



Testimony of

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Chairman Cornyn, Ranking Member Durbin, and Members of the Committee, it is my honor to appear on behalf of the Department of Health and Human Services (HHS).

I became the permanent director earlier this year and it is a privilege to serve in this role alongside the ORR career staff on a daily basis. I am continually impressed with the level of commitment and professionalism I see in the ORR staff. I have visited 37 UAC shelters and programs so that I can see firsthand the quality of care that ORR facilities provide to UAC. My goal is to ensure the safety and well-being of the children in our care in a manner that is consistent with the law. As the ORR Director, I am committed to making decisions that are in the best interest of each child in ORR's care.

Prior to my time at ORR, I worked for two Members of the U.S. House of Representatives for approximately eight years. That experience provided me with a firsthand knowledge of the important role that you and your staff members have in ensuring federal programs operate successfully.

### **About the UAC Program**

The Homeland Security Act of 2002 (HSA) and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRRA), as amended, govern the UAC program. So do certain provisions of the *Flores* Settlement Agreement (FSA). As defined by the HSA, 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 an unaccompanied alien child and is transferred to ORR for care and custody.

ORR does not apprehend migrants at the border or enforce the immigration laws. The Department of Homeland Security (DHS) and the Department of Justice (DOJ) perform those functions.

ORR facilities offer a variety of placement options, including foster care, group homes, shelter, staff secure, secure, and residential treatment centers. These options allow ORR to accommodate each child's unique circumstances when deciding where to place a child.

UAC shelters provide housing, nutrition, routine medical care, mental health services, educational services, and recreational activities such as arts and sports. They provide service on par with the domestic child welfare system. Grantees operate the facilities, which are licensed by state licensing authorities responsible for regulating such residential child care facilities.

The exception is ORR's temporary hard-sided influx care facility in Homestead, Florida. That facility is not required to obtain state licensure. However, children who reside at this location generally receive the same level of care and services as those provided by a permanent state-licensed facility.

The UAC program bed capacity has expanded and contracted over the years, driven by fluctuations in the number of UAC 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 quick ability to add temporary beds. That arrangement helps HHS to accommodate changing flows in the number of referred UAC.

HHS cares for all UAC until they are released to a suitable sponsor, which is usually a parent or close relative, while they await immigration proceedings. UAC may also leave HHS care if they return to their home countries following an immigration judge's order of removal, turn 18 years of age, or gain legal immigration status.

### **Current State of the Program**

In fiscal year (FY) 2018, DHS referred approximately 49,100 children to ORR. 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. If this rate of referrals continues in FY 2019, ORR will care for the largest number of UAC in the program's history. Based on the anticipated growth pattern in referrals of UAC from DHS to ORR, HHS is preparing for the need for high bed capacity to continue.

The fluctuations in the numbers of children in care are significant. Currently, HHS maintains approximately 14,000 beds. This is up from approximately 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.

As you are likely aware, on May 1st, the Administration transmitted to Congress a supplemental request for \$2.9 billion for HHS, which would enable ORR to increase shelter capacity to approximately 23,600 total beds in order to accommodate the high number of UAC anticipated to be referred to ORR through the remainder of the fiscal year. Given that current referral trends are likely to continue into next fiscal year, the amount requested would also provide ORR the ability to maintain a high bed capacity through December 2019. Without additional funding, there is a significant likelihood that the UAC program will exhaust all of its resources in June, in which case HHS may need to reallocate more funds from refugees and victims of trafficking and torture, and scale back services. In the worst-case scenario, thousands of children might remain for lengthy periods of time in DHS facilities that were never intended to be long-term shelters, rather than being expeditiously transferred to HHS custody, where they would receive case management and other services that address their unique needs.

### **Recent Program Demographics**

In FY 2018, approximately 92 percent of referred children came from Honduras, Guatemala, and El Salvador. UAC 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 in route to the United States. Teenagers made up approximately 85 percent of UAC referrals in FY 2018, the remainder being children under the age of 12.

