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# PROTECTING UNACCOMPANIED CHILDREN: THE ONGOING IMPACTS OF THE TRUMP ADMINISTRATION'S CRUEL POLICIES

## HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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[1] The information has been retained in committee files and also is available at https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109953.

# PROTECTING UNACCOMPANIED CHILDREN: THE ONGOING IMPACTS OF THE TRUMP ADMINISTRATION'S CRUEL POLICIES

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**THURSDAY, SEPTEMBER 19, 2019**

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

The subcommittee met, pursuant to call, at 10:01 a.m., in the John D. Dingell Room 2123, Rayburn House Office Building, Hon. Diana DeGette (chairwoman of the subcommittee) presiding.

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

Also present: Representatives Cárdenas, Barragán, and Soto.

Staff present: Kevin Barstow, Chief Oversight Counsel; Billy Benjamin, Systems Administrator; Jeffrey C. Carroll, Staff Director; Manmeet Dhindsa, Counsel; 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; Kevin McAloon, Professional Staff Member; Meghan Mullon, Staff Assistant; Alivia Roberts, Press Assistant; Tim Robinson, Chief Counsel; Benjamin Tabor, Staff Assistant; Rebecca Tomilchik, Staff Assistant; 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; Margaret Tucker Fogarty, Minority Staff Assistant; Brittany Havens, Minority Professional Staff Member, Oversight and Investigations; Peter Kielty, Minority General Counsel; and J. P. Paluskiewicz, Minority Chief Counsel, Health.

Ms. DEGETTE. The Subcommittee on Oversight and Investigations hearing will now come to order. Today, the committee is holding a hearing entitled "Protecting Unaccompanied Children: The Ongoing Impact of the Trump Administration's Cruel Policies."

The purpose of today's hearing is to examine the Trump administration's care for unaccompanied children in Government custody and the impact of administration policies on the health and well-being of children. The Chair now recognizes herself for an opening statement.

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

Today, this committee is continuing its oversight of the Trump administration's care for unaccompanied children. Last year, thousands of children were forcibly separated from their parents by the Trump administration. We heard the horror stories of how children were torn away from their families. No one will forget the images of crying children and helpless parents. Frankly, we all agree it is a shameful chapter in this country's history.

In February, this subcommittee held a hearing about the callous family separation policy. Commander Jonathan White, who again joins us today—and I want to thank you, Commander White—testified that he tried to raise the alarm within the administration about the damage that would be done by separations. Unfortunately, those warnings went unheeded.

We also heard from experts about how separating their children from their parents can cause a host of mental and physical health problems. We feared about the long-term traumatic consequences these children would endure for the rest of their lives. It appears now that we have proof that these fears have come true. A new report from the HHS Office of Inspector General is the first Government accounting that details the emotional, psychological toll of separation of children from their parents. And we just got this report this week.

Last year, investigators from the OIG went to 45 ORR facilities and spoke to approximately 100 mental health clinicians who provide care for unaccompanied children, including those who were separated, and what they heard is frankly heartbreaking. Mental health clinicians described how children cried inconsolably, and they believed their parents had abandoned them. One ORR program director told OIG, "Every single separated kid has been terrified. We are seen as the enemy."

OIG tells the story of one child who believed his father had been killed and that he would be killed also. Another medical director told OIG that the children described the emotional pain they were enduring, with one child saying, "I can't feel my heart." We should not be surprised by these findings, but we should also not be complacent. We should take this report as a clarion call to ensure an injustice like this never happens again in this country.

Moreover, there have been new developments since that crisis that again call into question this administration's ability to adequately care for unaccompanied children. This past summer, we were shocked again to see reports of children in unacceptable conditions at a CBP facility in Clint, Texas. Press accounts reported of toddlers at that facility without diapers, young children caring for infants they just met, and children unable to wash or to shower. I had to call Mr. Hayes during that ordeal to ensure that the agencies were working together to address these issues.

To help alleviate that crisis, ORR eventually stood up an emergency influx facility in Carrizo Springs, Texas, but just as quickly as it got stood up, it got shut down. As the operator of the facility said, "It was much too late." This episode raises important questions about how ORR and CBP are coordinating as they see trends

shifting on the ground so that these kids are properly cared for. That is the most important thing.

We are only beginning to appreciate the carnage that was unleashed by the administration last year, and it appears that unfortunately some have not learned their lesson as we see policies coming from this administration that fail to treat these children with dignity and respect every day. So today is an opportunity to have an accounting of the fallout from these policies and to hear what is being done to ensure that no child, no child is ever neglected again in the custody of this Government.

Finally, I just want to speak really briefly to the committee's ongoing investigation into the family separation crisis. I know and the committee knows there are hundreds of dedicated career staff at HHS who are devoting their lives and their careers to caring for these children, and the men and the women of the Border Patrol put their lives on the line to protect our border. These staff did not create this crisis, and that is why the committee is demanding accountability from the leadership.

But across the board, the administration is obstructing our legitimate congressional oversight to unprecedented levels, and it is no exception here. Our committee has had an 8-month-old request for documents from HHS about its role in the family separation crisis. HHS has produced thousands of nonresponsive documents in order to look cooperative while it withholds documents from key leaders to whom Commander White raised concerns. It is still unclear who knew about the family separation policy before it was enacted and what, if anything, they did to try to stop it. From what I have seen, it seems at best HHS leaders should have known that it was coming and did not try to stop it. But since they are hiding documents, we also have to ask whether they were complicit.

So I hope the administration and HHS in particular will show good faith cooperation with Congress, end the stonewalling and air all the facts to let the American people see for themselves. And Ranking Member Guthrie and I both agree that documents should be produced. I talked to the administration several times and asked for narrow categories of documents to be produced, and they have not been produced. We once again repeat this demand.

[The prepared statement of Ms. DeGette follows:]

## PREPARED STATEMENT OF HON. DIANA DEGETTE

Today, this committee is continuing its oversight of the Trump administration's care for unaccompanied children.

Last year, thousands of children were forcibly separated from their parents by the Trump administration. We heard the horror stories of how children were ripped away from their family. None of us will ever forget the images of crying children and helpless parents. It was a shameful chapter in our country's history.

In February, this subcommittee held a hearing about the callous family separation policy. Commander Jonathan White—who is here again today—testified that he tried to raise the alarm within the administration about the damage that would be done by separations. Unfortunately, those warnings went unheeded.

We also heard from experts about how separating children from their parents can cause a host of mental and physical health problems. We feared about the long-term traumatic consequences these children would have to endure for the rest of their lives.

It appears that those fears have come true. A new report from the HHS Office of Inspector General is the first official government accounting that details the emotional and psychological toll separations had on children.

Last year, investigators from the OIG went to 45 different ORR facilities and spoke to approximately 100 mental health clinicians who provide care for unaccompanied children, including those who were separated. What they heard is heartbreaking.

Mental health clinicians described how separated children cried inconsolably, and believed their parents had abandoned them. One ORR program director told OIG [quote] "Every single separated kid has been terrified. We're [seen as] the enemy."

OIG tells the story of one child who believed his father had been killed and that he would be killed, too. Another medical director told OIG that the children described the emotional pain they were enduring, with one child saying [quote] "I can't feel my heart."

We should not be surprised by these findings, but we should also not be complacent. We should take this report as a clarion call to ensure an injustice like this never happens again.

Moreover, there have been new developments since that crisis that again call into question this administration's ability to adequately care for unaccompanied children.

This past summer, we were shocked again to see reports of children in unacceptable conditions at a CBP facility in Clint, Texas. Press accounts reported of toddlers at that facility without diapers, young children caring for infants they just met, and children unable to shower or wash their clothes. I had to call Mr. Hayes during that ordeal to ensure these agencies were working together to address these issues.

To help alleviate that crisis, ORR eventually stood up an emergency influx facility in Carrizo Springs, Texas. But just as quickly as it was stood up, it was shut down. As the operator of that facility said, [quote] "it was too much too late." This episode raises important questions about how ORR and CBP are coordinating as they see trends shifting on the ground, so that these kids are properly cared for.

We are only just beginning to appreciate the carnage that was unleashed by this administration last year. And it appears that they have not learned their lesson, as we continue to see policies coming from this administration that fail to treat these children with dignity and respect.

Today is an opportunity to have an accounting of the fallout from these policies, and to hear what is being done to ensure no child is ever neglected again in the custody of this government.

Finally, I would like to speak to this committee's ongoing investigation into the family separation crisis.

We know there are hundreds of dedicated career staff at HHS who devote themselves to caring for these children. And the men and women of the Border Patrol put their lives on the line to protect our border. Those staff did not create this crisis, and that is why this committee is demanding answers from leadership at those agencies.

But across the board, the Trump administration has taken its obstruction of legitimate congressional oversight to unprecedented levels—and this is no exception.

Our committee has an 8-month-old request for documents from HHS about its role in the family separation crisis. HHS has produced thousands of non-responsive documents in order to look cooperative while it withholds documents from key leaders to whom Commander White raised concerns.

