children crying out for their parents, and the unnecessary detention of parents and families.

handcuffed and told she was going to an adult detention center. At that moment, she heard her daughter in the next room frantically screaming, "Mommy don't let them take me away!"

Ms. L was not told why her daughter was taken or where she was going, learning only after a few days that her daughter was taken to a government facility in Chicago. The young girl spent nearly five months in Chicago by herself, celebrating her seventh birthday in an HHS facility without her mother. When I met with Ms. L. in the San Diego detention center, she had at that point been separated for about three months, and was barely eating or sleeping, constantly worrying about her daughter all alone in a strange place. They were only able to talk a few times during this period, and never by video hook-up.

At the first court hearing in the case, the government claimed that the child had been separated for her own good, because Ms. L. did not have papers demonstrating parentage; the government claimed that it had to protect the girl against possible traffickers or unscrupulous adults. But asylum seekers often will not have papers when they arrive, either because they had to leave their home countries too quickly, or lost the papers on the journey, or as is common, had their belongings stolen along the way. And, in this case, there could not have been any serious doubt about parentage given the resemblance between mother and daughter, and the fact that the daughter was screaming for her mother when she was taken away. Federal District Court Judge Dana Sabraw asked the government why it had not simply given the mother a DNA test if they genuinely doubted parentage, rather than leaving a little girl sitting in Chicago all by herself in a strange country for months. After the court-ordered DNA test, which of course established parentage, Ms. L. and her daughter were reunited, but only after inexplicably spending five months apart.

Two weeks later, in March 2018, the ACLU expanded its lawsuit into a national class action, alleging that there were hundreds of families who had been separated. On June 26, 2018, the court held that the family separation policy violated the Constitution, and that separations could only happen where the parent was genuinely unfit or a danger to his or her child. Calling the family separations "brutal" and "offensive," the court ruled that the practice "shocked the conscience" and violated the Due Process Clause of the Fifth Amendment to the Constitution.

At the time the court ruled, the government claimed there were approximately 2,700 children still in the custody of HHS who had been separated from a parent. The court ordered HHS and the other relevant agencies to reunify these families in 2 stages, giving HHS 14 days to reunify the 100 plus children under 5 years old and the remaining children within 30 days. HHS missed both deadlines.

The reunification process was exceedingly difficult for a variety of reasons, including the lack of any centralized database to track the families. Commenting on the lack of a proper system, Judge Sabraw stated: "There were three agencies, and each was like its own stovepipe. Each had its own boss, and they did not communicate. What was lost in the process was the family. The parents didn't know where the children were, and the children didn't know where the parents were. And the government didn't know either."[12]

The government has resisted reunification at every step of the way. It missed both reunification deadlines for a substantial number of families. It initially said it would put parents through a months-long administrative process before they could get their kids back, until the court ordered them to do it faster. At one point, HHS even stated that it might require parents to

[12] *Ms. L* Status Conference, July 27, 2018.

pay for their children's reunification flights, because the agency lacked a budget line for reunification expenses.

Further complicating reunification was the fact that the government deported approximately 400 parents without their children, who were left stranded in the United States. Many of these parents were misled or coerced into giving up their own asylum rights. Some of these parents were even told their child would be on the plane with them when they were returned to their home country, only to have the flight take off without their child. Remarkably, the government claimed that these parents should not be part of the case and that if the ACLU wanted to find these parents, it should "should use [its] considerable resources" to do so.[13]

This statement from the government is particularly striking when one compares the budget of a national nonprofit with the record levels of funding this administration has received. Since the agency's inception in 2003, there has been a tripling of the budget of Customs and Border Protection (CBP) and doubling of the budget of Immigration and Customs Enforcement (ICE)—two agencies at the heart of carrying out the detention and separation of families.

Judge Sabraw flatly rejected the government's suggestion that it bore no responsibility for these deported parents. He pointedly stated that "the government is at fault for losing several hundred parents in the process."[14] A week later, he reiterated: "The reality is that for every parent who is not located, there will be a permanently orphaned child. And that is 100 percent the responsibility of the administration."[15]

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[13] Joint Status Report, Aug. 2, 2018, *Ms. L.*
[14] Status Conference, July 27, 2018, *Ms. L.*
[15] Status Conference, Aug. 3, 2018, *Ms. L.*

Ultimately, however the government did little to locate these deported parents leaving the task to the ACLU and its partners, including a court-approved steering committee.[16] The committee and other NGOs have spent countless hours—without financial or other support from the government—tracking these parents by telephone and on the ground in Central America. At one point, Judge Sabraw had to order the government to provide us with basic information. Indeed, the government sat on the phone numbers of the deported parents while NGOs searched on the ground in Central America. Now that the HHS OIG has estimated that thousands more families may have been separated, there likely will be more parents the administration deported without their children.

III. THE HARDSHIP INFLICTED ON THE FAMILIES AND CHILDREN

The sheer number of children separated tell only part of the story. The real story is the unbearable trauma suffered by these families, especially the children, some of whom were just babies or toddlers. Children were ripped from their families often begging not to be taken from their mom or dad. Often it would be so bad that guards would tell parents they were just taking the child for a bath, only to whisk the child away to another facility, frequently thousands of miles away. Here are just a few examples of separations:

- Mirian fled Honduras with her 18-month-old son, after the military tear-gassed her home. Despite having her son's birth certificate, U.S. officials separated them. They told Mirian to strap her son into a car seat before driving him away, the desperate toddler looking out the window to see if his mother would be getting in the car. They did not see each other again for more than three months.[17]

- Mrs. C., a Brazilian mother, sought asylum with her 14-year old son, James. They were separated, with Mrs. C. detained in a Texas detention center while James was

[16] The Steering Committee consists of Kids in Need of Defense, Women's Refugee Commission, Justice in Motion, and the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP.
[17] Amrit Cheng, *ICE Separates 18-Month-Old From Mother for Months*, ACLU BLOG (April 23, 2018, 5:00 PM), https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/ice-separates-18-month-old-mother-months.

brought to a government facility in Chicago. When officers were taking James away, Mrs. C. remembers him looking back at her, as if to say "Mom, help me." They spent more than nine months apart.

- Jessika, a single mother from El Salvador, had been beaten up by MS-13 gang members in front of her two sons, ages 4 and 10. The gang threatened to take her 10-year-old from her. She had family in the United States, so she did what any responsible parent would do—fled to the U.S. in search of safety. When she arrived, both of her sons were taken from her and placed in separate facilities. They were held for two months before being released to her relatives. She was eventually reunited with them a month later, after people from all over the country donated the money to pay the $12,000 bond she needed to pay for release. They are together now, but both constantly ask the same question: when will someone be coming to take their mother away again? The 4-year-old suffers regularly from nightmares.

- Another parent was reassured his separation from his 6-year-old daughter would only be temporary—she would be taken away and he would follow her soon. He would replay that conversation for weeks after he was returned to El Salvador without his daughter, and without knowing where she was.

IV. ONGOING SEPARATIONS

The government continues to separate families, as confirmed by the recent HHS OIG report. The court in *Ms. L.* made clear that separations may only occur where there is a genuine reason to believe the parent is unfit or presents a danger to the child. But the government is unilaterally declaring parents unfit or a danger, without stating precisely what standard it is applying; without any process to contest the finding; and without showing what evidence it is using to try to justify a separation. Moreover, when children are dropped off at HHS facilities, the facilities are not always being informed about the child's parents or why the child was separated, making it difficult to contest the separation or facilitate eventual reunification. And there is serious reason to doubt that all of these ongoing separations are lawful and based on hard evidence. Some children have even been separated where the parent has committed only an immigration violation or some minor criminal offense (or even where there is simply an

unproven allegation that the parent is a gang member—made worse by the fact that some of these families actually fled their home countries to escape gang violence).

V. HHS OIG REPORT AND THE GOVERNMENT'S RESPONSE

A January 17, 2019, report from the HHS Office of the Inspector General makes clear that HHS is unwilling to account for all separations, and that children are still today being taken from their parents without good reason.

- The report estimates that there may be "thousands" of separations that have not been accounted for or reported. This estimate comes from HHS employees.
- The report confirms that before 2017 separations of families were "historically rare," and happened in medical emergencies or in rare cases of a parent who was a current threat to their child.
- The report says it's still not clear that ORR, HHS, and DHS can track separated families across agencies, even today.
- The report confirms that separations are ongoing. The government has disclosed at least 218 separations from June 26 through December, the youngest involving a baby less than 1 year old. Some new separations were on the basis of the parent's "immigration history," or are not explained.

The government's court-ordered response to the report, filed February 1, 2019, is perhaps even more troubling. The government does not even address the ongoing separations. And for the potentially thousands of newly disclosed separations, the government is fighting against any obligation to account for those children by claiming they are not part of the *Ms. L* lawsuit. The government candidly says that there is no tracking system or database, so it would have to examine thousands of files. Doing so, in HHS's view, is not worth the effort. HHS also says that most children in those thousands of separations are "probably" with some family member and that for the good of the children it is best not to try and reunite them with their parents.

VI. FUTURE STEPS AND NEED FOR OVERSIGHT

Congress's oversight at this juncture is essential.

First, the Committee should ensure that HHS account for the potentially thousands of families identified in the OIG Report. It is not sufficient for the agency to say it is not worth the effort, not when children are at stake.

Second, it is critical that proper procedures and standards be adopted so that separations occur only where there is a genuine reason to believe the parent is unfit or presents a danger to the child—the traditional child welfare standard. It is not satisfactory or lawful for Customs and Border Protection agents and officers to make unilateral decisions to separate families.

Third, in the rare instance where separations do occur, HHS and the other relevant agencies must develop a database and tracking system, so families can quickly be reunited with their parents.

Fourth, parents who were deported without their children and who were misled or coerced into giving up their own asylum rights should be permitted to return to the United States and given an asylum hearing.

Fifth, funds should be allocated for the families that were separated to assist them with obtaining medical and other assistance for the trauma they suffered and continue to suffer even after reunification.

Ms. DEGETTE. Thank you, Mr. Gelernt.
Ms. Podkul?

STATEMENT OF JENNIFER PODKUL

Ms. PODKUL. Thank you, Chairwoman DeGette, Ranking Member Guthrie, and members of the subcommittee.

I'm very grateful for your invitation today. I'm here to represent Kids in Need of Defense, a national organization dedicated to promoting the rights of child migrants and ensuring every child has access to high-quality legal representation.

Traditionally, KIND has only represented children who arrive in the United States unaccompanied, meaning without a parent or a legal guardian. However, last summer during the family separation crisis, we expanded our services to serve the separated children and families.

The majority of children that we serve come from El Salvador, Guatemala, and Honduras. These children have fled their countries out of a desperate need for protection. Extreme violence and threats to their lives and safety leave them with no choice but to flee. Children are telling us that they're embarking on what they know will be a dangerous journey. As one 11-year-old told me who I interviewed, he said, "If I stayed in my country, I would die. If I took the journey, I might die. So, I had to take the chance."

Because of these levels of fear and desperation, any policies designed to deter future asylum seekers from asking for protection will be unsuccessful. You can't deter away a refugee crisis.

Unfortunately, what we saw this administration do last summer was an attempt at deterrence, but in the most cruel way imaginable. Once the systematic separations began taking place, KIND sent emergency teams of lawyers to serve these families. Their stories were heartbreaking.

There is an 8-year-old boy who's separated from his father, and he was put on an airplane to an ORR facility over 2,000 miles away. The DOJ officer told him he would see his father when he got there. That was not true.

There is a 7-year-old who is highly traumatized by being separated from her father. And when the KIND attorneys went to go meet with her in a shelter, they could not even begin to discuss her legal case. She couldn't even answer questions. She was just sobbing during that entire meeting.

There is a mother who is separated from all four of her children. And when she was finally waiting the return of her youngest, she was given the wrong baby.

Our attorneys heard several hundreds of these kinds of stories. We were serving younger children than we had ever before. As attorneys, we're obligated to represent a client's express wishes. Yet, some of these children couldn't even talk.

While some of the children have legal claims that are distinct from their parents', many children's cases are dependent on their parents' claim. But because there is no system in place to track the separated children and their parents, our attorneys didn't even know which children had been separated, let alone how to find the parents.

We must demand accountability for what happened last summer, but we must also focus on the separations that are continuing to take place and address the systematic shortcomings that are still harming children. Although the law allows DHS to separate a child from their parent if there is ever a risk to the child's safety, there are no standards for how that decision should be made. In order to reduce unnecessary traumas, we need to have answers to these six questions:

One, who is doing the screening to evaluate the rare instance in which a child should be separated?

Two, what specialized training does that screener have to make a decision with such grave consequences?

Three, what standards are they using to make that decision?

Four, who reviews that decision?

Five, how can a decision be challenged if there's a concern that the separation was not necessary?

And six, what tracking systems are in place to ensure communication and future reunification in the event that a separation must occur?

We need answers to these questions immediately. Congress gave the care and custody of unaccompanied children to Health and Human Services because of their expertise in child welfare issues. HHS should help DHS develop standards for screening and make sure that a trained child welfare professional is doing that screening to ensure that it only happens when it's absolutely necessary. When DHS sends a child to HHS, HHS must demand that DHS provide complete information about that child, and then, HHS must always provide that information to the child's attorney or advocate.

What happened to children under the family separation policy must never happen again. Intentionally harming children is not who we are as a country, and we must act now to ensure that we are protecting any child that comes to us asking for help.

Thank you, and I'm happy to answer any questions.

[The prepared statement of Ms. Podkul follows:]

Statement for the Record
Kids in Need of Defense (KIND)
Jennifer Podkul, Esq. Senior Director for Policy and Advocacy
on
"Trump Administration's Inhumane Family Separation Policy"
U.S. House Committee on Energy & Commerce
February 7, 2019

Kids in Need of Defense (KIND) was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie, and is the leading national organization that works to ensure that no refugee or immigrant child faces immigration court alone. We do this in partnership with 585 law firms, corporate legal departments, law schools, and bar associations, which provide pro bono representation to unaccompanied children referred to KIND for assistance in their deportation proceedings. KIND has served more than 18,000 children since 2009, and leveraged approximately $250 million in pro bono support from private sector law firms, corporations, law schools and bar associations. KIND also helps children who are returning to their home countries through deportation or voluntary departure to do so safely and to reintegrate into their home communities. Through our reintegration pilot project in Guatemala and Honduras, we place children with local nongovernmental organization partners, which provide vital social services, including family reunification, school enrollment, skills training, and counseling. KIND also engages in broader work in the region to address root causes of child migration, such as sexual- and gender-based violence. Additionally, KIND advocates to change law, policy, and practices to improve the protection of unaccompanied children in the United States, and is working to build a stronger regional protection framework throughout Central America and Mexico.

Background on the Zero Tolerance Policy and Family Separations

On May 7, 2018, Attorney General Jeff Sessions announced the Administration's Zero Tolerance Policy (ZTP), under which families arriving at the border would be separated. Parents would be held in adult detention facilities and prosecuted for illegal entry—despite exercising their lawful right to seek asylum—while children would be reclassified as unaccompanied children and placed in the custody of the Office of Refugee Resettlement (ORR). From May to July 2018, at least 2,700 immigrant and refugee children were separated from their parents after crossing into the U.S. seeking safety. The majority of these families came from the Northern Triangle of Central America: Honduras, El Salvador, and Guatemala. The Trump Administration implemented the policy with no specific plan in place to connect or reunite these children with their parents and ultimately deported hundreds of parents without their children. The remote and scattered locations of the parents and children, challenges in gaining access to detention facilities, and the frequent transfers of child and adult detainees without notice created enormous obstacles to helping families access legal protections under the Immigration and Nationality Act during the height of the crisis.

The American Civil Liberties Union (ACLU) filed a lawsuit—the *Ms. L v. Sessions* case—which resulted in a court injunction mandating reunification of children with their parents by

July 26, 2018. With other direct legal service providers,[1] KIND formed a part of the Steering Committee ordered by the court, to provide legal expertise and input in the lawsuit and locate and interview the deported parents.

KIND's Response to the Zero Tolerance Policy

In response to the ZTP, KIND formed a dedicated Family Separation Response Team (FSRT). The other legal staff in KIND's 10 field offices also provide support on family separation cases, and senior legal services leadership provides oversight and support. In addition to directly handling the legal cases of separated children and their families, the FSRT provides expert mentorship and training to pro bono attorneys and staff, collaborates in ongoing coalition-building and litigation efforts, and works with partners across the U.S. to support families affected by the crisis. The team has also collaborated with KIND's Regional Team in the effort to locate deported parents in Central America.

Over the summer, KIND sent rotating teams of staff to the border attendant to the family separation crisis. In total, KIND assisted over 200 detained parents at Immigration and Custom Enforcement's Port Isabel Processing Center (PIPC). KIND staff provided triage services to help detained parents reestablish contact with their children, prepared them for their credible fear hearings (which are the initial threshold screenings for asylum), and helped them establish eligibility for reunification and release from detention. In addition, four KIND staff members provided screening and services to separated children and families who were transferred to the Karnes and Dilley family detention centers as well as ORR's Tornillo Emergency Reception Center. Additionally, KIND represented over 100 detained children who had been separated as part of this policy. The average age of these children was 10 years old.

KIND continues to serve these families to the extent possible. Despite the fact that many families have scattered throughout the U.S. in locations where KIND does not have a presence, every effort is made to provide remote support and/or referrals to local provider options.

In addition to the above, KIND has now received approximately 280 additional referrals for released, separated children across our 10 field offices, including numerous children whose parents were deported. KIND is also assisting dozens of reunified family units.

Summary

KIND strongly opposes the use of family separation for purposes of punishing or deterring the migration of children and families. Through our work we have witnessed the far-reaching and devastating impacts of the Administration's family separation policies on both the well-being of children and parents as well as their cases for legal protection. The lack of an integrated data system to track separated families across agencies created a chaotic situation last summer, in which parents and children were unable to locate or communicate with each other, in many cases

[1] The Steering Committee approved by the Court in the Ms. L litigation includes the law firm Paul, Weiss as well as three non-governmental organizations: Justice in Motion, Kids in Need of Defense (KIND), and the Women's Refugee Commission (WRC).

for several weeks. This lack of effective tracking also inhibited the prompt reunification of families separated by the Administration and remains of grave concern. KIND is similarly concerned about ongoing family separations, which continue to occur without any particular standards in place, systematic tracking of separations, or detailed information about why the separation occurred, such as evidence indicating that a parent poses a risk to their child's safety or well-being. KIND further objects to the proposed limits on third-party government oversight once children are in detention facilities. We hope the Committee will consider these problems and their long-term and detrimental effects on children and families, who often come to our country in search of protection from harrowing violence and other threats to their lives.

We urge the Committee to request assurances that all family separation policies will be promptly reevaluated and that the important recommendations outlined below will be implemented.

Introduction

Family unity is a fundamental human right and central principle of U.S. immigration policy and international law.[2] The Administration gutted this fundamental principle when it began separating families as a way to deter asylum seekers from seeking protection at the U.S./Mexico border. Families like that of Luisa, a 7-year-old child who was separated from her father after they entered the U.S. last summer.[3] The day after this separation, Luisa's mother and 10-year-old brother entered the U.S. and passed a credible fear interview, which placed them into removal proceedings during which they may assert their claims for asylum. Although Luisa's brother and mother were released, Luisa stayed in a detention facility. On her own, she could not have made a case for asylum because she did not know why her family came to the U.S. When KIND spoke with Luisa, it was impossible to even conduct a legal assessment with her because she could not stop crying—she was so distraught by the separation that she simply sobbed during most of the meeting with an attorney.[4]

Additional policies of the Administration have delayed the release of children in detention to their families—even children that had gone through the horror of having been separated from their parents. Two sisters KIND is working with remained in ORR custody for nearly 8 months after being separated from their father, who was then deported. The girls' mother submitted all necessary paperwork for the girls' release, but officials insisted for months that one particular individual, who periodically resided in the home, but traveled frequently for work, also submit fingerprints. In December, ORR suddenly changed its policy and no longer required the missing fingerprints. The girls were finally released the week before Christmas and able to reunite with their mother. The children remain very concerned about their father, who was deported and faces ongoing threats to his safety.

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[2] *See* U.N. International Covenant on Civil and Political Rights, art. 23, Dec. 16, 1966, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171; U.N. Convention on the Rights of the Child, art. 9, Nov. 20, 1989, 1577 U.N.T.S. 3. *See also* WILLIAM KANDEL, U.S. FAMILY-BASED IMMIGRATION POLICY, CONGRESSIONAL RESEARCH SERV. 2 (2014) (available at https://trac.syr.edu/immigration/library/P9368.pdf).

[3] *How You Can Help Separated Families and Ensure Protection for Children*, KIND (June 28, 2018), https://supportkind.org/resources/how-you-can-help-end-family-separation-and-ensure-protection-for-children/.

[4] *Id.*

These children belong with their families.

More Children Are Separated and Detained by the Government

These two stories offer a small window into the trauma experienced by the nearly 15,000 migrant children who were held in government custody in December 2018. ORR was running out of beds in its 130 shelters, forcing it to use emergency overflow tent facilities, like the one in Tornillo, Texas.[5] That camp shuttered its doors after a troubling report issued by HHS' Office of Inspector General. The report warned of "serious safety and health vulnerabilities," even though the government must abide by court-mandated safety standards.[6]

The uptick in family separations came after the Department of Justice (DOJ) and the Department of Homeland Security (DHS) implemented a "zero-tolerance" immigration policy in the spring of 2018.[7] The policy directed DHS border officials to refer every individual apprehended near the border who did not present at an official port of entry to DOJ for criminal prosecution, even when individuals were primary caregivers to children and exercised their lawful right to seek asylum.[8] Adults were taken to federal detention facilities, while children were transferred into the care of ORR, which operates within HHS.[9] Once separated from their parents, DHS classified the kids as "unaccompanied."[10]

Even before the ZTP, the *New York Times* reported that, from October 2017 to April 2018, over 700 children were taken from their parents.[11] The latest HHS Inspector General's report estimates that DHS separated thousands of children from 2017 to June 2018.[12] After the Administration officially acknowledged the ZTP, a Customs and Border Protection (CBP) official testified that 639 parents traveling with 658 children were processed for prosecution in the span of thirteen days in May alone.[13] As of December 2018, HHS had identified 2,737

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[5] *See* Arelis R. Hernández, *Trump Administration Is Holding Record Number of Migrant Youths*, WASHINGTON POST (Dec. 21, 2018), https://www.washingtonpost.com/local/immigration/trump-administration-is-holding-record-number-of-migrant-youths/2018/12/21/183470c0-03b7-11e9-b5df-5d3874f1ac36_story.html?utm_term=.daaeee949b03.

[6] Letter from Daniel R. Levinson, Inspector General, Dep't of Health & Hum. Serv., to Lynn Johnson, Assistant Secretary, Admin. for Child. & Fam., Dep't of Health & Hum. Serv. (Nov. 27, 2018) (on file at https://oig.hhs.gov/oas/reports/region12/121920000.pdf). *See also* Stipulated Settlement Agreement, Flores v. Reno, No. CV 85-4544- RJK(Px) (C.D. Cal. Jan. 17, 1997) (hereinafter Flores).

[7] U.S. DEP'T OF HEALTH & HUM. SERV., OFFICE OF INSPECTOR GENERAL, OEI-BL18-00511, SEPARATED CHILDREN PLACED IN OFFICE OF REFUGEE RESETTLEMENT CARE (2019), 1 (hereinafter INSPECTOR GENERAL REPORT).

[8] Press Release, KIND & Women's Refugee Comm'n, Family Separation at the Border (May 30, 2018) (on file at https://supportkind.org/media/family-separation-at-the-border/).

[9] INSPECTOR GENERAL REPORT, *supra* note 7, at 2.

[10] Press Release, *supra* note 8.

[11] Caitlin Dickerson, *Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border*, NYTIMES (Apr. 20, 2018), https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html.

[12] INSPECTOR GENERAL REPORT, *supra* note 7, at 1, 13.

[13] *TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children: Hearing Before the Subcomm. on Border Security & Immigration*, 105th Cong. (2018) (statement of Richard Hudson, Deputy Chief of the Operations Program, Law Enforcement Operations Directorate, U.S. Customs & Border Protection).

children who had been separated from their parents under the policy and were required to be reunified under a June 2018 federal court order.[14]

Alarmingly, the HHS Inspector General's report confirms what KIND has seen with its own caseload, which is that the Trump Administration continues to separate families at the border. Even after President Trump announced an end to the ZTP, ORR received at least 118 newly separated children between July 1 and November 7, 2018.[15] ORR often receives little or incomplete information about the reasons for such separations.

Sponsors Fear Coming Forward

Once in custody, ORR must provide a safe and secure placement for a child in the "least restrictive setting that is in the best interest of the child" while he or she awaits immigration proceedings.[16] ORR must prioritize reunification with a parent or close family member. However, recent Administration policies prevent ORR from bringing families back together. In the summer of 2017, ICE used information gathered from CBP, ORR, and the kids themselves to target, question, and arrest sponsors of unaccompanied children.[17] More recently, ORR, CBP, and ICE entered a memorandum of agreement that, among other things, permits the sharing of information about sponsors and other adults in their homes, including for immigration enforcement purposes. As part of efforts to implement this agreement, ORR added burdensome sponsorship requirements. Between June and December 2018, sponsors and every adult living with them were required to submit their fingerprints as part of the vetting process. The government later admitted that the extra screening was "not adding anything to the protection or the safety of children."[18] As information-sharing for enforcement purposes persists, potential sponsors, who may be the safest and best person to care for the child, are deterred from coming forward to care for their young family members. Consequently, children remain in detention facilities, potentially indefinitely.

Tracking Mechanisms for Recording Family Relations are Deficient

The HHS Inspector General's report emphasizes that the total number and current status of children separated from their parents or legal guardians by DHS and then referred to ORR's care is unknown.[19] Although HHS has devoted "considerable resources" to improving tracking mechanisms, the agency admits the lack of an existing and integrated data system that can track separated families across agencies poses significant challenges.[20] In HHS' filing in the *Ms. L*

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[14] Miriam Jordan, *Family Separation May Have Hit Thousands More Migrant Children Than Reported*, NYTIMES (Jan. 17, 2019), https://www.nytimes.com/2019/01/17/us/family-separation-trump-administration-migrants.html.
[15] *Id.* at 11.
[16] 8 U.S.C. § 1232(c)(2).
[17] Letter from KIND et al. to Cameron Quinn, Dep't of Homeland Security & John Kelly, Dep't of Homeland Security (Dec. 6, 2017) (on file at https://cliniclegal.org/sites/default/files/pressreleases/Sponsor-Enforcement-OIG-CRCL-Complaint-Cover-Letter-FINAL-PUBLIC.pdf).
[18] Miriam Jordan, *Thousands of Migrant Children Could be Released After Sponsor Policy Change*, NYTIMES (Dec. 18, 2018), https://www.nytimes.com/2018/12/18/us/migrant-children-release-policy.html.
[19] INSPECTOR GENERAL REPORT, *supra* note 7, at 13.
[20] *Id.*

case on February 1st, HHS noted that when DHS transferred children to ORR, "certain DHS components provided any anecdotal information about their separation of children to ORR on a discretionary, *ad hoc* basis by transmitting the information into the child's record on the ORR portal." The Declaration goes on to state, "For instance, certain Customs and Border Patrol (CBP) stations created notes in the records of children on the ORR Portal, using terms such as 'separation' in order to identify separation cases." The fact that such information was not required, or was not diligently maintained in a systematic way, is shocking and unacceptable. ORR should demand that DHS input detailed information about any separations going forward into the ORR portal in a rigorous and systematic way.

The glaring problems with these tracking systems are not new. While there was no blanket family separation policy under the Obama Administration, family separations did occur in limited circumstances. As KIND and our partners highlighted in January 2017, children were separated from parents or legal guardians if there was a concern for the child's safety such as an indication the adult abused the child, or if families were composed of individuals with "mixed" immigration statuses.[21]

When separations occur, DHS and HHS have no consistent or comprehensive means to document family status or track family members between their agencies. There is no database or hotline across ICE, CBP, and ORR that can help identify a separated family member's location or assist with reunification.[22] This is not only important for children separated from their parents and legal guardians, but it is important when, according to the Trafficking Victims Protection Act,[23] a child is classified as unaccompanied and separated from an extended family member or sibling.

DHS's widespread failure to consistently record, track, and transmit family information has yielded damaging results. This reached a boiling point in the summer of 2018 when the government implemented the ZTP, triggering a crisis of chaos and confusion. Separated families are left with little, if any, knowledge of their family members' locations. One family member may have exclusive access to information or key evidence for legal proceedings, which hampers and bifurcates immigration cases. Repatriations of parents and children have occurred without notice to counsel of record, or even to the adults hoping to receive the child off the plane in the country of origin.

Recommendation: To ensure children are not subject to needless harm and have access to due process, KIND recommends that HHS work with DHS to develop protocols and ensure child welfare professionals screen children to ensure separations are only done when it is in the best interest of the child. DHS should coordinate with HHS to identify separated families and to facilitate release and reunification.[24] DHS should bring back the Family Case Management

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[21] KIND, WOMEN'S REFUGEE COMM'N & LUTHERAN IMMIGRATION SERV., BETRAYING FAMILY VALUES: HOW IMMIGRATION POLICY AT THE UNITED STATES BORDER IS SEPARATING FAMILIES 4 (2017) (hereinafter BETRAYING FAMILY VALUES).
[22] *Id.* at 4.
[23] 8 U.S. Code § 1232. Enhancing efforts to combat the trafficking of children
[24] BETRAYING FAMILY VALUES, *supra* note 21, at 2.

Program to support released families so that they may make a request for protection.[25] We are encouraged by ORR's efforts to modify its online case management system and create a consolidated spreadsheet.[26] Efforts to improve communication, transparency, and accountability for the identification, care, and placement of separated children should continue. Further, all family relationships should be recorded and communicated to ORR as well as the child's attorney in order to facilitate the family reunification process.

There Are No Stated Reasons for Separation

The HHS Inspector General's report notes that DHS only provides ORR with "limited information" about why a family has been separated.[27] Under current policies and practices, these decisions are arbitrary. They require no justification or documentation and do not involve the screener to have any child welfare expertise.[28] The HHS Inspector General's report emphasizes that "[i]ncomplete or inaccurate information about the reasons for separation, and a parent's criminal history in particular, may impede ORR's ability to determine the appropriate placement for a child."[29] It also notes that DHS does not consistently respond to ORR's requests for follow-up information about the reasons for a child's separation.[30] KIND continues to see cases in which neither ORR nor the attorney are notified that DHS separated a child from a parent. A parent can lose physical custody of their child without any judicial oversight and for reasons that are inconsistent with child welfare legal standards.[31] For example, while a parent may have a prior deportation order or an arrest warrant in the home country, that history may actually be the basis of the parent's asylum claim for government persecution, such as in the case of a parent fleeing an oppressive government regime.

KIND has seen several recent cases, post-ZTP, of children separated from their parents for unknown reasons. In one case, a father was separated from his teenage daughter and no information was given for the reasons for the separation. Moreover, KIND only found out this child had been separated from her father through interviews with the child. The separation was not noted in her file and no one from ORR flagged the separation for the attorney of record. Frequently in these cases, KIND attorneys have had to track down the location of the parents, and then begin the difficult task of communicating with them at an ICE detention facility, often several hundred miles away. Even when KIND attorneys are able to establish contact with the separated parent, the parent is typically given little to no information as to why they were forcibly deprived of their ability to remain with their child. There is currently no formal written document issued to parents outlining the reasons for the separation, and no vehicle for them to challenge any assertions being made against them.

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[25] https://www.womensrefugeecommission.org/rights/resources/1653-family-case-management-program

[26] The HHS Inspector General also commends this course of action in his January 2019 report. INSPECTOR GENERAL REPORT, *supra* note 7, at 13.

[27] INSPECTOR GENERAL REPORT, *supra* note 7, at 11.

[28] BETRAYING FAMILY VALUES, *supra* note 21, at 7.

[29] INSPECTOR GENERAL REPORT, *supra* note 7, at 12.

[30] *Id.*

[31] BETRAYING FAMILY VALUES, *supra* note 21, at 7.

Recommendation: KIND recommends the government hire child welfare professionals at the border to supervise the protection of children and families and the circumstances in which family separations occur.[32] Further, immigration enforcement agents should be trained to consider family unity as a primary factor in charging and detention decisions.[33] Written standards should be drafted, in consultation with child welfare experts, describing protocols and procedures for determining when separation may be in the best interest of a child. Immigration enforcement agents should also receive training on how to apply the "best interests of the child" framework for when they believe a child's separation from their parent is warranted.[34] These instances include when a parent has a conviction for a violent offense or child abuse or neglect offense. DHS should also consider ORR's best interest recommendation. Family separation should be recorded and justified in writing, with an opportunity provided to the parent or child to challenge the separation. ORR, family members, and attorneys should be able to easily access this information. In order to ensure that accurate information is available, ORR must demand that DHS input detailed information about any separations going forward into the ORR portal in a rigorous and systematic way.

Oversight of DHS and HHS Facilities Holding Migrant Children is Essential

Children being detained alone in such high numbers places enormous strain on the ORR system. Even prior to this Administration's policies, ORR struggled to provide required post-release services for kids who legitimately needed support.[35] Currently, ORR is required by the *Flores* Settlement Agreement to hold children in the "least restrictive setting" possible.[36] Nonetheless, the Administration actively seeks to roll back *Flores* protections, which set out national standards for the government's treatment, detention, and release of unaccompanied children and other minors. In September 2018, it proposed regulations that would relax *Flores* standards for how kids in custody can be held and transported.[37]

The proposed regulations would eliminate the vital third-party oversight and monitoring that is currently provided through judicial enforcement of *Flores*. As recently as July 2018, the supervising court found that the government had breached the agreement in several ways, including by undertaking policies that "unnecessarily delay" the release of children to custodians.[38] In January 2019, *CBS News* reported that *Flores* counsel discovered facilities

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[32] *Id.* at 2.
[33] *Id.* at 1.
[34] *Id.* at 7.
[35] JENNIFER PODKUL & CORY SHINDEL, KIND, DEATH BY A THOUSAND CUTS: THE TRUMP ADMINISTRATION'S SYSTEMATIC ASSAULT ON THE PROTECTION OF UNACCOMPANIED CHILDREN 3 (2018).
[36] Flores, *supra* note 6.
[37] Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 83 Fed. Reg. 45486 (proposed Sept. 7, 2018) (to be codified at 45 C.F.R. pt. 410).
[38] KIND, Comment Letter on Proposed Rule Relating to Apprehension, Processing, Care and Custody of Alien Minors and Unaccompanied Alien Children 29 (Nov. 6, 2018), https://supportkind.org/wp-content/uploads/2018/11/KIND-Comments-DHS-Docket-ICEB-2018-0002-11.6.18.pdf.

holding unaccompanied children operating without licenses.[39] *Flores* counsel recounted that ORR has failed to notify children and parents of their rights relating to securing children's release from facilities, discouraged parents from seeking their children's release by passing their information to ICE,[40] and delayed background investigations of potential sponsors.[41]

Recommendation: ORR remains the appropriate entity to care for migrant children–it has experience resettling refugees and child welfare expertise. It is not an immigration enforcement agency. However, third-party monitoring of facilities must be retained and protected, particularly at a time when there is enormous strain on ORR's resources. Compliance with *Flores* must not be left to discretion, especially at a time when ORR policies result in higher and longer detention rates for children.

Parents and Children Face Long-Lasting Consequences

Parents and children face lasting trauma as a result of their forced separations. In 2017, the American Academy of Pediatrics explained that detention stunts child development and causes severe psychological trauma, like depression and post-traumatic stress disorder.[42] Medical and mental health experts have concluded that the forced separation of migrant children who fled violence can have particularly harmful consequences, even if the separation is brief.[43] At the Port Isabel detention center, a father articulated the pain he felt being separated from his 9-year-old son, saying, "I haven't seen my son in over two months–I don't want anything from the United States other than my son."[44] A mother who was separated from her 6-year-old son said, "I don't know how he's doing; I haven't spoken to him, I don't know where he is. We're here because we watched our family get murdered."[45]

Not only are family members physically separated, but their legal cases and experiences within the immigration enforcement system are also bifurcated. This raises serious due process concerns, and serious inefficiencies in a backlogged system, especially when individuals from the same family have the same claim for asylum. Children, in particular, may not know all the details or have important documents relating to their family's asylum claim. When this happens, disparate results and incomplete information are far more likely to affect important immigration proceedings.

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[39] Graham Kates, *Migrant Children in U.S. Are Being Held in Unlicensed Shelters, Lawyers Say*, CBS NEWS (Jan. 24, 2019, 2:17 PM), https://www.cbsnews.com/news/migrant-children-in-u-s-are-being-held-in-unlicensed-shelters-lawyers-say/.

[40] A leaked internal DHS memo from December 2017 proposed a Memorandum of Understanding between ORR and ICE, under which the agencies would coordinate to place undocumented sponsors in removal proceedings. It anticipated that the policy would "result in a deterrent impact on 'sponsors' who may be involved with smuggling children into the United States" and there would be "a short term impact on HHS where sponsors may not take custody of their children in HHS facilities, requiring HHS to keep the UACs in custody longer." Memorandum from Dep't of Homeland Security (Dec. 2017) (on file at https://www.documentcloud.org/documents/5688664-Merkleydocs2.html). This policy took effect four months later.

[41] Kates, *supra* note 39.

[42] JULIE M. LINTON ET AL., AM. ACAD. OF PEDIATRICS, DETENTION OF IMMIGRANT CHILDREN 6 (2017).

[43] BETRAYING FAMILY VALUES, *supra* note 21, at 12.

[44] *#SilencedVoices*, KIND, https://supportkind.org/get-involved/silencedvoices/.

[45] *Id.*

Recommendation: Children should not be separated from their parents barring instances in which separation legitimately protects the child and is in line with child welfare standards.

Conclusion

KIND condemns the use of any tactics to deter people from seeking protection in the United States that clearly harm children. KIND is deeply concerned about the lack of tracking mechanisms for separated families, ongoing separations, proposed limits on third-party oversight once children are in government care, and serious long-lasting psychological and legal impacts on the most vulnerable in our immigration system. Child protection must be a priority in the enforcement of our immigration laws. We urge the Committee to request assurances that all family separation policies will be promptly reviewed and that important changes will be immediately implemented.

Ms. DEGETTE. Thank you.

Dr. Linton, you are recognized for 5 minutes.