In FY 2018, children typically stayed in ORR care for 60 days. To date, in FY 2019, the average length of care has been 78 days, although we expect this average to decline pursuant to several ORR-issued operational directives. In FY 2018, ORR released 86 percent of children to a sponsor. Of those sponsors, 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 or non-relatives such as a close family friend.

As of March 30<sup>th</sup> FY 2019, 92 percent of those children discharged from ORR custody were released to individual sponsors. Of those sponsors, 44 percent were parents, 47 percent were close relatives, and 9 percent were more distant relatives or non-relatives.

### **Coordination with the Department of Homeland Security**

HHS and DHS's Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) entered into an information sharing Memorandum of Agreement in April 2018. The agreement requires CBP and ICE to provide ORR with certain information pertaining to gang membership and criminal history at the time of placement so ORR can make a placement decision in the child's best interest. The agreement also was designed to provide biometric fingerprint and immigration checks for sponsors and adults in their households through ICE databases. Prior to the agreement, DOJ's Federal Bureau of Investigation (FBI) processed fingerprint criminal checks and DHS's U.S. Citizenship and Immigration Services (USCIS) provided biographic checks of the potential sponsor's immigration status.

Currently, ICE provides ORR with a biographic immigration status checks, but the FBI provides the fingerprint criminal background check. ICE provides a fingerprint check that may confirm an individual's identity. ORR uses immigration status information to determine whether it must plan for the child's care if the sponsor left the United States due to their status as an alien.

Since the implementation of the agreement, ORR has implemented operational directives in December 2018 and March 2019. Under the December 2018 operational directive, adults in the potential sponsor's household are no longer required to undergo fingerprint background checks unless the potential sponsor is a distant relative, the potential sponsor is unrelated to the child, or when there are "red flags," such as a home study or other special concerns identified by our providers, contractors, or federal staff. Under the December 2018 operational directive, ORR could release a child on a case-by-case basis to a parent or legal guardian ("category 1 sponsor") or close adult relative ("category 2 sponsor") *after* fingerprinting the sponsor, *but pending* the results. ORR could not release a child in cases with "red flags" until after receiving the background check results. Both category 1 and category 2 sponsors were still subject to other biographic criminal checks (i.e., public records checks and sex offender registry checks) and ORR could not release a child prior to receiving the results of those checks.

Under the March 2019 operational directive, ORR is no longer required to conduct fingerprint background checks on category 1 sponsors, but does so in cases where there is a "red flag." ORR must still conduct biographic criminal and sex offender registry checks. This was ORR's policy prior to the agreement with ICE and CBP. ORR continues to collect information about immigration status from sponsors to determine whether a sponsor may be unable to provide care in the future.

On July 31, 2018, ORR published a Joint Concept of Operations (JCO) with DHS, on the recommendation of HHS's Office of Inspector General and the Government Accountability Office, to address overlapping responsibilities between HHS and DHS during normal operations and influxes. The JCO covers transportation, processing, and care of UAC. The JCO formally memorializes existing policies, procedures, and protocols that ORR, CBP, and ICE officials have implemented for years. The JCO is updated as necessary to reflect revisions to policies and procedures.

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

The President issued E.O. 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.

Secretary Azar directed the Office of the Assistant Secretary for Preparedness and Response to help ORR comply with E.O. 13841. Shortly after the *Ms. L.* Court orders were issued, the Secretary directed HHS 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.

HHS faced a formidable challenge because, while ORR knew the identity and location of every one of the more than 11,800 children in ORR care as of June 26, 2018, there was no single aggregated list of children who had been separated from a parent before being referred to ORR. This information was maintained by multiple government agencies in different systems, and the most critical data were not available in aggregated form. In order to comprehensively identify all possible children of potential class members, HHS conducted a rigorous, forensic data review to identify any and all indicators of potential separation for every child in ORR care as of June 26, 2018. The information reviewed encompassed the following: more than 60 sets of aggregated data regarding potentially separated children provided by DHS; ORR case management records for every child in ORR care as of June 26, 2018; and sworn testimony from each ORR grantee on the separated children at the grantee's shelters as of June 26, 2018.

As a result of this information review, HHS initially identified 2,654 children in ORR care who DHS had potentially separated from a parent at the border. However, this list depended on the information that was available at the time of analysis.