It is still unclear who knew what about the family separation policy before it was enacted and what, if anything, they did to try to stop it or mitigate its effects.

From what we have seen, it seems that at best, HHS leaders knew or should have known it was coming and did not try to stop it. But at this point, since they are hiding documents, we also have to ask whether they were complicit.

I hope this administration—and HHS in particular—will begin to show good-faith cooperation with this Congress, end the stonewalling, and air all of the facts to let the American people see for themselves.

Ms. DEGETTE. And with that I yield back, and I recognize the ranking member for his opening statement for 5 minutes.

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

Mr. GUTHRIE. Thank you. Thank you, Chair DeGette, for holding this hearing. The committee's oversight over the care and treatment of the 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 influx 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. And I believe our member of the committee Dr. Burgess was instrumental in that—well, I know he was and I believe he was.

Our work continued last Congress after the announcement and the end of the zero-tolerance initiative. As I said at our hearing earlier this year, I support strong enforcement of our Nation's borders, but I do not support separating children from their parents. It was clear then just as it is now that these separations caused harm to the children involved.

This spring, the U.S. Department of Homeland Security and HHS experienced another surge of children and family units coming across our southern border. The influx of migrants this year has been higher than in previous years, including large groups of people illegally entering the United States. For example, on May 29th, CBP agents apprehended over a thousand migrants illegally crossing from our southern border as one group. Days earlier, CBP apprehended a group of over 400 individuals in the same area. By the end of July, DHS had referred over 63,500 unaccompanied children to HHS for this fiscal year alone. That number, which has certainly increased over the past 2 months, exceeded the total number of referrals in the fiscal year 2016 by more than 4,000.

As highlighted in several Inspector General reports from both DHS and HHS, capacity and resources at CBP and ORR facilities were strained well beyond their limits. The increased number of immigrants including unaccompanied children resulted in overcrowding at CBP facilities, as well as ORR facilities being at or near capacity. Among other problems, these capacity issues caused prolonged detention at CBP facilities that exceeded the 72-hour limit under the Flores settlement.

Immigration trends are hard, if not impossible, to accurately predict. But influx numbers like the ones we saw in 2014 and again this year are examples of why it is critical to ensure that ORR has a capacity model that enables the agency and its grantees to acclimate and be in a position to accept and care for the unpredictable number of children that ebb and flow by the day, let alone month or year.

Whether it is bed capacity, challenges with hiring and retaining personnel, or ensuring that grantee staff are appropriately screened and trained before being hired or being allowed to interact with minors, all of these components are critical to ensuring that these children are cared for in the best available and safest way possible.

It is not just HHS and ORR, though. This process from apprehension all the way to the placement of a child with a safe and appropriate sponsor crosses multiple departments and agencies within the Federal Government, which includes nongovernment entities

such as ORR grantees. As a result, it is crucial to understand how CBP and HHS work together regarding their respective capacities, processing referrals, healthcare needs, background checks of potential sponsors, and more. Ensuring that this process in its entirety is working smoothly and efficiently will hopefully prevent some of the issues that arose earlier this year.

Finally, this is the second hearing that this subcommittee has had on this topic this year, and I hope that we can start to discuss some solutions to the issues that we discussed at the hearing in February and I am sure we will be discussing again today. In addition to sharing any challenges they faced over the last year, I invite the witnesses to share any ideas that they may have, particularly if there are ways which Congress can help. It is an important function of this committee not only to conduct oversight but to use the information that is gained from its oversight to change the law when needed.

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

[The prepared statement of Mr. Guthrie follows:]

## PREPARED STATEMENT OF HON. BRETT GUTHRIE

Thank you, Chair DeGette, for holding this hearing.

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 influx 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.

Our work continued last Congress after the announcement and then end of the Zero Tolerance Initiative. As I said at our hearing earlier this year, I support strong enforcement of our Nation's borders, but I do not support separating children from their parents. It was clear then—just as it is now—that these separations caused great harm to the children involved.

This spring, the U.S. Department of Homeland Security and HHS experienced another surge of children and family units coming across our southern border. The influx of migrants this year has been higher than in previous years, including large groups of people illegally entering the United States. For example, on May 29th, CBP agents apprehended over 1,000 migrants illegally crossing from our southern border as one group. Days earlier, CBP apprehended a group of over 400 individuals in the same area.

By the end of July, DHS had referred over 63,500 unaccompanied children to HHS for this fiscal year alone. That number, which has certainly increased over the past 2 months, exceeded the total number of referrals in fiscal year 2016 by more than 4,000. As highlighted in several Inspector General reports from both DHS and HHS, capacity and resources at CBP and ORR facilities were strained well beyond their limits. The increased number of immigrants, including unaccompanied children, resulted in overcrowding at CBP facilities as well as ORR facilities being at or near capacity. Among other problems, these capacity issues caused prolonged detention at CBP facilities that exceeded the 72-hour limit under the Flores settlement.

Immigration trends are hard—if not impossible—to accurately predict. But influx numbers like the ones we saw in 2014, and again this year, are examples of why it is critical to ensure that ORR has a capacity model that enables the agency, and its grantees, to acclimate and be in a position to accept and care for the unpredictable number of children that ebb and flow by the day, let alone month or year. Whether it's bed capacity, challenges with hiring and retaining personnel, or ensuring that grantee staff are appropriately screened and trained before being hired or

being allowed to interact with minors—all of these components are critical to ensuring that these children are cared for in the best and safest way possible.

It's not just HHS and ORR though. This process—from apprehension, all the way to the placement of a child with a safe and appropriate sponsor—crosses multiple departments and agencies within the Federal Government, and includes non-government entities, such as ORR grantees. As a result, it is crucial to understand how CBP and HHS work together regarding their respective capacities, processing, referrals, health care needs, background checks of potential sponsors, and more.

Ensuring that the process in its entirety is working smoothly and efficiently will hopefully prevent some of the issues that arose earlier this year.

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It is an important function of this committee not only to conduct oversight, but to use the information that is gained from its oversight to change the law when needed.

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

Ms. DEGETTE. 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, Madam Chair.

Today we are continuing our ongoing oversight of one of the most shameful actions of the Trump administration. Last year, this administration forcibly separated thousands of innocent children from their families, leading to widespread chaos and untold harm to these children. Experts sounded the alarm about what this would do to the children, and some of HHS's own career staff voiced concern at another oversight hearing on this issue earlier this year.

But for reasons still unclear to this committee, those warnings were not heeded. Now the HHS Office of Inspector General has released a disturbing report on the effects the zero-tolerance policy has had on the children who were separated. The OIG is unambiguous, and I quote, "separated children exhibited more fear, feelings of abandonment, and post-traumatic stress than did children who were not separated," unquote.

Children were angry and confused because they believed their parents had left them. They isolated themselves, refused to eat. One separated child suffered such mental distress that he required emergency psychiatric care. These findings sound like they come from a dystopian novel, not a Government report in 2019. But perhaps the most troubling aspect of these findings is that they were completely avoidable. No child should have to endure this anywhere, and the fact that it was the result of intentional Government policy is outrageous.

In addition to the family separation issue, there are lingering issues relating to planning and ongoing care for children in U.S. custody. For example, I want to understand how HHS's Office of Refugee Resettlement (ORR) and Customs and Border Protection (CBP) are communicating and planning so that they can better

manage the spikes and populations that seem predictable. This summer, for example, we saw the complete chaos as ORR and CBP had to deal with the influx of kids that resulted in hundreds being jammed into filthy facilities that were never designed for that purpose. And as soon as an influx shelter was set up by ORR to help relieve this pressure, it was shut down a few weeks later. I think there are clearly planning and communication lessons that need to be learned from this episode, and I want to know what those lessons are and if they are now being implemented.

Regardless of which agency is holding a child at any given time, we need to make sure that they are properly cared for throughout the system, and that includes ensuring that they receive appropriate vaccinations. It is critical that the administration has learned from its mistakes because, inexcusably, the administration continues to push policies that are only going to lead to more suffering.

Recently, the Departments of Homeland Security and Health and Human Services issued a final regulation that essentially dismantles well-established protections for unaccompanied children known as the Flores Settlement. The regulation states that children will be treated, and I quote, "with dignity, respect, and special concern for their particular vulnerability," unquote. But, frankly, after the way we have seen this administration's approach to these populations, this promise lacks any credibility. We are not here today to attack the men and women who are doing their best to support the missions of these agencies, but the leaders of these departments have deliberately implemented policies that are not in the best interest of these vulnerable children, and that is not acceptable.

There are many issues we intend to explore at this hearing, but we should not lose sight of the fact that everything comes down to one thing. What is the Trump administration doing to make sure these children are properly cared for, and that should be at the forefront of our minds. We need answers to that question from the administration, and we are going to continue to hold the administration accountable to make significant improvements.

So I look forward to hearing from the witnesses on how they are prioritizing these kids, and I would like to yield the last minute I have to the gentleman from Massachusetts, Mr. Kennedy.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

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Last year, this administration forcibly separated thousands of innocent children from their families, leading to widespread chaos and untold harm to these children.