STATEMENT OF JULIE M. LINTON

Dr. LINTON. Chairwoman DeGette, Ranking Member Guthrie, and members of the Energy and Commerce Committee, thank you for the opportunity to speak here today.

I'm Dr. Julie Linton, a practicing pediatrician in Greenville, South Carolina, where my clinical work is focused on the care of children in immigrant families. I'm the cochair of the American Academy of Pediatrics Immigrant Health Special Interest Group. On behalf of the American Academy of Pediatrics, or the AAP, and our 67,000 members, thank you for holding today's hearing.

The AAP is nonpartisan and pro-children. Pediatricians care about the health and well-being of children, all children, no matter where they or their parent was born. As pediatricians, we know that children do best when they are together with their families. After reading media reports in March of 2017 that the Department of Homeland Security, or DHS, was considering a policy that would separate immigrant mothers from their children upon arriving at the U.S. border, we immediately spoke out against this proposed policy.

We, subsequently, wrote to DHS six times to urge the agency to reject such a policy. The AAP also issued roughly half a dozen statements about why family separation devastates the most basic human relationship we know, that of parent and child. The AAP has repeatedly said that separating children from their parents contradicts everything we stand for as pediatricians, protecting and promoting children's health.

Today, I will underscore the health effects of separation, both what we know from the scientific literature and what I know from caring for patients. Prolonged exposure to highly stressful situations, known as toxic stress, can disrupt a child's brain architecture and adversely impact short- and long-term health. A critical role of a parent or known caregiver is to buffer this stress. Separation from a parent robs children of that buffer.

Separated children can face immediate health problems, including physical symptoms like headaches and abdominal pain; changes in bodily functions such as eating, sleeping, and toileting; behavioral problems like anger, irritability, and aggression; and difficulty with learning and memory. Children who have been separated may also experience feelings of mistrust and bereavement, guilt, or shame. In the long term, children who have been separated may be susceptible to chronic conditions such as depression, post-traumatic stress disorder, diabetes, or heart disease.

I have seen the impact of family separation with my own eyes. In June of 2018, I cared for an 8-year-old boy that I will never forget. This boy and his pregnant mother fled violence and direct personal threats in Central America. Realizing that the zero-tolerance policy was at that time in effect, I specifically and gently asked the boy and his mother if they had been separated at the border. With my question, a chilling silence arose. They both became tearful and their angst was palpable. The boy shook and his mother shuttered

whispering, "Seven days." For seven days, this boy and his pregnant mother did not know about the other's location or safety.

This separation was shorter than many children harmed by the zero-tolerance policy, but he still suffered the consequences. He could no longer sleep through the night. He had trouble being away from his mother for even a short period of time. And his mother reported he was a shell of his previous self.

Children are not little adults. To untrained eyes, they can appear quite healthy, even when their systems begin to shut down. Tragically, this was the case for Jakelin and Felipe while in the custody of Customs and Border Protection in December.

We urge our Federal agencies to apply a child-focused lens when considering policies that could have an impact on child health. The AAP remains committed to working with Federal agencies to offer our expertise as medical providers for children in order to protect and promote child well-being.

Additionally, children should not be placed in unlicensed facilities, whether they are run by HHS or DHS. The findings of the HHS Office of Inspector General about Tornillo and family separation are troubling. We urge all relevant Federal agencies to address these findings.

It is critical that all reunified children receive appropriate medical care in the community to help them recover from the traumatic experience of separation from their families. Children and families who have faced trauma, with trauma-informed approaches and community support, can begin to heal. As a pediatrician, I know that, first and foremost, we must treat all immigrant children and families seeking safety in the U.S. with dignity, compassion, and respect.

Thank you.

[The prepared statement of Dr. Linton follows:]

American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN™

Testimony of Julie M. Linton, MD, FAAP
On Behalf of the American Academy of Pediatrics

Before the U.S. House of Representatives
Committee on Energy and Commerce Subcommittee on Oversight and Investigations

"Examining the Failures of the Trump Administration's Inhumane Family Separation Policy"

February 7, 2019

Chairwoman DeGette and Ranking Member Guthrie, thank you for the opportunity to speak here today. I am Dr. Julie M. Linton, a practicing pediatrician from Greenville, South Carolina, and my clinical work is focused on the care of children in immigrant families and families who prefer to speak Spanish. I am testifying today on behalf of the American Academy of Pediatrics (AAP) where I serve as co-chair of its Immigrant Health Special Interest Group (SIG) and am a member of the Executive Committee for the AAP Council on Community Pediatrics. I am also a co-author of the AAP's 2017 policy statement entitled *Detention of Immigrant Children.* The AAP is a non-profit professional membership organization of 67,000 primary care pediatricians and medical and surgical pediatric subspecialists dedicated to the health and well-being of all infants, children, adolescents, and young adults.

The AAP is non-partisan and pro-children. Pediatricians care about the health and well-being of **all** children—no matter where they or their parents were born. The AAP supports comprehensive health care in a medical home for all children in the U.S. As pediatricians, we know that children do best when they are together with their families. When we read media reports in March of 2017 that the Department of Homeland Security (DHS) was considering a policy that would separate immigrant mothers from their children when they arrived at the U.S. border, we were compelled to immediately speak out against this proposed policy. We urged federal authorities to exercise caution to ensure that the emotional and physical stress children experience as they seek refuge in the U.S. is not exacerbated by the additional trauma of being separated from their siblings, parents, or other relatives and caregivers.

We subsequently wrote to DHS six times to urge the agency to reject a policy that would separate immigrant children from their parents at the border. In addition to these letters, the AAP issued roughly half a dozen statements, and pediatricians across the country, myself included, penned countless op-eds about why family separation devastates the most basic human relationship we know — that of child and parent.

The AAP has said repeatedly that separating children from their parents contradicts everything we stand for as pediatricians—protecting and promoting children's health. In fact, highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry lifelong consequences for children. Today I'd like to speak more about the health effects of separation, both what we know from the scientific literature and what I know from caring for my patients.

When I consider the harms of the family separation crisis, I think about a boy I saw in my clinic in North Carolina in early June of 2018. This boy and his mother, who was pregnant, had fled a Northern Triangle country in search of safe haven in the U.S. After I learned that they had recently arrived and knowing that we were in the midst of the Zero Tolerance policy, I gently asked the boy and his mother if they had been separated at the border. With my question, a chilling silence arose. Both this mother and her child became tearful, and their angst was palpable. The boy's mother shuddered, whispering, "Seven days." For seven days, this boy and his pregnant mother did not know where the other one was. Rather than being comforted by his mother, this boy was left to lie alone on a mat on the floor, covered by an aluminum blanket, wondering if he would ever see his mother again. His future baby brother or sister

was exposed to seven days of continuous stress hormones while trying to grow in the body of a mother yearning for her son, placing the baby at risk for preterm delivery and low birth weight.[1]

Writing about her experience visiting a "tender age" shelter run by ORR in April 2018, then-president of the AAP Dr. Colleen Kraft described a little girl:

> A toddler, her face splotched red from crying, her fists balled up in frustration, pounding on a play mat in the shelter for unaccompanied children run by the Department of Health and Human Services (HHS)' Office of Refugee Resettlement. No parent was there to scoop her up, no known and trusted adult to rub her back and soothe her sobs. The staff members at the center tried their best, and shared my heartbreak while watching this child writhe on the floor, alone.
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> We knew what was wrong, but we were powerless to help. She wanted her mother. And the only reason she could not be with her mother was because immigration authorities had forcibly separated them when they crossed the border into the United States. The mother was detained, and the little girl was handed over to the shelter as an "unaccompanied" child.[2]

The co-chair of AAP's Immigrant Health, SIG Dr. Marsha Griffin, and SIG member Dr. Rita Agarwal, told the story of a child they encountered during a visit to an ORR shelter for unaccompanied children in the spring of 2018. This child had been separated from her mother. They wrote:

> In a walled-in courtyard, we saw a 5-year-old girl chasing iridescent bubbles blown by two adults. Staff said she tried to run away any time she played outside, so she was limited to the courtyard. She would bite anyone who approached her, so she was kept away from other children and distracted with bubbles. Biting and seeking to run are signs of acute distress in a child of this age — a normal reaction to extreme fear. This girl did not need bubbles and a walled courtyard but rather her mother or her father to calm her — someone who could hold her and make her world right again.[3]

Studies overwhelmingly demonstrate the irreparable harm caused by breaking up families.[4] We know that children who have been separated can have a host of health challenges, including developmental

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[1]Novak NL, Geronimus AT, Martinez-Cardoso AM. Change in Birth Outcomes among Infants Born to Latina Mothers After a Major Immigration Raid. *Int J Epidemiol*. 2017;46;839-49.
Krieger N, Huynh M, Li W, Waterman PD, Van Wye G. Severe sociopolitical stressors and preterm births in New York City: 1 September 2015 to 31 August 2017. J Epidemiol Community Health. 2018;72(12):1147-1152.
[2] Kraft C. Separating parents from their kids at the border contradicts everything we know about children's welfare. LA Times. https://www.latimes.com/opinion/op-ed/la-oe-kraft-border-separation-suit-20180503-story.html. Published May 3, 2018. Accessed February 1, 2019.
[3] Agarwal R, Griffin M. Taking immigrant kids from parents shows contempt for families. Houston Chronicle. https://www.houstonchronicle.com/opinion/outlook/article/Taking-immigrant-kids-from-parents-shows-contempt-12963039.php. Published June 3, 2018. Accessed February 1, 2019.
[4] Shonkoff JP, Garner AS. The Lifelong Effects of Early Childhood Adversity and Toxic Stress. *Pediatrics*. 2012;129(1):e232-46.
Masten AS. Global perspectives on resilience in children and youth. *Child Dev*. 2014;85(1):6-20.
Bouza A, Camacho-Thompson DE, Carlo G, et al. Society for Research in Child Development. The Science Is Clear: Separating Families Has Long-Term Damaging Psychological and Health Consequences for Children, Families, and

delays like those in gross and fine motor skills, regression in behaviors like toileting and speech, as well as constant stomach and headaches. Prolonged exposure to highly stressful situations — known as toxic stress — can disrupt a child's brain architecture and affect his or her short- and long-term health. A parent or a known caregiver's role is to mitigate these dangers. When robbed of that buffer, children are susceptible to a variety of adverse health impacts including learning deficits and chronic conditions such as depression, post-traumatic stress disorder and even heart disease.

The government's practice of separating children from their parents at the border counteracts every science-based recommendation I have ever made to families who seek to nurture and protect their children's physical, intellectual, and emotional development. Children, who have often experienced terror in their home countries and then additional trauma during the journey to the US,[5] are often re-traumatized through processing and detention in Customs and Border Protection (CBP) facilities not designed for children. This trauma is profoundly worsened by forced separation from their parents. It can lead to long term mental health effects such as developmental delays, learning problems and chronic conditions such as hypertension, asthma, cancer and depression. Children who have been separated may also be mistrusting, questioning why their parents were not able to prevent their separation and care for them. A child may show different behaviors in response to exposure to traumatic events like separation from parents depending on their age and stage of development. Some of these signs of distress are listed in the chart below:[6]

Preschool children	**Elementary school children**	**Middle and high school-aged youth**
• Bed wetting • Thumb sucking • Acting younger than their age • Trouble separating from their parents • Temper tantrums • Aggressive behavior like hitting, kicking, throwing things, or biting • Not playing with other kids their age • Repetitive playing out of events related to trauma exposure	• Changes in their behavior such as aggression, anger, irritability, withdrawal from others, and sadness • Trouble at school • Trouble with peers • Fear of separation from parents • Fear of something bad happening	• A sense of responsibility or guilt for the bad things that have happened • Feelings of shame or embarrassment • Feelings of helplessness • Changes in how they think about the world • Loss of faith • Problems in relationships including peers, family, and teachers • Conduct problems

Communities. https://www.srcd.org/policy-media/statements-evidence/separating-families. Published June 20, 2018. Accessed February 1, 2019.

[5] Kadir A, Shenoda S, Goldhagen J, Pitterman S. The Effects of Armed Conflict on Children. *Pediatrics*. 2018;142(6).

[6] The National Child Traumatic Stress Network. Effects. https://www.nctsn.org/what-is-child-trauma/trauma-types/refugee-trauma/effects. Published September 4, 2018. Accessed February 1, 2019.

Some have suggested that an alternative to separating families is to increase the use of Immigration and Customs Enforcement (ICE) family detention. However, family detention is not a safe or effective solution to address the forced separation of children and parents at the border. I co-authored the AAP Policy Statement entitled *Detention of Immigrant Children,* which recommends that immigrant children seeking safe haven in the United States should never be placed in ICE detention facilities. There is no evidence that any amount of time in detention is safe for children.[7] In fact, even short periods of detention can cause psychological trauma and long-term mental health risks for children.[8] Studies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression and posttraumatic stress disorder.[9] Detention itself undermines parental authority and the capacity to respond to their children's needs; this difficulty is complicated by parental mental health problems.[10] Parents in detention centers have described regressive behavioral changes in their children, including decreased eating, sleep disturbances, clinginess, withdrawal, self-injurious behavior, and aggression.[11]

Specifically, detention of youth is associated with physical and mental health symptoms that appear to be caused and/or worsened by detention. A study of children ages 3 months to 17 years in a British immigration detention center revealed physical symptoms that may include somatic complaints (*e.g.*, headaches, abdominal pain), weight loss, inability to manage chronic medical problems, and missed follow-up health appointments including those for vaccinations, developmental and educational problems, and mental health symptoms including anxiety, depression, and reemergence of post-traumatic stress disorder.[12] In a systematic review that explored risk and protective factors for the psychological wellbeing of children and youth who were resettled in high-income countries, the authors indicate that adverse events during and after migration may be more consequential than pre-migration events. Specifically, the authors conclude that detention of immigrant children and youth is particularly detrimental to mental health and an example of trauma for which impact is cumulative.[13]

Conditions in CBP processing facilities, which include forcing children to sleep on cement floors, open toilets, constant light exposure, insufficient food and water, no bathing facilities, and extremely cold temperatures, are traumatizing for children.[14] No child should ever have to endure these conditions. Tragically, two children have now died in CBP custody. The AAP has called on CBP to implement specific meaningful steps to ensure that all children in CBP custody receive appropriate medical and mental health screening and necessary follow-up care by trained providers. We can and must do better to protect children in our country.

Children are not just small adults. To untrained eyes, they can appear quite healthy even while their systems begin to shut down. We urge our federal agencies to apply a child-focused lens when

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[7] Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Lorek A, Ehntholt K, Nesbitt A, et al. The Mental and Physical Health Difficulties of Children Held within A British Immigration Detention Center: A Pilot Study. *Child Abuse Negl*. 2009;33(9):573-85.
[13] Fazel M, Reed RV, Panter-Brick C, Stein A, Mental health of displaced and refugee children resettled in high-income countries: risk and protective factors, *Lancet*, 379(9812):266-282 (2012).
[14] Linton, Griffin, Shapiro. Detention. 2017.

considering policies that could have an impact on child health and well-being. AAP remains committed to working with federal agencies to offer its expertise as medical providers for children to protect and promote child well-being.

Additionally, AAP has repeatedly called upon the federal government to appoint an independent team comprised of pediatricians, pediatric mental health providers, child welfare experts, and others to conduct unannounced visits to federal facilities including ORR shelters, CBP processing centers, and ICE family detention centers to assess their conditions for children and capacity to respond to medical emergencies involving a child and to ensure that immigrant children receive optimal medical and mental health care. Further, DHS and HHS should consider remoteness of such facilities as that can impact proximity and access to trained pediatric providers.

We must remember that immigrant children are, first and foremost, children. Protections for children in law or by the courts exist because children are uniquely vulnerable and are at high risk for trauma, trafficking, and violence. In September, DHS and HHS proposed regulations regarding the Flores Settlement Agreement (FSA) that strip vulnerable children of vital protections, jeopardizing their health and safety. The FSA set strict national standards for the detention, treatment, and release of all minors detained in the legal custody of the federal government. It requires that children be held in the least restrictive setting appropriate for a child's needs and that they be released without unnecessary delay to a parent, designate of the parent, or responsible adult as deemed appropriate.

The proposed regulations are inconsistent with the FSA by allowing DHS to expand family detention centers, increase the length of time children spend in detention, and create an alternative licensure process that undermines state child welfare laws and basic protections for children. Proposals like this that seek to override the FSA in order to allow for the longer-term detention of children with their parents or to weaken federal child trafficking laws strip children of protections designed for their safety and well-being. We urge Congress to reject these proposals.

The operation of unlicensed facilities where children are housed poses a risk to the health and safety of children. According to the HHS Office of Inspector General, "because of the temporary and emergency nature of influx care facilities, they may not be licensed or they may be exempt from licensing requirements. In addition, influx care facilities like Tornillo may be opened on federally owned or leased properties, in which case the facility is not subject to State or local licensing standards."[15] As such, we urge extreme caution. The circumstances that led to the opening of Tornillo, a tent city with capacity to house roughly 3,800 children, are concerning. The findings of the HHS Office of Inspector General (OIG) about clinician staffing and background checks at Tornillo are troubling. The Memorandum of Agreement signed between DHS and HHS, among other things, forced children to languish in Tornillo for months awaiting reunification with a parent or legal guardian. We applaud the work of dedicated ORR staff who work day and night to ensure the expeditious and safe placement of children with parents or sponsors. We urge all relevant federal agencies to address the findings of the HHS OIG in its recent report, particularly around the transfer of data on separated children to HHS.

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[15] Levinson D. The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff. https://oig.hhs.gov/oas/reports/region12/121920000.pdf. Published November 27, 2018. Accessed February 1, 2019.

As a pediatrician, my job is to apply science to advocate for children's health. Evidence affirms that parental separation and family detention are not healthy for children. Instead of detention, AAP recommends the use of community-based alternatives for children in family units. Community-based case management should be implemented for children and families, thus ending both detention and the placement of electronic tracking devices on parents. Community release with case management has been shown to be cost-effective and can increase the likelihood of compliance with government requirements.[16] We urge Congress to provide funding to support case management programs. AAP also advocates for expanded funding for post-release services to promote the safety and well-being of all previously detained immigrant children and to facilitate connection and access to comprehensive services, including medical homes, in the community. All immigrant children seeking safe haven in the U.S. should have comprehensive health care and insurance coverage, which includes access to qualified medical interpretation covered by medical benefits, pending immigration proceedings. Children and families should have access to legal counsel throughout the immigration pathway. Unaccompanied children should have free or pro bono legal counsel with them for all appearances before an immigration judge.

When I consider the health impact of systematic family separation, I consider my young patient and his pregnant mother, both of whom continued to show signs and symptoms of stress weeks after their seven days of forced separation. This boy, this mother, and this unborn baby were the lucky ones, reunited after seven days of separation. Yet, their physical and emotional reactions, which I witnessed in my pediatric office, exposed the scars of detention and family separation that will remain with them forever.

It is critical that all children who have been reunited with their parents receive appropriate medical care to help them recover from the traumatic experience of separation from their families. As a pediatrician, I also know that children and families who have faced trauma, with trauma-informed approaches and community support, can begin to heal from trauma. As such, immigrant children seeking safety should have access to health care, education, and other essential services that support their growth, development, and capacity to reach their full potential. We must continue to support all immigrant children and families seeking safe haven in the U.S. and treat them with dignity and respect.

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[16] Edwards, A. Measures of first resort: alternatives to immigration detention in comparative perspective. The Equal Rights Review. 2011;7:117-142.
U.S. Immigration Customs and Enforcement. Report of the DHS Advisory Committee on Family Residential Centers. https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf. Published September 30, 2016. Accessed February 1, 2019.
Lutheran Immigration & Refugee Service, Women's Refugee Commission. Locking Up Family Values, Again. https://www.womensrefugeecommission.org/resources/document/1085-locking-up-family-values-again. Published October 28, 2014. Accessed February 1, 2019.

Ms. DEGETTE. Thank you, Doctor.

Now, Dr. Muñiz de la Peña, recognized for 5 minutes.

STATEMENT OF CRISTINA MUÑIZ DE LA PEÑA

Dr. MUÑIZ DE LA PEÑA. Thank you for the opportunity to share my thoughts before the subcommittee related to the adverse health impact of family separation at the border.

I'm Cristina Muñiz de la Peña, licensed psychologist and director of mental health services at Terra Firma Immigrant Youth Clinic in New York City. I'm speaking today, also, on behalf of the American Psychological Association, or the APA.

Terra Firma is a program designed to serve unaccompanied immigrant children and families since 2013. Over the past six months, however, Terra Firma has received increased requests for mental health services from foster care agencies and immigration attorneys caring for these children, as well as from the parents themselves who had been reunited with their children and are still struggling with the aftermath.

My thoughts are drawn both from kids' examples from my therapeutic work with these children and from research findings. The traumatic impact of the separation of children in the border involves at least two different types of trauma. One is the acute trauma of the insensitive manner the separations were performed, and the other is the trauma from the length of the separation. The level of impact of these vary depending on crucial factors, such as the child's age and gender, developmental level, the level of harshness of the separation, the length of the separation, the degree to which the child had communication with the parent during the separation, and the degree to which the child was informed and predictability was offered during the separation.

Ample research tells us that unwanted and unexpected separation from parents may have severe consequences in a child's developmental processes and psychosocial functioning. When separated from their parents, high levels of anxiety and distress occur which impair the developmental trajectories in otherwise healthy children. The following two examples illustrates some of the adverse circumstances and outcomes of parent-child separations.

The youngest child seen in our program was a 2-year-old Honduran boy who had been separated from his mother while asleep and was kept away from her for 2 months. The mother had been told to leave the detention cell, and when she asked to wake her son up to take him with her, the officers told her to not bother because she was going to be right back. After 2 months of helpless wait, the mother was reunited with her son in New York. She came to our program asking for help, concerned about the then-3-year-old son and anxiety of separation and persistence of hypervigilance. During the sessions, the boy clung to his mother with fearful demeanor and had great difficulty relaxing and letting go to initiate the normal exploring behavior of a child his age.

Another 4-year-old Salvadorian boy I evaluated, who appeared highly pleasant, engaged, and animated at first, would suddenly turn quiet, stare off, and become emotionally flat following each question about his father and the separation. During these episodes, the child appeared to struggle to return his attention to the

present moment and reengage in conversation and play. These are clear symptoms of disassociation from the trauma of being snatched from his father without any explanation or opportunity to say goodbye.

Research shows that the longer parents and children are separated, the greater the reported symptoms of anxiety and depression. According to the APA's Presidential Task Force on Immigration, sustained parental separation also predicts ongoing difficulty trusting adults and institutions, as well as reduced educational attainment.

Attachment is the emotional bond that typically forms between infant and caregiver. In lay terms, attachment, love, and protection from a parent is to a child's mental health what water, oxygen, and food are for physical health. It is the means by which helpless infants get their primary needs met. It is also the needed platform of safety and comfort that allows for a child to explore, learn, and develop.

As an example, the mother of the 2-year-old described earlier expressed feelings of profound anxiety and depression because she was terrified of connecting emotionally with her son, then being detained, causing him a second trauma of separation. As a result, she found herself keeping her emotional distance to protect her child from a second trauma of separation. And therefore she was unable to provide the emotional safety and nurturing necessary for her son to feel safe, venture into the world, and develop.

In sum, from my observations and well-documented research findings, attachment with a main caretaker must be protected and preserved. Meaningful access to trauma-informed mental healthcare is critical to ensure that both adult and child survivors of separation trauma heal.

I would urge this committee to consider the serious mental health impact of parent-child separation on both children and parents, and put an end to the practice of family separation and help to ensure that immigrant children and their parents reunite and receive needed mental healthcare.

Chairwoman, I would ask that the letter that the APA wrote to the President in June about family separation be included in the record.

And I will be pleased to answer any questions. Thank you.

[The prepared statement of Dr. Muñiz de la Peña follows:]

Statement

Of

Cristina Muñiz de la Peña, Ph.D.

Terra Firma Mental Health Director

Center for Child Health and Resiliency

On behalf of the American Psychological Association

Hearing on

Examining the Failures of the Trump Administration's Inhumane Family Separation Policy

Before

The U.S. House Committee on Energy and Commerce

Subcommittee on Oversight and Investigations

February 7, 2019

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Chairwoman DeGette, Ranking Member Guthrie, and Members of the Subcommittee, thank you for the opportunity to share my thoughts related to the adverse health impact of immigrant family separation. I am Dr. Cristina Muñiz de la Peña, a licensed clinical psychologist at the Center for Child Health and Resiliency (CCHR) and co-founder and director of mental health services at the Terra Firma Immigrant Youth Clinic in New York City. I am also speaking today on behalf of the American Psychological Association (APA).

I am here to offer over 10 years of experience providing mental health services to vulnerable children and families, including immigrants and trauma survivors in both the United States and abroad. As Terra Firma's director of mental health since 2012, I am responsible for the design, coordination, and management of mental health services for recently-arrived immigrant youth. Terra Firma is a program specifically serving unaccompanied immigrant youth, since its inception in September 2013. CCHR is a Federally Qualified Community Health Center (FQHC) of The Children's Hospital at Montefiore and the Children's Health Fund.

We offer individual, family, and group therapy interventions that aim at healing the impact of traumatic experiences, alleviating the levels of acute stress associated with immigration and adjustment to a new culture, and facilitating healthy reunification of children and caretakers. During psychotherapy sessions with immigrant children, I gather in-depth psycho-social histories and observe the emotional, cognitive, interpersonal, and behavioral problems arising from the traumatic experiences children endure during the process of entering this country. Over the past six months, Terra Firma has received increased requests for mental health services from foster care agencies and immigration attorneys caring for children separated at the border, hence rendered "unaccompanied," as well as from parents who have recently been reunited with their children but still worry about the psychological sequelae of the separation experience for them.

APA is a scientific and professional organization representing psychology, with 115,700 members and affiliates across the United States and internationally. APA works to advance the creation, communication, and application of psychological knowledge to benefit society and improve people's lives. Many APA members serve immigrant youth and adults in a wide range of settings, including schools, community centers, hospitals and refugee resettlement centers.

I have been asked today to share what I have learned and experienced about the health impacts on immigrant children and families who have been separated. In this testimony, I include both my own professional observations in my work with recently-arrived children and parents who were separated at the border, as well as what the research tells us about the psychological effects that these experiences have. I will focus on four areas of specific impact separation has on children and families.

Anxiety and Distress Severely Impact Developmental and Psychosocial Functioning

Unwanted and unexpected separation from parents may have severe consequences in a child's developmental processes and psychosocial functioning. When separated from their parents, high levels of anxiety and distress occur which impair the developmental trajectories in otherwise healthy children. The intense fear, sense of helplessness, and vulnerability for the child associated with forced separation from their parent can lead to a state of hyperarousal, attention deficits, depressive symptoms, and interference in their ability to communicate and relate to others. These observations based on my own clinical work are reflected in research findings as well.

Negative Impacts of Sustained Parent- Child Separation (Post Traumatic Stress Disorder, Depression, Anxiety)

Research shows that the longer parents and children are separated, the greater the reported symptoms of anxiety and depression are for children.[1] According to the APA's Presidential Task Force on Immigration, sustained parental separation also predicts ongoing difficulty trusting adults and institutions, as well as reduced educational attainment.[2] These negative outcomes of separation reflect largely the disruption of the parent-child relationship – a relationship that is a central part of healthy psychological development and a necessary protective source for children, particularly when they are exposed to traumatic life experiences.[3] Sudden and unexpected family separation is also associated with stress and emotional trauma for children, housing instability, food insecurity, interrupted schooling, and behavioral/emotional responses such as fear, anxiety, aggression and changes to sleep and appetite. Parental separation can have a long-term negative impact on children into adulthood.[4]

It is my observation that the difficulties associated with parent-child separation are evident in the greater rate observed in these children of post-traumatic stress symptoms, depression and anxiety disorders, attention and hyperactivity, interpersonal challenges, poorer performance in school, and greater vulnerability to re-victimization and abuse than in the general population. Even living under the threat of separation has been shown to have a negative effect on children and their development. There

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[1] Suarez-Orozco, C., Bang, H.J., & Kim, H.Y. I felt like my heart was staying behind: Psychological implications of family separations and reunifications for immigrant youth. *Journal of Adolescent Research.* 2010, *26*(2), 222-257.
[2] American Psychological Association, Presidential Task Force on Immigration. Crossroads: The psychology of immigration in the new century,2012.
[3] Lustig, S.L., Kia-Keating, M., Knight, W.G., Geltman, P., Ellis, H., Kinzie, J.D., & Saxe, G.N. Review of child and adolescent refugee mental health. *Journal of American Academy of Child & Adolescent Psychiatry*. 2004, *43*(1), 24-36.
[4] Dávila, S. (2019). Immigration Policy: A Psychological Perspective, *American Psychological Association*, https://www.apa.org/advocacy/immigration/fact-sheet.pdf.

is the constant sense of vulnerability to losing a parent and the threat to the foundational needs for protection, safety, and nurturance that only the main attachment figure can provide.

Terra Firma Traumatic Separation Psychotherapy Session Examples

In my observations of children who experience traumatic separation from a parent, the impact is prevalent, multilayered, and varies depending on several critical factors and the complex interplay among them. These include: the child's age and gender; the way separation was enforced; the length of the separation; the level of communication with the parent; and the level of predictability or availability of information for the child during the separation. Overall, it has been my observation that children who endured separation at the border are more likely to develop symptoms of post-traumatic stress and depression which are reflected in their negative perceptions of the world as unsafe and uncontrollable and their self-perceptions as helpless and endangered. These perceptions affect how children navigate the world, how they communicate with others, how they learn, and how they develop relationships with peers and other adults in their life.

The following case examples illustrate some of the adverse circumstances and outcomes of parent-child separations:

1. The youngest child referred to our program was a 2-year-old who had been separated from his mother while asleep and was kept separated for two months. The mother had been told to leave the detention area and when she asked to wake her son to take him with her, the officers told her to not bother because she was going to come right back. After two months of desperation, the mother was reunited with her son in New York. At the time she came to our program for assistance, the boy had turned 3 and demonstrated separation anxiety and hypervigilance.

2. In the case of a 4-year-old Salvadorian boy, I observed severe symptoms of dissociation triggered specifically when recalling the separation from his father. This boy had been yanked from his father without any explanation or opportunity to say goodbye. At the time of the assessment, the boy had been separated for over 2 months and waited in foster care for the reunification with his father with total uncertainty of when or if this would ever take place.
3. Similarly, a 16-year-old girl from Honduras who had been separated from her mother was referred to our program due to depressive symptoms. The girl appeared to struggle with the deep confusion about the separation and severe feelings of depression and acute stress. The experience of total lack of control and terror during the separation had left her with severe helplessness, which she described as feeling like others would always have control over what happens to her, and hopelessness, which she described as feeling like her life would never get better.

The Rupture of the Emotional Bond

In my clinical observations, the impact that separation from the primary caregiver at Immigration and Customs Enforcement (ICE) detention had on the child was two-fold: 1. the manner of separation and 2. the act of separating the parent from the child. First, the manner in which these separations were enforced was traumatic in itself due to the harsh ICE protocols. Most children reported post-traumatic stress symptoms from the terror experienced by the yelling, insults, and aggressive manners of the officers who handled the separations. A 6-year-old girl described feeling terrified because of the officer who yelled at her for crying after being separated which she explained caused her to try her best to contain her tears and comfort the other children around her.

Second, after the act of separating the child from the parent, the period of separation causes another set of potential ruptures in the attachment trajectory of these children. For example, when a 9-year-old

child with developmental delays was reunited with his mother after a month, he displayed ambivalent attachment toward his mother, who herself was struggling with post-traumatic stress since the separation.

It is evident from the reports of many immigrant children that there is a steep difference between ICE-run and Health and Human Services (HHS)-run facilities. Children describe the ICE processing centers as inhumane both in their conditions as well as in the attitudes of the officers. On the other hand, children tend to describe their time at the Office of Refugee Resettlement (ORR) facilities, an office within HHS, as positive, productive, and peaceful. They describe the shelters as pleasant and comfortable and the staff as caring, and nurturing.

Attachment is the emotional bond that typically forms between infant and caregiver. It is the means by which helpless infants get their primary needs met. It then becomes the engine of subsequent social, emotional, and cognitive development. Healthy attachment is the foundation from which the child can develop and survive independently. When this foundation is ruptured, this ability is severed, and it is likely to lead to adverse long-term personality, interpersonal, cognitive, and emotional sequelae.[5]

As reflected in some of the examples above, the ruptures in attachment and the impact of separation are not only evident in children but also in the parents, which ultimately further affects the child's outcomes. For example, the mother of the 2-year-old that was described earlier requested therapy to help her with feelings of profound anxiety and depression because she feared connecting emotionally with her son then being deported, causing him a second trauma of separation. In response, she kept her emotional distance to protect him.

[5] Bowlby, J.(1988). A secure base: Parent-child attachment and healthy human development. New York:US: Basic Books.

Over the past five years directing the mental health services at Terra Firma, I have observed the impact of recent immigration policies on children and families, both positive and negative. I have seen an increase in anxiety in children and families due to potential separation, detention, and deportation. It is worth noting here that separation of children and parents continues to take place under unjustified circumstances; two of the examples described above happened recently, in November of 2018.

Ending Family Separations

Over the past year, many families have reported to me increased fear of opening the door at the possibility of ICE officers being on the other side. Several parents have complained about their children's fear reactions when the doorbell rings, and some have reported an increased fear and mistrust of institutions and agencies in general.

In sum, decades of psychological research have determined that it is in the best interest of the child and the parents to keep families together. Research also suggests that the longer that parents and children are separated, the greater the reported symptoms of anxiety and depression are for children.[6] My experiences described in this statement working with immigrant children and families as a psychologist and director of mental health services corroborate the findings that past studies report on the negative impact of separation. As a result of my observations and well documented research findings, meaningful access to trauma-informed mental health care is critical to ensure that both adult and child survivors of trauma heal and ultimately achieve psychological wellbeing. I would urge this committee to consider the serious mental health impact of parent-child separation on both children and parents and put an end to the practice of family separation and help to ensure that immigrant children and their parents receive needed mental health care.

[6] Suarez-Orozco, C., Bang, H.J., & Kim, H.Y.(2010).

Ms. DEGETTE. Thank you.

Now, Ms. Abbott, I am pleased to recognize you for 5 minutes.

STATEMENT OF DONA ABBOTT

Ms. ABBOTT. Chair DeGette, Ranking Member Guthrie, and members of the subcommittee, thank you for this opportunity to appear before the committee today, so that I may share the impact that family separation had on the children Bethany serves and to propose solutions, so that we as a nation may better care for children and their families who are seeking refuge. My hope is that the protection and care of children evokes a bipartisan response.

Bethany partners with the Office of Refuge Resettlement as well as Lutheran Immigration and Refugee Services and the U.S. Conference of Catholic Bishops to meet the need of unaccompanied children. These children have fled from dictators, gang violence, sex and labor trafficking, starvation, and countries with the highest murder rates in the world. ORR does a good job of ensuring that children in transitional foster care have access to the services they need, including a safe temporary foster home, education, medical care, case management, mental health services, legal screening, and postrelease services.

As soon as children enter our care, we immediately begin the process of locating their families. Since 2013, Bethany has directly reunified more than 2,000 unaccompanied children with sponsors. Our mission always has been, and always will be, to quickly and safely reunify children with their families.

During the implementation of the family separation policy, Bethany provided care for 108 separated children. Bethany staff worked diligently to identify the location of their parents and, jointly with their parents, develop a reunification plan for every separated child in our care, as we do with every unaccompanied child in our care.

Sadly, some children are still being separated from parents and caregivers at the border. While the reasons for continued separations are not often clear and continue to be concerning, it is never OK to take children from their families for the purpose of immigration enforcement. Children should never be used as a deterrent, leverage, or bait.

Many more children could be better protected by giving ORR authority at the border. Under current law, CBP has 72 hours to determine if a child is fleeing to the United States as an unaccompanied child, with a parent or known guardian, or being trafficked. CBP is a law enforcement agency, and their agents are not trained in child welfare best practices. ORR social workers with a background in child protection could facilitate quick, adequate investigations and assist in making decisions about the appropriateness of separation.

I would also like to address a major barrier to reunifying children with families. In May 2018, the Department of Homeland Security and HHS announced a memorandum of agreement mandating continuous information-sharing on unaccompanied children, including their sponsors. We are no longer able to reassure a sponsor that claiming their children won't lead to their arrest and potential deportation to a country that they've fled to escape violence and persecution. Sponsors are being forced to choose between the

safety of their households and their children, a decision no parent should ever be forced to make. The MOA should be rescinded.

As I was preparing this testimony, I was reminded of two sisters, 15 and 11, who were raised by their grandmother in Guatemala. Their mom lived in the U.S. and regularly sent money back home so the girls could be fed, clothed, and go to school. It wasn't long before gang members started visiting their home and demanding protection money. The price for their protection eventually surpassed their ability to pay. Gang members beat Grandma in front of the girls and promised to return for the girls if payment was not made in full. The girls fled. Bethany and ORR helped these girls find safety and then, eventually, their mother. Young girls should not have to live in fear of being raped and prostituted, especially when people in this great country can do something to help them.

Like these two girls, every unaccompanied child is made in the image of God. Each of them mattered deeply to Him, and each of them should matter to us.

Thank you.

[The prepared statement of Ms. Abbott follows:]

House of Representatives Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

Testimony of Dona Abbott
Vice President of Refugee and Immigrant Services
Bethany Christian Services

February 7, 2019

Chair DeGette, Ranking Member Guthrie, and Members of the Committee:

Thank you for the opportunity to appear before the Committee today so that I may share the impact that family separation had on the children Bethany serves and to propose solutions so that we, as a nation, may better care for children who are seeking refuge.

I. Introduction

Bethany is a global child protection agency, headquartered in Grand Rapids, Michigan. Founded in 1944, our mission is to protect and enhance the lives of children and families around the world. For over 40 years, Bethany has developed long-standing partnerships with churches, communities, and governments to aid refugees and asylum-seekers in crisis. And for more than 20 years we have helped unaccompanied refugee children reunify with family in the United States. Since 2013, we have directly reunified approximately 2,000 unaccompanied children with sponsors and assisted in reunifying more than 5,000.

In fiscal year 2018, Bethany kept 374 children safe in temporary foster homes, as well as 106 children in long-term foster care. In addition, Bethany is one of the leading providers of home studies and post-release services in the country – because we want to ensure children and families are safe and able to thrive in their communities. We have seen first-hand the importance of the United States as a place of refuge for those who are fleeing dictators, gang violence, labor and sex trafficking, starvation, and countries with the highest murder rates in the world.