ORR continued to collect 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 HHS to conclude that DHS had not separated 79 of the possible children of potential class members.

Similarly, the new case management information that ORR amassed between July and December 2018 led HHS to conclude that 162 other children who were in ORR care as of June 26, 2018,

but who were not initially identified as potentially separated, should be re-categorized and added to the list of possible children of potential class members reported to the Court. All of these children had already been discharged from ORR care.

With the additional 162 children, the government identified 2,816 total possible children of potential *Ms. L.* class members. Subsequently, ORR identified two children in the count of 2,816 children who were actually referred to ORR in July 2018. As a result, the total count changed to 2,814. These two children had already been discharged from ORR care. The count of 2,814 children does not include children who were discharged by ORR before June 26, 2018. Nor does it include separated 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 during their stays with ORR.

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 Court.

HHS worked in close partnership with colleagues in ICE and DOJ. The court order required reunification under a compressed schedule: 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, which represented 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. 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, HHS 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, the U.S. Government developed a different operational plan, which the Court also approved. HHS identified and resolved any “red flags,” such as doubts about parentage or child safety and well-being. ORR care provider case managers contacted the parents in their home countries, and provided contact information for all of the parents to the American Civil Liberties Union (ACLU), which serves as plaintiffs’ counsel for the *Ms. L.* class. The ACLU counseled parents about their options and 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 HHS received a parent’s stated desire for reunification, we worked with DOJ and ICE to expeditiously resolve the children’s immigration cases, and worked with the consulates and embassy 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.

Of the 2,814 children reported to the *Ms. L.* Court, as of April 12, we have reunified 2,162 with the parent from whom they were separated. Another 597 children have left ORR care through other appropriate discharges such as a release to a sponsor who is a family member or a close family friend.

Of the 2,814 children reported to the Court, there are 15 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. For example, the parent has a criminal history, or the parent is otherwise unfit or poses a danger to the safety and well-being of the child, such as when a child has credibly alleged parental abuse. There are 28 children still in ORR care whose parents are outside the U.S. and have waived reunification. Those parents have chosen for their children to remain in the U.S. and go to a domestic sponsor under the TVPRA. Further review has determined that nine children in ORR care had not been separated. There are three children in care whose parents are in the United States and have waived reunification.

Of the 2,814 children reported to the Court, there are two children who HHS cannot reunify unless the parents convey their preferences through the ACLU. In one of those cases, the ACLU has advised that the resolution of the parent's preference will be delayed and for the other case, the ACLU could not obtain the parental preference. We cannot reunify those children until their parents elect reunification.

As I indicated earlier in my testimony, the 2,814 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 Court defined the class.

There were other children who (1) DHS had separated from their parents at the border; (2) DHS then referred to ORR; and (3) who were discharged to a sponsor pursuant to the TVPRA before June 26, 2018. On March 8, 2019, the Court modified the class definition to include separated children referred to and discharged from ORR care between July 1, 2017 and June 25, 2018.

HHS is currently implementing a plan to *identify* all potential children of possible class members from this time period. On April 25, 2019, the Court approved the government's proposed plan to identify the children who were referred to and discharged from ORR custody between July 1, 2017 to June 25, 2018 and who were separated by DHS from their parents at some point in the process. That plan is underway now, and we anticipate meeting the Court's deadline of identifying possible children of potential *Ms. L.* class members within six months.

### **Conclusion**

The UAC Program provides care and services to UAC every day and our work is driven by child welfare principles. My top priority is ensuring the safety and well-being of the children who are placed temporarily in HHS custody. In order to accomplish this goal, I am committed to

identifying UAC shelters that will expand the capacity of the UAC Program network and provide the appropriate care. HHS is also working with our colleagues at DHS and DOJ to ensure that we have the information necessary to safely and quickly release children from HHS custody. Further, HHS continues to work diligently to expedite safe reunifications of children who were separated from their parents following DHS apprehension.

Thank you for your support of the UAC Program and the opportunity to discuss our important work. I will be happy to answer any questions you may have.