Experts sounded the alarm about what this would do to the children. And some of HHS's own career staff voiced concern at another oversight hearing on this issue earlier this year. But for reasons still unclear to this committee, those warnings were not heeded.

Now, the HHS Office of Inspector General has released a disturbing report on the effects the Zero Tolerance policy has had on the children who were separated.

The OIG is unambiguous: [quote] "Separated children exhibited more fear, feelings of abandonment, and post-traumatic stress than did children who were not separated." [end quote].

Children were angry and confused because they believed their parents had left them. They isolated themselves and refused to eat. One separated child suffered such mental distress that he required emergency psychiatric care.

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Perhaps the most troubling aspect of these findings is that they were completely avoidable. No child should have to endure this anywhere, and the fact that it was a result of intentional government policy is outrageous.

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It's critical that the administration has learned from its mistakes because inexcusably the administration continues to push policies that are only going to lead to more suffering.

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That should be at the forefront of our minds. We need answers to that question from the administration, and we are going to continue to hold the administration accountable to make significant improvements. I look forward to hearing from the witnesses on how they are prioritizing these children.

Mr. KENNEDY. Thank you, Mr. Chairman.

"Every heartbeat hurts."

"I can't feel my heart."

"Child was under the delusion that his father had been killed and believed that he would also be killed."

These are the words included in an Inspector General report released earlier this month which tell the sickening story of this administration's family separation policy. Kids fleeing unimaginable violence and poverty and destitution arriving at our border to claim asylum and experiencing trauma in our Nation's name.

Think about that for a minute, what they endured, what they fled, that they left a life where gangs indiscriminately killed family members and neighbors while meals were scarce and violence constant. And they made it here to the United States of America, a beacon and shining city of global light and freedom and an opportunity for good. The relief they must have felt touching our soil, and that is what they got. Those children, those babies, those toddlers will forever carry those scars with them.

I look forward to getting some answers today. Yield back.

[The prepared statement of Mr. Kennedy follows:]

PREPARED STATEMENT OF HON. JOSEPH P. KENNEDY III

Quote: "Every heartbeat hurts." End quote.

Quote: "I can't feel my heart." End quote.

Quote: "Child was under the delusion that his father had been killed and believed he would also be killed." End quote.

These words, included in an Inspector General report released earlier this month, tell the sickening story of this administration's family separation policy.

Kids fleeing unimaginable violence and poverty and destitution, arriving at our border to claim asylum and experiencing trauma in our Nation's name.

Think about that for a second. What they had endured. What they had fled. They left a life where gangs indiscriminately killed family members and neighbors. Where meals were scarce, and violence was constant.

And they made it here. The United States of America—this beacon, this shining city, this global light of freedom and hope and opportunity and good. The relief they must have felt to finally see us on the horizon.

Instead, the nightmare continued.

And those children—those babies, those toddlers—they will carry the scars we gave them forever.

To the witnesses here today, you may have objected to heartless policies behind closed doors and argued against such unfathomable cruelty from the confines of your conference rooms, but that doesn't matter. That doesn't count. What matters now is what you do—what we do—next. How we take accountability for the profound mental trauma we inflicted on children we should have stopped at nothing to protect.

Mr. PALLONE. And I yield back, Madam Chair.

Ms. DEGETTE. The gentleman yields back. The Chair now recognizes the ranking member of the full committee, Mr. Walden, for 5 minutes for purposes of an opening statement.

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

Mr. WALDEN. Thank you, Chair DeGette, and thanks for holding this hearing. I want to thank our panel of witnesses. Some of you have been here before. We are appreciative of the work you and your teams are doing. We know it is a tough job. We look forward to continuing to work with you. As Republican Leader Guthrie stated, this committee has conducted oversight of the Office of Refugee Resettlement and Unaccompanied Alien Children programs since 2014. We saw a lot of problems in the Obama administration and mistakes that were made there and have tried to learn from those and not repeat them.

Last Congress, I and every Republican member of this committee sent a letter to HHS seeking information from ORR to ensure that children who are in ORR's custody, whether they cross the border as an unaccompanied child or because they were separated from a parent or legal guardian during the zero-tolerance initiative, are properly cared for while in ORR's care.

I also led a bipartisan delegation of Members down to McAllen, Texas, a year ago in July, to visit and tour part of the southwest border. I wanted to see it firsthand. We looked at the central processing facility operated by CBP and an ORR shelter. My staff also visited five additional ORR facilities, including the temporary influx facility in Tornillo, Texas, that closed at the end of the last year.

Earlier this summer, overwhelming numbers of migrants crossed the southwest border. This border crisis more than taxed the resources of every agency involved at each point in the process, and that includes CBP and ORR. So I wanted to see for myself again how CBP was handling this new surge of people at our southwest border, so I visited the CBP facility in Yuma, Arizona. By the time I had arrived in Yuma, Congress had finally—finally—acceded to the President's request for emergency funding, which I supported—I was the only one in the Oregon delegation to do so—and Yuma had a temporary processing facility in addition to the regular station.

But just weeks before, the facility had been overwhelmed, at one point holding more than 1,600 migrants, including UACs. CBP agents I met with, they answered every single question I had and they talked to me about the difficulties they face. They also showed me every part of the facility, even the storage rooms which were filled with fresh diapers and clothing and food and other supplies.

I also took a helicopter tour of the border, seeing parts of the Yuma sector that are so remote that air travel is necessary to efficiently and effectively patrol it. And I saw a cave on the top of a mountain where a cartel scout had lived for months, helping traffickers bring people and contraband into the United States illegally. And I saw the different types of border barriers in place in the Yuma sector, some of which are extremely ineffective at stopping people from entering the United States.

Now on that same trip, I also traveled to Carrizo Springs, Texas, to see the ORR-funded temporary influx shelter that was operational at that time. And, as with other ORR-funded facilities, I and my staff have seen the children there were very well cared for. They received not just food and shelter, but also medical, educational, and counseling services.

But was this too little, too late? This summer, before ORR was able to open Carrizo Springs, unaccompanied children spent far too long in CBP facilities, more than the 72 hours mandated by the Flores Settlement. CBP agents in Yuma told me that at the peak of the crisis children stayed in their Border Patrol facility for 7 to 10 days—and nobody thought that was acceptable, but they were overwhelmed.

Unlike ORR facilities, CBP facilities are not meant to house children. It is critical that we move them into more appropriate facilities as quickly as possible. These immigration and border security issues are complex and something Congress has grappled with for decades. I have always been clear I support strong enforcement of our Nation's borders. A country that doesn't have control of its borders does not have control of its security.

And children in the care of the Federal Government no matter where they are in the process or how they arrived here should be treated as if they were our own children. So I am pleased we have two of the agencies involved in the apprehension of the UACs before us today. We should note that they do not represent the full process, and it would be nice sometime in this committee if we could have the entire chain here of agencies involved so we saw a clear and full picture.

I hope that HHS and CBP will also update us today on how they are using the funds provided by Congress earlier this year in the emergency supplemental, which the President requested and I supported, and how each agency is preparing for a likely increase in migrants in the coming months. We know there would be a dropoff in the extremely hot times in the summer, but we also know there will be a pickup. While immigration numbers are difficult to predict, there are patterns, and we must learn from this summer's crisis.

And I also echo Republican Leader Guthrie's call for solutions. If there are legislative changes your agencies need from us, please let us know. If you need resources as you requested earlier this year, let us know. So I thank our witnesses for being here, for the work you and your teams do, and I yield back.

[The prepared statement of Mr. Walden follows:]

## PREPARED STATEMENT OF HON. GREG WALDEN

Thank you, Chair DeGette, for holding this hearing.

As Republican Leader Guthrie stated, this committee has conducted oversight of the Office of Refugee Resettlement and the Unaccompanied Alien Children program since 2014.

Last Congress, I, and every Republican member of this Committee, sent a letter to HHS seeking information from ORR to ensure that children who are in ORR's custody—whether they crossed the border as an unaccompanied child or because they were separated from a parent or legal guardian during the Zero Tolerance Initiative—are properly cared for while in ORR's care.

I also led a bipartisan delegation of Members down to McAllen, Texas, a year ago in July to visit and tour part of the Southwest border, including the Central Processing Facility operated by CBP and an ORR shelter.

My staff also visited five additional ORR facilities, including the temporary influx facility in Tornillo, Texas, that closed at the end of last year.

Earlier this summer, overwhelming numbers of migrants crossed the Southwest border. This border crisis more than taxed the resources of every agency involved at each point in the process, including CBP and ORR.

I wanted to see for myself how CBP was handling the surge of migrants at our Southwest border, so I visited a CBP facility in Yuma, Arizona. By the time I arrived in Yuma, Congress had provided emergency funding and Yuma had a temporary processing facility in addition to the regular station. But just weeks before, the facility had been overwhelmed, at one point holding more than 1,600 migrants, including UACs.