II. Impact of Family Separation

The forced separation of refugee children from their families is a gaping wound in our country. During the implementation of the family separation policy, Bethany and our foster families provided care for 108 separated children. Bethany staff worked diligently to identify the location of and communicate with parents for every separated child in our care. In fact, we contacted a parent for every forcibly separated child in Bethany's care to develop a reunification plan.

While the President's executive order halted the enforcement of the mass separation policy, the fact remains – ***children are still being separated from their parents at the border.*** While the reasons for separation are not often clear, it is evident that separations are occurring at elevated levels compared to past years. It is never ok to take children from their families for the purposes of immigration enforcement or to use children as the scapegoats of a broken federal system.

Many more children could be better protected by giving the Office of Refugee Resettlement (ORR) authority at the border. Under current law, Customs and Border Patrol (CBP) officials have 72 hours to

determine if a child is fleeing to the United States with a parent, a known guardian, or being trafficked. CBP is a law enforcement agency and their agents are not trained in child welfare best practice. ORR social workers, preferably with a background in child protection services, could facilitate a quick, adequate investigation. They should be given authority to make decisions about the appropriateness of a separation.

III. The Unaccompanied Children Program

Bethany partners with ORR, as well as Lutheran Immigration and Refugee Services (LIRS) and the U.S. Conference of Catholic Bishops (USCCB), to meet the needs of unaccompanied children. In general, ORR does a good job of ensuring these children have access to the services they need including an education, mental health services, medical care, legal services, and post-release services. But too many children are being forced into large-scale institutions. This past Christmas, approximately 9,800 children in the U.S. spent the holiday in large-scale institutions holding more than 100 kids each. This method of housing children at the border is both surprising and deeply concerning when you consider that the United States rejected large-scale, institutional care for vulnerable children in the U.S. 110 years ago at the White House Conference on the Care of Dependent Children. It harms children, and we shouldn't accept it today for traumatized children who are seeking refuge within our borders. The reality of large-scale institutionalization of unaccompanied children is even more heartbreaking because alternatives exist.

Organizations like Bethany provide Transitional Foster Care for children who are seeking refuge in the United States without their families. The goals of this program are two-fold. First, we ensure that children who have fled for their lives are cared for and kept safe in temporary foster families. Then, as soon as children enter our care, we immediately begin the process of locating their families while providing the child with individualized trauma sensitive treatment. Our mission always has been—and always will be—to quickly and safely reunify children with their families.

IV. Barriers to Reunification

In May 2018, the Departments of Homeland Security and Health and Human Services announced a Memorandum of Agreement (MOA) mandating continuous information-sharing on unaccompanied children beginning when DHS takes them into custody through their release from ORR custody. This includes the fingerprinting of potential sponsors who are usually parents or other close family members. Immigration status should not be a determining factor for one's ability to parent their child, yet the MOA remains the biggest barrier to reunifying children with their families. The MOA is a significant policy change and its likely consequences include increased costs because of greater time spent in government custody, heightened risks of trafficking, and the ethical challenges it poses for direct service providers.

While we welcomed ORR's decision to no longer require every adult household member to be fingerprinted, sponsor information is still being shared with ICE for the purposes of immigration enforcement. Therefore, we are no longer able to reassure sponsors that claiming their children won't lead to their arrest and potential deportation to a country that they fled to escape violence and persecution. Sponsors are being forced to choose between the safety of their households and their children – a decision no parent should ever have to make.

U.S. policy has been, and should continue to be, focused on the welfare of children. Prompt adjustments to the MOA are necessary to return focus to child welfare. The MOA should be rescinded followed by

establishing clear and specific criteria for appropriate circumstances of information sharing between HHS and DHS.

V. Conclusion

While I am grateful that this hearing is examining critical policies and their impact on unaccompanied children, I want to remind the members of this committee and the public that these children are more than just numbers. These children have names and their stories matter. In closing, I want to share about two sisters who were cared for through Bethany's Transitional Foster Care program last year.

The sisters, 15 and 11, were raised by their grandmother in Guatemala. Their mom lived in the U.S. and regularly sent money back home so that the girls could be fed, clothed, and attend school. It wasn't long before gang members started visiting their home and demanding protection money. The price for their protection eventually surpassed their ability to pay. They beat grandma in front of the girls and promised to return for the girls if the payment could not be made. It was then that the girls fled, desperately searching for safety. Bethany and ORR helped keep these girls safe and ultimately reunified them with their mother. Even more, ORR agreed to refer the reunited family for services to help them process the trauma they experienced and to help them become a family again. Young girls should not have to live in fear of being raped and prostituted, especially when we can do something to help them

More than 50,000 unaccompanied children were apprehended at the border in the last 12 months alone. Like these two girls, each of these children are made in the image of God, each of them matter deeply to him, and each of them should matter to us. U.S. law should once again reflect the value found in each child.

Thank you, I look forward to your questions.

Ms. DEGETTE. Thank you so much, Ms. Abbott.

And batting cleanup, Dr. Shonkoff. Thank you so much for joining us. You are recognized for 5 minutes.

STATEMENT OF JACK P. SHONKOFF

Dr. SHONKOFF. Chair DeGette, Ranking Member Guthrie, members of the subcommittee, I want to thank you, also, for myself for the opportunity to be here with you today.

My name is Jack Shonkoff. I am Professor of Child Health and Development at the Harvard Chan School of Public Health and the Graduate School of Education, and Professor of Pediatrics at Harvard Medical School. And I direct the Center on the Developing Child at Harvard University. I'm a pediatrician by training, and my work is focused on early life influences on learning, behavior, and health.

I took the liberty—I promise I will not exceed my time—but I cut two paragraphs out of my prepared remarks because they've been said by everybody who has spoken here this morning. So, what I want to do is take a chance on using this opportunity to give you a deeper understanding of what the term toxic stress means. It's been mentioned a great deal. I'm going to give you a deeper understanding of that. And my testimony is based on strong scientific consensus from decades of scientific research. This is not about a single study, but it's the consensus of the scientific community.

Sudden forcible separation of children from their parents is deeply traumatic for both the child and the parent. But, above and beyond the distress we see on the outside, this triggers a massive biological stress response inside the child which remains activated until the parent returns and provides some sense of comfort.

Without exaggeration, there are literally thousands of studies that have converged on the following two simple, basic, core scientific concepts. No. 1, a strong foundation for healthy development in young children requires a stable, responsive, and supportive relationship with at least one parent or primary caregiver. And the second concept is that high and persistent levels of stress activation, known as toxic stress, can disrupt the architecture of the developing brain and other biological systems, which I will say a little bit about in a moment, with serious negative impacts on learning, behavior, and lifelong physical and mental health, not just mental health.

So, early experiences are literally built into our brains and our bodies from the beginning. Stable and responsive relationships promote healthy brain development, they establish well-functioning immune and metabolic systems and cardiovascular systems, and they strengthen the building blocks of resilience. If these relationships are disrupted, young children are hit by the double whammy of a brain that is deprived of the positive stimulation it needs and is assaulted by a stress response that disrupts its developing circuits.

When any of us feels threatened, our bodies' stress responses are activated. Heart rate and blood pressure go up. Stress hormone levels are elevated. Blood sugar arises, and inflammatory responses are mobilized. This is the fight-or-flight response, and every one of us knows what it feels like physically to be optimally stressed out.

And I want to repeat that. The toxic stress response is what everybody here understands. When you are most stressed, you know what you feel physically. We all know what that feels like.

This response is automatic, and it's essential for survival. It is built into our biology, but it is designed to go back to normal when the threat is over. And if the sense of danger continues, the ongoing activation of the stress response system shifts from being protective and allowing us to deal with threat to becoming disruptive and outright damaging over time.

For example, persistently elevated stress hormones can disrupt brain circuits that affect memory, the ability to focus attention, and regulate behavior. Excessive inflammation and metabolic responses to stress in childhood increase the risk of heart disease, diabetes, hypertension, stroke, various forms of cancer, as well as depression and a vulnerability to addictions in the adult years.

A number of people have alluded to this. It's not magic. We are opening up this black box. We are beginning to understand what is it about all of this constant stress that makes you more at risk for heart disease decades later. It's because the underlying biology is what is happening to these ensuring systems.

Unlike positive or tolerable stress, which can build resilience, extensive, prolonged toxic stress has lifelong consequences. So, what I want to do is conclude by sharing with you how these scientific principles that I've just described provide a powerful framework for understanding the damage caused by the current family separation policy.

All children who are abruptly separated from familiar caregivers at the border experienced overwhelming stress. Will some survive without significant problems? The answer is yes. Will many be seriously impaired for the rest of their lives? The answer, again, is yes.

The biology of adversity suggests three factors that influence who is at greatest risk.

The first is age. Younger children are the most vulnerable because their brain circuitry and other biological systems are relatively underdeveloped, and they are the most dependent on adult caregivers.

The second is previous harm from adversity. Many people have alluded to this. The pile-up of stress on children who are already compromised shifts the odds against them even further. Intentionally withholding the most powerful healing intervention we could possibly offer, the care of their parents when children are in danger, goes against everything that science tells us. Everything.

The third reason for variation in outcomes is the duration of separation, and that's the part that I want to leave you with. Toxic stress is a ticking clock, and prolonged separation inflicts increasingly greater harm as each week goes by. From a scientific perspective, the initial separation and the lack of rapid unification are both highly indefensible. Forcibly separating children from their parents is like setting a house on fire, and prolonging that separation is like blocking the first responders from doing their job.

Thank you very much for the opportunity.

[The prepared statement of Dr. Shonkoff follows:]

Center on the Developing Child HARVARD UNIVERSITY

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTE ON OVERSIGHT AND INVESTIGATIONS

HEARING ON "EXAMINING THE FAILURES OF THE TRUMP ADMINISTRATION'S INHUMANE FAMILY SEPARATION POLICY"

February 7, 2019

Testimony Submitted by:

Jack P. Shonkoff, M.D.

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Professor of Pediatrics, Harvard Medical School and Boston Children's Hospital.

SUMMARY

This testimony is based on strong scientific consensus supported by extensive research across multiple disciplines. A century of countless studies across the behavioral and social sciences provide extensive evidence of the consequences of separating children from their parents, especially if that separation is unexpected, abrupt, or in a frightening context. Recent advances in 21st-century biology are now providing a deeper understanding of the disruptions that occur in the developing brain and other biological systems, which explain ***why*** and ***how*** traumatic, parent-child separation can have such devastating effects.

The broad overview of peer-reviewed literature summarized in the section that follows this summary illustrates the depth of knowledge available to inform a credible, science-based analysis of the policies and actions that have separated thousands of children from their parents or other caregivers at the U.S.-Mexico border.

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Sudden, forcible separation of children from their parents is deeply traumatic for both. Above and beyond the distress we see "on the outside," separating a child from his or her parents triggers a massive biological stress response "*inside*" the child, which remains activated until the parent returns and provides comfort. Continuing separation removes the most important resource a child can possibly have to prevent long-term damage—a responsive adult who's totally devoted to his or her well-being.

The results of thousands of studies converge on the following two core scientific concepts:

(1) A strong foundation for healthy development in young children *requires* a stable, responsive, and supportive relationship with at least one parent or primary caregiver.

(2) High and persistent levels of stress activation (known as "toxic stress") can disrupt the architecture of the developing brain and other biological systems with serious negative impacts on learning, behavior, and lifelong health.

Early experiences are literally built into our brains and bodies, and the experiences that are most important in driving positive development are the care and protection provided by parents and other primary caregivers. Stable and responsive relationships promote healthy brain architecture, establish well-functioning immune, cardiovascular, and metabolic systems, and strengthen the building blocks of resilience.

If these relationships are disrupted, young children are hit by the "double whammy" of a brain that is deprived of the positive stimulation it needs and assaulted by a stress response that disrupts its developing circuitry. When any of us feels threatened, our body's stress response systems are activated. Heart rate and blood pressure go up, stress hormone levels are elevated, blood sugar rises, and inflammatory responses are mobilized. This is the "fight or flight" response. We all know what that feels like physically when we're really stressed out! This response is automatic and essential for survival, but it is designed to go back to normal when the threat is over.

If the sense of danger continues, ongoing activation of the stress response shifts from protection to disruption or outright damage. For example:

- Persistently elevated stress hormones can disrupt brain circuits that affect memory and the ability to focus attention and regulate behavior.

- Excessive inflammation and metabolic responses to stress in childhood increase the risk of heart disease, diabetes, depression, and many other chronic illnesses in the adult years.

Unlike "positive" or "tolerable" stress, which can build resilience, the excessive and prolonged nature of what we call "toxic stress" increases the risk of lifelong problems.

The scientific principles described above provide a powerful framework for assessing the damage caused by the current family separation policy. All children who were abruptly separated from their parents or primary caregivers experienced substantial stress and we must bear the responsibility for their well-being. Will some of these children survive without significant problems? The answer is yes. Will many be seriously impaired for the rest of their lives. The answer again is yes. The biology of adversity suggests three factors that are particularly important for understanding who is at greatest risk.

The first is age. Younger children are the most vulnerable to long-term impacts, both because their brain circuitry and other biological systems are relatively under-developed and because they are most dependent on adult caregivers.

The second is previous harm from adversity. The pile-up of stress on children who are already compromised shifts the odds against them even further. The intentional withholding of the most powerful healing intervention we could possibly offer—the care and protection that parents provide for their children when they're in danger— goes against everything science tells us.

The third reason for variation in outcomes is the duration of separation. Toxic stress is a ticking clock—and prolonged separation inflicts increasingly greater harm as each week goes by.

From a scientific perspective, both the initial separation and the lack of rapid unification are indefensible. Forcibly separating children from their parents is like setting a house on fire. Prolonging that separation is like preventing the first responders from doing their job.

PEER-REVIEWED LITERATURE ON THE SCIENCE OF CHILD HEALTH AND DEVELOPMENT AND THE BIOLOGY OF ADVERSITY

The remaining sections of this testimony provide a more detailed review of peer-reviewed evidence that reflects the cutting edge of 21st-century science. This content has been excerpted from almost two decades of working papers and related materials produced by the National Scientific Council on the Developing Child, which I have chaired since its founding in 2003. The following four documents (each of which has been subjected to intensive, scientific peer review) provide a wealth of complex scientific knowledge that has been synthesized and translated for non-scientists.

Excessive Stress Disrupts the Architecture of the Developing Brain: Working Paper 3 (2005, updated 2014)

Early Experiences Can Alter Gene Expression and Affect Long-Term Development: Working Paper 10 (2010)

The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain: Working Paper 12 (2012)

Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience: Working Paper 13

These and other relevant materials are available on the website of the Center on the Developing Child at Harvard University (www.developingchild.harvard.edu).

The Critical Importance of the Parent-Child Relationship

Nurturing and stable relationships with caring adults are essential to healthy development beginning from birth. These relationships affect virtually all aspects of development—intellectual, social, emotional, physical, and behavioral—and their quality and stability in the early years lay the foundation that supports a wide range of later outcomes.[1-6] These outcomes include self-confidence and sound mental health, motivation to learn, achievement in school and later in the workplace, the ability to control aggressive impulses and resolve conflicts in nonviolent ways, behaviors that affect health risks, lifelong physical and mental health outcomes, and the capacity to develop and sustain friendships and close relationships and ultimately become a responsible citizen and successful parent of the next generation.[7]

"Serve and return" interactions (i.e., mutually responsive vocalizing, facial expressions, and gestures back and forth between young children and the adults who care for them) build sturdy brain architecture, beginning at birth, and create strong relationships in which the child's experiences are affirmed and new abilities are nurtured. Children who have healthy relationships with their parents and other important caregivers are more likely to develop insights into other people's feelings, needs, and thoughts, which form a foundation for cooperative interactions with others and an emerging conscience. Sensitive and responsive parent-child relationships also are associated with stronger cognitive skills in young children and enhanced social competence and work skills later in school, which illustrates the connection between social-emotional development and intellectual growth.[8-17]

The gradual acquisition of higher-level skills, including the ability to focus and sustain attention, set goals, follow rules, solve problems, and control impulses, is driven by the development of the prefrontal cortex (the large part of the brain behind the forehead) from infancy into early adulthood.[18-21] A significant part of this formative development begins during early childhood and is refined and made more efficient during adolescence and the early adult years.[22,23] Although these capabilities (known as executive function and self-regulation) do not emerge automatically, children are born with the potential to acquire them within the context of responsive relationships that model the skills and scaffold their development. Acquiring the

building blocks of executive function and self-regulation is one of the most important and challenging tasks of early childhood, and the opportunity to build on these foundational capacities is critical to healthy development through middle childhood, adolescence, and into adulthood.[23]

The stability and predictability of the caregiving environment affects the health and development of young children through its effect on the consistency, quality, and timing of daily routines which shape developing regulatory systems. Beginning in the earliest weeks of life, the predictability and nature of these experiences influence the most basic biological rhythms related to waking, eating, eliminating, and sleeping.[24,25] When positive experiences are repeated regularly in a predictable fashion, the complex sequences of neural stimulations create pathways that become more efficient (i.e., "neurons that fire together wire together.") For example, infants who learn that being soothed and comforted occurs shortly after they experience distress are more likely to establish more effective physiological mechanisms for calming down when they are aroused and are better able to learn to self-soothe after being put down to sleep.[24,26] In contrast, when eating and being put to bed occur at different times each day and when comforting occurs unpredictably, the organization and consolidation of sleep-wake patterns and self-soothing responses do not develop well, and biological systems do not "learn" healthy routines and self-regulation.[27]

Just as early experiences affect the architecture of the developing brain, they also shape the development of other biological systems that are important for both physical and mental health. For example, responsive caregiving plays a key role in the normal maturation of the neuroendocrine system.[28-30] A wealth of animal research that is now being replicated in humans demonstrates that caregiving behavior also shapes the development of circuits that regulate how individuals respond to stressful situations.[31,32] Genes involved in regulating the body's stress response are particularly sensitive to caregiving, as early maternal care leaves a signature on the genes of her offspring that carry the instructions for the development of physiological and behavioral responses to adversity. That signature (known as an epigenetic marker) is a lasting imprint that affects whether the offspring will be more or less likely to be fearful and anxious

later in life.[33] Consequently, early overloading of the stress response system can have a range of adverse, lifelong effects on learning, behavior, health, and longevity.

Regulatory mechanisms that manage stress also influence the body's immune and inflammatory responses, which are essential for defending against disease. Young children cared for by individuals who are available and responsive to their emotional and material needs develop well-functioning immune systems that are better equipped to deal with initial exposures to infections and to keep dormant infections in check over time.[34] Conversely, inadequate caregiving and limited nurturance very early in life can have long-term (and sometimes permanent) effects on immune and inflammatory responses, which increase the risk of chronic impairments such as asthma, respiratory infections, and cardiovascular disease.[35,36]

The Biology of Adversity and Resilience

When faced with an acute challenge or threat, the body's stress response systems shift into immediate action mode. Heart rate and blood pressure go up, stress hormone levels are elevated, blood sugar rises, inflammation is increased, and blood flow is diverted preferentially to the brain and muscles. This is the classic "fight or flight" response and it is essential for survival.

Stressful experiences for children can be positive, tolerable, or toxic depending on their duration, intensity, and timing, and on whether protective relationships are available to help the child feel protected and thereby restore the biological activation to baseline levels. The National Scientific Council on the Developing Child created three categories of stress response that provide a framework for understanding the underlying biology of each.[37]

- ***Positive stress*** refers to moderate, short-lived stress responses, such as brief increases in heart rate or mild changes in the body's stress hormone levels. This kind of stress is a normal part of life and learning to adjust is an essential feature of healthy development. Adverse events that provoke positive stress responses tend to be those that a child can learn to control and manage well with the support of caring adults, and which occur against the backdrop of

generally safe, warm, and positive relationships. Examples include meeting new people, dealing with frustration, or getting an immunization. This is an important part of the normal developmental process.

- ***Tolerable stress*** refers to stress responses that have the potential to negatively affect the architecture of the developing brain but generally occur over limited time periods that allow for the brain to recover and thereby reverse potentially harmful effects. Tolerable stress responses may occur as a result of the death or serious illness of a loved one, a frightening accident, an acrimonious parental separation or divorce, or persistent discrimination, but always in the context of ongoing, supportive relationships with adults. Indeed, the presence of supportive adults who create safe environments that help children learn to cope with and recover from adverse experiences is one of the critical ingredients that make serious stressful events such as these tolerable. In some circumstances, tolerable stress can even have positive effects, but in the absence of supportive relationships, it also can become toxic to the body's developing systems.

- ***Toxic stress*** refers to strong, frequent, or prolonged activation of the body's stress management system. ***Stressful events that are chronic, uncontrollable, and/or experienced by children who do not have access to support from caring adults tend to provoke these types of toxic stress responses.*** Studies indicate that toxic stress can have an adverse impact on brain architecture. In the extreme, such as in cases of severe, chronic abuse, especially during early, sensitive periods of brain development, the regions of the brain involved in fear, anxiety, and impulsive responses may overproduce neural connections while those regions dedicated to reasoning, planning, and behavioral control may produce fewer neural connections. Extreme exposure to toxic stress can change the stress system so that it responds at lower thresholds to events that might not be stressful to others, and, therefore, the stress response system activates more frequently and for longer periods than is necessary, like revving a car engine for hours every day. This wear and tear effect increases the risk of stress-related physical and mental illness later in life.[38]

Protective relationships play a central role in building resilience by buffering children from sources of stress and providing the support needed to build their own capacities to cope with adversity. Decades of research have produced a rich knowledge base that explains why some people develop the adaptive capacities to overcome significant adversity and others do not. ***Whether the burdens come from the hardships of poverty, the challenges of parental substance abuse or serious mental illness, the stresses of war, the threats of recurrent abuse or chronic neglect, or a combination of factors, the single most common finding is that children who end up doing well have had at least one stable and committed relationship with a supportive parent, caregiver, or other adult.*** These relationships provide the personalized responsiveness, scaffolding, and protection that buffer children from the sources of disruption. They also build key capacities—such as the ability to plan, monitor and regulate behavior, and adapt to changing circumstances—that enable children to overcome adversity and thrive as they get older. This combination of supportive relationships, adaptive skill-building, and positive experiences constitutes the foundations of what is commonly called resilience. On a biological level, resilience protects the developing brain and other organs from the damage that can be produced by excessive activation of stress response systems. Stated simply, resilience transforms potentially toxic stress into tolerable stress.

Resilience requires relationships, not rugged individualism. There is no "resilience gene" that determines the life course of any individual irrespective of the experiences that shape genetic expression. The capacity to adapt and thrive despite adversity develops through the interaction of supportive relationships, gene expression, and adaptive biological systems.[39-41] ***Despite the widespread belief that individual grit, extraordinary self-reliance, or some in-born, heroic strength of character can triumph over calamity, science now tells us that it is the reliable presence of at least one supportive relationship and multiple opportunities for developing effective coping skills that are essential building blocks for the capacity to do well in the face of significant adversity.***

Extensive evidence indicates that deprivation or neglect—defined broadly as the ongoing disruption or significant absence of caregiver responsiveness—can cause more harm to a young child's development than overt physical abuse.[42-44] The clearest findings that support

this conclusion come from studies of children who have experienced severe neglect while being raised in institutions.[45] This research has provided an opportunity to investigate the distinctive consequences of extreme psychosocial deprivation apart from the impacts of other forms of maltreatment. Additional knowledge comes from studies involving institutionalized children whose life circumstances have been positively transformed through foster care placements or permanent adoption.[46-50]

There is extensive evidence that severe neglect in institutional settings is associated with abnormalities in the structure and functioning of the developing brain. Children who experience extreme levels of social neglect early in life show diminished electrical activity in the brain, as measured through electroencephalography (EEG).[47,50] Institutionally reared children also show differences in the neural reactions that occur when looking at faces to identify different emotions.[48,49] These findings are consistent with behavioral observations that neglected children struggle to correctly recognize different emotions in others.[44,51] Children who experience severe neglect in institutional settings also exhibit decreased brain metabolism and poorer connections among different areas of the brain that are important for focusing attention and processing information, thereby increasing the risk for emotional, cognitive, and behavioral disorders later in life.[46,52]

The impact of severe neglect can be manifested in different ways across different periods of development. At younger ages, maltreated children show impairments in their ability to discriminate different emotions, yet these difficulties are not observed at older ages.[44,53,54] Conversely, antisocial behavior may be more salient among adults or older adolescents with early childhood histories of neglect.[55,56] Given the fact that interpersonal relationships and life challenges (e.g., dealing with peers, becoming involved in romantic relationships, entering parenthood, achieving financial stability) change across the lifespan, it is essential that the adverse consequences of significant deprivation are addressed in a developmentally appropriate manner.

Early adversity can affect long-term health and development by chemically altering the expression of genes. Extensive research has demonstrated that the healthy development of all

organs, including the brain, depends on how much and when certain genes are expressed. When scientists say that genes are "expressed," they are referring to whether they are turned on or off—essentially whether and when genes are activated to do certain tasks. Research has shown that there are many non-inherited environmental factors and experiences that have the power to chemically mark genes and control their functions. These influences create a new genetic landscape, which scientists call the epigenome. Some of these experiences lead to chemical modifications that change the expression of genes temporarily, while increasing numbers have been discovered that leave chemical signatures that result in an enduring change in gene expression. Research tells us that some genes can only be modified epigenetically during certain periods of development, defined as *critical periods* of modification.[57-62] In some cases, very early experiences and the environments in which they occur can shape developing brain architecture and strongly affect whether children grow up to be healthy, productive members of society.

Modification of the epigenome caused by stress during early childhood affects how well or poorly we respond to stress as adults and can result in increased risk of adult disease. Some of our genes provide instructions for how our bodies respond to stress, and research has shown that these genes are clearly subject to epigenetic modification. For example, research in animals has shown that stressful experiences soon after birth can produce epigenetic changes that chemically modify the receptor in the brain that controls the stress hormone cortisol and, therefore, determines the body's response to threat (the fight-or-flight response).[63-65] Healthy stress responses are characterized by an elevation in blood cortisol followed by a return to baseline to avoid a highly activated state for a prolonged period of time. If young children experience toxic stress as a result of serious adversity in the absence of protective relationships, persistent epigenetic changes can result.[66] These modifications have been shown to cause prolonged stress responses, which can be likened to revving a car engine for long periods of time. Animal studies have shown correlations between excessive stress and changes in brain architecture and chemistry as well as behaviors that resemble anxiety and depression in humans.[67-72] Human studies have found connections between highly stressful experiences in childhood and increased risk for later mental illnesses, including generalized anxiety disorder and major depressive disorder.[73-75] Atypical stress responses over a lifetime can also result in increased risk for physical ailments, such as asthma, hypertension, heart disease and diabetes.[73-82]

Children who have experienced serious deprivation in infancy are at risk for abnormal physical development and impairment of the immune system. Severe neglect is associated with significantly delayed growth in head circumference (which is directly related to brain growth) during infancy and into the toddler years.[83] More extreme conditions of deprivation, such as those experienced in institutional settings that "warehouse" young children, are associated with even more pervasive growth problems, including smaller body size, as well as impairments in gross motor skills and coordination.[84-86] Children who are raised in institutional settings also have more infections and are at greater risk of premature death than children who live in supportive homes.[87] One possible explanation for these findings is that chronically disrupted cortisol levels suppress immunologic reactivity and physical growth, thereby leading to a greater risk for infection and chronic, stress-related disease throughout life.[88]

Chronic neglect over time can alter the development of biological stress response systems in a way that compromises children's later ability to cope with adversity. Extensive research indicates that the two primary stress response systems in humans—the sympathetic-adrenal-medullary (SAM) system, which produces adrenaline and affects heart and respiration rates, and the hypothalamic-pituitary-adrenal (HPA) axis, which elevates cortisol, a key stress hormone—are both disrupted by significant deprivation. For example, years after adoption, children who experienced extreme neglect in institutional settings show abnormal patterns of adrenaline activity in their heart rhythms, which can indicate increased biological "wear and tear" that leads to greater risk for anxiety, depression, and cardiovascular problems later in life.[89]

The consequences of severe neglect can be reduced or reversed through appropriate and timely interventions. The capacity for recovery in children who are removed from neglectful conditions and placed in nurturing environments in a timely fashion has been well-documented.[90-94] However, improvement often requires more than simply the cessation of neglectful caregiving. Rather, systematic, empirically supported, and often long-term (six to nine months or longer) interventions are needed to promote effective healing. Successful treatments have been shown to reduce behavioral difficulties and attachment problems in previously neglected young children who have been placed in foster homes[90,91,93] as well as to promote

secure attachments in young children who continue to live with their families, while being monitored by child welfare agencies because of previous allegations of neglect.[94] On a biological level, systematic interventions targeting the social-emotional needs of young children living in foster care settings (the majority of whom were victims of neglect rather than physical abuse) have shown evidence of improved stress-regulatory capabilities with patterns of cortisol production that are indistinguishable from those of non-neglected, healthy children.[17,91,92,94-96] With appropriate intervention, previously institutionalized children have also demonstrated improvements in brain activity as measured by EEG.[97,98]

Children's recovery rates are influenced by the severity, duration, and timing of the deprivation as well as by the timing and type of the intervention that is provided. Children who experience more severe neglect, especially during the early childhood years, are more likely to withdraw when stressed and show more anxiety and difficulties regulating their mood than children whose experiences of deprivation are less severe.[99] Longer periods of deprivation have also been associated with greater deficits in attention and cognitive control,[100] academic achievement,[101,102] brain activity,[103] and dysregulation of the HPA axis.[104] Previously institutionalized children who experienced the most extreme levels of deprivation often continue to struggle with problems in attention and behavioral regulation even after intervention has been provided.[105-109]

Concluding Thoughts

The scientific knowledge base available to inform policies that affect the health and development of children is extensive and accessible. Any policy that involves separating children from their families raises serious questions that require thoughtful reflection. When decisions are made that do not draw on authoritative knowledge for guidance, the well-being of children can be jeopardized and lead to serious, lifelong consequences. The evidence provided in this testimony is offered in the hope that it can be used to guide science-informed policies going forward. With respect to the children who remain separated from their families today, science is telling us that excessive stress activation will continue for as long as the separation persists—and the longer these children are deprived of the healing effect of supportive caregiving, the worse the consequences will be.

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Ms. DEGETTE. Thank you very much, Doctor. Thank you.

On popular demand, we are going to recess the committee until the conclusion of this series of votes that we are about to have on the floor.

I would ask the witnesses to stay close, because we will reconvene immediately after the conclusion of the last vote. Thank you.

The committee is in recess.

[Recess.]

Ms. DEGETTE. The committee will come to order.

And the Chair will recognize herself for 5 minutes for questioning.

Mr. Gelernt, I wanted to start with you because I wanted to ask you about this point that Commander White made about the court ordering the reunification of the families. And what he said is that, because of the different agencies that are involved in that process, it really took a court order to get them operating together, which seems kind of ridiculous to me, but that is what he said. So I am wondering what the ACLU is planning to do in the pending lawsuit about the new reports that we have that there may have been thousands of children separated even before the April order. And what processes are you guys going to undertake?

Mr. GELERNT. Right. Thank you for that question, because I think that is a critical point.

And I want to be absolutely clear. It's the Government's position that the court did not require reunification of the children who were released from ORR before June 26. Our position is that the court was including those children. So we have a motion now before the court to clarify that those children who were released—separated and released—before June 26 are part of the class. The Government has an obligation to find them and reunite them. So we will be in court on February 21st where the court will hear that motion. And so what we will ask the court is to clarify that those children are part of this class and then to come up with a plan to reunify those children.

I would emphasize, though—and I think this is a point the Chair made before—there is, we believe there is a legal obligation, and we will try to clarify that on February 21st, but we see no reason why the Government should need a court order to do the right thing here and try and reunify those kids.

And to a point I think the Chair made and a few others made from the last panel, we do not believe that it's either ICE goes into all these households and gets the children or nothing is done. We believe it can be done by the Government giving the NGOs information about the parents and children, and that we contact them. That's what the court has ordered in the past, and that works perfectly well.

Ms. DEGETTE. So, if it is in the best interest of the child, then that is what the agency will do?

Mr. GELERNT. Exactly. We would contact the parent. We would contact the child welfare agency. We'd contact the child's lawyer. And we'd say, "What's the situation with this family? What do they want to do?" There's no reason why ICE needs to go in. And that's worked perfectly well in the past, and that could work for these thousands of children going forward.

Ms. DEGETTE. Thank you.

Dr. Linton, in your testimony you state that there is overwhelming research confirming irreparable harm caused to the children by separating them from their family, and that the trauma by forced separations leads to a host of health challenges. Is that correct?

Dr. LINTON. Yes, Congresswoman, that's correct.

Ms. DEGETTE. And, Dr. Muñiz de la Peña, based on your own observations, you have found that when children are separated from their parents, high levels of anxiety and distress occur which can impair the development trajectory of otherwise healthy children. And that includes intense fear, helplessness, and vulnerability. Is that also correct?

Dr. MUÑIZ DE LA PEÑA. That's correct.

Ms. DEGETTE. And, Dr. Linton, to put a fine point on it, as I think you testified, separations lead to toxic stress. And Dr. Shonkoff testified that that actually disrupts the child's brain architecture and affects short- and long-term health. Dr. Linton, is that correct?

Dr. LINTON. Yes.

Ms. DEGETTE. And, Dr. Shonkoff?

Dr. SHONKOFF. Yes.

Ms. DEGETTE. Yes?

So I just want to pivot for a second to figure out how we can prevent something like this from ever happening because, as we heard, kids are still being separated from their parents at the border. And sometimes in limited circumstances separations are appropriate to protect the child, but it is still being elevated.

And so, Ms. Podkul, I wanted to ask you—you said, according to your observation, the separation decisions are still being made arbitrarily. And so I want to ask you, what do you think we should do in order to ensure that the separations are only happening in the very limited situation where there is a genuine reason to believe that the parent is unfit or presents a danger to the child?

Ms. PODKUL. I think there needs to be clear guidelines about when separations are appropriate, and I think we need to ensure that child welfare professionals are making those decisions. Right now, those decisions are being made by Customs and Border Protection officials and not somebody with specialized training.

Ms. DEGETTE. And do you believe we can put systems in place to track these kids, so that DHS is providing ORR with sufficient information so the families can be reunited?

Ms. PODKUL. Absolutely. I don't think that's going to be hard to do.

Ms. DEGETTE. Thank you. Thank you.

I yield to Mr. Guthrie.

Mr. GUTHRIE. Thank you very much. I appreciate that.

Thank you to you all for being here today.

And I have a couple of questions directed to Ms. Abbott. Bethany Christian Services has spent more than 20 years caring for and helping unaccompanied children reunify with their family in the United States. Can you please describe how this process has changed over the past 20 years?

Ms. ABBOTT. We always have provided care to unaccompanied children, children who come to the United States without a parent or an adult, to provide care for that. What had changed over the last year is seeing children separated from their parents. Foster care is meant to provide care when the parents aren't available to provide care or cannot provide healthy care for a child. We were seeing children who are healthy and attached to their family—their family was providing good care—being separated.

Mr. GUTHRIE. How many that were separated not for cause other than illegal entry, the zero tolerance, how many children under zero tolerance did you care for?

Ms. ABBOTT. A hundred and eight.

Mr. GUTHRIE. A hundred and eight? And they are all reunified?

Ms. ABBOTT. They have all been reunified as of September 24.

Mr. GUTHRIE. What kind of difficult thing did you find in reunifying? What was the hardest thing to do in a reunify?

Ms. ABBOTT. I think it's the information that's available. Because we've had a long history of finding family for children who've been separated, we have staff well-trained at figuring out how to track down parents. So sometimes the information would come that was just inadequate information or parents would be moved from one detention facility to another.

Mr. GUTHRIE. Because Captain White testified that they now have—are they separated and what is the issue, I mean, why they were separated.

Ms. ABBOTT. Yes.

Mr. GUTHRIE. Has that been helpful?

Ms. PODKUL. It's been helpful because we can identify that a child has been separated, but sometimes it doesn't give enough explanation. So, it says illegal, you know, they've been charged with criminal history or maybe even in their own country with abuse or neglect. We don't know what that means until a child comes into care, we have a chance to communicate with the parent and the child to figure out whether it raised to the level that a separation should have occurred.

Mr. GUTHRIE. OK. How many organizations like yours are helping refugee children?

Ms. ABBOTT. We work with the United States Catholic Conference a bit, USCCB, and LIRS, in providing care——

Mr. GUTHRIE. There's several? Many doing it?

Ms. ABBOTT. Yes.

Mr. GUTHRIE. Did your organization work with any Federal agencies such as HHS or DHS when trying to create these unifications, reunification plans?

Ms. ABBOTT. Yes, not directly, only through USCCB and LIRS. But we were, we do have a Federal field specialist onsite——

Mr. GUTHRIE. OK.

Ms. ABBOTT [continuing]. Who is directly contracted with the Office of Refugee Resettlement and advises us on all of our reunification findings.

Mr. GUTHRIE. OK. There have been reports in the media that separations may still be occurring for zero tolerance.

Ms. ABBOTT. Yes.

Mr. GUTHRIE. Has Bethany Christian Services continued to see any cases for children who are separated from a parent or legal guardian without cause other than illegal entry or zero tolerance?

Ms. ABBOTT. I hate to say, after 40 years of working in this field, that I'd have been naive not to have realized that our Government would separate children purposefully. So, after zero tolerance occurred, an alert went out to our staff saying you need to inform leadership the minute we see any referrals in children who have been separated. So, in the last three months, we received 12 referrals on children separated from a parent.

Mr. GUTHRIE. Were they separated for cause or for——

Ms. ABBOTT. Well, the cause is usually a criminal history or inaccurate reporting at the border, not proof of the relationship. So sometimes families in crisis don't always tell the whole truth about the situation. And so the officer on the spot is trying to make a decision as to whether this child belongs to the family or not.

Mr. GUTHRIE. OK. Thank you.

I have just a few minutes. I won't take all my time. But I just want to comment.

I know there is a lot of stress in the immigration system today. I can specifically speak to families in my community of Bowling Green, wonderful families who are from El Salvador, came in 2001 under TPS. And they are extended, they don't know from year—I don't know exactly what their window is, but it is getting short on them. But it has continued to be extended. They have been there for 18 years, and they are still not sure what their next, what is going to happen after a few months. I think it is another year.

Their children are U.S. citizens. Their children speak English as a first language. As a matter of fact, I was talking to one the other day and used a double negative. And I said, well, the problem isn't whether they are going to speak English, but whether they will speak it "good" or "well." So, that is kind of a joke. English teachers like that one.

And they just don't know, and you see that with DACA children and the opportunity to fix—and it seems like kind of the frustration when we have—this policy was bad. I didn't support it. We shouldn't have done it that way. But if you look at the concerns with DACA, the concerns with TPS, whatever, the administration is enforcing the law as we wrote it—not necessarily us sitting here, but as Congress has written the law, particularly TPS and those such things as that. And the President has offered, he said in last year's State of the Union that he was for a path to citizenship for DACA. He said that. He brought up TPS just a few weeks ago and said that, once the Government is open again, we will discuss these things and they will be on the table. And so, I really hope that this never happens again, but I do hope that we, as a committee, as a Congress—not necessarily in this committee, but this Congress—will look at all of the issues that are going on in the immigration system and take care, do the right thing.

I know my constituents—oh, I am sorry, I ran out of time?—I know my constituents say secure the border and we can deal with these other issues, and I hope we do.

I am sorry, I wasn't looking at the clock.

Ms. DEGETTE. Dr. Ruiz, for 5 minutes.

Mr. RUIZ. Thank you.

This hearing has been very good for the human soul. It holds a mirror to our conscience as a nation and as individuals. And it has been very difficult to take. Personally, my heart swells. As a father, just to imagine that I was separated from my child brings me to tears. And it is hard. I'm emotionally drained. And I just can't imagine what the children and the parents went through and what they felt.

As a physician, we have the Hippocratic Oath, "First do no harm". And I believe that should be a guiding principle for our Federal Government as well.

You see, talking about the cases of real people humanizes this story. And oftentimes, that affects our conscience, and oftentimes perhaps it could create a sense of not allowing that to affect us as human beings. It is easy, then, to turn to dehumanizing the individual, so that you feel guilt-free perhaps or don't allow it to enter your conscience. And I see a lot of that going on. But separating families is dehumanizing, not only for those that have been separated but also for the separators, because it will affect them and their conscience as well.

We have talked about—I have heard some statements that, well, they already had toxic stress in their home countries, almost implying that, well, they are kind of damaged goods, like we didn't cause any more harm to them.

So, Dr. Muñiz de la Peña, is there additional harm, additive harm to an individual when you separate them from their parent? Is there any difference that we did versus what they felt in their home countries?

Dr. MUÑIZ DE LA PEÑA. There's no doubt about it. If you think about physical harm, it is the same concept. If you have someone physically injured and you continue to injure that person, they will have more injury.

Mr. RUIZ. It is compounding. It is additive.

Dr. MUÑIZ DE LA PEÑA. Of course.

Mr. RUIZ. And the other thing is, back home, when they are threatened or being raped or they were going to be killed, and whatnot, or extreme poverty, or other stimuli for toxic stress, at least they have their parents to help them cope. When you separate that parent, then you are leaving that child completely vulnerable with nobody to hold them and to comfort them.

Dr. Linton, what are the long-term effects years from now that they are going to experience?

Dr. LINTON. Well, what we know about toxic stress—and certainly Dr. Shonkoff can describe the large body of science—but what we understand is that serious prolonged stress, in the absence of a buffer, places children at risk not for just those short-term effects that I discussed in my opening statement but also long-term effects, including depression, substance use, diabetes, and heart disease. And that really stems from the biology of having stress hormones coursing through the body without any control and the damage it does to the body.

Mr. RUIZ. It rewires the brain to a point—and this is the part that gets me—to the point where they won't be able to interpret love. They won't be able to feel that comfort of trust with anybody

in any relationship. They will have difficulty feeling intimacy that many of us have the luxury of feeling with our spouses and the vulnerabilities.

Dr. Shonkoff, welcome. I am a Harvard Medical School graduate. Thank you for being here.

And I wanted to ask you, what is the treatment? What do we do now? What should ORR be doing to mitigate and lessen those symptoms that they are going to face for their lifetime?

Dr. SHONKOFF. As you know, there is a prevention question. There is a treatment question. There is kind of a long-term outcome question. In this case, it is all the same.

In fact, this committee has responsibility for so much in the healthcare domain. All of the health problems of adulthood, the expensive ones, have their origins early on.

Mr. RUIZ. So, what do we need to do to mitigate and to help these children now?

Dr. SHONKOFF. We need to provide kind of a stable, nurturing, responsive environment in which predictable relationships help protect children from excessive stress activation. That affects every part of their developing system.

Mr. RUIZ. If I may, just a quick thing. There were reports that people weren't allowed to hold babies when they are crying and have their fit. What happens to the physiology of that child, of that baby, that is not held, that was left alone without being coddled by another human being?

Dr. SHONKOFF. It is a critically important question because, in fact, what's happening is that biologically that baby is responding to what is essentially a life-threatening situation, not being taken care of, because babies are so helpless.

And I think the misconception is we say, well, none of us remember things that we had experienced when we were babies——

Mr. RUIZ. We do.

Dr. SHONKOFF [continuing]. And babies don't really understand what's going on anyway. But the reality is it may not be a conscious memory, but the body doesn't forget. The body is affected. The body is affected biologically. And that's why statistically these children in those circumstances are already more at risk for problems later on. So it's the invisible part. It's what's going inside the body that we're understanding more and more now. But when we look at young children and we say, well, they're either crying and they seem upset or they seem better and they're not acting out, we don't see what's going on inside. And that's what 21st century science is telling us, about how to address what is essentially a commonsense moral issue——

Ms. DEGETTE. Thank you.

Dr. SHONKOFF [continuing]. Which is how important these issues are.

Ms. DEGETTE. The gentleman's time has expired.

Mr. RUIZ. Thank you.

Ms. DEGETTE. The gentleman from Oregon.

Mr. WALDEN. Thank you, Madam Chair.

And I want to thank all our panel here today. We've got a couple of hearings going on simultaneously. So some of us had to go back

and forth. But I appreciate the concern you are all showing for these children.

I don't know anybody up here that supported the separation policy, certainly not me. And we want to do the best for these kids.

Ms. Abbott, Bethany Christian Services has been a subgrantee for ORR for some time, right?

Ms. ABBOTT. Yes.

Mr. WALDEN. How long?

Ms. ABBOTT. We have been, we have worked with ORR since '75.

Mr. WALDEN. 1975?

Ms. ABBOTT. With refugee children fleeing Southeast Asia, and then have worked with the unaccompanied children since ORR took responsibility for those children.

Mr. WALDEN. Walk me through, because you are there on the ground. How many children do you deal with at any given time?

Ms. ABBOTT. Right now, we have the capacity to have about 99 children in foster care. We don't offer large shelter settings. We do really believe that a family setting is best——

Mr. WALDEN. Sure.

Ms. ABBOTT [continuing]. For an unaccompanied child.

Mr. WALDEN. Yes.

Ms. ABBOTT. So, at any one time, we could have 99 children in care. And we are expanding our foster care capacity into three other States, so that we can continue to meet the need of truly unaccompanied children——

Mr. WALDEN. Yes.

Ms. ABBOTT [continuing]. Who need a family setting.

Mr. WALDEN. I figure it is somewhere around 11,000 children right now are in the ORR system. It varies, I know, because it is a daily intake and a daily——

Ms. ABBOTT. Exit.

Mr. WALDEN. Yes. And ORR is kind of in the middle, right?

Ms. ABBOTT. Yes.

Mr. WALDEN. I mean, they just have—the Border Patrol turns over these people, these kids, to ORR. They take care of them and give them——

Ms. ABBOTT. Find sponsors and assure that the release is to a safe, caring adult.

Mr. WALDEN. And that is something I think you have heard all of us talk about as well, because there were mistakes made by the Government in the past in some instances, right, of turning kids over to people we thought were their responsible parent or guardian or something? It turned out they ended up in really bad environments, right? Have you seen that?

Ms. ABBOTT. Not at Bethany, but I have heard——

Mr. WALDEN. Right.

Ms. ABBOTT [continuing]. And been involved in consulting in some situations where that has happened. We try hard to do home studies, background checks on the families, and so forth, and the children and get information from parents. We can contact parents back in country of origin, if the other parent is there.

Mr. WALDEN. Right.

Ms. ABBOTT. Often, many of the reunifications you've heard about are with another parent that's already here. One parent was coming with other children to join that parent.

Mr. WALDEN. I know when I toured, led the delegation to Texas, and we went through one of the facilities and met with the kids and all, to a certain extent—obviously, we respected their privacy—it seemed like they had access, we were told at least they had access to call their parents or loved ones back in their home country, as well as to be in regular contact with whoever they might be going to be placed with here in the U.S. Is that——

Ms. ABBOTT. That is correct, and ORR policy mandates that we provide that service.

Mr. WALDEN. And my understanding is, what we saw, again, at this facility was they had access, basically, to 24/7 medical care as well as routine mental health services in the facility. Is that your experience as well?

Ms. ABBOTT. Yes, at least with our transitional foster care program and our small shelter program that we have in Grand Rapids and Maryland, that's been our experience.

Mr. WALDEN. OK. I was just thinking back to, literally thinking of the facility and the doctors and then the mental health services, and the phones they could access.

When you are with these kids, what do they tell you? I mean, unlike the rest of us, you are actually there, you and your folks. I mean, some of you may be doing this work too. So, I am not trying to say that. What do these kids tell you, what stories?

Ms. ABBOTT. The stories are much like the story I told about the two girls. Their stories are as compelling as any refugee story I've heard. Like I say, I've been working with refugee kids for 40 years, and their stories about victimization, their fears——

Mr. WALDEN. On the way up?

Ms. ABBOTT. Well, in their own country.

Mr. WALDEN. In their own country or on the way up.

Ms. ABBOTT. It forces them to flee to begin with, yes.

Mr. WALDEN. OK.

Ms. ABBOTT. The idea of the gangs that are out of control, governments either unable or too corrupt to intervene to protect their citizens.

Mr. WALDEN. So we were told when we were there in the bipartisan delegation that, for some of these people, it is literally the first time they have felt this safe and cared for since they left their home country, because of the kind of victimization you were talking about in the home country or the horrific things we have all read about on the journey north. Is that what your experience is?

Ms. ABBOTT. Yes. I believe that a lot of people who come here as refugees or asylum seekers are looking just for that. They want safety.

Mr. WALDEN. Yes.

Ms. ABBOTT. They want all the things that we all want.

Mr. WALDEN. So, in conclusion—I know my time is about out—it feels to me like we have a humanitarian crisis or a problem at the border. Is that your take, too?

Ms. ABBOTT. Yes, yes. I tend to refer to those at our border as refugees——

Mr. WALDEN. Yes.

Ms. ABBOTT [continuing]. Rather than migrants, because I think people think, when they think migrants, that people have a choice.

Mr. WALDEN. Or they are going back and forth?

Ms. ABBOTT. Yes.

Mr. WALDEN. Yes.

Ms. ABBOTT. But the majority of children we're seeing coming from the border right now are truly—again, we get well-founded explanation of fear of persecution.

Mr. WALDEN. Thank you, Madam Chair, for your courtesy in extending extra time.

Ms. DEGETTE. The gentlelady from New Hampshire is recognized for 5 minutes.

Ms. KUSTER. Thank you.

And thank you to the panel and for your expertise.

I want to go back to the scene of being inside. We were, again, in Brownsville and in McAllen, Texas, with the families. I want to get at, do you have a professional opinion—and we will continue with Ms. Abbott—whether those children would be better off with their parent?

Ms. ABBOTT. A child is always better off with their parent.

Ms. KUSTER. Right.

Ms. ABBOTT. And if a parent and a child has to be separated, there needs to be a reason, that the child's safety, whether it's physical or emotional, is threatened.

Ms. KUSTER. And again, I would just say from my own experience, 25 years in the child welfare and child protection legal world of adoption, that in fact our laws are very, very strict of what it would take to terminate parental rights, and particularly to terminate parental rights against the will rather than in a consensual way.

So I want to go back, if I could, to Mr. Gelernt and Ms. Podkul, about the process, because I know that you are going back into court. I want to understand what we could be doing differently, from all of the witnesses, to protect these children and to make sure this decision is not being made in an arbitrary or perhaps even capricious way.

And I think there was a reference made to separation being used as a technique or a tactic of immigration, which, by the way, the Trump administration didn't hide that. I mean, they spoke openly that this was going to be used as a threat. "We will take your children if you come into our country. We will take your children." That is the moral failure. Internationally we lost moral authority in the league of nations, in the world of nations. I certainly feel that way.

What could this committee, what could we in Congress be doing differently? And would it be to have well-trained people under contract with ORR who understand child welfare, who understand the psychology?

And you talked about the acute nature of the separation and the length of the separation, and the circumstances. Let me tell you, the women I met, just briefly, the circumstances were that they were told they had to go to court, they had to go to a court hearing, and they were not allowed to bring the children into the courtroom.

And the children were taken by our Government while they were in the courtroom. And I mentioned two mothers breastfeeding, breastfeeding infants that were stolen by our country.

So how could we change? Could we have social workers at that initial moment to sort this out?

And then, because my time is short and I want to give you time, why can't we have a hospital band? Why can't we have a number that the parent and the child has? How, in this day and age, has our country lost track of these children and these parents?

Mr. GELERNT. Yes, so taking your last question first, there's no question we could have an integrated database and a tracking system. And the judge in our case is very concerned that there wasn't one, and he has asked that we work with the Government to come up with one. And if he's not satisfied, he is going to add to it.

But I think this committee and Congress certainly can do oversight of that, and they could implement something even better, if they decide to do that.

In terms of going forward, we're absolutely seeing separations, and we don't know what standards CBP is applying. They certainly are not using experts in child welfare to do it. So there have to be very clear standards. There has to be someone who's trained in child welfare to do it. And there has to be a way where the information flows to the parent and the people taking care of the child to say, "Wait, we need to contest that." So there has to be processes to contest it.

Ms. KUSTER. Do the children have any kind of legal advice? Do they have access to an attorney to——

Mr. GELERNT. Not all of them, unfortunately. But, even the ones that are getting legal advice, what we're hearing—and I've been getting texts all morning saying, "Make sure the committee understands that, even if we are with them, we're not always being told that they were separated from a parent in the U.S. The child is just being dumped on us. And so, we don't actually know what the situation is."

So that information has to be told to the people taking care of the child, so they can look for the parent and get to the bottom. But we are seeing separations for the most minor crimes or even allegations, and we are very concerned that these, although they are being called for-cause separations, there's really no basis for them.

Ms. KUSTER. And I just have to close because my time is up.

The capricious nature of this, one of the mothers, finally—finally—after months, by the way, not days, not weeks, months, was able to get through on a telephone to her child, and her 4-year-old child refused to come on the phone to speak to her because the child had been told that she abandoned the child at the border.

Ms. DEGETTE. The gentlelady's time has expired. The gentleman from Virginia, Mr. Griffith.

Mr. GRIFFITH. Thank you, Madam Chair, and I look forward to working with the gentlelady in regard to a number of items.

It is interesting that we just had a bill today—and I am not sure, I haven't sorted it all out yet, it was voice voted—where we cut advocates or defenders in the juvenile courts, we cut them out of getting some grant money. I am sorting it all out, and I was going to

vote "present" if it had come up for a recorded vote. Because, if you were watching the first panel, my wife is a juvenile judge, and they cut that money as well. And so, I wanted to check on that.

Ms. Abbott, you all had 108 children. Can you tell me how long it took you all to get them back—what the shortest and longest was—back with their parents?

Ms. ABBOTT. I don't have that information.

Mr. GRIFFITH. Roughly, do you have any ideas? I won't hold you to it exactly.

Ms. ABBOTT. OK. Roughly, 54 days.

Mr. GRIFFITH. About 54 days?

Ms. ABBOTT. It's our average.

Mr. GRIFFITH. OK.

Ms. ABBOTT. But I can't tell you the, yes, the earliest and the rest. Because we're used to reunifying children all the time. Even before we were aware that there was going to be a new policy, we were already in the process of reunifying children. Even when they've been separated, we have been talking to parents in detention centers and identifying other relatives if the parent didn't want the child to remain in foster care.

I think one of the things we have to emphasize is that we need to talk with parents. Parents have a right to make decisions about their children and how to keep their children safe and where their children belong. Many families may choose to have their children stay with a relative in the United States than be reunified with them in country because it's so unsafe for the children to reunify—a tough decision for a parent to make, but one we need to respect.

Mr. GRIFFITH. And I don't know the answer. I am just looking for answers. Mr. Gelernt, I asked earlier, there apparently are five kids that the ACLU has said—hold up a minute—as a part of the court action, that had not yet been reunified with their parents, of the six that are still out of that first grouping remaining. And I was wondering if you could enlighten us as to the what the complications were, what the problems were. I understand some of them might be out of country, the parent my be out of country. And just wondering if you could enlighten us as to what that process is and why we are holding up on five of those.

Mr. GELERNT. Right. Yes, Congressman. I think it may actually be down to three now, but I'm going to double-check that.

Mr. GRIFFITH. OK.

Mr. GELERNT. And I could let the committee know.

It's certainly not us holding it up. It's respecting the parents' wishes. I think they were particularly complicated cases where the child may have been in danger coming back. The parent was having trouble understanding what the child's rights would be in the U.S. I think one parent was difficult to find. So, for those complicated reasons, we're giving the parent a little more time to make the choice.

And it's an agonizing choice, just to pick up on my copanelist. When I was in Guatemala talking to these families, you would have a father saying, "Well, look, my life is basically over." And this was someone in his forties. "The gangs may kill me, but I can't bring my child back here. It's just too dangerous." And to see the agony on the face of these parents. And so, I think no one should

be under the mistaken belief that these parents don't want their children. It's they are making what is a classic choice for many vulnerable immigrants, that they are just going to have to leave their children in the U.S.

And so, for these three parents, there are certain complications where, for privacy reasons, I can't get into.

Mr. GRIFFITH. Yes, sir.

Mr. GELERNT. And so, we are just giving them a little more time to respect their wishes.

Mr. GRIFFITH. And I understand that, but I would then turn to Dr. Shonkoff's testimony. Doctor, the child may not understand that. The child is not likely to understand that if they're a particularly young age, are they?

Dr. SHONKOFF. Well, it depends on what you mean by "understand". You're absolutely right.

Mr. GRIFFITH. OK. Yes.

Dr. SHONKOFF. You're absolutely—children don't understand that, but——

Mr. GRIFFITH. And I think you testified earlier that they don't know what is going on, and even if the parent has made this decision, for all reasons that we might agree with, it still creates the problems that you were talking about with toxic stress for the child, particularly if they are—I mean, if they are 17, maybe not—but if they are 4 or 5, 6, 7, even 9 or 10, they don't understand all that, do they?

Dr. SHONKOFF. Well, what's wonderful about your question, Congressman, is that for young children the forcible separation from a parent in our child welfare system, even in circumstances where the child is in danger, is seen as threatening and upsetting for the child. No young child sees the separation as a relief, even in tough circumstances. And so, that's the problem. We have to think through the mind of what does this look like for the child, not just the adult.

Mr. GRIFFITH. I appreciate it. I appreciate all of your testimony today, and we are going to try to make sure that this doesn't happen again. And even where there are cases where there are justified reasons—I think you said, Ms. Abbott, you had about 12 or so that had been referred because there was a belief—we need to try to make it minimal. And if there is a legitimate reason for the separation because the person is a really bad actor who is the parent who came with them, we need to make sure that we're taking action to get them into a secure situation where they have got somebody who creates that safe space that you talked about, Dr. Shonkoff.

And I yield back.

Ms. DEGETTE. Thank you.

The gentlelady from Illinois.

Ms. SCHAKOWSKY. Thank you so much.

I know we are mainly talking about the effects on children of this separation, but I wanted to ask about the issue of essentially our country making decisions, and it seems rather quickly that these are made, on who is a fit parent. And so, if someone could just describe to me—my understanding of our domestic child welfare system, ending parental rights is really a big deal and is a very pre-

scribed process for that to happen. So, I don't know if anybody wants to—I don't want to go too long on it, but it has to be done over time, right?

Dr. MUÑIZ DE LA PEÑA. Normally, if there's not an imminent threat, like the kid has a physical injury visible, the child remains in the home, and they activate an investigative process where social workers go to the home and interview the children separately from the parents. And they visit the family every week or every other week to continue an ongoing supervision process to see if the indicators of possible abuse or neglect are real. And that, it takes a lot for, in my experience in New York State, it takes a lot to take the children from the home.

Ms. SCHAKOWSKY. So, I am assuming that the premise behind that is that it is best to try and keep a child with the parent. There is a bias toward, because it is so important to keep a child with a parent. So my understanding here is that criminal behavior can be a reason for someone being taken away from a parent. Now does that always, regardless of what it is, make that parent—I mean, how do they decide what is a reason to take the parent away? I don't know if there is, you know——

Dr. SHONKOFF. I think, especially when you talk about young children, young children don't exist outside of a relationship with a caring adult. They can't survive. So that, in any of these circumstances where we consider the possibility of an alternative arrangement, it's a developmental and psychological emergency to kind of preserve for the child a protective relationship. It starts in the family, and if in some circumstances it's deemed unsafe, it's still a relationship emergency to determine what happens next, as opposed to feeling like removing the child is somehow an answer. Young children cannot exist without a caring relationship.

Ms. SCHAKOWSKY. So, yes, go ahead.

Ms. PODKUL. If I may, I think your question is very astute, because what you're saying is, it's not only do we have no standards and no child welfare professionals making the decision in that moment, there's no followup so a parent or child could ever challenge that, if that was the wrong decision. So, there's two points where we're failing these families: at the point of separation and also we're not giving them an opportunity to have that reviewed and challenged, in case it was an erroneous decision.

Ms. SCHAKOWSKY. Go ahead. But, before that, let me make sure that I put on the record, I am not saying that we want to keep children in unsafe situations. And if someone is a child abuser or posing as a parent and really it's a trafficker of some sort, obviously, we have to deal with that.

But go ahead.

Mr. GELERNT. Right. I think what you just said there is the key. A criminal conviction under State child welfare laws does not mean you would separate from parent. It has to be the type of criminal history that suggests the parent is a real danger to the child,

And what's happening now is, the Government is separating for very minor crimes, nonviolent crime, crimes that happened decades ago, that would never under our domestic laws allow for the separation of parent and child. It has to be where the parent is either

unfit or presents a danger to the child. That has to be the standard. That's the standard the court laid out.

And I think what some of my copanelists were suggesting is one role for this committee is to flesh that standard out, so there is really clear guidance for whoever is doing the separations. And hopefully, that's someone who knows about child welfare.

Ms. SCHAKOWSKY. I want to tell a really quick story. When we were down at the border, we saw a woman who was inconsolable in a cage. And she was crying because she came in with her 7-year-old granddaughter. That granddaughter was taken away, redefined as an unaccompanied minor, 7 years old, because we didn't recognize a grandparent. There was no paper saying she was the legal guardian. But, clearly, they could have seen the relationship, I am sure.

So is there something we should do about definition of what a family is? Whoever.

Dr. SHONKOFF. So many of these are moral issues. From a scientific point of view, a child's brain is not asking about the genetic relationship between——

Ms. SCHAKOWSKY. She had raised that child, by the way.

Dr. SHONKOFF. Yes. What a child's brain needs is a responsive, consistently responsive person, and it doesn't have to be someone you're related to, but it has to be the person who is the important adult caring for you. Grandparents——

Ms. DEGETTE. The gentlelady's time has expired.

Ms. SCHAKOWSKY. Thank you. Thank you. I yield back.

Ms. DEGETTE. The gentlelady from Indiana.

Mrs. BROOKS. Thank you, Madam Chair.

Each of you have so much background and expertise in various aspects of this really horrible situation we've been dealing with now for many, many years. And I would love to actually hear from each of you in my 5 minutes because we all want to fix—we all want a better system. We all want a system that does not include separating families who are legitimate family members.

And so, we don't have a terrific system. We don't have standards. We don't have procedures. I am hearing from all of you that we just have been lacking this for years and years.

So I would love for each of you, very briefly, to just share, if you could fix one thing—and you all have very different expertise—if you could do one thing that helps not only the separation issue but also my continued concern for the unaccompanied children as they are going into all of our communities.

And Bethany I understand is opening or has just opened a facility in Indianapolis. So I welcome you. I look forward to visiting. I haven't had the opportunity to do that yet.

What should we be doing? And very quickly, I mean, and I know all have said—and I respect—I am a lawyer. I have been in these courts, and I have talked to my juvenile judge. And she is seeing some of these children coming into the courts. But yet we have no idea where they are around the country or even maybe how to help them.

So very quickly, Mr. Gelernt?

Mr. GELERNT. I think other people will probably talk about the standards and processes going forward. I think one thing this com-

mittee should think about is, for the kids who were separated and were subjected to this kind of trauma, as the doctors have pointed out, that really may be permanent, what this committee can do to get them potentially some medical health. Because I think there's no way that these children and these young parents are going to be able to cope without professional help.

Mrs. BROOKS. Thank you.

Ms. Podkul?

Ms. PODKUL. I think we need to make sure that we are not being wasteful with our resources in trying to deter away a refugee situation. I think what we need to do is dedicate our attention and resources to getting the bottom of every person's story and finding out who needs protection here in the United States. And the best way to do that is make sure we have an efficient court process and that people are represented throughout that process.

Mrs. BROOKS. And have more trained professionals figuring out who is in a dangerous versus in a family situation?

Ms. PODKUL. Exactly. Exactly.

Mrs. BROOKS. Do we use DNA testing, swabs? Do we use that?

Ms. PODKUL. Yes. Well, I think what we can——

Mrs. BROOKS. To figure out if they are actual family members?

Ms. PODKUL. Well, a lot of family members are coming with appropriate documentation to show family relationships. So, I think what we need to do is have a specially trained cohort of professionals who know what are all the tools that can be used and then let the families decide what they want to do in terms of moving forward.

Mrs. BROOKS. Thank you.

Dr. Linton?

Dr. LINTON. And, Representative Brooks, you mentioned the needs in the community. And I would, as a pediatrician who is on the ground in my community, I would say that every child who is coming to our country in search of safe haven, including those who have been separated, really does need access to comprehensive medical care and mental health services where, in partnership with our legal colleagues, we can ensure that their stories are told and they have access to legal counsel, to education, and to health services that allow them to stay healthy as they proceed through their immigration cases.

Mrs. BROOKS. And so, expansion of legal/medical partnerships? But we have got to know where the children are.

Dr. LINTON. Yes.

Mrs. BROOKS. We have to know where they are.

Yes, Doctor?

Dr. MUÑIZ DE LA PEÑA. I want to say that I think we do have the guidelines and best practices. In the child welfare agencies, we have the guidelines of how to separate children and how do we reunify when there was risk. They are being practiced in every State. So, we could adopt those guidelines in the immigration context and bring those professionals to really counsel people there on the ground.

And then, in the community, I also work with the children that are released in the community. I agree with you that they need ongoing mental health and medical services, integrated care.

And I would add that one of the biggest barriers is that these children are released to the community, and most States don't have health insurance. So, they face great barriers to access basic medical and mental health services. So, that's a big issue.

Mrs. BROOKS. Thank you. Thank you.

Ms. Abbott?

Ms. ABBOTT. I would suggest that an expansion of the postreunification services—those are services that follow a child after they're reunified with a family. It would help make referrals to community professionals, look for where healthcare could be provided, and identify whatever the needs are that that family and child has. Right now, ORR does not have enough resources to assure every child and family gets that service.

Mrs. BROOKS. Thank you.

In my 10 seconds, Dr. Shonkoff?

Dr. SHONKOFF. So, I would say the urgency is the passage of time, in a sense that the crisis, as much as it is a crisis of plan of separation, the urgent emergency is the amount of time it takes to reunite the child with family, because the increase in damage is real.

Mrs. BROOKS. Thank you all. Thank you all for your work.

I yield back.

Ms. DEGETTE. Thank you.

The gentlelady from Florida, Ms. Castor.

Ms. CASTOR. Thank you, Madam Chair.

And thank you to all the witnesses for what you have done to help children, especially in the midst of this inhumane family separation policy.

Mr. Gelernt, the ACLU is engaged in ongoing litigation to reunify the children who were separated from their parents as a result of the family separation policy. So, I'm going to ask this of you, but if any of the other witnesses have answers, I would like to hear those too.

Earlier today on the first panel, Director Gambler from the Government Accountability Office, who oversees the Homeland Security and Justice Departments, responded to a line of questions that the action taken by a parent or guardian in properly entering the U.S. with a minor is not a factor in deciding whether a child should be separated from that parent or guardian. Is my characterization of Director Gambler's response consistent with your understanding of the test for separation that immigration officials or judges have been applying before and under the zero-tolerance policy?

Mr. GELERNT. What we saw was that people were separated for entering illegally until the court said, "No more of that. That can't happen." But we believe it may still be happening.

But one of the other things I think that's tricky is that, although they may say it's not the basis for separation, they put the parent in jail for 48 hours and then they say, well, the child can't come to jail, so we're going to separate. So it's sort of, they know what's going to happen, and then they say, well, you don't want the child going to jail. And we say, well, what about giving the child back after the 48 hours when the parent is released?

And that's really what the court got its hands around, is parents were not getting their children back for 8, 9 months. And so I think

you're right to characterize it. It's very much a factor of, we're going to prosecute this mother, put her in jail for 48 hours because it's just a misdemeanor, and then we're not going to give the child back. And the judge said it cannot be a factor, but it very much was a factor, and we think it may still be a factor.

Ms. CASTOR. Thank you.

How many parents or guardians separated from their children in percentage terms have been previously charged, detained, or arrested for improper entry into the United States?

Mr. GELERNT. That's a very good question, and we've been trying to figure that out and have not been able to get statistics on it. And I don't know that the Government keeps track of it. So I think we are trying to interview people and get some sense of it, but it's very difficult. But by no means was everyone who was separated someone who went and crossed between ports of entry. Our main plaintiff, Ms. L, went to a port of entry, applied legally, and was still separated from her child. And there were many people like that. So the narrative that "Oh, we won't take your child if you go to a port of entry and apply legally" is simply not true.

Ms. CASTOR. Could a prior case that has been brought against a parent or guardian for attempting to cross the border or enter the U.S. improperly be used as a factor in determining whether to separate that parent or guardian from their child?

Mr. GELERNT. We don't believe so, and we don't believe that the court is allowing that. So, if we see that—the problem is we're not getting full information, and I don't think the providers on the ground are getting full information. But we will go back to court anytime we see that because we think the court made it clear that that's not a basis for separation, because then you would be separating lots of asylum seekers where they're not presenting a danger to their child.

Ms. CASTOR. As we heard on the previous panel as well, several ongoing and unresolved issues between HHS and DHS have impaired efforts to reunify children with their parents and may have resulted in additional separations even after the family separation policy supposedly ended. Incomplete data, failure to share information collected between Departments.

Ms. Podkul, I would like to start with you. Why is it important to ensure that the data about children's separation status be tracked and shared with HHS?

Ms. PODKUL. There's so many reasons.

Ms. CASTOR. So many?

Ms. PODKUL. But I would say, just looking at the child's legal case, oftentimes it's going to be the parent who has the information about why the family fled the country in the first place. The adult is often the one that's going to hold the documents that would be used to prove a case.

So, if our attorneys are representing a child, they're going to have incomplete information and the child won't be able to make their case about why they need protection. So it's incredibly important not only for reunification purposes but for our Government to find out what is the story with this child and does this child need protection here in the United States.

Ms. CASTOR. Were you surprised by the January 2019 OIG report about ORR, that they are still having problems? The ORR systems are still not where they need to be to properly track potentially separated children?

Ms. PODKUL. Unfortunately, I was not. I can tell you, just a few weeks ago, a colleague reported that she was interviewing a child, and the only way she found out that that child had been separated from a parent was through her own interview with the child. She was never notified through the official files, a file for the child. She was never notified by the ORR case worker. It was only because she interviewed the child and specifically asked him that she found out that he had been separated.

Ms. CASTOR. There is so much more to do.

Thank you very much. I yield back.

Ms. DEGETTE. The gentleman from South Carolina is recognized.

Mr. DUNCAN. Thank you, Madam Chairman.

Let me remind the committee that it's Shine a Light on Slavery Day today. Forty million people around the globe are enslaved. Seventy percent are women. One in four are children.

I want to thank the panelists. It is obvious that your heart is in the right place, that you care about children, and you want to do what is best for them.

I actually supported money for the Northern Triangle countries when we had the unaccompanied children issue back during the Obama administration. I had a conversation with President Obama at the Summit of the Americas in Panama, where I told him I probably supported more money than he was asking for to deal with the problem down there, to try to stop the flow of unaccompanied children. It is hard to believe that parents would send their children north unaccompanied that way.

To shift gears just a little bit, on Monday, McAllen agents working near Hidalgo, Texas, arrested eight illegal aliens shortly after they entered the U.S. When they did the background check, a Mexican man's records checked that he had been arrested in Cobb County, Georgia, for child molestation. Later that night, agents from the Rio Grande City, working near Roma, Texas, arrested a Honduran mule. Records checks indicated that he had been arrested and convicted in North Carolina for indecent liberties with a child.

Tuesday morning, Arlington agents working near Progressa, Texas, arrested 16 illegal aliens after making their illegal entry into the United States. Record checks for a Honduran man revealed he is a member of MS–13, a gang with a criminal history that included aggravated assault with a deadly weapon, kidnapping, false imprisonment, State of Florida. The Border Patrol is processing these subjects.

And that is a real issue. People are coming into this country, and they are all not children. They are all not with their parents. We have a situation at our border.

But I am hearing today things like toxic distress and traumatic life experiences. So let's talk about some of those. How about the traumatic life experience of having your loved one murdered by an illegal alien, like Kate Steinle or Brian Terry, or the David family,

or countless other Angel Moms and Angel Dads who will never hold their children in their arms again because of violent illegal aliens?

How about the traumatic life experience of having your neighborhood taken over by MS–13? Having your school terrorized by illegal alien gangs? American children raped, beaten, and murdered by MS–13 thugs? The President mentioned one in New York on the subway, the first subway murder in I don't know how many years there, by MS–13 gang members. That is toxic distress for American families that they face every day because of illegal immigration.

So we are not here today to talk about asylum reform or changing the Flores Settlement or building the wall or mandatory E–Verify. We are not talking today about illegal immigration magnets that created the incentives for illegal families to do the stupid things that endanger their kids by traveling thousands of miles across a desert to come in the country that they may or may not get asylum or citizenship from.

We are not talking about the drug trafficking of the meth, and the fentanyl, and the cocaine, and the marijuana that is pouring across our southern border. We are not talking about the sex trafficking today and human trafficking in general that happens along our southern border. We are not talking today about sanctuary city policies. We are not talking about the murder of American citizens on American soil by illegal immigrant thugs. We are not here to discuss how to end the crisis at our border by strengthening American security. No, we are here playing politics to muddy this President and the laws that are on the books that require what is going on.

Now I mentioned earlier today, when children are apprehended at the border, either alone or with someone, we need to make sure that that person they are with is a relative or a parent. So get that child away from maybe a potentially dangerous situation. I just mentioned some—child trafficking, human trafficking, sex trafficking—that affects children. Let's separate that child and make sure that that person is who they say they are, that there is a DNA test, make sure that that child who has just traveled thousands of miles is healthy.

They don't all get the inoculations that we get and give to our children here in this country. So there is a potential that they have the diseases that we have beat back in this country that they could be bringing in and exposing American children when they are relocated in our communities. That is important, to make sure that that child is healthy and he gets the vaccination that is needed.

And then we will figure out if that person that he came with is a parent or, if he is alone, maybe there is somebody in the country that will take care of that child. That takes a little bit of time. You can't do it overnight, and many times you can't do it in 72 hours.

And so, when I talk to the Office of Refugee Resettlement and I talk to the folks at HHS, they are doing the best they can to make sure that those kids have a comfortable, safe environment to live in while we are figuring all this out, places to kick a soccer ball and interact with other kids while we are figuring this out, because heaven forbid we release a child into the country that ends up in Atlanta, Georgia, during the Super Bowl, providing a service be-

cause they are a sex slave in this country. It is hard for me to fathom that we even have that going on in this country.

But it is Shine a Light on Slavery Day, and it is going on around the world, and we can put an end to it.

And with that, I yield back.

Ms. DEGETTE. The gentlelady from New York is recognized for 5 minutes.

Ms. CLARKE. I thank you, Madam Chair, and I thank the ranking member.

I thank our experts for being here and sharing with us their observations and the work that they are doing.

My colleague, I know, was not trying to make us believe that he is in favor of innocent individuals having their children orphaned by a broken process that was established under this administration.

And so I just want to focus in once again on why we are here. There are innocent families who have been separated at the border, and an incompetent administration that did not take into account all of the steps that need to be in place to accept individuals into our Nation as refugees along with their children.

I wanted to ask a couple of questions. Dr. Muñiz de la Peña, I understand that your clinic has also provided services to children who have been affected by this policy. Could you describe some of your firsthand experiences in working with these children and their families?

Dr. MUÑIZ DE LA PEÑA. One of the first experiences that was different from the general unaccompanied immigrant children population that we see is that it was younger ages. And so, the trauma, how it showed up, the stress was very different, from a 7-year-old who was sobbing from the minute she was in the room and I started asking questions and couldn't talk the entire session and hung onto me because that's all she could do, from the child I described earlier with disassociation symptoms, so he couldn't even be present to answer the questions about that, but he was able to answer any questions about what sports he played or what toys he liked. A teenager who was depressed and feeling hopeless and helpless that nothing else was going to change in her life, because that's what trauma does to you. When terrifying experiences happen to you that you don't have control over, you might generalize that to any experience in your life and any figure of power in your life.

Ms. CLARKE. And how would you say that these experiences have impacted the mental health of the children that came through your clinic, both now and in the long term?

Dr. MUÑIZ DE LA PEÑA. In the short term, you see a lot of symptoms of acute stress, so a lot of anxiety. I have a way of describing this. Children and humans in general, we tend to internalize this stress or externalize it. When we internalize it, we become depressed, we become anxious. There's low self-esteem, fear. When you externalize it, you are the kind of person that acts out, that becomes loud, that has impulsivity. So you see that in the children in the short term.

In the long term, the way that you relate to people is affected, the way that you feel about yourself, the way you feel about the

world, the beliefs you have and perceptions and expectations you have about others, the way you are able to love your family, your own children in the future, your partner. So it affects the basic elements of your life experience.

Ms. CLARKE. Very well.