The CBP agents I met with answered every one of my questions about the difficulties they faced. They also showed me every part of the facility—even the storage rooms filled with diapers, clothing, food, and other supplies.

I also took a helicopter tour of the border—seeing parts of the Yuma sector that are so remote that air travel is necessary to efficiently and effectively patrol it. I saw a cave at the top of a mountain where a cartel scout lived for months, helping traffickers bring people and contraband into the United States illegally. And I saw the different types of border barriers in place in the Yuma sector—some of which are extremely ineffective at stopping people from entering the United States.

On the same trip, I also traveled to Carrizo Springs, Texas, to see the ORR-funded temporary influx shelter that was operational at the time. As with the other ORR-funded facilities I and my staff have seen, the children were well-cared for, receiving not just food and shelter, but also medical, educational, and counseling services.

But was this too little too late? This summer, before ORR was able to open Carrizo Springs, unaccompanied children spent far longer in CBP facilities than the 72 hours mandated by the Flores Settlement. CBP agents in Yuma told me that, at the peak of the crisis, children stayed in their border patrol facility for 7 to 10 days. Unlike ORR facilities, CBP facilities are not meant to house children and it is critical that we move them into more appropriate facilities as quickly as possible.

Immigration issues are complex, and something that Congress has grappled with for decades. I have always been clear, I support strong enforcement of our Nation's borders, but I do not support the separation of children from their parents. And chil-

dren in the care of the Federal Government, no matter where they are in the process or how they arrived there, should be treated as if they were our own.

I am pleased that we have two of the agencies involved in the apprehension and care of UACs before us today, but we should note that they do not represent the full process.

I hope that HHS and CBP will also update us today on how they are using the funds provided by Congress earlier this year in the emergency supplemental, and how each agency is preparing for a likely increase in migrants in the coming months. While immigration numbers are difficult to predict, there are patterns, and we must learn from this summer's crisis. I also echo Republican Leader Guthrie's call for solutions. If there are legislative changes your agency needs, let us know. If there are resources you need, let us know.

I thank our witnesses for being here today, and for the important work that they, and so many others at ORR and CBP do every day.

Ms. DEGETTE. The gentleman yields back. The Chair now asks unanimous consent that the Members' written opening statements be made part of the record. Without objection, so ordered.

I now would like to introduce the witnesses for today's hearing. Ms. Ann Maxwell, Assistant Inspector General for Evaluation and Inspections, Office of Evaluation and Inspections, Office of Inspector General, U.S. Department of Health and Human Services.

Mr. Jonathan Hayes, Director, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

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

And Chief John R. Modlin, Acting Deputy Chief of Law Enforcement Operational Programs, Law Enforcement Operations Directorate, U.S. Border Patrol, U.S. Customs and Border Protection, U.S. Department of Homeland Security.

Don't worry, we won't use the entire titles of each of you every time we ask you a question.

But I do want to thank each one of you for appearing today. It is important that we hear all of your testimony. And I am sure all of you are aware this committee takes hearings—it is an investigative hearing, and so we have the practice of taking testimony under oath. Does anyone have an objection to testifying under oath?

Let the record reflect that 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. Does anybody wish to be accompanied by counsel today?

Let the record reflect the witnesses have responded no.

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

[Witnesses sworn.]

Ms. DEGETTE. Let the record reflect that the witnesses have responded affirmatively, and you may be seated. You are all now under oath and subject to the penalties set forth under Title 18, Section 1001 of the United States Code.

And the Chair will now recognize our witnesses for a 5-minute summary of their written statements. In front of you is a microphone and a series of lights. The light will turn yellow when you have a minute left, and it will turn red to indicate that your time has come to an end.

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

**STATEMENTS OF ANN MAXWELL, ASSISTANT INSPECTOR GENERAL FOR EVALUATION AND INSPECTIONS, OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES; JONATHAN H. HAYES, DIRECTOR, OFFICE OF REFUGEE RESETTLEMENT, ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES; JONATHAN WHITE, COMMANDER, PUBLIC HEALTH SERVICE COMMISSIONED CORPS, DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND JOHN R. MODLIN, ACTING DEPUTY CHIEF OF LAW ENFORCEMENT OPERATIONAL PROGRAMS, LAW ENFORCEMENT OPERATIONS DIRECTORATE, BORDER PATROL, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY**

**STATEMENT OF ANN MAXWELL**

Ms. MAXWELL. Good morning, Chair DeGette and Ranking Member Guthrie and other distinguished members of the subcommittee. Thank you for the opportunity to discuss OIG's ongoing oversight of the Unaccompanied Alien Children Program administered by the Office of Refugee Resettlement. Today, I will be focusing on our findings regarding challenges ORR-funded facilities face in addressing the mental health needs of children in their care.

These facilities serve migrant children who arrive in the U.S. on their own or who are separated from their parents by immigration officials. These children have often experienced intense trauma before coming into ORR care, which is why prompt medical health treatment is not only required by ORR but is essential for children's well-being. My testimony reflects what we heard firsthand from facility staff across the country about the obstacles they face.

We were told that there are a number of systemic challenges that make it difficult for staff to address the mental health needs of children. These include the ability to employ and support clinical staff. Mental health clinicians reported heavy caseloads. They also asked for more training and support to treat traumatized children. In addition, staff faced difficulties accessing specialty care such as psychologists and psychiatrists to treat children with greater needs. In one example, the only bilingual specialist a facility could find was located in another State.

Finally, staff reported a lack of therapeutic placement options within ORR's network equipped to treat children who needed a higher level of care. This was especially acute for children who needed secure therapeutic settings due to their history of behavioral problems.

To address these systemic challenges, we recommend that ORR leverage expertise and resources within HHS and the broader mental health community to ensure facilities have sufficient clinical staff who are fully supported and are able to access the needed specialty care for children.

These systemic challenges, according to facility staff, were exacerbated by policy changes made in 2018. In the spring of 2018, the Department of Homeland Security formally adopted the zero-toler-

ance policy of criminally prosecuting all adults for illegal entry and placing their children in ORR facilities.

Facilities reported that addressing the needs of children who have been separated from their parents unexpectedly was particularly challenging because these children exhibited more fear, feelings of abandonment, and post-traumatic stress than did children who were not separated.

One medical doctor told us separated children would present physical symptoms as manifestations of their psychological pain. These children would say their chest hurt even though there was medically nothing wrong with them. One child said, "Every heartbeat hurts."

These children didn't understand why they were separated. As a result, some were angry, believing their parents had abandoned them. Others were anxious, concerned for their parents' safety. And as we've heard, one 8-year-old boy separated from his father was under the delusion that his father had been killed and that he was next, and he required emergency psychiatric care.

Caring for separated children was additionally challenging because they were often younger than the teenagers the facilities were used to serving. Staff reported that younger children had shorter attention spans, needed greater supervision, and were more commonly exhibiting defiance and other negative behaviors. They couldn't always accurately communicate. The little ones, as one program director said, don't know how to express what they are feeling.

Other policy changes that occurred in 2018 involved the process for discharging children to sponsors. ORR added new screening requirements and started sharing sponsor information with immigration officials. Staff noted that these changes led to longer stays in care for children, and that had a negative effect on their behavior and their mental health. They said that even children who entered care with good coping skills became disillusioned as their time in care dragged on, resulting in higher levels of hopelessness, frustration, and more instances of self-harm.

While the policy changes made in 2018 have largely been reversed, facilities continue to serve separated children as well as children who are not quickly discharged from care. To address these continuing challenges and to ensure that children are not unnecessarily harmed, we recommend that ORR continue to reassess whether its current policies are negatively impacting children in any way and adjust as needed. We also recommend that ORR establish guardrails that ensure the future policy changes prioritize child welfare considerations above all other competing demands.

Thank you to the committee for the opportunity to present this information and your ongoing support of our oversight work. I am happy to address any questions.

[The prepared testimony of Ms. Maxwell follows:]

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

**Testimony Before the**
**United States House Committee on Energy & Commerce**

**HHS-OIG Oversight of the Unaccompanied Alien Children Program**

Testimony of:

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

**September 19, 2019**
**10:00 a.m.**
**Location: 2123 Rayburn House Office Building**

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 Committee. 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). I appreciate the opportunity to appear before you to discuss the challenges that care provider facilities faced addressing the mental health needs of children in HHS custody. Any significant challenges that facilities face in addressing a child's mental health needs could have serious immediate and long-term ramifications for children's well-being.

**OIG's Oversight**

OIG oversees all HHS programs and operations. OIG combats fraud, waste, and abuse in those programs; promotes their economy, efficiency, and effectiveness; and protects the beneficiaries they serve. To accomplish this, OIG employs an array of tools, including audits, evaluations, and investigations.

OIG takes very seriously its responsibility to protect the health and welfare of vulnerable children. As such, we have prioritized oversight of the Unaccompanied Alien Children (UAC) Program, which is administered by the Office of Refugee Resettlement (ORR) within HHS's Administration for Children and Families (ACF), since responsibility for caring for unaccompanied children was transferred to HHS by the Homeland Security Act of 2002.