Dr. Linton, you mentioned in your testimony that you have served patients who were separated from a parent as a result of this policy. And your description of the boy and his mother who were separated for over a week is heartbreaking. One shudders to think how many children had to go through these experiences.

But, Dr. Linton, from a clinical perspective, how were these children affected by the experience of being separated?

Dr. LINTON. Well, I think we can use the framework again of toxic stress to think about that, both the impact on the short term and then the impact on the long-term health. I think what's broader here and what's different about this particular set of children is that this is really Government-sanctioned child endangerment. So, rather than the experiences that a child had in country of origin that left the family with no choice but to flee, upon arriving on our border, rather than providing a response that was characterized by dignity, compassion, and respect, we've retraumatized the child and reinitiated the process of toxic stress, compounding that stress, as Dr. Ruiz mentioned, and furthering that stress, such that we have a much more serious risk of both short-term impact and long-term impact.

I saw with that child, who had only been separated for a mere seven days, a serious physiologic reaction right in front of my eyes. And I can only imagine what that looks like, and I have seen what it looks like when it's much more prolonged.

Ms. CLARKE. Well, let me thank all of you. And I want to, in particular, thank you at the ACLU for taking on a role and responsibility that really wasn't necessarily part of your mission but has become a part of your mission. Our Nation is reeling from the realization of what the United States Government under this particular administration has done. And I really believe in the end we are going to have to start restitution. So I hope that the ACLU will look into ways and work with this Congress to look at what restitution could look like for these families, because there is no way that this crime against humanity should go just the way that it has.

Mr. GELERNT. Thank you, Congresswoman, and we absolutely will.

Ms. CLARKE. I yield back.

Ms. DEGETTE. The gentleman from Texas, Mr. Burgess, is recognized.

Mr. BURGESS. Thank you, Madam Chair.

And thanks to our witnesses, our panel, for staying with us. This has been a long day, an important day, an informative day.

Let me just be sure that I am clear on a couple of items. First, Mr. Gelernt, as we have heard throughout the course of this long day, the problem on the border during the Trump administration, but may have actually predated the Trump administration. So I remember going down in 2014, 2013. I think in the height of the surge of unaccompanied immigrant children in 2014 I remember a Customs and Border Patrol individual giving me a figure of we pick

up 1,300 a day, we process 1,300 a day, we have got 90 beds. So that was a problem.

And ORR, subsequently, has said—one thing Mr. Duncan referenced, some of the appropriations that were done during the Obama administration. So, got more resources down there, but still it was a big problem to have to manage.

At that point, children were being held at a reclaimed barracks in San Antonio at the Air Force Base there. Was ACLU involved in any of those cases?

Mr. GELERNT. Well, Congressman, I would like to distinguish between two types of unaccompanied children. The first I think is what you are talking about, which are kids who were genuinely unaccompanied, coming here without a parent. And they need some place to go. I think that presents one issue.

But what we're talking about here that's different than prior administrations is children being rendered unaccompanied, taken from their parents.

Mr. BURGESS. And let's stay with that concept for a minute. Because, in 2014, the child comes and is unaccompanied. Yes, it's Lackland Air Force Base. If they have a parent with them, the procedure, if I remember correctly, particularly down in south Texas, was they got dropped off at the parking lot at Sacred Heart Church in McAllen. And a volunteer at the church would provide a bus ticket, and off they would go. They had a notice to appear. And I referenced the term "permiso." That was how it was referred to locally back in home country.

So that was part of the problem, as well, because folks were just going into communities without really a lot of control, and no one knew who they were, where they were showing up.

The pediatricians on the panel can tell us that there are some public health implications to that. 2014 saw one of the largest outbreaks of Enterovirus D68 that had ever been seen in this country. I am not saying it was a result of the surge of unaccompanied alien children and their family units, but certainly the timeline, it was August of 2014 when that occurred.

Dr. Linton, you talked about you had a child that had recorded a seven-day separation, is that correct? In general, were the separations longer or shorter than that? You gave that one as an example.

Dr. LINTON. Yes. So the majority of the separations were much longer. And as the chair of the American Academy of Pediatrics Immigrant Health Special Interest Group, I have the privilege of connecting with pediatricians across the country who have cared for children who've been separated——

Mr. BURGESS. Let's stick with ones you, yourself, directly administered to.

Dr. LINTON. So I've seen children separated from anywhere from several days to several months.

Mr. BURGESS. And my understanding from information you provided to the staff, that there was a three-month separation?

Dr. LINTON. Yes, I did see a three-month separation.

Mr. BURGESS. Do you remember when that was?

Dr. LINTON. Yes. It was in a previous administration. And what I would add to that would be that what I learned from that was

seeing the horrible short- and long-term effects of health that made me attune to what I may see in a future separation, which was then reported by pediatricians across the country.

Mr. BURGESS. So that occurred before the unenlightened Trump administration came to power. So that was 2015 or 2016?

Dr. LINTON. That separation was an example of one of the specific separations that may have occurred prior to systematic Government-sanctioned separation for merely crossing a border.

Mr. BURGESS. But what were the circumstances of that separation?

Dr. LINTON. I'm not privy to discuss the separation, but the mother was not reported to——

Mr. BURGESS. Well, I think it would be important, Madam Chairwoman, if there is some way you can provide in a public forum that——

Dr. LINTON. I think I can share that this woman was victimized by a gang and had fled as a result of that and was subsequently accused of violence, which she had not in fact willingly been part of. She was forced by——

Mr. BURGESS. See, I do agree with Mr. Duncan, and he said that he had requested from the Obama administration to perhaps consider additional funding for countries in Central America, and I don't disagree with that. I did travel down there this summer. Yes, there is a problem with violence, but the violence is begotten by corruption of their governments. I guess the big news this morning is there's a new President in El Salvador.

Ms. DEGETTE. The gentleman's time has expired.

Mr. BURGESS. And he sounds to be a reformer. I encourage this administration to make the inroads and outreach to that new administration in El Salvador. We are not going to solve this problem——

Ms. DEGETTE. The gentleman's time has expired.

Mr. BURGESS [continuing]. On the southern border. It is going to have to be solved farther upstream.

Ms. DEGETTE. The Chair recognizes——

Mr. BURGESS. Thank you. I yield back.

Ms. DEGETTE. The Chair recognizes the chairman of the full committee, Mr. Pallone.

Mr. PALLONE. Thank you, Madam Chair.

Some in the administration claim the family separation policy is over, the crisis is past, and we should move on. But, even if the administration has cleaned up their act, which remains unclear based on what we heard today, the children who were ripped from their families still suffer enormous physical and psychological consequences long after being reunited with their loved ones.

So I just want to dive a bit deeper into the research that has been conducted on these impacts. I think it is safe to say that forcibly separating a child from their parent would disrupt that relationship and would substantially impact the stability and predictability of that child's environment, and this could cause immense damage to the child's development that would only compound the longer the disruption occurred.

So let me just ask some questions in this regard. Dr. Shonkoff, what made the policy of forced separation uniquely damaging to the children affected by it?

Dr. SHONKOFF. That's a really good question. Uniquely damaging is that it was Government-ordered separation arbitrarily. Beyond that, it's not unique at all. I mean, this is not a new phenomenon for us to understand what the consequences are for children to be separated from their parents. And we know a lot about how to minimize the trauma and how to meet the needs. But I think the only thing in my mind that was unique was that I have no memory of the Government ever ordering kind of arbitrary separation of children from parents.

Mr. PALLONE. And, Dr. Linton, is there anything you would add about what the research shows regarding the unique harms caused by the forced separation policy?

Dr. LINTON. I think I would add that, again, we're retraumatizing children who have already fled violence and are seeking safety. And then, doing that in a systematic way is much different than doing that on a case-by-case basis under the provision of child welfare standards where you're concerned for the safety of the child at the hand of a parent, and you have the supervision of a competent family court making that determination.

Mr. PALLONE. Let me go back to Dr. Shonkoff. Is there any way to design a policy of forced separation that would not be harmful to children?

Dr. SHONKOFF. Any abrupt separation is traumatic for a child. The question of whether it's harmful depends upon what is prompting the need for separation. So I think the message here is really clear from any perspective. It is that separating children from their parents should have a very high threshold for being done. And when it's done, for whatever reason, it immediately creates an urgent situation of how do we protect the child from the effects of the separation.

Mr. PALLONE. I am going to go back to Dr. Linton again. In your professional opinion, is there any research that shows that a policy of forced separation is good for children?

Dr. LINTON. There's no evidence at anytime a separation from a parent is good for children.

Mr. PALLONE. Well, let's say if the Government had consulted you on a family separation policy. What would you have told them?

Dr. LINTON. I would have told them that separation of a parent and a child should never occur unless there are concerns for the safety of that child at the hand of a parent and a competent family court makes that determination with the best interest of the child at hand.

Mr. PALLONE. And, Dr. Muñiz, can I ask you to comment on that too, the same thing?

Dr. MUÑIZ DE LA PEÑA. Yes. I think that we have systems in place already in each State to investigate cases where there is indication of child abuse or neglect. And so, that can inform the process in which we separate those children. But it takes a lot legally for a court to take away a child from a parent. It doesn't happen immediately without signs of immediate harm, physical, especially physical. So I think we have already systems that we could use.

Mr. PALLONE. I appreciate all this. I mean, I know I sound like a broken record, Madam Chair. And I know that HHS is not in charge of the separation. They are not the agency that orders the separation and when people are separated.

But I just think that, when I weigh these things, and even today, based on the advocates in my district that I talk to, they are very concerned about the fact that, even today, that sometimes—I don't know how often—children are separated from their parents at the border because there is this sort of innate concern that they shouldn't be taking the kids off to the border and there is something wrong with the parents that do that.

I experienced that too, as I said earlier, when I went to visit the fathers that I visited in New Jersey on Father's Day, that there was this sort of notion by the people that were watching them that, just because they brought the kids over the border, that they are bad parents. And it seems to me that, even if you believe that, which I don't, the harm that is done by separating them is so much worse than if they were kept with the parent.

And so I think what Dr. Linton said is true, that unless you have—what did you say? You said that you actually would want to see it litigated in court before it was done, that this parent was abusive or this parent, you know, it was something harmful to the child. And I agree with you.

Thank you, Madam Chair.

Ms. DEGETTE. Thank you very much, Mr. Chairman.

The Chair now recognizes the gentleman from Florida, Mr. Soto, 5 minutes.

Mr. SOTO. Thank you, Madam Chair.

And I spoke a little bit before about my experience at the Homestead facility in south Florida in our home State. And that was after being blocked from getting to go the first time, where we saw 1,179 teenagers, primarily from Honduras, Nicaragua, El Salvador, there. Many of them were there because of the family separation policy.

And this idea that it is an act of negligence by a parent or somehow this is de facto proof that a parent was doing something bad for their kid is just totally false. When you look at, unfortunately, the war-torn countries down there and the drug cartels, this is an act of love. I mean, I don't think anybody can deny that this is a loving parent who doesn't want their kids condemned to death or being conscripted in drug cartels.

We saw a surge of folks in the Homestead facility, among many others, when the family separation policy happened. We also saw a bottlenecking of them afterwards due to certain policies. One of those that both created this bottleneck and weaponized HHS was the announcement of a formalized memorandum of agreement to share information, including immigration status, of potential child sponsors. I have seen many folks who have raised serious concerns about this, the idea of using information obtained from detained immigrant children to try to deport their parents. It risks weaponizing ORR into becoming an immigration enforcement arm of DHS. A hundred and seventy such people were deported by ICE as a result of that information sharing.

First, Ms. Podkul, KIND stated last June that the proposed information collection under the MOA will, quote, "alter longstanding practice and frustrate the ability of the ORR to place children in the least restrictive setting in their best interest."

Ms. Podkul, how does the MOA interfere with ORR's ability to act in the child's best interest?

Ms. PODKUL. Sure. When Congress gave the responsibility of unaccompanied children to ORR, what they did is they separated who was going to be doing the immigration enforcement—that was going to go to DHS—and then the care and custody of children would be a completely different arm of Government. And the goal was that agency could prioritize child welfare. And then we had a whole other department and agencies who were responsible for immigration enforcement.

Up until the MOA, ORR was never using information they were gathering. That was never intended to go to ICE for immigration enforcement purposes. What ORR was doing is they were finding the best possible person who was willing to care for the child, at no cost to the Government, while that child goes through their court process.

Mr. SOTO. Thank you.

Mr. Gelernt, in Secretary Nielsen's and Secretary Azar's last November letter, the ACLU joined 111 national organizations urging the reversal. Could you describe any firsthand examples of the chilling effect on potential sponsors and how that impacts children and families?

Mr. GELERNT. Yes. I think what we're seeing is families being scared to come and sponsor children. We feel like they're being deterred from coming forward.

Also, some of the procedures that have been put in place, the delays in fingerprinting, fingerprinting everyone in the household, some of these changes we think are creating real delays in getting children out. And so that detention centers are filling up unnecessarily.

Mr. SOTO. Thank you.

And, Dr. Muñiz de la Peña, what would the impacts be on a child faced with the possibility that they might put family members at risk for arrest or deportation by naming them?

Dr. MUÑIZ DE LA PEÑA. Well, there is already research about the impact that the fear of the deportation of your caretaker does for children, and it is similar to what has been discussed in terms of toxic stress. Because just the fear of losing your caretaker can create that fear of harm to your well-being. So, I think that the harm is obvious.

Mr. SOTO. And, Dr. Linton, are there potential compounding effects of both the possible extended separation due to this MOA and the related guilt/responsibility placed on these children?

Dr. LINTON. Yes. I think we've heard today from our panel that prolonged separation increases the risk of both the short- and long-term effects of that stress response on the developing brain and the developing body of children who have been systematically separated.

Mr. SOTO. Thank you.

And I just want to end by saying, you know, this is a legal act, coming to this Nation seeking asylum. This isn't even an unlawful entry. And there's a humane way of doing this. Unless there is cause, then we should be using ankle bracelets and letting kids go to the best caretaker they have and let the immigration process sort itself out, rather than this separation to try to deter in the most inhuman way that the greatest nation in the world could possibly do. And it doesn't even serve as an effective deterrent in the process.

And with that, I yield back.

Ms. DEGETTE. I thank the gentleman for yielding.

With unanimous consent, we will enter the letter offered by Dr. Muñiz de la Peña from the American Psychological Association into the record.

[The information appears at the conclusion of the hearing.]

Ms. DEGETTE. And I really want to thank all the witnesses for coming today. This was the first hearing this committee has had on the unaccompanied minors and the family separation, and it has been a very important hearing. I appreciate you sticking with us for the whole day.

And I want to let you and also the previous panel know that the investigation continues. We are still waiting for documents from HHS about how far up this policy went. And we are also still looking at what the policies are. And so we can expect more action.

I remind Members that, pursuant to committee rules, they have 10 business days to submit additional questions for the record to be answered by witnesses who have appeared before the subcommittee. And I ask that the witnesses agree to respond promptly to such questions, should you receive any.

With that, the subcommittee is adjourned.

[Whereupon, at 4:32 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

June 29, 2018

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Azar:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is examining the operations of the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services (HHS). Specifically, the Committee is evaluating ORR's operations related to the management and treatment of unaccompanied alien children (UAC), including the reunification of children with their parents.

We support strong enforcement of our nation's borders. We also support keeping families together, and believe that children should not be separated from their parents. We also seek to ensure that children who are within the custody of ORR—whether because they crossed the border as an unaccompanied minor or because they crossed the border with a family member and were subsequently separated—are properly cared for while within the custody of ORR.

The Homeland Security Act of 2002 transferred responsibilities for the care and placement of UAC from the Commissioner of the Immigration and Naturalization Service to the Director of ORR.[1] UAC are apprehended by the Department of Homeland Security (DHS) immigration officials, but are transferred to the care and custody of ORR and ORR places UAC in the least restrictive setting that is in the best interests of the child.[2] A number of DHS agencies are involved in apprehending, processing, and repatriating UAC, while HHS is responsible for

[1] Office of Refugee Resettlement, Administration of Children & Families, U.S. Department of Health & Human Services, (last accessed on June 19, 2018), available at https://www.acf.hhs.gov/orr/programs/ucs.
[2] Office of Refugee Resettlement, Administration of Children & Families, U.S. Department of Health & Human Services, (last accessed on June 19, 2018), available at https://www.acf.hhs.gov/orr/programs/ucs.

the care and custody of UAC. The Executive Office of Immigration Review in the U.S. Department of Justice (DOJ) conducts immigration removal proceedings.[3]

On April 6, 2018, Attorney General Jeff Sessions issued a memorandum for federal prosecutors along the southwest border that directed "each United States Attorney's Office along the southwest border—to the extent practicable, and in consultation with DHS—to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a)."[4] As a result, between April 6 and June 20, 2018, DHS officials referred any adult "believed to have committed any crime, including illegal entry," to DOJ for prosecution and, if convicted to deportation hearings.[5] Meanwhile, DHS transferred children traveling with those adults to the custody of ORR. This process resulted in families being separated.

On June 20, 2018 President Donald J. Trump signed an Executive Order stating, in part "It is also the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources."[6] Pursuant to this Executive Order, families will now be detained together by the Department of Homeland Security. Presumably, this will lead to a decrease in the number of UAC transferred to the custody and care of ORR.

As of June 20, 2018, HHS had 2,053 minors separated as a result of the zero-tolerance policy in HHS-funded facilities.[7] This number represents 17 percent of minors in HHS funded facilities; the remaining 83 percent arrived without a parent or guardian.[8] According to media reports, many of the children that have been separated from their families are too young to speak, and there are reports of children under the age of one in the care of ORR.[9] The Assistant Secretary for Preparedness and Response (ASPR) has established a task force to reunify separated children with their families, and we understand that ASPR is working expeditiously on this mission.

The Committee investigated ORR's management and treatment of UAC beginning in 2014 after the dramatic surge in border crossings by UAC from Central America as well as a series of reports and records that were released by the *Houston Chronicle* regarding allegations

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[3] The United States Department of Justice, Executive Office for Immigration Review, Fact Sheet, (last updated Feb. 24, 2017), available at https://www.justice.gov/eoir/observing-immigration-court-hearings.
[4] Office of the Attorney General, Memorandum for Federal Prosecutors Along the Southwest Border, from The Attorney General, "Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), (April 6, 2018), available at https://www.justice.gov/opa/press-release/file/1049751/download.
[5] Salvador Rizzo, *The facts about Trump's policy of separating families at the border*, THE WASHINGTON POST, (June 19, 2018), available at https://www.washingtonpost.com/news/fact-checker/wp/2018/06/19/the-facts-about-trumps-policy-of-separating-families-at-the-border/?utm_term=.d50c017c4caf.
[6] Executive Order, *Affording Congress an Opportunity to Address Family Separation*, June 20, 2018, available at https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/
[7] *Id.*
[8] *Id.*
[9] Caitlin Dickerson, *What's Behind the 'Tender Age' Shelters Opening for Young Migrants*, THE NEW YORK TIMES (June 20, 2018), available at https://www.nytimes.com/2018/06/20/us/tender-age-shelters-family-separation-immigration.html.

of abuse, including sexual abuse, of minors in HHS custody.[10] According to the *Houston Chronicle*, children and teenagers reported having sexual contact with staff at facilities in Texas, Florida, New York, and Illinois. In 2016, *The Washington Post* reported that, in 2014, ORR placed an unaccompanied child with sponsors in central Ohio who were later discovered to be human traffickers who forced the child to work 12 hours a day on an egg farm.[11] The *Associated Press* reported additional instances of abuse after ORR placed UAC with sponsors.[12] In the course of this investigation, the Committee sent three letters to HHS raising grave concerns about the treatment of children while in the custody of ORR, and the then-lack of follow up to ensure that children were cared for properly after being placed with a sponsor.[13] The Committee also requested documents and answers to detailed questions, and, in 2014, held a bipartisan roundtable for members on issues related to UAC. Given HHS' historical difficulties in properly caring for UAC, the Committee believes that additional scrutiny of ORR is warranted at this time.

To assist the Committee in its efforts, please provide written answers to the following questions, as well as the requested documents, no later than July 20, 2018.

1. How many UAC are in ORR custody as of June 29, 2018?

    a. How many UAC have been placed into ORR custody as of June 29, 2018, as a result of being separated from their parents or families?
    b. What is the age range of UAC in ORR custody as of June 29, 2018?

2. What documentation or information does ORR receive when a UAC is transferred by DHS to ORR custody?

    a. Does that documentation or information change depending on whether the child was separated from a family or crossed the border alone?

3. Is there a formal process to determine whether UAC have been separated from someone who is legitimately their parent, and/or for reuniting parents and children who have been separated? If so, please describe this process.

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[10] Susan Carrol, *Crossing alone: Children fleeing to U.S. land in shadowy system*, (May 24, 2014), HOUSTON CHRONICLE, available at https://www.houstonchronicle.com/news/investigations/article/Crossing-alone-Children-fleeing-to-U-S-land-in-5503127.php; Susan Carrol, *Unaccompanied children in country illegally still lack federal protection*, HOUSTON CHRONICLE, (May 29, 2014), available at https://www.houstonchronicle.com/news/houston-texas/houston/article/Unaccompanied-children-in-country-illegally-still-5514344.php.
[11] Abbie VanSickle, *Overwhelmed federal officials released immigrant teens to traffickers in 2014*, THE WASHINGTON POST, Jan. 26, 2016.
[12] Garance Burke, *Feds' Failures Imperil Migrant Children*, THE ASSOCIATED PRESS, Jan. 25, 2016.
[13] Letter from Hon. Fred Upton, Chairman, H. Comm. on Energy & Commerce, to Hon. Sylvia Burwell, Sec'y, U.S. Dep't of Health & Human Servs. (Jan 14, 2015); Letter from Hon. Fred Upton, Chairman, H. Comm. on Energy & Commerce, et. al, to Hon. Sylvia Burwell, Sec'y, U.S. Dep't of Health & Human Servs. (Feb. 11, 2016); Letter from Hon. Fred Upton, Chairman, H. Comm. on Energy & Commerce, to Hon. Sylvia Burwell, Sec'y, U.S. Dep't of Health & Human Servs. (Feb. 26, 2016).

a. How many UAC that have been placed into ORR custody have been reunited with the family member from whom they were separated?

4. What is the role of the task force established by ASPR? How is this task force working with other HHS agencies or other federal agencies?

5. What is the maximum number of UAC that ORR can have in custody at any given point? Please provide a breakdown of how much of that capacity is permanent, influx, or temporary facilities.

   a. Does ORR have the resources to properly house and care for this high number of UAC being transferred to their custody?

6. How does ORR determine which facility a child is sent to upon entering ORR custody?

   a. Is age a factor?
   b. Are siblings kept together?

7. What steps is ORR taking to track and address issues of abuse within HHS funded facilities, including but not limited to significant incident reports?

   a. What oversight does HHS or ORR conduct of HHS funded facilities, including but not limited to site visits, reviews, or audits of the facilities?

8. What medical screenings for communicable or other diseases does ORR or its grantees conduct?

9. What types of medications is ORR authorized to administer, or does ORR authorize grantees to administer, to UAC, including but not limited to antibiotics, vaccinations, and psychotropic drugs?

10. How does ORR identify an appropriate sponsor for a UAC?

11. Since January 1, 2014, how many UAC have been placed with a parent (Category 1), relative (Category 2) and unrelated adult (Category 3)? Please provide the number per category.

   a. How often is ORR unable to identify a Category 1, 2, or 3 sponsor? What happens in those situations?
   b. Under what circumstances would ORR remove a UAC from a sponsor? In those situations, what happens after a UAC is removed from a sponsor?

12. Please provide all policies and procedures since January 1, 2014, regarding the care of UAC while in ORR custody.

13. Please provide all policies and procedures since January 1, 2014, regarding the placement of UAC with a sponsor or reunification of UAC with their family, if separated.

14. Please provide copies of all contracts or grant agreements since January 1, 2014, between the Department or any of its divisions and private companies to house UAC.

15. Please provide all Significant Incident Reports or other documents that relate to allegations of abuse of children in the care or custody of ORR from January 1, 2017, to the present.

Please also make arrangements to provide a briefing to Committee staff to review your response by July 20, 2018. An attachment to this letter provides additional information about complying with the Committee's request. If you have any questions, please contact Jennifer Barblan or Brittany Havens with the Majority staff at (202) 225-2927. Thank you for your attention to this request.

Sincerely,

Greg Walden
Chairman

Gregg Harper
Chairman
Subcommittee on Oversight
and Investigations

Michael C. Burgess, M.D.
Chairman
Subcommittee on Health

Fred Upton
Chairman
Subcommittee on Energy

John Shimkus
Chairman
Subcommittee on Environment

Marsha Blackburn
Chairman
Subcommittee on Communications
and Technology

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Robert E. Latta
Chairman
Subcommittee on Digital Commerce
and Consumer Protection

Steve Scalise

Cathy McMorris Rodgers

Joe Barton

Jeff Duncan

Leonard Lance

Bill Flores

Tim Walberg

Brett Guthrie

Billy Long

Pete Olson TX-22

Gus M. Bilirakis

Susan W. Brooks

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Markwayne Mullin

Larry Bucshon

Chris Collins

Kevin Cramer

Bill Johnson

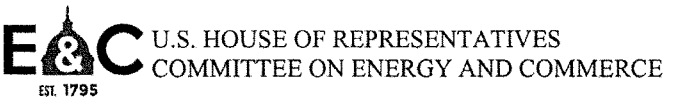
Mimi Walters

Ryan Costello

Richard Hudson

Earl L. "Buddy" Carter

Attachment



July 12, 2018

TO: Members, Committee on Energy and Commerce

FROM: Committee Majority Staff

RE: CODEL to the United States-Mexico Border

On July 9, 2018, Chairman Walden led a bipartisan delegation of members of the Committee on Energy and Commerce to McAllen, Texas, and surrounding areas, to view border facilities and the border between the United States and Mexico. Members visited the following facilities:

- Department of Homeland Security (DHS), Customs and Border Protection (CBP) Centralized Processing Center (CPC) in McAllen, Texas;
- Tour of the border between the United States and Mexico near McAllen, Texas;
- Department of Health and Human Services, Office of Refugee Resettlement (ORR) grantee facility, Southwest Key Facility "Casa Padre" in Brownsville, Texas;
- DHS, Gateway Bridge Port of Entry in Brownsville, Texas; and
- DHS, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) Port Isabel Detention Center.

This memorandum is compiled from the notes and recollection of staff who participated in the CODEL. It is not a comprehensive collection of all information learned during the trip. Members and staff were not permitted to take pictures inside the facilities visited. All interior pictures included in this memorandum are from press reports. All exterior pictures were taken by Committee staff.

I. The Rio Grande Valley Sector and the U.S.-Mexico Border

Members received a tour of the "line"—the border—between the U.S. and Mexico near McAllen, Texas. The Rio Grande Valley (RGV) sector of the border includes the facilities visited on July 9. The RGV includes more than 34,000 square miles of Southeast Texas, including 320 river miles and 250 coastal miles.

The RGV has the highest apprehension rate of UAC and family units on the Southwest border. According to CBP officials, cartels and other smugglers send UAC and family units across in dense refuge areas—areas with thick vegetation along the Rio Grande river—known to CBP. This means that, while CBP agents are apprehending family units and UAC from what are

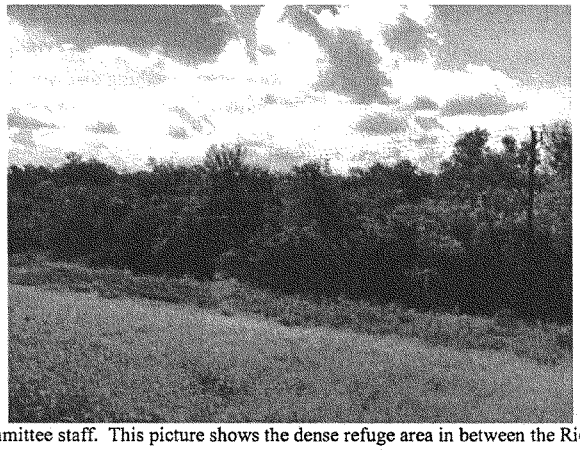
effectively designated areas, cartels and other smugglers can bring in drugs and other contraband through other areas along the border in the RGV.

There are approximately 3,100 CBP agents in the RGV. Each day, roughly 900 agents are at checkpoints or on the border line, and 200 agents work to process individuals apprehended crossing the border illegally. CBP estimated that it needs another 500 agents in just this area of the border to provide adequately patrol coverage. CBP patrols the RGV border line by air, boat, on land (by vehicle, horse, and foot), and by utilizing permanent and mobile surveillance systems.

CBP officials explained the various challenges they face within the RGV sector due to the variation in the terrain and characteristics of the Rio Grande river. Examples of those challenges include dense vegetation and changes in the river's width and depth. The tools and equipment that they need to patrol these various terrains are more extensive than other sectors. For example, the river alone can require different types of marine vessels or boats given the variations in width and depth. CBP has a pilot initiative underway to increase the use of drones on the border, but it is difficult to use drones because the operator must keep a clear line of site with the drone. In addition, CBP must operate drones at specified elevations and obtain permits from the Federal Aviation Administration (FAA) for missions, especially given the proximity of the border to McAllen International Airport. Drones also have limited effectiveness in this sector due to the dense refuge areas on one or both sides of the border. The refuge areas on the U.S. side of the Rio Grande river are under the jurisdiction of the Fish and Wildlife Service. There are also many areas where private property runs up to the Rio Grande river. Many of the crops grown in this area are tall crops, which also makes it difficult to view and detect individuals (or goods, in the case of drugs and other contraband materials) moving through the property.

Due to the dense refuge areas on both sides of the border, individuals crossing the river from Mexico typically cannot be seen until they are in a raft on the Mexican side, and are quickly lost in the refuge area. They are often apprehended by CBP once they emerge from the undergrowth. Family units and UAC are seeking to be apprehended by CBP officials. One CBP agent said, "they arrest us." Roughly 100 UAC per day are apprehended in the RGV. CBP officials could not provide an average number of persons apprehended per day in family units. Often individuals are apprehended in large groups that include individuals, UAC, and family units.

Source: Committee staff. This area of the Rio Grande river has dense refuge areas on each side of the river. The river can be seen in the distance.



Source: Committee staff. This picture shows the dense refuge area in between the Rio Grande river and an access road. The river cannot be seen through the refuge area.

CBP officials stated that additional "enforcement zones" and additional technology would be helpful to secure the border in the RGV. The delegation viewed one such "enforcement zone" that was previously created. The area allows CBP agents to see individuals

as they exit the refuge area. One CBP agent said that the creation of a road along the Rio Grande river in the RGV would be very helpful.

Source: Committee staff. The "enforcement area" is bounded on one side by an access road and a levee on the other. A road runs through the middle of the area. Persons entering the country often walk through the enforcement zone to a large road nearby until they encounter CBP agents. On the other side of the access road is the refuge area.

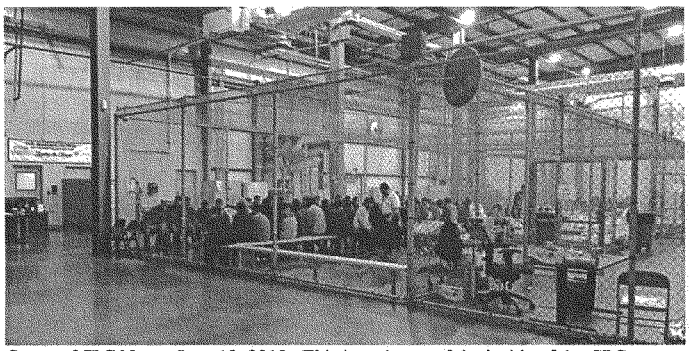
CBP agents emphasized the challenges in the RGV sector but noted that different areas of the border with Mexico require different solutions, and something that would be helpful in the RGV may not be helpful in another part of the border. CBP showed members a video detailing changes in enforcement and apprehensions at different border sectors, including the RGV, from FY 1992 to FY 2016. The video can be found here: https://www.youtube.com/watch?v=jRihEaftS0M.

CBP estimated that 6,000 individuals illegally enter the U.S. in the RGV each week; CBP apprehends roughly 4,000-4,200 people. Family units and UAC pay roughly $4,000 to smugglers to make it to the U.S. border. According to CBP, family units and UAC want to be apprehended by CBP, so their cost is lower. The smuggler will bring the family unit or UAC to the edge of the river on the U.S. side of the border and immediately return across to Mexico. The smuggler typically does not leave the raft on the river, so it is difficult for CBP to apprehend the smuggler himself. Individuals who want to get past the checkpoints further into the U.S., for example, to Houston, pay roughly $8,000. For even more money, cartels and smugglers will bring an individual to any city in the U.S. An individual seeking to enter the U.S. illegally can also pay more money to avoid having to walk or travel through refuge areas.

CBP estimated that $1.3 billion per year is generated for the cartels and other smugglers bringing individuals into the United States through only the RGV. The expenses for the journeys are roughly $640 million, which includes rafts, guides, drivers, stash houses, bribes, etc., and the profits are roughly $658 million.

II. DHS Customs and Border Protection Centralized Processing Center in McAllen, Texas

The delegation visited a CBP Centralized Processing Center (CPC) facility in McAllen, Texas and was provided a briefing and tour of the facility. The briefing included information regarding the shift in immigration patterns across the southern border and how those shifts in patterns have been addressed by the U.S. to date. This CPC facility is an example of the first facility that a person or family will visit after being apprehended for an illegal border crossing. There are two temporary detention facilities at this location. There is a 55,000-square foot facility which houses family units and UAC, which members viewed. There is a second facility that houses men and women who are not UAC or part of a family unit. The facility was quickly built after the surge of UAC in 2014. The facility can hold 3,300 people. On July 9, 2018, approximately 1,300 people were at the facility.



Source: NBC News, June 18, 2018. This is a picture of the inside of the CPC.

Prior to the creation of this facility, individuals and families apprehended at the border were processed at the McAllen station, which had a capacity of only 250 people. The video that CBP showed the delegation included images of the CBP facilities in McAllen prior to the creation of this facility, beginning at minute 4:12. The video can be found here: https://www.youtube.com/watch?v=jRihEaftS0M.

Individuals are held in this facility for an average of 50 hours for processing. The longest instance of someone being held in this facility that CBP could recall was one week. Upon arriving at the facility, the personal belongings of each individual are taken and stored. Individuals are provided a "claim check" for their belongings, which are then returned upon an individual's departure from the facility. If an adult or child's clothes need to be laundered, CBP provides new clothing and launders and then returns the original clothing. Individuals receive meals and snacks are readily available. Toilet and shower facilities are available, toiletries and other items such as diapers are provided, and each individual is issued a soft mat for sleeping and a hygienic mylar "space blanket" for warmth. Televisions with age-appropriate entertainment were provided in each of the facility's zones. Representatives from the consulates of several countries are on site.

The building is divided into four "zones" – male head of household (men traveling with children); female head of household (women traveling with children); male UAC; and female UAC. In most situations, family units are held in the same zone. There are exceptions to this. For example, an older daughter traveling with her father will not be housed in the male head of household section. At the time of our visit, there was one family where the father and one young child were held in the male head of household section, and an older daughter was held in the female UAC section. CBP agents said that they would take them out of the respective areas to talk with each other any time they asked.

Processing by CBP includes determining whether a family relationship exists or if there is any evidence of fraud. Most of the time, CBP does not discern evidence of fraud or trafficking within the family units. However, there are exceptions. For example, CBP officials recounted that, just a few days before the Committee's visit, a man crossed the border with a four-month-old baby that he claimed was his child. The demeanor of the man raised suspicions of CBP agents. Upon questioning, he then said that he was not the child's father, but the child's uncle. CBP agents searched their records and found that he had entered the U.S. the previous year with another child. When CBP agents asked about the whereabouts of that child, the man said that he did not know. Upon further questioning, the man admitted that he was not a relative of the infant at all, and the infant was separated from the man who brought him or her across the border.

After CBP processes those apprehended at the border, UAC are sent to HHS Office of Refugee Resettlement (ORR) shelters. HHS tells CBP which shelter a UAC should be sent to, and CBP transfers the UAC. Family units are referred to ICE detention facilities. If ICE does not have the capacity to detain the family, then they are released, typically with an ankle bracelet, and given a notice to appear at a subsequent immigration hearing. While there are several thousand ICE detention beds for women traveling with children, there are less than 90 detention beds for men traveling with children in the U.S. Adults apprehended illegally entering the country without minor children are also referred to ICE detention facilities. If ICE does not have the capacity to detain an adult, then he or she is released, typically with an ankle bracelet, and given a notice to appear at a subsequent immigration hearing.

Members asked about the implementation of the "zero tolerance" initiative and whether there was coordination between federal agencies prior to the implementation or announcement of this policy. One CBP official stated that, in his opinion, the "zero tolerance" initiative was a good deterrent, but expressed that the policy was not well executed. While CBP did not explicitly state that there was no coordination between federal agencies prior to the public announcement of the "zero tolerance" initiative, CBP officials did acknowledge that the implementation of the "zero tolerance" initiative was not great, and did not consider second, third, and fourth degree impacts, including family separations. CBP officials told staff that, in the RGV, they did not separate children under five from their parents unless there were concerns about fraud or trafficking, or other endangerment issues for the children. CBP officials also clarified that families were not separated in the field. CBP officials could not provide a figure for the number of children in total separated from their parents at this facility.

III. HHS Office of Refugee Resettlement, Southwest Key "Casa Padre" facility in Brownsville, Texas

The delegation visited an HHS ORR facility, managed by HHS grantee Southwest Key. The "Casa Padre" facility is licensed to hold just under 1,500 boys between the ages of 10 and 17. The facility originally received a license for 1,200 children, and received a variance for roughly an additional 240 children. Approximately half of all UAC, including separated children, in the RGV are housed at this facility. There are two other Southwest Key facilities nearby that house female UAC, including separated children. HHS also has other grantee sites in the RGV. According to Southwest Key staff, there are 23 other facilities in South Texas, but there isn't another program as big as Southwest Key. The average length of time that a child stays at this facility is 48 to 52 days. The longest amount of time that a child has stayed at this facility is "more than a year." The Casa Padre facility has approximately 1,200 employees.

According to Southwest Key, roughly 90 percent of the children housed in this facility are true UAC, meaning that they entered the U.S. without a parent or guardian. Roughly 10 percent were separated from a parent or legal guardian. For purposes of this section, both true UAC and children separated from their parents are defined as "UAC."