One important goal of OIG's work on the UAC Program has been to promote the protection of children in HHS care. We have reviewed whether ORR grantees met safety standards for the care and release of children in their care, and the efforts of ORR to ensure the safety and well-being of children after their release to sponsors.

In 2018, numerous stakeholders raised serious concerns about the health and safety of unaccompanied children, including the provision of appropriate mental healthcare services, at HHS-funded facilities. Given the urgency of the situation, and OIG's independent oversight role, we launched a series of reviews examining health and safety issues in the UAC Program. This testimony focuses on challenges to providing mental health services. Other reviews from our 2018 initiative address employee screening, including staff background checks, physical security of facilities, and challenges facilities faced in ensuring children's safety. We are also assessing the challenges HHS and facilities faced in reuniting separated children with their parents.

**ORR's Unaccompanied Alien Children Program**

The UAC Program serves children who have no lawful immigration status in the United States and no parent or legal guardian available to provide care and physical custody. By law, ORR has custody of and must care for each unaccompanied child by providing housing, food, educational services, recreational activities, and health services, including mental health services.

ORR funds a network of more than 100 facilities that furnish care for children until they are released to a sponsor or otherwise leave ORR custody. These facilities, generally, are State-licensed and must meet ORR requirements. Most children are in shelter facilities, the least restrictive setting. ORR's network also includes residential treatment centers that provide therapeutic care, as well as secure and staff secure facilities that provide a higher level of supervision. One of the staff secure facilities also offers specialized therapeutic care.

**Mental Health Services in Care Provider Facilities**

According to the terms of the 1997 Flores Settlement Agreement, which sets national standards for the detention, release, and treatment of children without legal immigration status in

Federal custody, children must receive necessary medical and mental health services. At a minimum, each child in ORR custody must receive at least one individual counseling session per week from a trained mental health clinician. When needed, children also may receive care from external mental healthcare specialists, such as psychiatrists and psychologists.

Mental health clinicians are employed at every facility and are responsible for providing in-house mental healthcare for children. These clinicians, who must meet minimum education and experience qualifications, are responsible for conducting mental health assessments, providing counseling services, providing crisis intervention services, and recommending care from external specialists. ORR requires each facility to employ at least 1 mental health clinician for every 12 children in care.

**HHS-OIG Review of Mental Healthcare Challenges in ORR-Funded Facilities**

To complete this review, OIG conducted site visits at 45 of the 102 ORR-funded facilities that were in operation in August and September of 2018. We visited facilities to hear directly from their staff about the challenges they faced caring for children and ensuring their safety.

Facilities were purposively selected to achieve wide coverage of facilities participating in the UAC Program, varying by size and geographic location, among other factors. These facilities cared for about 72 percent of children in ORR's custody at the time of our review.

We conducted qualitative analysis of interview data from: (1) approximately 100 mental health clinicians who had regular interaction with children across the 45 facilities; (2) medical coordinators in each of the 45 facilities; (3) the program director and lead mental health clinician in each of the 45 facilities, and (4) the 28 ORR federal field specialists assigned to the 45 selected facilities.

We did not determine whether the challenges that were identified resulted in care that failed to meet ORR requirements or clinical standards, nor did we assess the quality of the mental healthcare provided. Instead, we offer a broad survey of the challenges facing the program as reported by staff in order to provide ORR with information useful for directing attention toward the most significant mental health-related challenges facing facilities.

## Report Findings and Recommendations

Facilities reported several challenges in addressing children's mental health needs. Some were systemic in nature, such as: (1) the inherent challenges associated with treating children who have experienced intense trauma, (2) difficulty accessing external mental health specialists, and (3) difficulty finding therapeutic placement options within ORR's network. In 2018, existing challenges were exacerbated by Federal policy changes that resulted in facilities caring for an increasing and changing population, including younger children who were unexpectedly separated from their parents. We recommend practical steps ORR can take to assist facilities and address these challenges.

### Mental Health Clinicians Stated That They Were Not Prepared To Care for Children Who Had Experienced Intense Trauma

Facility staff discussed the challenges inherent in caring for a population of children who have experienced intense trauma. Facility staff reported that many of the children in their care had experienced intense trauma from a variety of events in their home countries or on their journey to the United States. Some children experienced additional trauma when they were unexpectedly separated from their parents upon arrival in the United States.

Despite their training and experience, mental health clinicians reported feeling unprepared to address the level of trauma that some children had experienced.[1] The UAC Program is designed to house and care for children during relatively short-term stays until they can be released to sponsors. Because the length of children's stays are unpredictable and, from a mental health treatment standpoint, relatively short, mental health clinicians reported being unable to adequately address their trauma. Mental health clinicians reported that they were wary of opening wounds that they would not have time to address adequately through continued therapy and, instead, focused on making sure that children were stable and able to cope day-to-day.

All facilities reported that staff—including mental health clinicians—received training to help them work with children who had experienced trauma. Nonetheless, mental health clinicians discussed how challenging it was to hear about children's traumatic experiences. Further, mental health clinicians said that colleagues hired without previous experience in caring for unaccompanied children in ORR custody may have been especially unprepared for the severe trauma of children in their care. Mental health clinicians and program directors told us that facility staff would benefit from more training on trauma-informed care.

**OIG recommends: Additional guidance on addressing trauma in children.** To address these issues, we recommend that ORR provide facilities with evidence-based guidance on addressing trauma in short-term therapy in children of all ages.

[1] Our companion review: *Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks but Faced Challenges in Hiring, Screening, and Retaining Employees* found that almost all the facilities we visited hired mental health clinicians who met minimum requirements.

**High Counseling Caseloads Stretched In-House Mental Health Clinicians**

Care provider facilities reported high counseling caseloads due to challenges in recruiting and retaining mental health clinicians. This made it more difficult for them to make sure that all children received the time and attention they needed. Even facilities that met ORR's required facility-wide ratio of 1 clinician for every 12 children may have had individual clinicians who were responsible for counseling more than twice that number because of the way cases were distributed.

OIG also found that, at the time of our visits in August and September 2018, 26 of the 45 facilities reported that the mental health clinician position posed the greatest hiring challenge. Facilities most often attributed this to difficulties finding bilingual candidates and candidates who met the minimum qualifications.

> **OIG recommends: Strategies for addressing high mental health clinician caseloads**. We recommend that ORR assess whether to establish maximum caseloads for individual mental health clinicians. We also recommend that ORR develop and implement strategies to assist care provider facilities in overcoming obstacles to hiring and retaining qualified mental health clinicians.

**Facilities Faced Challenges Accessing External Specialists for Children Who Needed Specialized Diagnosis and Treatment**

We found that facilities faced challenges accessing external specialists for children who needed more mental health treatment than was available from in-house staff. ORR uses an insurance company that maintains a network of doctors, hospitals, and other health professionals to provide mental health services to children in ORR custody. However, facility staff told us that this provider network does not include enough mental health specialists to meet children's needs.

These challenges were acute for facilities in medically underserved areas. Bilingual specialists, in particular, were difficult to find.

**OIG recommends: Strategies for improving access to external mental health specialists.** ORR should ensure that the national network of external healthcare providers maintained by its insurer includes the mental health specialists needed to address children's mental health needs. For facilities in areas with a scarcity of mental health specialists, ORR could consider entering into agreements with Federal, State, or local health agencies or qualified specialists to provide necessary mental health treatment.

**Facilities Were Unable To Transfer Children Who Needed a Higher Level of Mental Healthcare to More Appropriate Placements Within ORR's Network**

Mental health clinicians determined that some children needed a higher level of care than facility staff and external specialists could provide, but facilities reported difficulties transferring these children to facilities in the ORR network that are licensed to provide specialized care. Staff said that the two residential treatment facilities in ORR's network lacked bed space for children who needed transfers. Combined, these two facilities have 50 beds dedicated to children in ORR care.

Facility staff also described difficulty in finding appropriate placements for children who needed more therapeutic treatment but who also had a history of problem behaviors that put themselves or others at risk. Children with significant mental health needs such as oppositional defiant disorder, dissociative symptoms, and suicidal ideation remained in settings not well equipped to address their needs.

**OIG recommends: Increased options for therapeutic placements in ORR's network.** ORR should increase therapeutic placement options for children who require more

intensive mental health treatment, including options for children with behavioral issues that accompany their mental health needs.

**Federal Policy Changes Exacerbated Existing Challenges in 2018**

Policy changes in 2018 exacerbated existing challenges, as they resulted in 1) a rapid increase in the number of children separated from their parents after entering the United States, many of whom were younger, and 2) longer stays in ORR custody for children.

***Separated and Younger Children.*** According to program directors and mental health clinicians, separated children exhibited more fear, feelings of abandonment, and post-traumatic stress than did children who were not separated. Separated children experienced heightened feelings of anxiety and loss as a result of their unexpected separation from their parents after their arrival in the United States. In addition, the trauma of their separation, and resulting feelings of distrust, made it difficult for mental health clinicians to establish therapeutic relationships through which they could address children's needs.

In addition, the number of young children, age 12 and younger, in ORR's care increased sharply in May 2018 when the Department of Homeland Security (DHS) formally adopted the zero-tolerance policy of criminally prosecuting all adults for illegal entry into the United States. This policy led to many more children, some of them quite young, being separated from their parents. The proportion of young children in ORR care rose from 14 percent of referrals to ORR in April 2018 to 24 percent of referrals in May 2018.

Caring for young children presented different challenges than caring for the teenagers facilities typically served. Young children had shorter attention spans, lacked the ability to comprehend the role of the facility, and more commonly exhibited defiance and other negative behaviors. Facilities noted the difficulties associated with completing assessments and other

screenings for pre-school-aged and younger children who could not accurately communicate their background information, needs, or the source of any distress.

**OIG recommends: Guidance that helps facilities care for young children**. As previously mentioned, we recommend that ORR disseminate guidance on addressing trauma in short-term therapy. This guidance can improve facilities' readiness to meet the mental healthcare needs of children of all ages, including very young children.

***Longer Stays in Facilities.*** A more stringent sponsor screening process led to longer stays in facilities. Facilities reported that children with longer stays experienced more stress, anxiety, and behavioral issues, which staff had to manage. Some children who did not initially exhibit mental health or behavioral issues began reacting negatively as their stays grew longer. Children who experienced longer facility stays exhibited higher levels of defiance, hopelessness, and frustration, along with more instances of self-harm and suicidal ideation.

ORR's requirements for screening potential sponsors have varied over time, as it attempts to balance safety concerns with the need for the timely release of children from HHS custody. In June 2018, ORR began requiring fingerprint background checks of all potential sponsors and the adult members of their households and sharing that information with DHS. Following this policy change, the amount of time that children remained in ORR care increased dramatically. In March 2019, ORR changed its policy again; it eliminated fingerprint background checks for parents or legal guardians, in most circumstances. By April 2019, the average length of stay had declined to 48 days. Since then, length of stay was 45 days in May and June and 47 days in July 2019.[2]

[2] The average length of time spent in care provider facilities by children who have been released from ORR custody. HHS, *Latest UAC Data- FY 2019*. https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/latest-uac-data-fy2019/index.html#.

**OIG recommends: Take reasonable steps to minimize the time that children remain in ORR custody**. It is essential that ORR appropriately assesses all sponsors before making a release determination. We recommend that ORR assess current policies and procedures to ensure that they do not present unnecessary barriers and establish procedures to ensure that future policy changes prioritize child welfare considerations and do not inadvertently increase the length of stay.

## Conclusion and Upcoming OIG Work on the UAC Program

ACF concurred with all of our recommendations and described its plans to address them, some of which are underway. We encourage ACF to support the facilities that are directly responsible for the care of children in its custody and minimize barriers to appropriate mental health treatment.

OIG appreciates the support that we have received from Congress for our work overseeing the UAC program and the additional resources to augment our efforts in this area. We anticipate initiating reviews on new topics. Specifically, we expect to examine coordination between HHS and DHS, sponsor screening, emergency preparedness, and the appropriateness of children's placements and transfers within ORR's network of facilities.

Challenges to addressing the needs of children in HHS custody require our combined attention and very best efforts. Thank you for the opportunity to testify today and to be part of this conversation on this important topic.

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

The Chair now recognizes Mr. Hayes for 5 minutes for purposes of an opening statement.

**STATEMENT OF JONATHAN H. HAYES**

Mr. HAYES. Thank you, Chair DeGette, Ranking Member Guthrie, and members of the subcommittee. It is my honor to appear today on behalf of the Department of Health and Human Services. My name is Jonathan Hayes, and as the Director of the Office of Refugee Resettlement, I oversee the Unaccompanied Alien Children Program.

I became the permanent Director earlier this year, and it is a privilege to serve in this role alongside the ORR career staff. I am continually impressed with the level of commitment and professionalism that I see in the ORR career staff and our grantees on a daily basis. The caring culture of ORR directly impacts our day-to-day operations and goals as well as a staff who carry out our round-the-clock operations of service of some of the world's most vulnerable children.

I have visited over 50 UAC care providers over the last year so that I can see firsthand the quality of care that the ORR staff and grantees provide to the UAC. I also heard the perspectives and input from our field team, which allowed me to better understand ways to improve our services and overall mission. My strong desire is to ensure the safety and well-being of the children in our care in a manner that is consistent with both the law and the prevailing child welfare best practices and one that empowers the career professionals and senior staff at ORR.

As the director of ORR, I am committed to making decisions that are in the best interest of each child in ORR's care and custody. Prior to my time at ORR, I worked for two Members of the House of Representatives for approximately 8 years, and that experience provided me perspective into the important oversight role that you and your staff have in ensuring that Federal programs operate successfully.

I apologize.

In the Homeland Security Act of 2002, or the HSA, Congress placed the responsibility of care for UAC with ORR. The Homeland Security Act defines an unaccompanied alien child as a person under the age of 18 with no lawful immigration status and without a parent or legal guardian present in the United States available to provide for the care and custody of the child. Once an apprehending agency determines that the child is a UAC, that agency is responsible for referring the child to ORR. Congress instructed ORR to ensure that the best interests of the child are considered when providing care and custody for children. All of us at ORR take this responsibility to heart, and work every day to ensure the safety and well-being of the children in our care.

To that end, based on the provisions of the Homeland Security Act, the Trafficking Victim Protection Reauthorization Act of 2008, and the provisions of the Flores Settlement Agreement, HHS has built a network of dedicated care providers, developed rules and standards for care for those providers, and created mechanisms of oversight to ensure compliance.

HHS's role in the lives of UAC is often misunderstood. HHS does not apprehend migrants at the border or enforce immigration laws. The Department of Homeland Security and the Department of Justice perform those functions. ORR does not have jurisdiction over children that arrive with an adult parent. DHS is responsible for those families. HHS's UAC program is a humanitarian child welfare program designed for the temporary care of children until they can be safely released or unified with family or other sponsors.

The number of UAC entering the United States during this fiscal year has risen to levels we have never seen before. As of September 16th of this year, DHS has referred more than 67,000 UAC to us at ORR, which is the highest number in the program's history. By comparison, HHS received just over 59,000 referrals in fiscal year 2016, which is the second-highest number on record. ORR operates nearly 170 State-licensed care provider facilities and programs in 23 States. ORR has different types of facilities in order to meet the different needs of the minors in our care.

HHS is, again, deeply committed to the physical and emotional well-being of all children temporarily in our care. Staff at our care providers are trained in techniques for child-friendly and trauma-informed interviewing, ongoing assessment, observation, and treatment of the medical and behavioral health needs of the children, including those who have been separated from their parents.

Care provider staff are trained to identify children who have been smuggled and/or trafficked into the United States. Care providers must provide services that are sensitive to the age, culture, and native language of each child. ORR provides a wide range of medical services to the children in our care. These services include a complete medical examination, routine medical and dental care, and emergency health services.

Mental health services are available at all of our facilities. ORR policy requires at a minimum that the UAC and ORR State-licensed facilities receive an individual counseling session and two group counseling sessions with a clinician every week. Additional mental health services are available as needed. I believe that a child should not remain in ORR care any longer than the time needed to find an appropriate sponsor. A central part of ORR's mission is to discharge children from care as quickly as possible while ensuring their safety.

As of the end of August of this year, the average length of time that a child stays in HHS's custody is approximately 50 days, which is a dramatic decrease of over 40 percent from late November 2018, when the average length of care was 90 days. ORR will continue to assess the efficiency of its operations, to improve the process for release, and reduce the time a child remains in our care and custody.

Again, my top priority and that of me and my team is the safety and well-being of the children in the temporary care of HHS as we work quickly and safely to release them to a suitable sponsor. Thank you for the opportunity to discuss our important work. I'll be happy to answer questions that you may have.

[The prepared testimony of Mr. Hayes follows:]

Testimony of

Jonathan H. Hayes
Director
Office of Refugee Resettlement
Administration for Children and Families
U.S. Department of Health and Human Services

Before the

Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
United States House of Representatives
September 19, 2019

Chair DeGette, Ranking Member Guthrie, and members of the Subcommittee, it is my honor to appear today, on behalf of the Department of Health and Human Services (HHS). My name is Jonathan Hayes. I am the Director of the Office of Refugee Resettlement (ORR) and in that role I manage the Unaccompanied Alien Children (UAC) Program.

I became the permanent Director earlier this year, and it is a privilege to serve in this role alongside the ORR career staff. I am continually impressed with the level of commitment and professionalism I see in the ORR career staff and our grantees on a daily basis. The caring culture of ORR directly impacts our day-to-day operations and goals, as well as the staff who carry out our round-the-clock operations in service of some of the world's most vulnerable children. I have visited over 50 UAC care provider facilities across the United States over the last year so that I could see firsthand the quality of care that ORR staff and grantees provide to UAC. I also heard the perspectives and input from our field team, which allowed me to better understand ways to improve our services and overall mission.