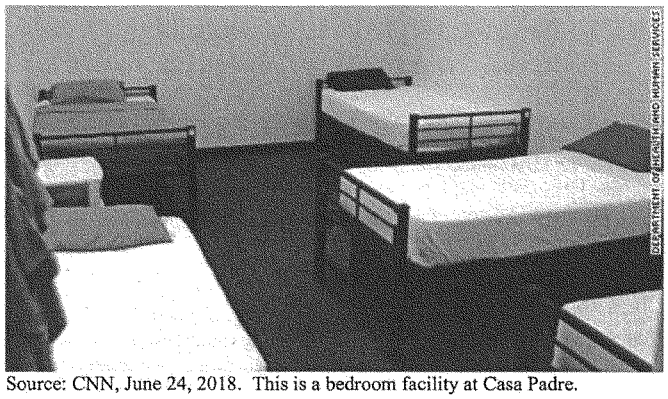
As noted above, UAC and children separated from their parents are first encountered by CBP. CBP notifies HHS ORR that it has apprehended a UAC. ORR does an "intake" out of its Washington, D.C. office and determines to which facility the UAC or separated child should go. DHS facilitates the transfer of the child to that shelter. According to ORR, more than 80 percent of UAC enter the U.S. with information about a potential sponsor and other paperwork.

ORR staff stated that they did not receive consistent information from DHS regarding whether a child was separated from their parents, including information about who that parent is, upon entry pursuant to the "zero tolerance" initiative or otherwise. Sometimes this information was in the information provided by DHS, and other times ORR learned about the separation from the child itself. Case managers work with DHS to obtain additional information needed about each UAC.

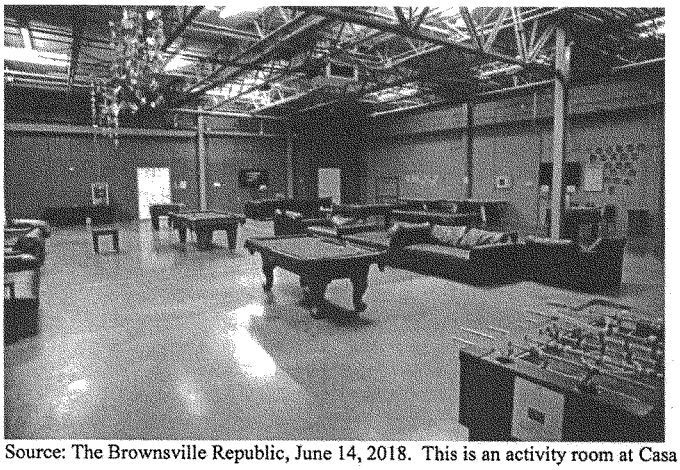
Within 24 hours of arriving at Casa Padre, UAC are assessed by a clinician and a case manager who immediately starts the reunification process. Within 48 hours of arrival, children are seen by a doctor for vaccinations, receive an x-ray for tuberculosis, are screened for communicable diseases such as chicken pox, and are screened via interview for information about sexual activity, sexual abuse, sexually transmitted diseases (STD), and chronic conditions, among other medical issues. Southwest Key follows the CDC's catch up schedule for vaccinations. If a UAC says that he or she received a vaccination in their home country, Southwest Key asks for documentation that they received the vaccination. It is rare that this documentation can be provided. If the UAC claims that they have been vaccinated, but documentation cannot be provided, the facility will still vaccinate the UAC. If a UAC tests positive for a reportable communicable disease or STD both the doctor and Southwest Key report that to the state. The sexual abuse screen asks whether a UAC has been sexually abused either in their home country, en route to the U.S., or in CBP or ORR care. UAC are also asked about sexual abuse by clinicians and case managers. UAC receive an educational assessment

within 72 hours and are assigned to one of four educational levels, with four being roughly a high school education.

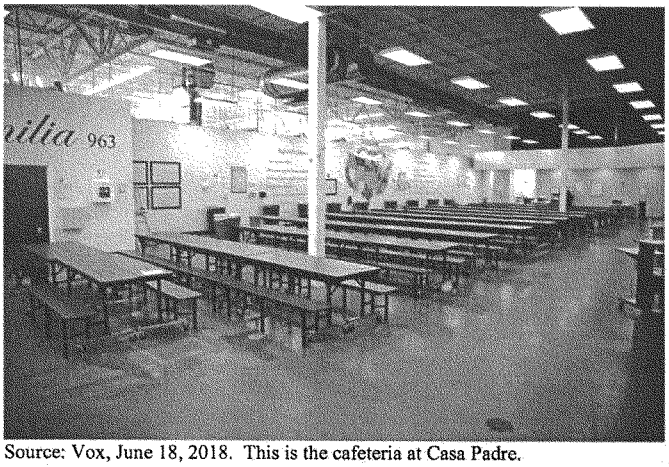
UAC see a clinician at least once a week, sometimes more. They also regularly meet with their case manager. At Casa Padre, each UAC can make two ten-minute phone calls a week—one to someone in their home country (typically a parent) and another to their potential sponsor in the U.S. UAC receive six hours of school Monday through Friday and two hours of outdoor time each day. There are also indoor activity rooms and gymnasiums. Meals are served in 30-minute shifts. The facilities viewed by the delegation were clean. Casa Padre is divided into four quadrants. Each quadrant is identical and includes bedrooms, classrooms, and activity rooms. Each quadrant has an elected student council, including a President, Vice President, Secretary, and Treasurer, and can voice concerns and suggestions to Casa Padre management.



Source: CNN, June 24, 2018. This is a bedroom facility at Casa Padre.



Source: The Brownsville Republic, June 14, 2018. This is an activity room at Casa Padre.



Source: Vox, June 18, 2018. This is the cafeteria at Casa Padre.

As noted above, according to ORR, most UAC arrive in the U.S. with information about a potential sponsor. The case manager works with the potential sponsor to determine the relationship to the child. ORR policy requires a bonafide relationship—the sponsor must know the UAC in some way. If the potential sponsor is unable to prove his or her relationship to the UAC via birth certificates, then DNA testing is used. Approximately 100-150 UAC at Casa Padre are placed with a sponsor each week. The vast majority of sponsors are parents, aunts, uncles, and grandparents. Some sponsors are close family friends. If a UAC enters the country without an identified sponsor, ORR works with outside groups to determine whether the UAC

has a likelihood of receiving asylum. If such a UAC is likely to receive asylum, then he or she would likely be placed in foster care. If such a UAC is not likely to receive asylum, then he or she would likely stay at the ORR facility until their court date. If a UAC turns 18 while in the care of ORR, they are transferred to DHS custody.

When a sponsor is approved, Southwest Key staff travels with the UAC so they can meet their sponsor. Many sponsors are not legally present in the U.S., so they cannot travel to the Casa Padre facility as it is within the checkpoints in Texas. After a UAC is released to a sponsor, ORR tracks the UAC for 30 days, including by follow-up phone call. If ORR finds that the UAC is not doing well, for example, it is found that they haven't been enrolled in school or are not attending school, ORR files a report. Members asked why HHS does not follow-up at subsequent intervals, such as 3 months, 6 months, 1 year, etc. According to ORR, the UAC must appear for court dates and there are other systems in place should the UAC not appear in court. ORR has previously told the Committee that it does not have the resources necessary to conduct longer-term follow up of UAC once they are placed with sponsors.

As Casa Padre is not a detention facility, it cannot forcibly stop UAC from leaving the property. If a UAC indicates that he wants to leave, staff at Casa Padre speak with the UAC and encourage him to stay, but does not restrain the UAC should they elect to leave. Casa Padre staff stated that two UAC have walked out of the facility since it opened in 2017; one was subsequently apprehended and was stepped up to a higher shelter.

ORR monitors the capacity of its grantee shelters daily and is able to adjust as necessary. For example, Casa Padre applied for and received a variance to house more UAC when that became necessary.

According to ORR officials, children that were separated from their parents and are to be reunified with their parents would be brought by the shelter where they were placed to a reunification site, at which point the children would be transferred to ICE custody and the family unit would be released by ICE due to a lack of family detention space.

IV. Gateway Bridge Port of Entry

The delegation visited the Gateway Bridge Port of Entry in Brownsville, Texas. The delegation was briefed and provided a tour by the CBP officials on the Port of Brownsville. The briefing included information regarding the port's area of responsibility; operational infrastructure; its processing and inspection process for passenger, pedestrian, commercial, seaport, and rail border traffic; and admissibility processing.

The Port of Brownsville is the only port of entry in the United States with all operational disciplines (land, air, sea, and rail) under the direction of one port director. The Brownsville area of responsibility extends over 180 square miles and has four international border crossings, an international airport, seaport, rail bridge, and two commercial import/export lots. The operational infrastructure consists of 17 vehicle lanes, 10 pedestrian lanes, 17 immigration processing windows, and eight inbound commercial lanes. In 2017 the Brownsville Port ranked 5th in the number of vehicles processed – 4,848,503; 6th in the number of privately owned

vehicle passengers processed – 10,003,047; 12th in the number of commercially operated vehicles processed – 222,406; 13th in the number of trains processed – 790; and 12th in the number of buses processed – 6,591. Thus far in FY 2018, the Port of Brownsville has processed individuals claiming asylum from 91 different countries. Additionally, they processed approximately 12,000 immigration apprehensions. The Port of Brownsville issues 3,000 to 4,000 I-94s each day.

Port officials cannot turn away individuals or families seeking asylum once they have crossed the border between the U.S. and Mexico at the port of entry. CBP officials process those seeking asylum, creating an "A-file." Individuals or families can stay at the Port for up to 72 hours, and all asylees are sent to ICE ERO after processing by CBP at the port. If the individual or family speaks Spanish, CBP officials can interview and transfer them to ICE ERO within three hours. If a translator is needed then the process can take longer, often six to eight hours. If the Port cannot transfer the individual or family, then the line quickly backs up. CBP officials stand outside the facility on the Gateway Bridge itself and allow people into the facility—both those seeking asylum and those otherwise entering the U.S.—as space permits. The CBP officials on the bridge also do a preliminary review of any paperwork presented by those wanting to enter the U.S. CBP officials expedite asylum processing for humanitarian reasons, including a pregnant mother or a family with young children. There are families waiting to legally claim asylum waiting in Mexico. CBP officials could not provide an estimate of how many families are waiting at this facility or the amount of time that an individual or family typically waits before space is available to process their asylum claim. According to CBP officials, they are processing legal asylum claims as quickly as ICE ERO can pick up the individuals or families. The delegation did not cross into Mexico.

According to CBP officials, approximately 80 percent of people seeking asylum are found to have a "reasonable fear" of persecution, which allows them to stay in the U.S. while their asylum case is pending. Ultimately, approximately 20 percent of people seeking asylum meet the "credible fear" standard.

CBP officials examine the documents provided by the individual or family for obvious indicators of fraud. According to CBP officials, they can often determine if a passport is fraudulent. It is much harder to determine if a birth certificate is fraudulent. CBP officials assume the documents presented are accurate and valid unless there is evidence that it is fraudulent. If an individual presents fraudulent documents, CBP refers the individual for prosecution.

The Port of Brownsville facility was last updated in 1983 and the CBP officials expressed concern over the fact that they don't have a lot of room to handle UACs or family units. The lack of infrastructure is compounded by the fact that finding a facility to house families can take 72 hours. During a walking tour of the facility and bridge, the delegation observed what was formerly office space that has been converted into a room to hold UACs and family units until they are able to transfer them. This room is in the same area as the interview rooms and holding cells for criminals that are apprehended at the port of entry.

In addition to the lack of space, the Port of Brownsville facility is largely using old technologies. According to CBP officials, the Port does not receive enough electricity to run newer scanning technologies or magnetometers.

CBP officials told the delegation that there has been an increase in the male head of household family units coming across the border, 200 last year, and officials shared that there are limited facilities and beds that can accommodate that type of family unit. According to an ICE official at the Port Isabel Detention Center, if a male head of household family unit requests asylum at the Port of Brownsville facility, CBP officials at Brownsville will interview and process the request and make a request to ICE for male head of household detention bed space. Given the lack of male head of household detention space, ICE will deny the request. The family unit will be sent to a CPC and processed with a notice to appear for a subsequent immigration hearing. Officials also noted that part of the CBP delay is due to the port's infrastructure because the facility is not designed to process the high number of individuals seeking asylum.

V. Port Isabel Detention Center

The delegation visited the U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Port Isabel Detention Center in Los Fresnos, Texas. The delegation was briefed and provided a tour by the ICE officials at the Port Isabel Detention Center. The briefing included information about the history of the facility, the size and classification of the population at the facility, average length of stay and the various reasons that individuals are detained at the Port Isabel facility.

The facility was built in the 1960s and was a former military base. Some of the infrastructure is new, but the facility still has parts of the original structure. The facility is a 1,200-bed facility and only holds adults, both male and female, who are awaiting removal or going through the removal process. The facility is authorized to house level 1 (non-criminal), level 2 (convicted of a minor crime), and level 3 (criminal felony) individuals. Individuals wear different color clothing depending on their level. Individuals classified as level 1 make up the majority of the facility's population. Individuals classified as level 1 do not interact with individuals classified as level 3. Individuals classified as level 2 can interact with individuals in level 1 or level 3, depending on the circumstances. Individuals detained at this facility come from a port of entry after claiming asylum, after apprehension by CBP after illegally crossing the border, often after claiming asylum, or an ICE action.

Upon arrival at the facility, individuals receive a quick medical screening and are classified into levels 1, 2, or 3. Within the first 12 hours, they receive a more thorough medical screening; females are also tested for pregnancy. The average length of stay for an individual is 11 days and on average there are roughly 500 individuals going in and out of the facility on a "good day." There are approximately 4-5 charter flights per week that hold 135 individuals to transport individuals back to their country of origin. Others are released into the U.S. after an interview showing that they have a "reasonable fear" of persecution if they return to their home country. Of the facility's population, officials noted that approximately 20-30 percent of individuals claim fear of being returned to their country.

According to ICE ERO officials, at this facility, if a pregnant woman is less than six months pregnant and can be returned to her home country within a week, she will be detained at Port Isabel and then deported. If she is more than six months pregnant, or will not be deported within a week, she is released with a notice to appear at a subsequent immigration hearing.

For individuals who are released into the U.S. after a credible fear screening, ICE ERO asks relatives or other people a potential asylee knows to procure a bus ticket for the individual before they are released. Local charitable shelters also help individuals get to their intended destinations.

Currently there are 371 identified parents in custody at Port Isabel, both male and female. ICE is working with HHS and ORR to identify parents and as such HHS is on site conducting DNA testing and matching them with children to ensure that they are a legitimate family. The DNA testing started last week and as of Monday, July 9, ICE officials expected that testing to be completed in the next 2 days. Despite being designated as a family reunification site, officials stated that there they are not equipped to have children at the Port Isabel facility. Instead, a third facility nearby was designated as a place for parents and kids to be reunified and they are working with ORR on that process. ICE ERO officials explained that Port Isabel had been designated as a family reunification site because it is a location to which parents have been moved to facilitate reunification with their children. ICE ERO officials at this facility did not have detailed information on the process by which parents separated from their children would be reunified with the parents at the third facility.

Print Close

I've fought sex trafficking as a DHS special agent – We need to build the wall for the children

By Timothy Ballard

Published January 29, 2019

Fox News

As a former Department of Homeland Security (DHS) special agent on the southern border who fought sex trafficking for over a decade, I can say with certainty that the issue of the border wall should be not about power and partisan politics. It should be about the children – the tens of thousands of them who have been and are being trafficked into the U.S. and forced into the commercial sex trade.

Human trafficking is the fastest growing criminal enterprise on the planet, with millions of child victims stuck in its clutches. Indeed, this is no peripheral issue – this alone should be front and center in our border and immigration debate.

I spent over 12 years working as a special agent/undercover operator for Homeland Security Investigations in the Child Crimes/Child Trafficking unit. For a decade of that service, I was stationed at the border office in Calexico, California. Based on my extensive experience fighting transnational crime along the southern border, I know that we should absolutely finish building the wall for the sake of the children.

DEMOCRATS WHO SAY THERE IS NO THREAT OF TERRORISTS CROSSING OUR BORDER ARE DELUSIONAL

Not long ago, a 13-year-old girl from Central America – let's call her "Liliana" – was kidnapped from her village, then trafficked into the U.S. at a location where there is no wall or barrier. From there, she was taken to New York City, where she was raped by American men 30 to 40 times a day.

The private anti-trafficking organization I founded over five years ago, Operation Underground Railroad, eventually helped Liliana escape her hell, and she is now healing in our care, as she prepares to take on her captors in federal court.

The U.S. is one of the highest, if not the highest, consumers of child sex. As such, traffickers know they will become very wealthy by getting their enslaved children into our country. We do these traffickers a great favor by leaving our border virtually wide open.

We should stop seeing the border wall as something that would keep the "bad guys" out – though it would certainly help do that too. We must instead focus on its ability to prevent children from being brought in to become sex slaves. The wall would undoubtedly be a significant barrier to entrance into the black market of child sex trafficking, thus decreasing kidnappers and traffickers' incentives in the first place.

For those children who are still kidnapped, the wall would provide hope. Had there been a wall, Liliana's traffickers would have likely been compelled to try their luck at any given port of entry, which are armed with advanced technology and well-trained officers. In fact, at about the same time that Liliana was trafficked, I was participating in the rescue of a 5-year-old boy, whose trafficker had kidnapped him in Mexicali, Mexico, where there actually was a wall.

Alert officers, using their sharp skills and high-tech monitoring equipment, snagged the American trafficker at the Calexico Port of Entry, rescued the boy, and then identified an entire trafficking network, allowing us to rescue many more children.

This is how it's supposed to work. Roughly 10,000 children are being smuggled into the U.S. every year to be sold as sex slaves – we owe it to them to finish this wall and protect them from the monsters within.

In light of this, I've been distraught to hear opponents of President Trump's plan declare the wall "immoral." Curiously, these same opponents have not called for the existing border structures, spanning roughly 30 percent of the southern border, to be torn down.

Well, is a wall "immoral" or not? Is 30 percent moral, but 31 percent is immoral? Their argument quickly falls apart, because walls work and wall opponents know that, or else they would be demanding the "moral" thing be done at long last, and tear it all down.

Without a wall to protect her, Liliana didn't get to enter America in a way that would have allowed her to experience the promises of the Statue of Liberty. Instead of breathing and living freely with a loving American foster family, she found herself enslaved by American sex predators.

The wall, contrary to President Trump's adversaries, doesn't contradict the Statue of Liberty. Rather it protects and preserves everything for which it stands.

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"There can be no keener revelation of a society's soul than the way in which it treats its children," Nelson Mandela once declared. Today, America finds itself deeply divided over border politics and immigration issues. Though confusion abounds, and "experts" disagree, we only need consult Mandela's great truth to know what to do next.

Put the children first, and our path forward becomes clear.

Timothy Ballard is founder and CEO of Operation Underground Railroad (O.U.R.), an organization dedicated to rescuing children from sex trafficking.

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FRANK PALLONE, JR., NEW JERSEY
CHAIRMAN

GREG WALDEN, OREGON
RANKING MEMBER

ONE HUNDRED SIXTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

January 18, 2019

The Honorable Alex M. Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Azar:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee is examining the Trump Administration's Family Separation Policy and the U.S. Department of Health and Human Services' (HHS) care for unaccompanied children.

Last summer, the Trump Administration's inhumane Family Separation Policy resulted in separating more than 2,500 children from their parents or guardians. Yesterday, the HHS Office of Inspector General issued a report stating that thousands of more children may have been separated from their parents or guardians beginning in 2017, before the start of the Family Separation Policy.[1] Additionally, a purported Administration document released yesterday appears to suggest that, in 2017, the Administration was considering specifically targeting migrant family units for separation by placing any adults in detention and transferring any minors to HHS for care.[2]

This new information comes on the heels of a U.S. Government Accountability Office report last year that found Office of Refugee Resettlement (ORR) officials noted an increase in separated families in 2017 and were told by HHS leadership not to engage in planning for

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[1] U.S. Department of Health and Human Services, Office of Inspector General, *Separated Children Placed in Office of Refugee Resettlement Care* (Jan. 2019) (OEI-BL-18-00511).

[2] *Trump admin weighed targeting migrant families, speeding up deportation of children*, NBC News (Jan. 17, 2019); *see* also www.documentcloud.org/documents/5688664-Merkleydocs2.html.

increased separations.[3] These troubling reports raise new questions as to whether the Trump Administration was engaging in family separations earlier than it reported as well as HHS's role in creating and implementing the Family Separation Policy.

Furthermore, the Administration document released yesterday also appears to suggest that HHS's April 2018 Memorandum of Agreement with the U.S. Department of Homeland Security (DHS), which allows the sharing of information between the agencies, was adopted at least in part to allow HHS to share background check information on potential sponsors with DHS so that it could potentially place those sponsors into deportation proceedings.[4]

HHS's responsibility is to care for unaccompanied children and promptly release them to sponsors who can provide for their physical and mental well-being. Experts have noted that prolonged detention of migrant children can lead to negative physical and emotional symptoms.[5] Concerns have been raised that the policy to share information between HHS and DHS regarding potential sponsors has led to family members being reluctant to come forward, thereby leading to children being in HHS custody longer, the exact consequence that was contemplated by Administration officials. We are concerned that instead of prioritizing what is in the best interest of the children in HHS's custody, you have allowed your agency to be turned into a mechanism for immigration enforcement.

To aid us in our inquiry, as well as to provide transparency to HHS's actions, please provide us with the following information no later than February 1, 2019:

1. All documents and communications among and/or between HHS, including the Immediate Office of the Secretary, the Administration for Children and Families, and ORR; DHS; the Department of Justice; and the Executive Office of the President, including the Office of Management and Budget; regarding family separations from May 1, 2017, through June 27, 2018;

2. All documents and communications from May 1, 2017, through April 14, 2018, regarding the Memorandum of Agreement among ORR and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection regarding consultation and information sharing in unaccompanied alien children matters that was signed on April 13, 2018;

3. All analyses regarding the decision in June 2018 to require all adults in potential sponsor households to submit fingerprints as well as the decision in December

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[3] Government Accountability Office, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border* (Oct. 2018) (GAO-19-163).

[4] *See* note 2.

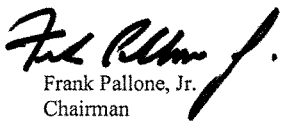
[5] Julie M. Linton, Marsha Griffin, and Alan J. Shapiro, *Detention of Immigrant Children*, Pediatrics, American Academy of Pediatrics (May 2017).

2018 to no longer require all adults in potential sponsors to submit fingerprints; and

4. The letter sent to HHS by the President and CEO of BCFS Health and Human Services on or about December 17, 2018.

We appreciate your attention to this matter, and if you have any questions, please contact Kevin Barstow or Kevin McAloon with the Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Chairman

Diana DeGette
Chair
Subcommittee on Oversight
and Investigations

Responding to Document Requests from the Committee on Energy and Commerce

In responding to the document request from the Committee on Energy and Commerce, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents inyour possession, custody, or control.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.

4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

5. Documents produced in electronic format should also be organized, identified, and indexed electronically. Documents produced in an electronic format should also be produced in a searchable format.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. When you produce documents, you should identify the paragraph or clause inthe Committee's request to which the documents respond.

8. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.

9. Each folder and box should be numbered, and a description ofthe contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.

10. It is not a proper basis to refuse to produce a document because another person or entity possesses a nonidentical or identical copy of the same document.

11. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determinethe appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (8) and (9) above.

12. In the event that a responsive document is withheld on anybasis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2017 to the present.

16. This request is continuing in nature and applies to anynewly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

17. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

18. All documents should be bates-stamped sequentially and produced sequentially.

19. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 316 of the Ford House Office Building, and the minority set should be delivered to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents locatedduring the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody, or control" means (a)documents that are in your possession, custody, or control, whether held by you or yourpast or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, bydocument or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, email (desktop or mobile device), text message, instant message, MMS or SMS message, or otherwise.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, jointventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

7. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

8. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

June 14, 2018

President Donald Trump
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Trump:

On behalf of the American Psychological Association (APA), we are writing to express our deep concern and strong opposition to the Administration's new policy of separating immigrant parents and children who are detained while crossing the border. We previously wrote to then Secretary of Homeland Security John Kelly on April 5, 2017, about this matter. Based on empirical evidence of the psychological harm that children and parents experience when separated, we implore you to reconsider this policy and commit to the more humane practice of housing families together pending immigration proceedings to protect them from further trauma.

APA is the leading scientific and professional organization representing psychology in the United States. Our membership includes researchers, educators, clinicians, consultants, and students. APA works to advance the creation, communication, and application of psychological knowledge to benefit society and improve people's lives. We have 115,700 members and affiliates across the United States and in many other countries, many of whom serve immigrant youth and adults in a wide range of settings, including schools, community centers, hospitals and refugee resettlement centers.

The current policy calls for children to be removed from their parents and placed for an often indeterminate period of time in the custody of the Office of Refugee Resettlement. Decades of psychological research have determined that it is in the best interest of the child and the family to keep families together. Families fleeing their homes to seek sanctuary in the United States are already under a tremendous amount of stress.[1] Sudden and unexpected family separation, such as separating families at the border, can add to that stress, leading to emotional trauma in children.[2] Research also suggests that the longer that parents and children are separated, the greater the reported symptoms of anxiety and depression are for children.[3] Adverse childhood experiences, such as parent-

[1] Chaudry, A. (2011). Children in the aftermath of immigration enforcement. *The Journal of the History of Childhood and Youth,* 4 (1), 137-154.
[2] Dreby, J. (2012). The burden of deportation on children in Mexican immigrant families. *Journal of Marriage and Family,*74, 829-845. Doi:10.1111/j.1741-3737.2012.00989x
[3] Suárez-Orozco, C., Bang, H.J. & Kim, H.Y (2010). I felt like my heart was staying behind: Psychological implications of family separations and reunifications for immigrant youth. *Journal of Adolescent Research 26(2),* 222-257.

750 First Street, NE
Washington, DC 20002-4242
(202) 336-5500
(202) 336-6123 TDD

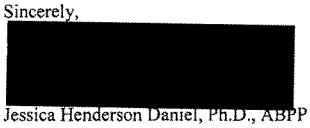
www.apa.org

child separation, are important social determinants of mental disorders. For children, traumatic events can lead to the development of post-traumatic stress disorder and other mental health disorders that can cause long lasting effects.[4] Furthermore, immigration policies, such as separating families at the border, can also adversely impact those immigrants who are already in the United States. They can suffer from feelings of stigmatization, social exclusion, anger, and hopelessness, as well as fear for the future.[5]

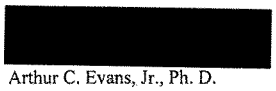
As a tragic example of the current policy's serious potential for harm, a Honduran man who was separated from his wife and 3-year-old son after he crossed the border into Texas recently took his own life while detained in a holding cell, according to the Customs and Border Protection officials, public records, and media reports.[6] There are also reports of detained immigrants foregoing legitimate claims for asylum by pleading guilty to expedite the return of their separated children and reports of parents being deported while their children, including infants, remain in custody. These incidents serve to highlight the mental health crisis for many families caused by the Administration's policy.

Given these considerations, a change in immigration policy regarding the detention of immigrant families at the border is desperately needed – from separating parents and children to housing them together and providing needed physical and mental health services. As psychologists, we have documented multiple harmful effects of parent-child separation on children's emotional and psychological development and well-being and urge that the current policy of family separation be reversed. Should you have any questions regarding these comments, please contact Serena Dávila, J.D., with our Public Interest Directorate at sdavila@apa.org or 202-336-6061.

Sincerely,



Jessica Henderson Daniel, Ph.D., ABPP
President



Arthur C. Evans, Jr., Ph. D.
Chief Executive Officer

cc: U.S. Attorney General Jeff Sessions
U.S. Secretary of Homeland Security Kirstjen Nielsen

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[4] Rojas-Flores, L., Clements, M., Koo, J. London, J. (2017). Trauma and Psychological Distress in Latino Citizen Children Following Parental Detention and Deportation. *Psychological Trauma: Theory, Research, Practice, and Policy,* Vol 9, No. 3, 352.

[5] Suárez-Orozco, C., (2017). Conferring Disadvantage: Behavioral and Developmental Implications for Children Growing up in the Shadow of Undocumented Immigration Status. *Wolters Kluwer Health, Inc., 426.*

[6] Mays J. & Stevens M. (2018, June 10). Honduran Man Kills Himself After Being Separated From Family at U.S. Border, Reports Say. *The New York Times.* Retrieved from https://www.nytimes.com/2018/06/10/us/border-patrol-texas-family-separated-suicide.html.

Post-Hearing Questions for the Record
Submitted to Kathryn A. Larin
Director, Education, Workforce, and Income Security Team
U.S. Government Accountability Office

From The Honorable Jan Schakowsky
"Examining the Failures of the Trump Administration's Inhumane Family Separation Policy"
February 7, 2019

1. Ms. Kathryn Larin, in 2015 the Government Accountability Office (GAO) found that the process to refer and transfer unaccompanied or separated children from Department of Homeland Security custody to Health and Human Services was inefficient and prone to errors, and it offered several recommendations to resolve these problems. In the most recent GAO report, it was found that these issues still have not been fully resolved, and there remains an utter lack of consistency in recording and tracking children that were separated from their parents.

   a. **What is causing such an extreme delay in maintaining an integrated data system to account for separated families across DHS and HHS?**

   Response: In our most recent report, we found that prior to April 2018, DHS and HHS did not have a consistent way to indicate in their data systems children and parents separated at the border. While both U.S. Customs and Border Protection and the Office of Refugee Resettlement have updated their databases to include a checkbox indicating whether a child had been separated, it is too soon to know the extent to which these changes consistently indicate when children have been separated from their parents. As of the time of our work, DHS and HHS continued to use separate systems to track individuals including children and families.

   We have previously identified weaknesses in DHS and HHS's process for the referral of unaccompanied children. In 2015, we reported that the interagency process to refer and transfer unaccompanied children from DHS to HHS was inefficient and vulnerable to errors because it relied on emails and manual data entry, and documented standard procedures, including defined roles and responsibilities, did not exist. As we reported, best practices of high-performing organizations include, among other things, ensuring the compatibility of the standards, policies, procedures, and data systems to be used. To increase the efficiency and improve the accuracy of the interagency unaccompanied children referral and placement process, we recommended that the Secretaries of 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 the referral and placement of unaccompanied children in HHS shelters. In response, DHS and HHS agreed to establish a joint collaborative process for the referral and transfer of unaccompanied children from DHS to ORR shelters.

b. When can we expect this problem to be fixed?

Response: Officials from DHS's Office of Strategy, Policy, and Plans told us that DHS delivered a Joint Concept of Operations between DHS and HHS to Congress on July 31, 2018, which provides field guidance on interagency policies, procedures, and guidelines related to the processing of unaccompanied children transferred from DHS to HHS. DHS submitted the Joint Concept of Operations to us on September 26, 2018, in response to our recommendation. As of March 2019, we are seeking additional information from DHS on the extent to which the Joint Concept of Operations includes a documented interagency process with clearly defined roles and responsibilities, as well as procedures to disseminate placement decisions, for all agencies involved in the referral and placement of unaccompanied children, including those separated from parents at the border, in HHS shelters. Moreover, to fully address our recommendation, DHS and HHS should implement such interagency policies.

We also have ongoing work evaluating DHS's processing of families at the request of the Chairman of the House Committee on Homeland Security and plan to report later this year on our results.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201

MAR 22 2019

The Honorable Diana DeGette
Chair
Energy and Commerce Committee
Subcommittee on Oversight and Investigations
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chair DeGette:

I am writing in response to questions for the record from Representative Jan Schakowsky, Representative Joseph P. Kennedy III, and Representative Greg Walden following my testimony before the Energy and Commerce Committee, Subcommittee on Oversight and Investigations on February 7, 2019, at the hearing entitled "Examining the Failures of the Trump Administration's Inhumane Family Separation Policy."

If you have any questions, please contact me, or your staff may contact Christopher Seagle, Director of External Affairs, at 202-260-7006 or Christopher.Seagle@oig.hhs.gov.

Sincerely,

[redacted]

Ann Maxwell
Assistant Inspector General

Enclosure:
Responses to Questions for the Record

HHS-OIG Response to Post-Hearing Questions for the Record Submitted to Ann Maxwell

"Examining the Failures of the Trump Administration's Inhumane Family Separation Policy"
Energy and Commerce Committee, Subcommittee on Oversight and Investigations
February 7, 2019, 10:30 a.m.
2123 Rayburn House Office Building
Washington, DC 20515

Questions for the Record

Questions from The Honorable Jan Schakowsky (D-IL)

Ms. Maxwell, during the February 7, 2019 hearing, the Office of Refugee Resettlement Office of Inspector General officials described the criteria used to separate children from parents. These determinations are typically made in cases where officials find that they may pose a danger to the child. Based on your experiences:

1.a. How is this determination made and by whom?

Answer: The decision to separate a parent and child at the border is not made by the Department of Health and Human Services (HHS). Instead, the decision to separate a child from his or her parents or guardian is made by immigration officials in the Department of Homeland Security (DHS). Because HHS has no role in the decision to separate families, we are unable to provide you with details as to the criteria applied by DHS in making those determinations. You may wish to pose your question to DHS officials who could provide you with authoritative information.

1.b. What constitutes a "danger" to a child? Please provide specific examples.

Answer: For the reasons stated above, we would refer you to DHS for details about their determinations when a parent or guardian poses a danger to his or her child. HHS has no role in the separation of families; its role is to provide care and arrange placement for children with no lawful immigration status who do not have a parent or legal guardian available to care for them, regardless of the reason.

We note that our OIG Issue Brief, *Separated Children Placed in Office of Refugee Resettlement Care*, reported that some children are still being referred to Office of Refugee Resettlement (ORR) care after being separated from a parent by DHS. Most of these referrals (65 of 118 during the period July 1 through November 7, 2018) were due to the parent's criminal history. However, DHS did not always provide detailed information about the nature of the criminal history.

1.c. Is any criminal history, including immigration offenses, grounds for separation?

Answer: On June 26, 2018, a Federal judge in the class action lawsuit, *Ms. L.* v. *ICE,* issued a preliminary injunction prohibiting DHS from continuing to separate families, with certain exceptions. As we understand this ruling, families may not be separated solely because a parent entered illegally into the United States. However, if the parent has other criminal history, the injunction would not bar family separation.

1.d. What process, if any, exists for parents or child advocates to challenge a decision to separate the parent and child?

Answer: There are numerous lawsuits challenging family separations at the border. The most prominent case is the class action in *Ms. L.* v. *ICE* mentioned above. That lawsuit, filed in the Southern District of California, has identified a nation-wide class of parents who were taken or will be taken into custody by immigration officials and whose children were or will be transferred to ORR for care. Judge Dana Sabraw, who presides over this case, recently expanded the class of covered individuals to parents who were separated as early as July 2017. The nation-wide injunction remains in effect and prohibits family separations except in specified circumstances. Parents who are wrongly separated may join the class and seek relief. Parents can, of course, also file individual actions as well; however, the class action has the benefit of being without cost.

Given that it is outside our authority, we have no knowledge of the internal administrative appeal mechanisms that DHS may or may not have to challenge these prosecution or separation decisions. You may wish to pose your question to DHS officials who could provide you with authoritative information.

Questions from The Honorable Joseph P. Kennedy III, (D-MA)

1. *Thank you for sharing your testimony regarding the separation of children from their families along the southern border. In your testimony, you mentioned that DHS has provided limited data and information to ORR regarding the separated children, thus complicating HHS's efforts to identify and track the children in compliance with the 2018 court order. As a part of ORR's efforts to identify and track the children, what additional information does ORR need from DHS?*

Answer: At minimum, complete and accurate identification and tracking of separated children would require DHS to provide the following:

- an accurate indication of whether a child has been separated and
- accurate information about the identity, location, and contact information of the parent from whom the child was separated.

We suggest consulting with ORR regarding additional data that would be helpful to their efforts to identify, track, and determine appropriate placements for separated children.

2. *Can you provide the key information and demographics ORR currently tracks for the separated children and for all children in the agency's care?*

Answer: OIG does not have detailed information about all data elements that ORR tracks in its case management system (i.e., ORR Portal) for all children in ORR care. A tracking spreadsheet for separated children that OIG reviewed in November 2018 included this key information:

- child's alien registration number,
- child first and last name,
- child's date of birth,
- child's age at time of referral,
- referring office,
- date and time of referral,
- parent or legal guardian name and alien registration number,
- relationship to child, and
- general reason separated.

3. *Beyond the country from which the children have migrated, does ORR track the city, town, village, or other locale where they previously lived; and, if so, how does ORR share this information with other agencies and Congress in order to promote and improve the use of international aid?*

Answer: OIG does not have this information.

Questions from The Honorable Greg Walden (R-OR)

1. *According to the HHS OIG's January 2019 Issue Brief, 118 children have been separated from a parent or a legal guardian between July 1 and November 7, 2018. According to the OIG, 65 of the children were separated because a parent had a criminal history, 18 children were separated because the parent had a gang affiliation, and 19 children were separated because the parent presented a false passport or claimed to be a legal guardian without proof, among other reasons. OIG cautioned, however, that "in some cases, little detail was provided" to ORR.*
    a. *In how many of the 118 cases of children separated from a parent between July 1 and November 7 did DHS not provide enough information to ORR?*
    b. *What types of information was not provided to HHS, and how often was each type of information not provided?*
    c. *Did HHS-OIG interact with DHS on this issue in an attempt to determine why, in your opinion, sufficient information was not provided in all cases?*

Answer: OIG reviewed an ORR spreadsheet tracking separated children referred to ORR from July 1 through November 7, 2018. Our analysis did not quantify the number of children for whom DHS did not provide specific types of information. In general, we found that DHS had not always provided ORR with detailed information about children separated and referred to ORR during this time period. For example, referral information sometimes noted only that a parent had a "criminal history" but provided no further information about the nature of the criminal history or the time at which it occurred. Insufficient information about the reason for a family separation, and in particular a parent's criminal history, may impede ORR's ability to determine the appropriate placement for a child. When a proposed sponsor, including a parent, has a criminal history, ORR policy is to evaluate the severity and type of crime and the length of time that has passed since the criminal act, along with any mitigating factors. ORR officials and staff have noted that from a child welfare perspective, not all criminal history rises to a level that would preclude a child from being placed with his or her parent.

HHS-OIG referred the data that we reviewed to DHS-OIG for further inquiry, and our understanding is that their work on this issue is ongoing.