My strong desire is to ensure the safety and well-being of the children in our care in a manner that is consistent with both the law and prevailing child welfare best practices, and that empowers the career professionals and senior staff at ORR. As the Director of ORR, I am committed to making decisions that are in the best interest of each child in ORR's care and custody.

Prior to my time at ORR, I worked for two Members of the House of Representatives for approximately eight years. That experience provides me with firsthand knowledge of the

important oversight role that you and your staff have in ensuring federal programs operate successfully.

**UAC Program Overview**

In the Homeland Security Act of 2002 (HSA), Congress placed the responsibility of care for UAC with ORR and not with a law enforcement agency. The HSA defines an unaccompanied alien child as a person under the age of 18; with no lawful immigration status; and without a parent or legal guardian present in the United States available to provide care and custody of the child. Once an apprehending agency determines that the child is a UAC, that agency is responsible for referring the child to ORR for care and custody.

Congress instructed ORR to ensure that the best interests of the child are considered when providing care and custody for children. All of us at ORR take this responsibility to heart and work every day to ensure the safety and well-being of the children in our custody.

To that end, based on the provisions of the HSA, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), as amended, and provisions of the Flores Settlement Agreement (FSA) which I discuss in further detail below, HHS has built a network of dedicated care providers, developed rules and standards for care for those providers, and created mechanisms of oversight to ensure compliance.

HHS's role in the lives of UAC is often misunderstood. HHS does not apprehend migrants at the border or enforce immigration laws. The Department of Homeland Security (DHS) and the

Department of Justice (DOJ) perform those functions. ORR does not have jurisdiction over children that arrive with an adult parent; DHS is responsible for those families. HHS' UAC Program is a humanitarian child welfare program, designed for the temporary care of UAC, until they can be safely released or reunified with family or other sponsors.

**Current State of the Program**

The number of UAC entering the United States during this fiscal year (FY) has risen to levels we have never before seen. As of September 16, 2019, DHS has referred more than 67,000 UAC to us, which is the highest number in the program's history. By comparison, HHS received 59,170 referrals in FY 2016, which is the second highest number on record.

HHS currently has fewer than 6,000 children in our care, though this number fluctuates on a daily basis. The number of children in our care is down from a recent high of over 13,700 just a few months ago in June. This decline is due to a decrease in daily referrals over the last few months, and ORR's ability to maintain a steady high discharge rate of UAC placement with sponsors. As of July, the average length of time that a child stays in HHS' custody is approximately 50 days, which is a dramatic decrease of over 40 percent from late November 2018, where the average length of care was 90 days. During my tenure at ORR, we have issued four operational directives and revised our policies and procedures with the specific aim of a more efficient yet safe release of UAC from our care and custody. Accompanying each directive is a detailed analysis explaining how the change would not compromise the safety of UAC.

On August 23, 2019, the Office of the Federal Register published a joint rule by HHS and DHS for the Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children. The regulations should replace and terminate the 1997 FSA by implementing the FSA's terms, consistent with the HSA and the TVPRA, with some modifications to reflect intervening statutory and operational changes. The rule will become effective October 22, 2019. DOJ filed a motion with the district court with jurisdiction over the FSA on August 30, 2019; as a result, ORR believes that the FSA should terminate on October 7, 2019.

For HHS, the final rule codifies standards for the temporary care, placement, and release of UAC in the custody of ORR. HHS carefully considered comments from the public, and made changes to the proposed regulations based on those comments. The rule outlines care provider licensing requirements, considerations for special needs minors, procedures during an emergency or influx, transportation of UAC, and age determinations.

**Identification and Reunification of Separated Children**

HHS is currently complying with the preliminary injunction order issued by the *Ms. L v. ICE* court on June 26, 2018. ORR, in coordination with its counterparts at DHS, continues to provide status reports to the court and the plaintiffs.

As of September 6, 2019, ORR has only 27 children of *Ms. L.* class members in care.
In general, DHS separates parents from their children for the reasons allowed by the *Ms. L.* Court. Those reasons include unverified familial relationship/fraud, criminal history, a communicable diseases, danger to the child, or lack of parental fitness.

Once HHS receives information from DHS that a child has been separated from a potential parent, we first establish communication with the separated adult, whether they are in the custody of DHS's Immigration and Customs Enforcement, DOJ's Federal Bureau of Prisons, or DOJ's U.S. Marshals Service. HHS works to confirm parentage and to confirm the circumstances around separation. In addition to the services it provides to UACs, HHS works with its DHS counterparts to reunify children of *Ms. L.* class members wherever appropriate, consistent with the Court's orders.

**Services While in Custody**

HHS is deeply committed to the physical and emotional wellbeing of all children temporarily in our care. 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 the children, including those who have been separated from their parents. Care provider staff are trained to identify children who have been smuggled and/or trafficked into the United States. Care providers must deliver services that are sensitive to the age, culture, and native language of each child.

Each care provider program maintains ORR-approved policies and procedures for interdisciplinary clinical services, including standards on licensing and education for staff, according to staff role or discipline. Staff who are required to have professional certifications

must maintain licensure through continuing education requirements, and all care provider staff must complete a minimum 40 hours of training annually.

When a child enters ORR's care, care provider staff assess each child's needs, including special concerns such as family separation, known medical or mental health issues, and other risk factors.

ORR provides a wide range of medical services to the children in care. These services include a complete medical examination, routine medical and dental care, mental health services, and emergency health services.

Children participate in weekly individual counseling sessions with trained social work staff, where the provider reviews the child's psychosocial wellbeing progress, establishes short term objectives for addressing trauma and other health needs, and addresses developmental and crisis-related needs, including those that may be related to family separation. Clinical staff may increase these once-a-week sessions if a more intensive approach is needed based on a child's individual needs. If children have acute or chronic mental health illnesses, ORR refers them for offsite mental health services or placement at Residential Treatment Centers.

Children also participate in informal group counseling sessions at least twice a week. The sessions give newly arrived children the opportunity to become acquainted with staff, other children in care, and the rules of the program and provides an open forum where everyone has an opportunity to speak. Together, children and care providers make decisions on recreational

activities and resolve issues affecting the children in care. For example, children at one temporary influx facility requested that they be allowed to conduct religious services themselves in lieu of an outside faith leader, and they then started to lead their peers in weekly faith-based services, appropriate to the child's faith, for those who wanted to participate.

**State-Licensed and Temporary Facility Capacity**

HHS operates nearly 170 state-licensed care provider facilities and programs across the United States. These care providers include group homes; long-term, therapeutic, or transitional foster care; residential treatment centers; staff-secure and secure facilities, and shelters. Our facilities provide housing, nutrition, routine medical care, mental health services, educational services, and recreational activities such as arts and sports. Grantees operate the facilities, which are licensed by the state licensing authorities responsible for regulating such residential child care facilities.

It is the expressed desire and goal of both the political and senior career leadership of ORR to expand our capacity in such a manner that as many children as possible are placed into permanent state-licensed facilities or transitional foster care while their sponsorship suitability determinations are made or their immigration cases are adjudicated, in the event no sponsor is available.

By December 31, 2020, we anticipate that we will have increased permanent, state-licensed facilities, including foster care. These beds will be funded by a combination of the supplemental funding appropriated earlier this year as well as discretionary funds requested in the President's 2020 Budget.

It takes approximately six to nine months from the posting of a funding opportunity announcement to open new licensed facilities. The start-up process includes the grant making process; retro-fitting the facility to meet specific physical plant requirements for licensed facilities; licensing of the facility by the state; and recruiting, vetting, hiring, and training of staff, among other activities. I am happy to report that our most recent funding opportunity announcement, which closed in May, is leading to new grant awards that will support approximately 3,000 more permanent state-licensed beds.

Some care provider facilities work solely with populations of children who need specialized care, which includes pregnant girls, infants and small children, those with mental health conditions. This limits the availability of permanent state-licensed bed space for other children during influxes.

HHS aims to have over 2,000 temporary beds available at temporary influx care facilities when our network of licensed beds is operationally full, to facilitate the expeditious transfer of UAC out of U.S. Border Patrol facilities, which are not designed or equipped to care for children. Note, given the current low occupancy, ORR is not sheltering children at either temporary influx facility at this time.

HHS has detailed policies for when children can be sheltered at a temporary influx care facility. The minor must be between 13 and 17 years of age; have no known special medical or behavioral health conditions; have no accompanying siblings age 12 years or younger; and be able to be discharged to a sponsor quickly, among other considerations.

HHS strives to provide a quality of care at temporary influx care facilities that is parallel to our state-licensed programs. Children in these facilities can participate in recreational activities and faith-based services, and receive case management, on-site education, medical care, legal services, and counseling.

As required under the emergency supplemental appropriations package, HHS will ensure influx shelters are only used as a last resort, meet child welfare standards, and include frequent monitoring; provide a 15 day notification prior to opening an influx facility; and ensure, when feasible, certain children are not placed at influx facilities, including children who would be expected to be in care for an extended period.