From: Jonathan White, Commander, United States Public Health Service Commissioned Corps

House Energy and Commerce
Subcommittee on Oversight and Investigations

Questions For the Record

Hearing Date: February 7, 2019

The Honorable Jan Schakowsky (D-IL)

1. ***Commander White, during the February 7, 2019 hearing, the Office of Refugee Resettlement and Office of the Inspector General officials described the criteria used to separate children from parents. These determinations are typically made in cases where officials find that the parents may pose a danger to the child. Based on your experiences:***
    a. ***How is this determination made and by whom?***
    b. ***What constitutes a "danger" to a child? Please provide specific examples.***
    c. ***Is any criminal history, including immigration offenses, grounds for separation?***
    d. ***What process, if any, exists for parents or child advocates to challenge a decision to separate the parent and child?***

Response: Congress has not specified in law the conditions under which a child may be separated from his or her parent/legal guardian. The decision to separate a child from a parent or legal guardian is a determination made by the apprehending or detaining agency—in most instances, the Department of Homeland Security's Customs and Border Protection (CBP), but in certain cases Immigration and Customs Enforcement (ICE). HHS defers to the Department of Homeland Security (DHS) on questions about the types of dangers and criminal histories that DHS finds sufficient to separate a parent from a child. My understanding is that parents have challenged separation decisions through the *Ms. L.* case.

The Honorable Joseph P. Kennedy III, (D-MA)

1. ***Thank you for sharing your testimony regarding the separation of children from their families along the southern border. As a part of ORR's efforts to identify and track the children, what additional information does ORR need from DHS to comply with the 2018 court order?***
    a. ***Can you provide the key information and demographics ORR currently tracks for the separated children and all the children in the agency's care?***
    b. ***In your testimony, you mentioned, "92 percent of ORR's children came from Honduras, Guatemala, and El Salvador." Beyond the country from which the children have migrated, does ORR track the city, town, village, or other locale where they previously lived; and, if so, how does ORR share this information***

with other agencies and Congress in order to promote and improve the use of international aid?

Response: ORR continues to comply with the Ms. L. Court's orders. There has been improved information sharing between DHS and ORR, including through improvements to the UAC Portal. But there is always room for further improvement. It would be helpful to receive more information about the parent separated from the child at the border at the time DHS refers a child to ORR, as opposed to later in the ORR case management process. Such information would include the name of the adult, alien number, DHS detention location, and reasons that DHS separated the adult from the child. ORR and DHS are working together to accomplish this goal.

a. Key information and demographics of the children in ORR's care, regardless of separation status, are in the UAC Portal (an electronic case management database) through which ORR tracks every alien child in its care. For example, the ORR Portal maintains the names and locations of children who are in ORR care and custody. The UAC Portal includes data about each child that DHS provided when DHS transferred the child to ORR custody. It also includes health and social data collected or entered by ORR personnel, grantees, or contractors. Demographic information in the UAC Portal includes a child's name, date of birth, gender, country of origin, and alien number assigned by DHS.
b. ORR does not track this information.

The Honorable Greg Walden (R-OR)

1. ***Does the Office of Refugee Resettlement (ORR) control the number of unaccompanied children that are transferred into its custody on any given day?***
    a. ***Does ORR have any control whether those children are true unaccompanied alien children (UAC), as defined by the Trafficking Victims Protection Reauthorization Act (TVPRA), as opposed to a child who was separated from a parent or legal guardian?***
    b. ***When a child is referred to ORR by the Customs and Border Protection (CBP), what information does ORR receive from CBP? And, specifically, if a child is separated from a parent or legal guardian, what information is provided to ORR?***
    c. ***How has ORR's accounting and tracking of children separated from a parent changed since the implementation of the zero-tolerance initiative?***

Response: No, ORR does not control the number of UAC who are transferred into our custody. Federal agencies refer UAC to ORR's care at any time. ORR's Intakes Team operates 24 hours a day, 7 days a week, year round to accept referrals and find a

placement for children within ORR's network of care providers. Once placed, the referring Federal agency transfers the unaccompanied children into ORR custody.

a. ORR does not control child referrals into ORR care by the referring Federal agency, which is usually DHS. ORR does not control whether the child was separated from a parent by DHS at the border before the referral.
b. ORR receives referrals from CBP either through a data "push" from CBP's data information system into ORR's Portal, through a phone call, or through an email. Historically, and up to the present, information from CBP to ORR on UAC referrals has varied. CBP provides information on separated UAC in a general "notes" section of the CBP data push (the means by which 97 to 98 percent of CBP referrals come in). ORR staff can request additional information related to a specific UAC referral, through email or phone communication. CBP's responses to such requests vary.
c. In July 2018, ORR added a "YES/NO" checkbox to the UAC Portal for the ORR staff to complete when documenting CBP UAC referrals. This checkbox enables ORR to pull and track separated UAC data from the UAC Portal. ORR tracks and accounts for all UAC separated from a parent or legal guardian at the border. ORR tracks UAC separations post-referral with the UAC Portal separation data.

2. ***According to the HHS OIG's January 2019 Issue Brief, 118 children have been separated from a parent or a legal guardian between July 1 and November 7, 2018. According to the OIG, 65 of the children were separated because a parent had a criminal history, 18 children were separated because the parent had a gang affiliation, and 19 children were separated because the parent presented a false passport or claimed to be a legal guardian without proof, among other reasons. OIG cautioned, however, that "in some cases, little detail was provided" to ORR.***
   a. ***What happens if CBP does not provide sufficient information about a child to ORR? What can ORR do to obtain this information?***
   b. ***What can Congress do to ensure that ORR is receiving complete information about the children transferred by DHS?***

Response:

a. In the event that CBP does not provide sufficient information about a child to ORR, ORR follows up with additional requests for information to CBP. ORR requests this information to facilitate case management and care services to the child.

<u>The Honorable Brett Guthrie (R-KY)</u>

1. ***I'm concerned about the health effects of the traumatic journey that these children endure on their way to the United States. Given your experience with ORR, can you***

describe, from a medical perspective, the trauma that a child may endure on his or her journey to the United States?

a. What resources are important for the child to have access to as soon as they reach the United States to minimize the negative effects of their traumatic journey to the United States?

b. Can you please describe, in detail, the services offered by ORR – specifically the medical and mental health services that are provided?

Response: ORR is deeply committed to the physical and emotional wellbeing of all children in its temporary care. ORR recognizes that many children and youth who come into the United States unaccompanied have experienced traumatic childhood events and that migration and displacement can contribute significantly to ongoing stressors and trauma in children. Children in ORR care may have been exposed to a number of traumatic experiences and situations in their journey to the United States.

Staff at care provider facilities are trained in techniques for child-friendly and trauma-informed interviewing, ongoing assessment, observation, and treatment of the medical and behavioral health needs of UAC.

a. When a child or youth enters ORR's custody, care providers assess the needs of each minor, including special concerns such as negative effects of their journey, known medical or mental health issues, and other risk factors. Care providers receive required training in techniques for child-friendly and trauma-informed interviewing, ongoing assessment, observation, and treatment of UAC. ORR instructs grantees to provide clinical services based on state-of-the-science therapeutic interventions, and structured sessions so clinicians have continuous supervision and the support they need in their clinical practice.

   All children and youth participate in weekly individual counseling sessions with trained social work staff, where the provider reviews the child's progress, establishes short-term objectives, and addresses developmental and crisis-related needs, including those related to trauma experienced on their journey. Clinical staff may increase these once-a-week sessions if a more intensive approach is needed. If children have acute or chronic mental health illnesses, ORR refers them for mental health services in the community.

b. ORR has developed its health care policies with the goals of ensuring the children's physical and mental well-being and the safety of care providers, medical personnel and communities. Through its care providers and other health care professionals and based on the requirements of the *Flores* Settlement Agreement, ORR provides the following services:
   - Routine medical and dental care
   - Family planning services, including pregnancy tests and comprehensive information about and access to medical reproductive health services and

emergency contraception
- Emergency health services
- A complete medical examination (including screening for infectious diseases) within two business days
- Immunizations in accordance with recommendations of the Centers for Disease Control and Prevention (CDC)
- Administration of prescribed medications and special diets
- Appropriate mental health interventions

Each UAC must receive an initial general medical examination within 48 business hours of admission. The purposes of the initial examination are to assess general health, administer complete immunizations in keeping with U.S. standards, find out about health conditions that require further attention, and detect contagious diseases, such as influenza or tuberculosis. Any health conditions identified are followed-up and treated immediately.

All UAC in ORR care receive at least one individual counseling session per week conducted by trained social work staff with the specific objective of reviewing the child's progress, establishing new short-term objectives, and addressing both the developmental and crisis-related needs of each child. All UAC in care receive group-counseling sessions at least twice a week.

Children placed in ORR care facilities receive an amalgam of services, including medical and mental health care described above. For a comprehensive review of ORR's existing direct care services, please refer to the ORR Policy Guide.[1]

2. ***In 2014, The Washington Post reported that ORR placed a UAC with sponsors in central Ohio who were later discovered to be human traffickers who forced the child to work 12 hours a day on an egg farm. The Associated Press reported additional instances of abuse after ORR placed UAC with sponsors. The Committee was concerned and as a result sent three letters to HHS raising grave concerns ·about the care, placement, and lack of follow-up that ORR was providing for UAC. Improvements were made to the policies and procedures at ORR - including increased medical services, increased and more thorough background checks of potential sponsors, as well as follow-up calls, and in some cases post release services, that are provided to UACs after they are released from ORR custody and placed with a sponsor.***

[1] ORR Policy Guide section 3.3 Care provider Required Services; and section 3.4 Medical Services (available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied)

It is my understanding that in April 2018 a Memorandum of Agreement (MOA) was entered into between CBP, ICE, and ORR that initially required that the sponsor undergo fingerprint background checks and also required adult members of the potential sponsor's household to undergo fingerprint background checks. However, a December 18, 2018 New York Times article noted that HHS said that it would no longer require that all members of a household where a child is to live be fingerprinted. Instead, fingerprints will be required only of the adult who is sponsoring the minor, typically a parent or another relative.

Given the Committee's longstanding concerns about the safety and well-being of the children in ORR's care, please explain why this fingerprint policy was reversed?

Response: A copy of the December 2018 Operational Directive is attached. It explains why ORR ended the policy of fingerprinting and conducting biometric background checks on all adult household members of sponsors.

ORR also issued an operational directive in March 2019 that suspended, until further notice, fingerprint background checks for Category 1 sponsors as part of the sponsor assessment process unless a public records check reveals possible disqualifying information, 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. Category 1 sponsors are parents or legal guardians.

3. ***It is my understanding that the HHS currently operates a network of more than 100 shelters in 17 states across the country. How many total beds does ORR have for UAC across its entire network?***

    a. ***What was the total number of UAC at the peak of the surge in 2014?***
    b. ***It is my understanding that the number of UAC coming across the border and coming into ORR's care fluctuates. What have the numbers looked like more recently, specifically during the zero-tolerance initiative and since?***
    c. ***Given the fluctuation in the number of UAC that have been coming across our southern border since 2014, and probably even before then, how does HHS and ORR accommodate for those types of influxes?***
    d. ***Has HHS or ORR made efforts to bring on additional permanent bed capacity? Please describe this process, including the number of permanent beds being added, and the status of adding beds to the permanent bed capacity.***
    e. ***What does ORR believe is an ideal number of permanent beds to have as part of its total capacity?***

Response: As of March 19, 2019, ORR has 13,571 beds across its entire network, including temporary shelter beds.

a. In FY 2014, the peak census of UAC in ORR care was 6,614. However, as many as 300+ UAC were in DHS custody pending designation for ORR shelters in 2014.
b. From FY 2015 to FY 2018, monthly referrals ranged from 633 in April 2017 to 7,731 in December 2017. ORR received 49,100 UAC referrals in FY 2018. In FY 2019, as of

March 30, DHS has already referred approximately 32,284 UAC to ORR. That is an increase over FY 2018 of almost 50 percent.

c. When there is an increased need for capacity, ORR will first try to expand the number of beds available with existing state licensed care facilities. The second preference is to seek bed space with a state licensed facility that is not currently housing UACs. In the event of an influx, defined in the ORR policy guide, as a period where the number of UACs exceeds the standard capabilities of federal agencies to process, transport, or shelter with existing resources, ORR may open a temporary influx care facility.

d. Yes. ORR makes efforts to bring on additional permanent bed capacity as a regular part of operations, and continues to do so on a daily basis. When there is an increased need for capacity, ORR will first try to expand the number of beds available with existing state licensed care facilities. The number of added permanent beds fluctuates based on the capacity of ORR's network of available beds, the length of time to build out, license, and hire staff for the bed expansion, and referrals into ORR care.

   In November 2018, ORR posted a funding opportunity announcement for care provider shelters and one secure care provider facility. ORR is in the process of issuing grant awards to applicants who responded to this announcement. The approved applications will add approximately 1,000 beds to ORR's permanent capacity.

e. The ideal number of permanent shelter beds to be maintained by ORR in total capacity is 18,000-23,600 beds. This number would eliminate the need to routinely use temporary influx sites, and would enable the program instead to rely solely on state-licensed permanent shelter capacity to receive children referred by DHS following apprehension as unaccompanied children. Fluctuations in the number of children in ORR care are very high, and in recent (post-2014) program history, the program has pursued a strategy, required by available appropriations, of trying to maintain an occupancy target of 85-90%. This has resulted in periods when significant numbers of permanent beds were reduced due to short-term periods of reduced referrals and lowered census (such as occurred in June 2017), followed by periods of very rapid expansion in capacity when referrals and census oscillated upward again. Such rapid expansion cannot be accommodated with permanent shelter capacity, due to the longer timeframe required to build out, license, and hire staff for permanent shelter programs; as a result, ORR has had to rely upon temporary shelter capacity, which has significantly higher daily bed cost. This process has also required frequent use of Secretarial transfer authority to fund these rapid capacity increases during the "upward phase" of the recurrent cycle of UAC census fluctuation. ORR can move beyond the need for temporary influx shelters and frequent Secretarial transfer authority use only if Congress appropriates the funds for a standing bed capacity of 18,000-20,000 state-licensed permanent beds, and only if there is tolerance in the system for periods of low bed occupancy during the lower end of the cycle.

4. ***Can you describe the difference in cost between the various types of ORR facilities? For example – what would the cost be to care for a UAC, per day, at a***

facility that has a more transitional foster care model versus a temporary influx facility such as Homestead or the recently closed Tornillo?

Response: The average cost per day for a UAC at a permanent shelter, including transitional foster care, is $262.00. The average cost per day for a UAC at a temporary influx care facility, such as Homestead, is $700.00-$800.00 cost per day.

ORR continues to develop efficient, cost-effective strategies to address the historical variations in the number of children apprehended at the border. Temporary influx care facilities carry higher costs associated with quick facility standup and the need to hire staff quickly and on a temporary basis, but other costs can be significantly reduced or eliminated when capacity is not needed. This means that, under some circumstances, the use of temporary influx care facilities may be more cost-efficient than year-round standard facilities.

5. ***How does ORR determine when and where to open a temporary influx facility?***

   a. ***How long does it take to stand-up and take down a temporary influx facility?***
   b. ***What is ORR's policy for evacuating any facility when there is a threat of a natural disaster-for example a hurricane?***
   c. ***Since Florida is a state that is known to experience hurricanes, as well as threats of possible hurricanes during hurricane season -which this year is expected to be from the beginning of June to the end of November -how does that effect Homestead as an ORR facility?***
   d. ***How have hurricanes affected the ORR program more broadly – especially since Hurricane Harvey likely affected some of the facilities in Texas?***

Response: When there is an increased need for capacity, ORR will first try to expand the number of beds available with existing state licensed care facilities. The second preference is to seek bed space with a state licensed facility that is not currently housing UACs. In the event of an influx, defined in the ORR policy guide as a period where the number of UACs exceeds the standard capabilities of federal agencies to process, transport, or shelter with existing resources, ORR may open a temporary influx care facility.

Once the need for a temporary influx care facility is established, ORR will evaluate all available properties offered by other federal agencies and departments. ORR has a tiered approach to the evaluation – internet research and data provided by those offering agencies and departments is the first evaluation stage. Most sites do not progress past this initial stage. If the site shows some promise, ORR will conduct a site visit, utilizing federal staff only. The site visits are preliminary onsite reviews, taking measure of the site with ORR requirements and meeting with the property custodians to determine the extent of available infrastructure (shore power, available water, parking, road access, proximity to airports, etc. If the site shows promise and has no fatal

flaws, ORR will conduct a site assessment with service providers before choosing the site as a temporary influx care facility.

a. ORR temporary influx care facilities can stand-up in 30 – 45 days. Taking down an ORR temporary influx facility requires the same amount of time.
b. All ORR care providers are required to have written emergency evacuation plans, including instances of when there is a threat of a natural disaster. ORR care providers also follow State licensing requirements when creating an emergency evacuation plan. ORR care providers work with local authorities and other ORR network providers to organize and safely evacuate all children in ORR care if there is a natural disaster.
c. All ORR care providers, including the temporary influx care facility Homestead, are required to have written emergency evacuation plans. Homestead has an emergency evacuation plan specifically for hurricanes. In October 2016, in advance of Hurricane Matthew; ORR evacuated all 678 minors then residing at Homestead to the Fort Bliss influx care facility and other ORR care provider facilities.
d. Please see the answer to "b" above. ORR care providers in Texas follow emergency evacuation procedures for all threats of a natural disaster, including hurricanes.

6. ***Recent media reports have suggested there is a difference in the care that UAC receive depending on which ORR facility they are placed at while they are in ORR's custody. Specifically, there have been allegations that the care in temporary influx facilities, such as Tornillo or Homestead, is subpar to other facilities. Is there a difference in the care that UAC have received at temporary influx facilities such as Tornillo or Homestead as compared to other ORR shelters or facilities?***
    a. ***How long has HHS and ORR utilized temporary influx facilities and why are they utilized?***

Response: HHS is the primary regulator of the Homestead Influx Care Facility and is responsible for its oversight, operations, physical plant conditions, and service provision. The State of Florida does not license or monitor Homestead. However, the Homestead Influx Care Facility operates in accordance with applicable provisions of the Flores Settlement Agreement, the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008, the Interim Final Rule on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Alien Children, as well as ORR policy.

UAC placed at Homestead have access to mental health care, routine and emergency medical services, case management, legal services, education, religious services, and recreation services. Homestead provides education services to UAC similar to other ORR-funded facilities, including the following: education assessments for each child; six hours of classroom-based learning Monday through Friday; weekly education progress reports for each child; and curriculum-based classes in History, Math, English as an Other Language (ESOL), Physical Education and Science.

a. The ORR UAC program bed capacity has expanded and contracted over the years. To respond to these fluctuations, ORR has brought both permanent and temporary UAC

housing capacity online as needed. ORR has a bed capacity framework with grant and contract mechanisms that provide standard permanent bed capacity, with the ability to add temporary beds to accommodate changing flows.

Large influxes of UAC that overwhelmed ORR's standard bed capacity network started in 2012 when UAC referrals doubled from previous years. In order to address large influxes of UAC, ORR opened temporary influx care facilities in some years on federal lands.

7. ***At the time of the hearing there were still six children in ORR care who might potentially be reunified with the parent from whom they were separated, but according to the most recent numbers provided by HHS that number has dropped to five. Of those five children, it is my understanding that four children have parents outside of the U.S. and for those four children an ACLU steering committee has advised that these cases will be delayed resolutions or is requesting an extension.***

   When HHS or ORR was first notified by the ACLU that there would be delayed resolutions or a requested extension for those four cases?

   a. ***Are there any details you can provide as to why the reunifications for these four children has been delayed?***
   b. ***Can HHS or ORR do anything to reunify these children or place them with a sponsor until HHS/ORR is provided an answer from the ACLU?***

Response: On November 1, 2018, the ACLU Steering Committee wrote to the Department of Justice requesting that three minors be reported separately because "the resolution of these cases [would] be delayed" due to "complicated family circumstances." On November 8, 2018, in its weekly joint status report in the Ms. L case, the government began reporting the category of children with parents outside the U.S. where "the Steering Committee has advised that resolution will be delayed."

As of the most recent Joint Status Report, filed June 6, 2019, there remains only one child in this category. We are pending information from the Steering Committee, and are thus unable to explain why this child's parent has not yet provided ACLU with a final determination as to whether the child would be reunified with him or her, or proceed to a sponsor through ORR care.

Under the terms of Ms. L, ORR cannot release this child to a sponsor or reunify him with the parent until the parent's final decision is received or the Judge orders a different disposition. ORR is thus focused on providing appropriate services and care to the child while he is in ORR care, pending resolution of the parent's wishes.

8. ***According to the HHS OIG Issue Brief, ORR officials and staff observed a significant increase in the number and proportion of children (i.e. children separated from their parent or legal guardian by DHS) relative to other UACs in the summer of 2017. The Issue Brief also stated that staff had begun informally tracking separations in 2016,***

recognizing that additional information and effort was required to locate parents of separated children. Does HHS know why ORR staff began informally tracking separations in 2016?

- ***a. Please provide any additional details about this informal tracking such as who made the decision to start doing it and whether it was program wide or limited to a specific facility, grantee, or region.***
- ***b. Why was the tracking informal rather than a formal practice or policy?***
- ***c. Is there a benefit to HHS tracking this information – whether it's provided to HHS by DHS or whether HHS were to be required to track it themselves?***
  - ***i. If so, and if the law was changed to require HHS to track separated children that are transferred to its custody, what information, tools, or resources would ORR need that it does not currently have from other Departments or Congress?***

Response: Some informal tracking by ORR staff of the number of separations "for cause" (which, historically, are low) has been longstanding in the program, dating back years prior to the summer 2017 observed increase. However, once ORR staff received anecdotal reports of what appeared to be increased numbers of separations, in August 2017, I instructed the field personnel and ORR intakes team to provide more detailed information and more extensive informal tracking. While the informal tracking was program-wide, and was not limited to a specific region or program, it was anecdotal and represented only those minors we had identified as potentially separated, rather than a comprehensive list of all separated children. This was the best available information ORR possessed on instances of possible separation at that time. The process was informal because during that period of time, the fact of separation was relevant to the case management process only in certain cases. Information about separation was added to the ORR portal when relevant. The program had no reason to track separations on an aggregated basis, across individual cases. Nor did the program have the systems or tools needed to track separations on an aggregated basis.

The ORR UAC Program is not designed to serve children separated from their parents (except in circumstances where separation was required according to strictly necessary causes, such as the protection of the child), and ORR recognizes the harm done to children by separation of children from their parents. To track those separated children that are referred to ORR care, process improvements were made in July 2018, to allow referring agencies in DHS to identify children as separated and to identify the name and alien number of the parent as well as the circumstances of separation. In addition to existing data points provided by DHS, such as parent name, alien number, and reason for separation, more detailed information regarding the criminal history or other basis for separation should be provided consistently

If HHS is required to report separations, additional authorities or guidance from Congress are required.

ADMINISTRATION FOR
CHILDREN & FAMILIES
330 C Street, S.W., Washington, DC 20201 | www.acf.hhs.gov

TO: Jonathan H. Hayes, Acting Director, Office of Refugee Resettlement

CC: Lynn A. Johnson, Assistant Secretary for Children and Families

FROM: Jallyn N. Sualog, Deputy Director for Children's Programs, Office of Refugee Resettlement

DATE: December 18, 2018

SUBJECT: [redacted] ACF/ORR directive under Memorandum of Agreement § VI

I. ISSUE AND RECOMMENDATION

The Office of Refugee Resettlement (ORR) has observed an increase in the median length of care for unaccompanied alien children (UAC) since implementing the Memorandum of Agreement (MOA) in June 2018. This increase presents child welfare and operational considerations for ORR.

Before the MOA, ORR conducted robust non-biometric background checks on all sponsors and their household members. ORR obtained fingerprints and conducted biometric background checks on Category 1 sponsors and their adult household members when deemed appropriate. ORR obtained fingerprints and conducted biometric background checks on all Category 2 and 3 sponsors without exception, and obtained the same for such sponsors' adult household members when deemed appropriate.

After executing the MOA, ORR revised the provisions of the ORR Policy Guide regarding background checks. The revisions require all putative sponsors at all levels—and all of their adult household members—to provide fingerprints and undergo biometric ICE background checks.

As part of its continuing, ongoing review of the program and operations, the ORR staff evaluated whether the expanded background checks of adult household members under the MOA have yielded new information that has enabled ORR to identify child welfare risks that ORR would not have found under the prior policy. The ORR staff concluded that the expanded background checks have not yielded such additional information to identify child welfare risks from June 2018 to date.

At the same time, the ORR staff concluded that the current, increased median length of care has a correlation to the time required for all adult household members to finish submitting fingerprints to ORR. The ORR staff believes that the current, increased median length of care is at a level that may present child welfare considerations for some children. The ORR staff's opinion is based on their own child welfare training and experience, and the child welfare literature on congregate care.

[redacted] after weighing these child welfare considerations, is that ORR issue a directive pursuant to MOA § VI to modify the ORR Policy Guide—and, by extension, the MOA—to enable ORR to complete individualized suitability assessment of sponsors without obtaining fingerprints from all adult household members in appropriate cases.

There are at least three reasons to accept this [redacted] First, the background checks that ORR will continue to conduct are robust and likely to identify any material risks to children. Second, the modification should enhance child welfare by reducing length of care. Third, the modification will increase individualized decision-making and operational flexibility in the field.[1]

II. BACKGROUND AND DISCUSSION

Before the MOA, Category 1 sponsors and all of their adult household members underwent public background and sex offender background checks without exception. They underwent fingerprinting and biometric background checks if there was a documented risk to the safety of the UAC, the UAC was especially vulnerable, or the case was referred for a home study. Category 1 sponsors also underwent child abuse and neglect (CA/N) checks if the case was referred for a home study or a special concern was identified. Their household members underwent CA/N checks for special concerns as well.

The prior policy for Category 2 and 3 sponsors and their adult household members was different. Category 2 and 3 sponsors and all of their adult household members underwent public background and sex offender background checks without exception. Category 2 and 3 sponsors also underwent fingerprinting and biometric background checks without exception. But, their adult household members underwent fingerprinting and biometric background checks only if there was a documented risk to the safety of the UAC, the UAC was especially vulnerable, or the case was referred for a home study. Category 2 and 3 sponsors also underwent CA/N checks if the case was referred for a home study or a special concern was identified. Their household members underwent CA/N checks for special concerns as well.

Under the MOA, ORR obtains fingerprints of all potential sponsors and adult household members (as well as other personal identifying information), and provides them to ICE. ICE then conducts a biometric immigration and criminal background check and provides the results to ORR. The ICE immigration and criminal background checks are conducted as an additional child protection measure, on top of ORR's standard background check process.

Information obtained through expanded background checks of adult household members

The ORR staff evaluated the results of the biometric ICE background checks on adult household members since June 2018. For those checks that identified immigration or criminal history: approximately 80% identified immigration history; approximately 8% identified history related to driving under the influence; and approximately 8% identified history related to traffic violations. The remainder does not fit within a single category. In general, none of the history for adult household members was automatically disqualifying for sponsors under current ORR policy.

[redacted]

I have spoken with ORR senior staff, as well as members of the ORR field staff who use this information when making suitability determinations. In general, they are unaware of any cases in which the biometric ICE background checks yielded new information about adult household members that enabled ORR to identify new child welfare risks. The ICE biometric background checks have generally corroborated what ORR has learned through pre-existing methods.

The ORR field staff, however, has informed me that biometric ICE background checks of all categories of sponsors are helpful for suitability analyses because they confirm the sponsor's identity.

Increase in median length of care and related child welfare considerations

ORR has conducted a data analysis and found an increase in length of care for UAC discharged to Category 1 sponsors. Median length of care for a Category 1 discharged UAC was:

- 20 days from November 20, 2017 to January 5, 2018;
- 22 days from March 30, 2017 through June 6, 2018 respectively; and
- 51 days from June 7, 2018 through September 30, 2018.

UAC referred to ORR during the week of July 7, 2018 had a median length of care of 73 days.

This data is consistent with ORR's experience during MOA implementation. The volume of fingerprint subjects increased immediately after the initial implementation of the MOA in June 2018. HHS then dedicated more resources to digital fingerprint sites, which capture sponsors' and adult household members' fingerprints, and the Program Support Services (PSC), which process fingerprints.

[redacted], the length time which all adult household members take to submit their fingerprints to ORR has not decreased materially since implementation. There appears to be a correlation between that length of time and the current increased median length of care. The ORR staff's best programmatic judgment is that the length of time taken by adult household members is affecting ORR's completion of suitability analyses and, by extension, the median length of care.

The increase in the median length of care presents child welfare considerations for ORR. In ordinary cases, where a suitable sponsor is available and discharge presents no risks to the health or safety of the UAC or the public, ORR's experience is that the best practice in child welfare would be to discharge the UAC within 30 days of admission. In ordinary cases, ORR generally does not recommend keeping UAC in care for longer than 60 days[2]. This is because family-based settings tend to produce better child welfare outcomes over longer periods of time.

ORR's approach is aligned with child welfare literature on congregate care. Over the last ten years, a consensus has emerged that children are better served in family-based settings. As a result, the number of children living in congregate care has decreased nationwide by 37 percent.[3]

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[2] There are of course, many instances where a UAC remains in care beyond 60 days – or longer – because a suitable sponsor cannot be found.

[3] Children's Bureau. "A National Look at the Use of Congregate Care in Child Welfare." May 13, 2015. Available at: https://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare_brief.pdf.

The Children's Bureau of ACF analyzed a number of data elements from the Adoption and Foster Care Analysis and Reporting System and found that children at risk for congregate care are more likely to have a mental health diagnosis or a behavioral problem.

ORR's current median length of care, as of November 30, 2018, is 90 days for all discharges, and a reduction towards 30 days would be more consistent with best practices in child welfare.

III. SPECIFIC [redacted] ACF/ORR DIRECTIVE

[redacted] modify the ORR Policy Guide—and, by extension, the MOA—to enable ORR to complete individualized suitability assessments of sponsors without obtaining fingerprints from all adult household members in appropriate cases.[4]

ORR would continue fingerprinting and biometric ICE background checks for all categories of sponsors. ORR staff would, however, have the discretion to conclude a suitability determination for a sponsor—and release the UAC to that sponsor—pending receipt of fingerprint background check results if other records are sufficient to confirm the sponsor's identity.

ORR would otherwise follow its prior policy on fingerprinting and background checks of sponsors and adult household members.

ORR would implement the operational directive immediately. In addition, during the next 45 days, the ORR staff would evaluate the current provisions of the ORR Policy Guide related to appeals of suitability determinations, and make any recommendations for further revisions as appropriate.

DECISION

Approved ✓ Disapproved _____ More Information Required _____

Jonathan H. Hayes

12/18/2018
Date

[4] The MOA contemplates this type of operational directive in § VI, which states that "[n]othing in this Agreement is intended to conflict with current law or regulation or the directives of DHS, CBP, ICE, HHS, or ORR. If a term of this MOA is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect."

Attachments:

ORR-ICE-CBP MOA Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters (April 13, 2018).

ORR Policy Guide, Section 2.5.1, Criteria for Background Checks (revised June 7, 2018). [current policy]

ORR Policy Guide, Section 2.5.1, Criteria for Background Checks (revised April 11, 2018). [previous policy]

MOA Impact on Category I UAC Length of Care and Sponsorship (November 26, 2018).

Citations to relevant child welfare literature on congregate care

MEMORANDUM OF AGREEMENT
AMONG
THE OFFICE OF REFUGEE RESETTLEMENT
OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AND
U.S. CUSTOMS AND BORDER PROTECTION
OF THE U.S. DEPARTMENT OF HOMELAND SECURITY
REGARDING
CONSULTATION AND INFORMATION SHARING
IN UNACCOMPANIED ALIEN CHILDREN MATTERS

I. Parties

The Parties to this Memorandum of Agreement (MOA) are the Office of Refugee Resettlement (ORR) in the Administration for Children and Families of the U.S. Department of Health and Human Services (HHS), and U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) of the U.S. Department of Homeland Security (DHS) (collectively "the Parties").

II. Purpose

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

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

III. Authorities

This MOA is authorized under, and entered into consistent with, the following provisions of law:

A. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 102(b), 462, 116 Stat. 2135, 2142, 2202 (codified at 6 U.S.C. §§ 112(b), 279);

B. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235, 122 Stat. 5044, 5077-79 (codified in principal part at 8 U.S.C. § 1232);

C. Privacy Act of 1974, as amended, 5 U.S.C. § 552a;

D. Immigration and Nationality Act of 1952, as amended, §§ 103(a), 287 (codified at 8 U.S.C. §§ 1103(a), 1357); and

E. Tariff Act of 1930, as amended, § 589 (codified at 19 U.S.C. § 1589a).

IV. HHS and DHS Responsibilities Upon Initial Referral

A. Initial Referral and Transfer

1. At the time of initial referral, the DHS component (ICE or CBP) referring the UAC to HHS (specifically, ORR) will electronically transfer the following information about the UAC, to the extent such information is known and can be gathered in an operationally reasonable manner, to ORR through the UAC Portal or by some other appropriate method:

    a. Basic biographical data (e.g., name, date of birth, country of birth, potential sponsor information);
    b. Situational factors (e.g., health, pregnancy, travel companions);
    c. Human trafficking indicators; and
    d. Known criminal or behavioral issues, including arrests, criminal charges and convictions, immigration history, gang affiliation or suspected gang affiliation, and violence or behavioral concerns.

2. To ensure ORR has available information and supporting documentation to make an informed placement decision, the apprehending DHS component (ICE or CBP) will normally include in the Transfer Packet:

    a. Copies of all identity documents;
    b. DHS Form I-213, Record of Deportable/Inadmissible Alien;
    c. DHS Form I-216, Record of Persons and Property Transferred;
    d. DHS Form I-217, Information for Travel Document or Passport;

e. DHS Form I-770, Notice of Rights and Request for Disposition;
f. DHS Form I-862, Notice to Appear or other charging document;
g. CBP Form 93, Unaccompanied Alien Child Screening Addendum (trafficking information), if conducted;
h. Other applicable DHS, ICE, or CBP forms, if applicable, such as DHS Form I-200, Warrant for Arrest of Alien; and
i. Copies of any publicly available federal, state, or local criminal records in the possession of the apprehending DHS component (ICE or CBP) at the time of transfer and appropriate available documentation describing any gang, immigration, criminal, or other activity that may affect placement.

3. As expeditiously as possible, but no later than 24 hours after receiving notification from ICE or CBP of a UAC needing placement at an ORR facility, ORR will send a notification email notifying both ICE and CBP of the placement location. At a minimum, the message will include:

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

B. ORR Care

1. While UAC are in ORR care, ORR will notify ICE or CBP of the following situations, as expeditiously as possible, but no later than 48 hours after the occurrence:

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

g. Change in level of care. ORR will provide notice by email to the FOJC of any step up/step down to or from secure care for the UAC.

2. ORR will provide to the FOJC copies of all age-determination findings concluding that an individual is 18 years of age or over, as soon as possible from the time of such determination.

3. If ICE or CBP becomes aware of any criminal information (e.g., information regarding gang affiliation) that it did not have at the time of initial referral and transfer, ICE or CBP will notify ORR as expeditiously as practicable after becoming aware of the information (using their best efforts to provide such notification within 48 hours), and provide supporting documentation, to aid in ORR's consideration of whether transfer of the UAC may be necessary.

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

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

A. HHS's Responsibilities

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

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

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

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

C. **DHS's Responsibilities**

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

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

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

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

VI. **Severability**

Nothing in this Agreement is intended to conflict with current law or regulation or the directives of DHS, CBP, ICE, HHS, or ORR. If a term of this MOA is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

VII. Disputes

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

VIII. Funding

Each Party intends to bear its own costs in relation to this MOA. Expenditures are subject to the Parties' budgetary resources and availability of funds pursuant to applicable laws and regulations. The Parties expressly acknowledge that this MOA in no way implies that funding is to be made available for such expenditures and does not obligate the Parties to expend any funds. Nothing in this MOA is intended to or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Antideficiency Act, 31 U.S.C. §§ 1341-1519.

IX. No Private Rights

This MOA is an agreement between the Parties and is not intended to, does not, and should not be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party in any administrative, civil, or criminal matter, against the United States, or any of its agencies, officers, or employees. This MOA does not and is not intended to place any limitations on the otherwise lawful enforcement or litigative prerogatives of the Parties.

X. Effective Date, Modification, and Termination

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

Approved by:

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

04/13/18
Date

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

APR 1 3 2018
Date

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

04-13-18
Date

Scott Lloyd
Director
Office of Refugee Resettlement
Administration for Children and Families
U.S. Department of Health and Human Services

4/13/18
Date

2.5.1 Criteria for Background Checks

All potential sponsors and adult household members undergo a background check for criminal history and immigration status using fingerprints. These checks are conducted by the Department of Homeland Security on behalf of ORR and DHS then submits the results to ORR.

In addition, ORR independently conducts background checks without going through DHS. This independent background check process varies, depending in part on the relationship of the potential sponsor to the unaccompanied alien child:

- Parents and legal guardians (Category 1)
- Other immediate adult relatives, such as brother, sister, aunt, uncle, grandparent or first cousin (Category 2)
- Distant relatives and unrelated adults (Category 3)

As a part of this independent background check process, all potential sponsors must undergo a public records check.

The following indicates the **minimum** requirements for the process for sponsors. ORR may require additional checks, verifications, or procedures for sponsors in any category if there are any unresolved issues or questions related to the well-being of the child.
The following table lists the types of background checks performed, and explains when they are performed, based on the potential sponsor's relationship to the unaccompanied alien child and other release considerations. The chart identifies when DHS performs the check on ORR's behalf. (See also Section 2.7.4, listing findings barring release)

Type of Background Check	Purpose	Persons Checked	When Performed
Public Records Check	Identifies arrests or convictions of sponsors, adult household members, or others. If a check reveals a criminal record or safety issue, it will be used to evaluate the sponsor's ability to provide for a child's physical and mental well-being.	Potential Sponsors in Categories 1-3. Non-sponsor adult household members and adult care givers identified in a sponsor care plan.	In all cases
Sex Offender Registry Check, conducted through the U.S. Department of	Identifies sponsors and others that have been adjudicated as sex offenders through a national	Potential Sponsors in Categories 1-3. Non-sponsor adult household members and adult care givers	In all cases

Justice National Sex Offender Public Website	search and, if available, a local public registry search.	identified in a sponsor care plan.	
		Potential Sponsors in Categories 1-3. Non-sponsor adult household members.	In all cases.
Immigration Status Check conducted by the Department of Homeland Security using fingerprints	Provides information about immigration court actions and immigration statuses, including information about orders of removal. The information is also used to determine whether a sponsor care plan is required for release (see Section 2.7.6).	Adult care givers identified in a sponsor care plan.	Where a public records check reveals possible disqualifying factors under 2.7.4; or where there is a documented risk to the safety of the unaccompanied alien child, the child is especially vulnerable, and/or the case is being referred for a home study.
		Potential Sponsors in Categories 1-3. Non-sponsor adult household members.	In all cases.
National (FBI) Criminal History Check, based on digital fingerprints or digitized paper prints	Determines whether a sponsor or adult household member has a criminal history, has been convicted of a sex crime, or has been convicted of other crimes that compromise the sponsor's ability to care for a child.	Adult care givers identified in a sponsor care plan.	Where a public records check reveals possible disqualifying factors under 2.7.4; or where there is a documented risk to the safety of the unaccompanied alien child, the child is especially vulnerable, and/or the case is being referred for a home study
		Potential Sponsor in Categories 1-3. Non-sponsor adult household members.	In all cases.
DHS criminal history check, based on digital fingerprints or digitized paper prints.	Determines whether a sponsor or adult household member has a criminal history, including: biographic criminal check of the national databases, a biographical check for wants and warrants.	Adult care givers identified in a sponsor care plan.	Where a public records check reveals possible disqualifying factors under 2.7.4; or where there is a documented risk to the safety of the unaccompanied alien child, the child is especially vulnerable, and/or the case is being referred for a home study.

		Potential Sponsors in Categories 1-2.	In cases that require a home study, and cases where a special concern is identified.
Child Abuse and Neglect (CA/N) Check, obtained on a state by state basis as no national CA/N check repository exists	Checks all localities in which the sponsor or household member has resided in the past 5 years.	Potential Sponsors in Category 3. Non-sponsor adult household members and adult care givers identified in a sponsor care plan.	In all cases. In any case where a sponsor is required to undergo a CA/N check.
State Criminal History Repository Check and/or Local Police Check	Assists in locating police or arrest records, or other criminal offense details, as needed.	Potential Sponsors in Categories 1-3. Non-sponsor adult household members and adult care givers identified in a sponsor care plan.	Used on a case-by-case basis when there is an unresolved criminal arrest or issue that is still in process.

Revised 6/7/18

2.5 ORR Policies on Requesting Background Checks of Sponsors

In order to ensure the safety of an unaccompanied alien child and consistent with the statutory requirements under the TVPRA of 2008, ORR requires a background check of all potential sponsors. Depending on the circumstances, this process may involve background checks on criminal history, child abuse/neglect checks (CA/N), and immigration background checks for the sponsor and, if applicable, adult household members and adult care givers identified in a sponsor care plan. The background check takes place as soon as the potential sponsor has been identified, agreed to the background check, completed the Authorization for Release of Information form, if applicable, and provided a copy of a valid government issued photo identification. Adult household members and adult care givers identified in a sponsor care plan requiring background checks through non-public registries or searches are also required to submit

2.5.1 Criteria for Background Checks

The background check process varies, depending in part on the relationship of the potential sponsor to the unaccompanied alien child:

- Parents and legal guardians (Category 1)
- Other immediate adult relatives, such as brother, sister, aunt, uncle, grandparent or first cousin (Category 2)
- Distant relatives and unrelated adults (Category 3)

As a part of the process, all potential sponsors must undergo a public records check. The following indicates the **minimum** requirements for the process for sponsors. ORR may require additional checks, verifications, or procedures for sponsors in any category if there are any unresolved issues or questions related to the well being of the child.

The following table lists the types of background checks performed, and explains when they are performed, based on the potential sponsor's relationship to the unaccompanied alien child and other release considerations. (See also Section **2.7.4**, listing findings barring release)

Type of Background Check	Purpose	Persons Checked	When Performed
Public Records Check	Identifies arrests or convictions of sponsors, adult household members, or others. If a check reveals a criminal record or safety issue, it will be used to evaluate the sponsor's ability to provide	Potential Sponsors in Categories 1-3	In all cases
		Non-sponsor adult household members and adult care givers	In all cases

	for a child's physical and mental well-being.	identified in a sponsor care plan	
Sex Offender Registry Check, conducted through the U.S. Department of Justice **NSOPWVisit disclaimer page**and **Public Registry Sites Visit disclaimer pagewhere** available	Identifies sponsors and others that have been adjudicated as sex offenders through a national search and, if available, a local Public Registry search.	Potential Sponsors in Categories 1-3	In all cases
		Non-sponsor adult household members and adult care givers identified in a sponsor care plan	In all cases
Immigration Status Check conducted	Provides information about immigration court actions and immigration statuses, including information about orders of removal. The information is used primarily to verify immigration status. If a potential sponsor has immigration issues that could lead to his or her removal from the United States, the sponsor will be required to have a safety plan for the unaccompanied alien child in the event the sponsor leaves the United States. ORR does not disqualify potential sponsors on the basis of their immigration status.) As follow-up to the Immigration Status Check, the Executive Office for Immigration Review (EOIR) Hotline provides	Potential Sponsors in Category 1	Category 1 cases where there is a documented risk to the safety of the unaccompanied alien child, the child is especially vulnerable, and/or the case is being referred for a home study

	the latest immigration court information.		
		Potential Sponsors in Categories 2-3	In all cases
		Non-sponsor adult household members and adult care givers identified in a sponsor care plan	Where a public records check reveals possible disqualifying factors under 2.7.4; or where there is a documented risk to the safety of the unaccompanied alien child, the child is especially vulnerable, and/or the case is being referred for a home study
National (FBI) Criminal History Check, based on digital fingerprints or digitized paper prints	Determines whether a sponsor or adult household member has a criminal history, has been convicted of a sex crime, or has been convicted of other crimes that compromise the sponsor's ability to care for a child.	Potential Sponsors in Category 1	Where there is a documented risk to the safety of the unaccompanied alien child, the child is especially vulnerable, and/or the case is being referred for a home study
		Potential Sponsors in Categories 2-3	In all cases
		Non-sponsor adult household members and adult care givers identified in a sponsor care plan	Where a public records check reveals possible disqualifying factors under 2.7.4; or where there is a documented risk to the safety of the unaccompanied alien child, the child is especially vulnerable, and/or the case is being

			referred for a home study
Child Abuse and Neglect (CA/N) Check, obtained on a state by state basis as no national CA/N check repository exists	Checks all localities in which the sponsor or household member has resided in the past 5 years	Potential Sponsors in Categories 1-2	In cases that require a home study, and cases where a special concern is identified
		Potential Sponsors in Category 3	In all cases
		Non-sponsor adult household members and adult care givers identified in a sponsor care plan	In any case where a special concern is identified
State Criminal History Repository Check and/or Local Police Check	Assists in locating police or arrest records, or other criminal offense details, as needed.	Potential Sponsors in Categories 1-3 Non-sponsor adult household members and adult care givers identified in a sponsor care plan	Used on a case-by-case basis when there is an unresolved criminal arrest or issue that is still in process

Revised 4/11/16

[redacted]

ADMINISTRATION FOR
CHILDREN & FAMILIES

Office of Refugee Resettlement (ORR)
Unaccompanied Alien Children (UAC) Program

Memorandum of Agreement (MOA) Impact on Category 1 UAC Length of Care and Sponsorship

Objectives: Evaluate trends correlated with the implementation of the MOA between HHS and the Department of Homeland Security (DHS).

Analysis: This paper assesses the median length of care for UACs at two points before the implementation of the MOA, and one point after the implementation of the MOA. The median length of care for UACs before and after MOA implementation assesses the policy's effect on the timeframe between the minors' entry into ORR's care and placement with their sponsor.

The cohorts prior to MOA enforcement include discharged UACs released to Category 1 sponsors that were placed in shelters and transitional foster care between November 20, 2017 through January 5, 2018 (n=946) and March 30, 2018 through June 7, 2018 (n=2,076). The cohort after enforcing the MOA includes discharged UACs released to Category 1 sponsors that were placed in shelters and transitional foster care between June 7, 2018 through September 30, 2018 (n=2,560).

ORR selected the November 20, 2017 through January 5, 2018 dates to compare intervals before and after the MOA when the occupancy rate was at or above 85%. This analysis calculates an overall length of care median for the two pre-MOA cohorts UAC assigned to category 1 sponsors, and the one post-MOA cohort indicated above. In addition, weekly median of length of care relative to a UACs' referral to ORR is also calculated. The analysis includes further assessment of discharge types. Additionally, this analysis assesses the timeframe between the request for fingerprints and the receipt of fingerprints (hereafter referred to as fingerprinting time) pre and post MOA enforcement.

Limitations: The UAC program's overall bed capacity is always changing, which could introduce bias in the data. To address the issue, we selected a pre-MOA timeframe where bed capacity was at 85% for analysis. The timeframe for the MOA is limited to a four-month period as the implementation is recent. Prior to MOA, there were only a few instances where both sponsors and household members were requested to provide fingerprints. Because of this, the sample size for the fingerprint analysis before MOA implementation is small compared to post-MOA enforcement. In addition, the data quality is contingent on user input and proper documentation. Finally, the post-MOA cohort spans the length of time that includes efforts to reunify the class members in the *Ms. L* litigation, which could affect the length of care in a variety of ways.

Although the graphs below indicate a decline of the median LOC for UAC in the post-MOA cohort, this does not indicate a reduction of the LOC of the group. Rather, it indicates that the cohort members entering ORR custody in the latter part of the study timeframe, have an inherently lower LOC due to the fact that they entered ORR custody closer to the end of the study period.

Findings: Overall, the median length of care for a Category 1 discharged UAC minor prior to policy implementation was 20 days between November 20, 2017 to January 5, 2018, and 22 days between March 30, 2017 through June 6, 2018 respectively. The median length of care after the implementation of the MOA, between June 7, 2018 through September 30, 2018, was 51 days. Minors referred to ORR during the week of July 7, 2018 experienced the longest length of care: 73 days.

Prior to the implementation of the MOA, 98% of discharged Category 1 minors were placed with their sponsors whereas 78% of discharged Category 1 minors were place with their sponsors after MOA implementation. The decrease is likely attributable at least two factors. First, in certain cases, the sponsorship process did not begin as the UAC was within days of aging out as they entered ORR custody. In the pre MOA cohort less than 1% of Category 1 UAC were discharged due to aging out. For post-MOA age outs accounted for 2% of the cohort. Second, a significant number of discharges during the study period were court-ordered reunifications of separated children from their parents in DHS custody.

The fingerprint data pre- and post-MOA implementation was notable. Before the MOA implementation, the time period from when the first fingerprint was requested by ORR to the last date upon which a required fingerprint was received by ORR was analyzed.[1] For the cohort spanning November 21, 2017 to January 5, 2018, the mean fingerprinting time was 4.5 days. For the cohort spanning from March 30, 2018 to June 7, 2018, the fingerprinting time was 3 days. In contrast, after the MOA implementation, the mean fingerprinting time was 25 days.

The variation in fingerprinting time post-MOA was wider than pre-MOA. Pre-MOA, the longest fingerprinting time for one individual (sponsor or household member) was 29 days. After MOA implementation, the longest fingerprinting time for one individual was 86 days. In addition, the fingerprinting time for sponsors and household members after MOA implementation was 20 days and 18 days, respectively.

Executive Summary:

- The MOA analysis indicates an increase in the median length of care for Category 1 minors admitted after implementing the MOA. Minors referred on the week of July 7, 2018 experienced the maximum length of care at 73 days.

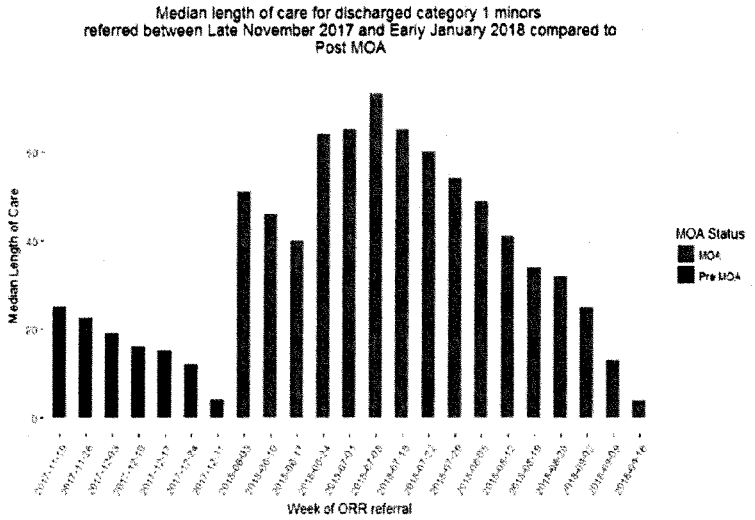
- There was a decline in median length of care for minors referred after the week of July 7, 2018, but LOC still remains at higher levels compared to the pre-MOA cohort.

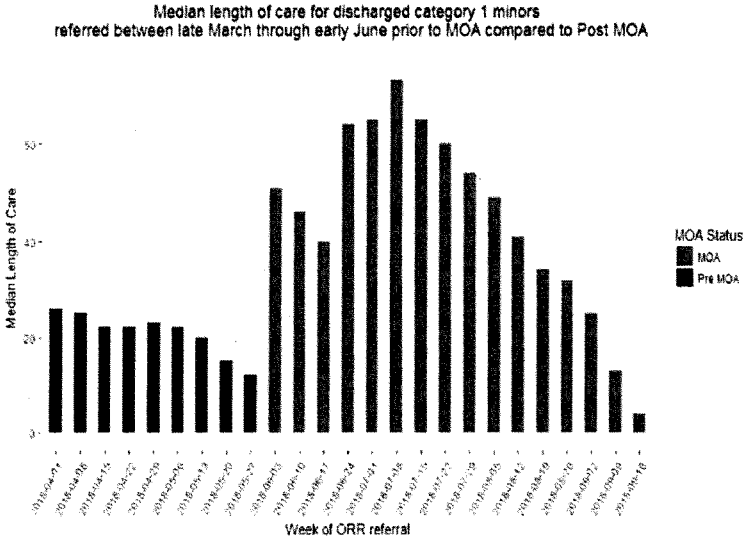
[1] Depending on the case, fingerprints were required for sponsors, other household members, or both.

[redacted]

- The fingerprinting data showed the length of time it takes a sponsor/household member to come forward to provide fingerprints was much more wide-ranging. In addition, the average time it takes a sponsor/household to come forward and provide fingerprints from the time of request compared to the pre-MOA cohort was significantly higher.

[redacted]


Median length of care for discharged category 1 minors
referred between Late November 2017 and Early January 2018 compared to
Post MOA
Median Length of Care
Week of ORR referral
MOA Status
MOA
Pre MOA


Median length of care for discharged category 1 minors
referred between late March through early June prior to MOA compared to Post MOA
Median Length of Care
Week of ORR referral
MOA Status
MOA
Pre MOA

[redacted]

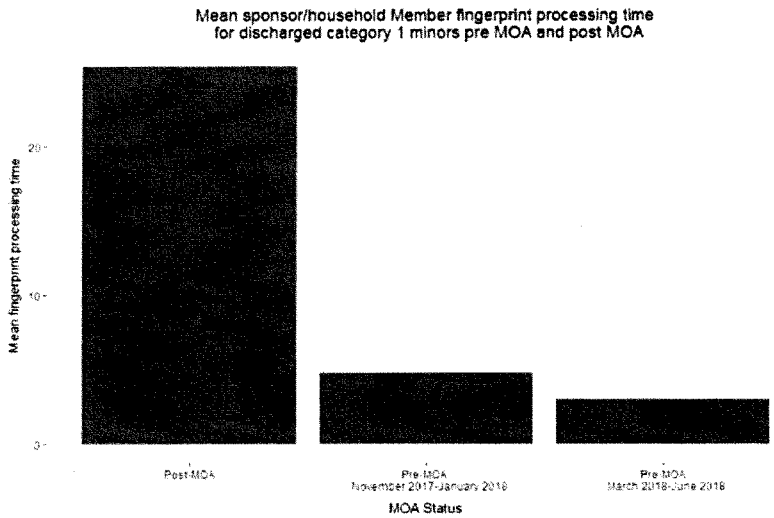


Figure 1: Length of Care and Sponsorship Outcomes because of MOA. The median length of care increased significantly for Category 1 discharged minors admitted during MOA implementation compared to those Category 1 minors discharged prior to MOA implementation, from late November 2017 to early January 2018 (Top). The median length of care for discharged Category 1 minors from June through September 2018 increased significantly after MOA compared to the two prior months before the MOA was implemented (Middle). The average sponsor/household member fingerprinting time increased after MOA implementation compared to the two pre MOA cohorts (Bottom)

*****Note that MOA waiver was instated from September 14, 2018 to October 2, 2018**

*****Note that the pre MOA time frames are when bed capacity was at or higher than 85%.**

Citations to relevant child welfare literature on congregate care

Annie E. Casey Foundation. (2012). Reducing congregate care: Worth the fight. Available at: http://www.aecf.org/blog/reducing-congregate-care-worth-the-fight

Children's Bureau. "A National Look at the Use of Congregate Care in Child Welfare." May 13, 2015. Available at: https://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare_brief.pdf.

Chapin Hall and Chadwick Center. "Using Evidence to Accelerate the Safe and Effective Reduction of Congregate Care for Youth Involved with Child Welfare." Available at: https://comm.ncsl.org/productfiles/83453725/reduction_of_congregate_care.pdf

LEE GELERNT
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To: The Honorable Jan Schakowsky CD-IL

Thank you for the opportunity to respond to your questions regarding the criteria used to separate children from their parents. You asked the following:

1. Mr. Gelernt, during the February 7, 2019 hearing, the Office of Refugee Resettlement and Office of the Inspector General officials described the criteria used to separate children from parents. These determinations are typically made in cases where officials find that the parents may pose a danger to the child. Based on your experiences:

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a. How is this determination made and by whom?

Based on reports from advocates and lawyers who work with separated families, and our exchanges with the Government, our understanding is that the initial separation decision is typically made by a CBP officer at or near the time that they arrest the family. We are not sure what criteria CBP officers apply when making the separation decision. Nor are we aware of any meaningful review process that takes place internally within CBP or DHS, or any other administrative body, for a separation decision.

b. What constitutes a "danger" to a child? Please provide specific examples.

As noted, the Government's precise criteria for separating families is not clear to us. We are aware, however, of cases where the separation decision was allegedly based on a criminal conviction or arrest that, in our view, supplies no basis for a finding that the parent is a danger to the child. For example, we are informed or aware that parents have been separated because of:

- A conviction from more than 10 years ago for giving a false name while arrested;
- A 15-year-old theft conviction;
- Driving without a license;
- Charges brought while the parent was still a juvenile;
- Littering.

We are also aware of a number of cases where the Government has separated families on the basis that the parents are involved in gangs. However, the Government frequently relies on flawed and incomplete evidence to reach that determination, such as mere arrest warrants

(rather than convictions), or even alleged "confessions" of gang membership in the absence of any other concrete evidence. Advocates have told us that when challenged to provide evidence to back their allegations of gang membership, the government frequently is unable or refuses to do so.

ProPublica recently reported on one case where CBP separated a father and four-year-old son because the father was allegedly a gang member. [1] But at the father's bond hearing before an immigration judge, the Government failed to produce *any* evidence supporting the gang allegations. The immigration judge ordered the father's release from custody, and only thereafter did he regain custody of his son.

c. Is any criminal history, including immigration offenses, grounds for separation?

The Government claims that it exercises some discretion when it makes separation decisions, and will not separate in all cases where the parent has a criminal history. But again, it is not clear to us what criteria the Government uses to determine whether criminal history is serious enough to warrant separation.

Judge Sabraw in *Ms. L* has ruled that a parent cannot be separated from a child "absent a determination that the parent is unfit or presents a danger to the child." PI Order at 22-23. Judge Sabraw has also specifically found that convictions for federal immigration offenses cannot serve as a basis for maintaining the separation of a parent and child.

To be clear, we have not taken the position in *Ms. L* that the parent and child must remain together during the time when the parent is actually in federal criminal custody (whether pretrial or after sentencing). So if the Government apprehends a family, then chooses to prosecute the parent for *any* criminal offense, including immigration offenses, separation can occur *while the parent is in federal criminal custody.*

After the parent is released from criminal custody and returned to DHS detention, the *Ms. L* injunction requires that the family be timely reunified. However, we remain concerned about the timeliness of reunifications after a parent's release from criminal custody, and are aware of cases where parents have remained separated for long periods of time even after their release from pretrial custody or prison. For example, it took one of our named Plaintiffs, Ms. C, about nine months to be reunified with her child after she served her sentence unlawful entry.

Based on U.S. Border Patrol Chief Carla Provost's recent testimony before Congress, it is not clear that the Government shares this interpretation. Chief Provost testified at a

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[1] Ginger Thompson, "Families Are Still Being Separated at the Border, Months After 'Zero Tolerance' Was Reversed," ProPublica, *available at* https://www.propublica.org/article/border-patrol-families-still-being-separated-at-border-after-zero-tolerance-immigration-policy-reversed

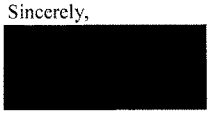
February 26 hearing that families are being separated, for example, when the parent has been convicted of any felony—even illegal reentry.

d. What process, if any, exists for parents or child advocates to challenge a decision to separate the parent and child?

We are aware of no formal administrative process within DHS or ORR that permits review of a family separation decision. Immigration counsel for the parent or child frequently use whatever informal channels are available to them to advocate for the family's reunification. We, in our capacity as *Ms. L* class counsel, also frequently bring individual cases to the Government's attention and request information about the family's case and/or push for reunification. We are also aware that some individual parents and children have filed separate lawsuits in other courts that have resulted in reunification.

However, all of these mechanisms are applied on an ad hoc and individualized basis. Again, we are not aware of any systematic or formal agency review process that allows parents or advocates to contest a separation decision.

Sincerely,



Lee Gelernt

March 20, 2019

House of Representatives Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
"Examining the Failures of the Trump Administration's Inhumane Family Separation Policy."

Questions for the Record from Dona Abbott
Vice President of Refugee and Immigrant Services
Bethany Christian Services

The Honorable Greg Walden (R-OR)

1. **Please describe the process that Bethany Christian Services staff go through in order to work to reunify or place unaccompanied alien children with their family or the most appropriate sponsor?**

   Bethany provides case management services to help reunify or place unaccompanied children with their family or the most appropriate sponsor. This includes:

   - Minimum of weekly meetings with the child
   - Identification and contact of potential sponsor
   - Support of sponsor to complete Family Reunification Packet (FRP) and supporting documents
   - Continuous updates for the child regarding process of reunification with sponsor
   - Set up and support sponsor in completing appropriate background checks
     - Fingerprinting appointment
     - Public records check
     - Online sex offender check
   - Submission of recommendation for release of child to identified sponsor to ORR, including a recommendation
   - Upon approval of recommendation, the child is prepared for discharge
   - The child is discharged within 72 hours of approval of recommendation
   - The child is accompanied by a Bethany staff member to meet sponsor
   - Staff explains discharge packet and the reunification is complete

   a. **What would happen to these children if the ORR program did not exist?**

      Before ORR existed, unaccompanied children were under the care and custody of the former Immigration and Naturalizations Services (INS). Many child welfare advocates were concerned about the care children received from INS during the 1980's and 90's which led to several lawsuits resulting in the Flores Agreement of

1997. The Flores Agreement established regulations for the humane detention and treatment of unaccompanied children. Several years later, the Homeland Security Act of 2002 (HSA) again addressed the treatment of children and transferred responsibility for their care and custody from DHS to the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS).

Without the HHS/ORR program, I am concerned that we would return to the treating fleeing and traumatized children as delinquents. Under INS care, children did not consistently receive therapy, an opportunity for regular contact with their parent or sponsor, educational services, developmentally appropriate recreation, access to legal services, and appropriate health care. They were often detained in unlicensed, INS monitored facilities with undertrained correction officers in the role of youth care workers.

ORR maintains a network of shelters and family foster care homes that can provide for the well-being of unaccompanied children. ORR could better provide for the well-being of unaccompanied children by being present with trained child protection social workers at the time the child crosses the border and during the transition to small group shelter or foster family care.

2. **Historically, when a child arrives at Bethany Christian Services, what type of information has been provided to you, as a grantee, particularly with respect to any information regarding a potential separation?**

At the time of referral, each program receives a placement request with the following information, which may be detailed and complete but can also be inaccurate or left blank:

a. A# (assigned identification "alien" number each child receives when taken into custody
b. Name
c. Date of birth
d. Age
e. Gender
f. Country of Origin
g. Health (typically lists "good" or any health concerns if noted at health screening)
h. Where they are being held
i. Notes (medical concerns, placement information, and separation notes are listed here). If a child has been separated from a biological parent, it is listed in the "notes" section. It is most common for it to read: "Parent separation: Separated from her father (father's name and A#) due to father's criminal charges". Occasionally, there is

more information that may or may not substantiate the separation of the child from its parent, i.e. "separated due to mother's charges of violent crimes".

j. Potential Identified Sponsor

3. Who provides you with that information?

ORR provides Bethany with access to this database via the Unaccompanied Alien Children Portal. The actual information is input by CBP officials.

a. **Did this information differ at all during the zero-tolerance period?**

During the zero-tolerance period, the notes section of a placement request began to list "Parent Separation" more frequently. When a child was listed as separated from a parent, the parent's name and A# were inconsistently included in any separation referral. During the zero-tolerance period, it was common to receive referrals for youth who did not have parent separation in the notes section, who later disclosed that they had been separated from a parent once they entered our care.

4. During the hearing, witnesses discussed the need for an integrated data system to track separated families across agencies. In your opinion, what information should be included in such an integrated data system and what information should not be included in the data system?

a. The current data tracking system (UC Portal) used by UC service providers is specific to individuals who are identified by CBP as Unaccompanied Children, and therefore relates only to minors. Any tracking system used for refugees/migrants who are above the age of 18 is not able to communicate with the UC Portal. For family separations, this means that if a CBP official determines that separation of a child from parent or caregiver is warranted, and enters them into the UC Portal as unaccompanied, service providers have no way of identifying why a separation occurred unless it is noted. In addition, no consistent method exists for parents who are logged in a CBP tracking system to be associated with their child in the UC Portal. This has left UC programs dependent on CBP to properly communicate reasons for separation and parent location.

b. An integrated system between ORR's UC Portal and CBP could connect children who are separated from their parents for any reason. It would be beneficial for caregivers of UC to have live updates on the cases of their clients' parents or caregiver, as well as access to the process for determining separation warranty. In addition, it would be important to establish appropriate firewalls that assure the confidentiality of a child and their sponsor's social work record.

c. Beside the need for a system that communicates active case updates between CBP and ORR, separations are not consistently or properly documented. UC programs have received referrals for clients who are labeled as separated but without rationale. I recommended the implementation of a system – aligned with child welfare values – that documents the process of deciding to separate and post-separation.

d. A database that allowed for tracking of UC after they are discharged from the UC program could allow for better assessment of program success. If communication was viable between UC programs and programs/advocates local to the reunified UC, collaboration could take place to ensure the UC is successful in their new placement—including successful in complying with court dates. Currently, UC program staff are unable to have communication of any kind with UC who have discharged their program beside one phone call after 30 days, unless they have been contracted by ORR to provide post-release services. The documentation of this phone call is done via spreadsheets and is not well tracked in a larger database. Using updated technology for the connection between reunified UC and UC program staff could show trends in successes and failures.

e. It is valuable to share any information that enhances the ability of UC caregivers to understand the history of the child and their families. For example, CBP evaluations of parents should be shared with UC programs. In addition, any information gathered by UC caregivers indicating harm to the child ought to be shared with proper investigative entities, as necessary.

f. ORR should not share collected information that is therapeutic or gathered during case management sessions with UC or sponsor. This could be used against sponsors for immigration enforcement purposes.

The Honorable Brett Guthrie (R-KY)

5. **In your testimony, you note that ORR generally does a good job of ensuring that separated children have access to services including an education, mental health services, medical care, legal services, and post-release services. Can you describe the general condition of the children that Bethany has cared for over the past twenty years upon arriving in the United States?**

The children that enter Bethany's care upon arriving to the U.S. often come scared, timid, and weary. Most often, children arrive with very few possessions, often just the clothes on their backs, but sometimes with a small backpack with important items such as birth certificates, phone numbers, medication, or a cell phone. It is usually clear when children arrive that they have gone days without a shower, proper water, and proper meals. We generally are met with questioning eyes and faces who are unsure about whether they can

trust us. Immediately upon arrival, we offer to facilitate a phone call to any family member. Children are often distraught and tired after the day of travel to our location but eager to hear the comforting voice and reassurance from family. This also provides Bethany workers with an opportunity to orient both the child and their family to the program and what is to come.

a. **What effect has their journey to the United States had on their physical and mental well-being?**

   If a child has a chronic health concern, the symptoms are often exacerbated throughout the journey. Poor hygiene, lack of ongoing medical care, and additional physical and emotional trauma resulting from community violence, during and after flight from their home country, tend to result in acute health concerns. This is true for both their physical and mental well-being. Children who have been subject to the physical and mental trauma of trafficking or who have been physically/sexually assaulted prior to or during flight need immediate medical and mental health services upon arrival.

   A child often has unexpressed feelings of guilt and shame when he/she arrives to the program; they feel sad about being caught or making their family come forward and risk their safety and livelihood to be a sponsor. Through clinical sessions and program orientation, we attempt to alleviate this stress and allow for the children to regain a sense of safety, all while educating sponsors on the benefits of the programming and resources available to them

   It is critically important for caregivers, mental health providers, and physical health providers to understand that children have most likely experienced physical and mental trauma prior to flight and that it is this experience that led to the decision to flee their home country. Thus, pre-flight history is critical to treatment since it is highly likely to be untreated to this point.

b. **Can you elaborate on the education, mental health services, medical care, legal services, and post-release services that Bethany provides to these children?**

   i. Children are provided with educational programming 5 days a week for 6 hours each day, year around. We have created a school-like atmosphere where teachers are trained to care for traumatized children, with a curriculum of classes offered to UC children in Spanish (or with interpretation services in their native language) such as math, science, art, reading and writing, and English language learning. Children take an educational assessment within 72 hours of arrival to assist in placing them in a grade. This allows for children to learn and understand what a public school might look and feel like, to better

prepare them for once they reunify with their family and begins school.

ii. Children are provided with a minimum of one hour a day of gross motor activity consistent with their age and development, including but not limited to time on a playground, playing soccer, basketball, gym time, etc.

iii. Each child is assigned a bilingual clinician upon arrival to the program. The clinician completes an initial assessment with the children within 48 hours to ensure the child is safe and to assess any urgent mental health concerns. The clinician continues to meet with each child individually a minimum of one session per week. Clinicians often facilitate family therapy sessions using video chat technology to incorporate the child's family into the mental health goals and treatment plan of that child. Each week, the children attend two sessions of group therapy led by an onsite clinician. Clinical services are increased dependent on the needs of the child and their family.

iv. Bethany facilitates all initial medical appointments for incoming children at local medical providers within 48 hours or their arrival. Their first appointment is a general child well-being appointment, completion of their immunizations and any lab testing that the doctor might recommend. Bethany staff ensures the completion of any follow up appointments, treatment or medication as prescribed or recommended by the physician. Should a child need urgent services while in care at Bethany, urgent care services are sought at a local hospital to ensure all the child's medical needs are met. All medical service history while in our care, including health care recommendations, is provided to the sponsor upon reunification to assist in obtaining health care for the child.

v. Each child attends a minimum of two legal service meetings while in care at Bethany, provided by the ORR contracted VERA legal provider. In the first meeting, called "Know Your Rights", an attorney meets with a group of newly arrived children to explain what their rights are in Bethany's programming and their rights as an immigrant in the U.S. The child then attends an individual meeting with an attorney who completes a legal screening, hears their story, and assesses any options for legal relief. Should the child have any questions or seek out legal counsel during their time in care, an additional meeting is arranged for the youth with an attorney. All legal documentation, including the recommendation, is then provided to the sponsor upon reunification to assist in obtaining legal representation for the child.

vi. Bethany provides Post Release Services (PRS) to children and their families post-reunification. These services are contracted for families who are assessed and deemed appropriate and safe but that might need assistance with navigating community resources to obtain mental health services, follow up medical services, or any type of post-reunification support. When PRS is approved by ORR and secured for a family, it ensures the family a case manager for six months after reunification.

c. **We've heard that the ORR program is a trauma informed program. Can you provide information regarding any training that Bethany Christian Services' staff have in order to care for an inherently traumatized population?**

i. Bethany is certified in the **Sanctuary Model** of care. Sanctuary is a theory-based, trauma-informed, trauma-responsive, evidence-supported, whole culture approach that has a clear and structured methodology for creating or changing an organizational culture. Sanctuary is a framework from which to better understand trauma – when children act out or display what people might label "bad behavior"- we ask ourselves, "what has happened to them?" rather than, "what is wrong with them?" To support our certification in Sanctuary, each staff undergoes three full day training to understand the seven pillars of Sanctuary, how trauma affects the brain, and to understand why it is important to acknowledge trauma in each one of us.

ii. **Trauma-Focused Cognitive Behavioral Therapy (TF-CBT)** is an evidence-based treatment for children and adolescents impacted by trauma. Research shows that TF-CBT successfully resolves a broad array of emotional and behavioral difficulties associated with single, multiple, and complex trauma experiences. Bethany clinicians undergo training in TF-CBT. Due to the transitional nature of the program, clinical interventions are accompanied by substantial time spent on assessment, family engagement and facilitating adjustment for the child. Therefore, the modality closely informs the clinical work done while children are in care. TF-CBT provides a knowledge base of psycho-education techniques, a trauma responsive process, and family therapy components that guide the interventions utilized with children placed with Bethany.

iii. **Mindfulness** is the basic human ability to be fully present, aware of where we are and what we're doing, and not overly reactive or overwhelmed by what's going on around us. Staff have gone through an implemented mindfulness course and learned techniques to assist in promoting mindfulness with clients. This is a tool to help youth deal with anxiety symptoms and hyper vigilance

that are intrusive symptoms from having experienced trauma.

iv. **Dialectical Behavioral Therapy (DBT)** is a modified form of Cognitive Behavioral Therapy that uses traditional cognitive-behavioral techniques, but also implements other skills like mindfulness, acceptance, and tolerating distress. It is particularly effective with youth who are engaging in self-harming behaviors. Our clinicians attend DBT trainings and use those strategies to help children develop positive coping skills and combat stress and trauma.

v. **CPI Nonviolent Crisis Intervention** is a behavior management system based on the philosophy of providing the best care, welfare, safety, and security for staff and those in their care, even during the most violent moments. The program focuses on preventing disruptive behavior by communicating with youth respectfully and with concern for their well-being. The program teaches physical interventions to be used only as a last resort (when a youth presents an imminent danger to self or others) and all physical interventions taught are designed to be non-harmful, non-invasive, and to maintain the youth's dignity. This approach includes follow-up debriefing strategies to protect the integrity of the relationship of the client and staff. All staff are certified through two full days of training each year, where they are taught the theories, are prompted to use de-escalation skills and practice disengagement and physical interventions.

6. **It is my understanding that ORR grantees can differ in their model. Can you please describe Bethany Christian Services' model for their UAC population and how it is different than some of the other grantees?**

In general, ORR has four models of care for unaccompanied children, listed below in order from the most restrictive to the least restrictive:

1. Influx Shelter – In 2018, influx shelters in Texas and Florida housed more than 2,300 children. The shelter in Texas closed; however, the shelter in Florida is still operational. The grounds are heavily guarded, and children cannot leave the premises. Children living there have limited access to medical care and educational programming, as these basic services are not required in influx shelters.

2. Large Shelter - Dorm-style facilities can house up to 1,500 children with residential staff always present. Children do not leave the premises, but they are offered recreational, medical and educational opportunities on-site.

3. Small Group Home - Children live in family like group housing with other unaccompanied children and is staffed 24/7. Children participate in community outings

and activities with the group after daily, on-site they are offered recreational, medical and educational opportunities on-site. Bethany provides this service.

4. Temporary Foster Family Care - Individual children under the age of 13, sibling groups, and children over 13 who are pregnant, have a young child, or special needs are placed in licensed foster homes and are cared for and kept safe in families. Foster care provides children with opportunity to be part of a community. Bethany provides this service.

Congress directed that each unaccompanied child must "be promptly placed in the least restrictive setting that is in the best interest of the child." (8 U.S.C. § 1232(b)(2)).

As an organization that believes children belong in families and consistent with Congress' mandate that children, when they cannot be with a parent or family member, be placed in the least restrictive setting that is in their best interest, Bethany provides Transitional Foster Care for unaccompanied children. The goals of this program are two-fold. First, we ensure that children who have fled for their lives are cared for and kept safe in temporary foster families. Then, as soon as children enter our care, we immediately begin the process of locating their families and begin facilitating reunification. Our mission always has been—and always will be—to quickly and safely reunify children with their families. In fact, Bethany has helped reunify more than 5,000 unaccompanied children with their families in the last five years.

For children 13 and older, HHS policy requires group supervised care. For identified youth who need additional supervision and whose needs cannot be provided in a foster care setting, community-based care models like small group homes are better alternatives to large-scale institutions. In small group homes, older children live in shared housing with other youth their age and have freedoms that may not be available in large-scale institutions such as community outings, group activities, individualized treatment plans, individual and group counseling, and intensive case management. Evidence based, trauma informed models of care can help ensure that youth in smaller shelters receive the best care possible.

Family and community-based care models are often significantly more affordable than influx and large group shelters – often less than half the cost.

7. **What is Bethany Christian Services' total bed capacity for unaccompanied alien children?**

As of March 13, 2019, Bethany's bed capacity is 123 children. Bethany recently received approval from ORR to expand bed capacity to 210 children and that expansion is in progress.

   a. **Given ORR's longstanding need for additional bed capacity, does Bethany Christian Services have the capacity to provide additional beds for UAC?**

Yes. It is Bethany's belief that the family-centered model of care we provide through transitional foster care is in the best interest of children—superior to the large shelter model which currently holds the most UC beds. Having available foster homes as a resource requires a commitment to long term capacity development and management.

b. **If so, how many additional beds is Bethany prepared to add to its overall capacity for UAC?**

In addition to the 210 beds that Bethany is approved for, we are prepared to provide 84 more by the end of this 2019. Bethany is committed to expanding the locations and numbers of foster homes available to unaccompanied children.