HHS is the primary regulator of the temporary influx care facilities and is responsible for their oversight, operations, physical plant conditions, and service provision. While states do not license or monitor influx care facilities, they operate in accordance with the HSA, the TVPRA, the FSA, the Interim Final Rule on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Alien Children, and ORR policy and procedures. On October 22, 2019, the final rule on the Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children should become effective and replace the FSA. The final rule substantively implements the FSA, including those provisions governing the operation of influx facilities.

HHS monitors temporary influx care facilities through assigned Project Officers, Federal Field Specialists, Program Monitors and all have the authority to issue corrective actions for

noncompliance. ORR can also remove children from facilities and stop placements altogether to ensure the safety and wellbeing of all children in HHS's care.

Recently, several local governments have expressed their unwillingness for ORR to open a licensed facility in their community. The unease of some officials about ORR facilities is understandable due to confusion about the conditions in those facilities and ORR's role in the care of UAC. While understandable, the hesitation or refusal to license an ORR facility impedes ORR's ability to increase permanent bed capacity, which may lead to a reliance on influx facilities and a backup of children in U.S. Border Patrol stations. ORR is working to address the concerns of local officials to avoid those outcomes by explaining the services children in care receive and distinguishing ORR from immigration enforcement agencies so that new facilities can be licensed and used to provide shelter to vulnerable children.

**Post-Release Services**

After HHS releases children from its custody to a sponsor, we offer case management services to those would benefit from ongoing assistance by a social service agency. Post-release case management services are offered by a network of ORR-funded non-profit service providers. ORR encourages the use of evidence-based child welfare practices that are culturally- and linguistically-appropriate to the unique needs of each individual and are rooted in a trauma-informed approach. Providers focus on helping released children find and access education, medical and behavioral health care, legal services, community programming, and other services. Providers may also offer

intensive case management to children and their families if they need support for specific challenges.

These services are not mandatory and released children and their sponsors may choose to participate or not in these services. Once children are released to sponsors, the sponsors assume legal responsibility for them. ORR has no statutory custodial authority over UAC after they are discharged from its care.

**Conclusion**

The UAC Program provides care and services to the children every day and our work is driven by child welfare principles. HHS is quickly expanding its state-licensed network of facilities to ensure that it can keep pace with the humanitarian crisis at the U.S.-Mexico border. Based on the anticipated growth, HHS expects its need for additional bed capacity to continue, despite placing children with sponsors at historically high rates. While referral rates have declined over recent weeks, given the unpredictable nature of the program, HHS must ensure that it has sufficient capacity to address needs as they emerge.

My top priority and that of my team is to ensure the safety and well-being of the children who are placed temporarily in HHS custody as we work to quickly and safely release them to suitable sponsors. 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.

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

Ms. DEGETTE. Thank you so much, Mr. Hayes.

I now recognize Commander White for 5 minutes for purposes of an opening statement. Commander?

**STATEMENT OF JONATHAN WHITE**

Mr. WHITE. Chairwoman DeGette, Ranking Member Guthrie, and members of the subcommittee, it's my honor to speak again before you today on behalf of the U.S. Department of Health and Human Services. My name is Jonathan White. I'm a career officer in the U.S. Public Health Service Commission Corps. I'm also a social worker and emergency manager. I previously served as the Deputy Director of ORR, the senior career official over the UAC program, and more recently I served as HHS's operational lead for the interagency mission to reunify children in ORR care who had been separated from their parents at the border.

Shortly after the *Ms. L* court issued its orders, Secretary Azar directed HHS and the Incident Management Team, which I led in particular, to take all reasonable actions to comply. The IMT worked closely with Department of Homeland Security, including CBP and our colleagues at ICE, to try to identify all parents of children in ORR care who potentially met the court's criteria for class membership. And as a result, the current reporting of possible children of potential *Ms. L* class members to the *Ms. L* court is 2,814 children. To be clear, that count of 2,814 children does not include children who had already been discharged by ORR before June 26th, 2018, nor does it include separated children referred to ORR care after that date.

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

For children whose parents had been released to the interior of the United States, we implemented an expedited reunification process. For parents who had departed the United States, the ACLU, which serves as Plaintiff's counsel for the *Ms. L* class member parents, obtained from those parents their desire either to have the child reunified with them in home country or to waive reunification so the child could undergo standard ORR sponsorship process. And once we received the parents' desire for reunification, HHS, DHS, and DOJ coordinated with the ACLU, with the government of the home country, and with the child's family to ensure safe reunification into the care of the parents.

Of the 2,814 children reported to the *Ms. L* court, as of September 6th, 2,787 have been discharged from ORR care. We reunified 2,168 of them with the parent from whom they were separated. Another 619 children have left ORR care through other appropriate discharges. There are 12 children still in ORR care whose parents are outside the U.S. and have waived reunification. There are four children in care who we later determined hadn't been separated.

There are eight children in ORR care who were separated, but we cannot reunify them because we've made a final determination that the parent poses a clear danger to the safety of the child based on sound social work child welfare methods. There's one child in care whose parents are in the U.S. and have waived reunification. There's one child left for whom the ACLU has advised that the resolution of the parents' wishes will be delayed. One child from the ACLU could not obtain the parents' preference.

As of April 25th of this year, the court also approved our plan to identify those children who had been separated from DHS starting on July 1st, 2017, referred to ORR, but had already been discharged pursuant to the TVPRA process before June 26, 2018. Teams of U.S. Public Health Service Commissioned Corps officers reporting to me have completed manual review of the UAC portal, the UAC program's official record, case file review for every child whose referral and discharge dates fell in that range. We resolve to err on the side of inclusiveness in identifying any potential preliminary indication of separation.

In weekly lists that data went from HHS, first to CBP, then to ICE where they could conduct their own manual records, and we since have been providing the ACLU on a rolling basis with lists of possible children of potential class members. And as of today, we have provided seven lists to the ACLU comprising 989 possible children of potential class members. The judge has given the Government until October 25th to provide the ACLU information on all the possible children of potential class members, and at this time I anticipate we will meet his deadline.

The UAC program's mission is a child welfare mission. And this has guided us also in our mission to reunify children, to place every child where we can back in their parents' arms, or to safely discharge that child to another family sponsor when that's a parent's wish or when it's in the best interest of the child.

Thank you. I'll be glad to answer any questions that you may have for me.

[The prepared testimony of Mr. White follows:]

Testimony 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
September 19, 2019

Chairwoman DeGette, Ranking Member Guthrie, and members of the Subcommittee, it is my honor to appear today 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 HHS 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 (UAC) Program.

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). Currently I am the HHS Operational Lead for the effort to identify children who were separated from their parents at the border, referred to ORR, and discharged from ORR care prior to June 26.

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.

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

The President issued Executive Order (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, Secretary Azar directed the 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 D.C., 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 inter-agency 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. Also, in March 2019, ORR discovered that two separated children it previously reported as possible children of potential class members were in fact referred to its care in July 2018. These

children were re-categorized to remove them from the count of possible children of potential class members.

As a result of these updates, the current reporting of 2,814 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 2,814 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 at all times during their stays with ORR. The re-categorizations are for the *Ms. L.* litigation, not clinical reasons. They do not affect the care the children receive 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 ORR UAC Portal. 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 Homeland Security Act (HSA) and the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA). 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, the Department of Justice (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"—doubts about parentage or child safety and well-being. ORR care provider 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 serves as plaintiffs' 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 2,814 children reported to the *Ms. L.* Court, as of September 6, 2019, 2,787 have been discharged from ORR care. We have reunified 2,168 with the parent from whom they were separated. Another 619 children have left ORR care through other appropriate discharges—in most cases, release to a family sponsor such as the other parent, an adult sibling, an aunt or uncle, a grandparent, a more distant relative, or a family friend.

Of the 2,814 children reported to the *Ms. L.* Court, there are 8 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 that poses a specific threat to child safety in the judgment of social work child welfare professionals, 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 12 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 4 children in care where further review determined that the child was not a separation. There is one child in care whose parents are in the U.S. and have waived reunification.

As of this morning, of the 2,814 children reported to the *Ms. L.* Court, there is only one child left for whom the ACLU has advised that the resolution of the parent's wishes will be delayed, and one child whom the ACLU could not obtain the parents' preference. 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.

*Ms. L. Expansion Class Identification*

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 *Ms. L.* Court defined the class at that time.
Early this year, the Ms. L. Court expanded the class to include parents of children who were separated by DHS starting July 1, 2017, referred to ORR, and discharged pursuant to the TVPRA process before June 26, 2018.

Identifying these children requires a different approach than that we were able to take with children still in ORR care, principally because the children are not in government custody and we do not have the same ability to talk with them. However, using the tools we do have—including the case file records of the three lead agencies ACF/ORR, CBP, and ICE—we developed and have been implementing an effective plan to identify these separated and discharged children.

On April 25, 2019, the Court approved our plan to identify the possible children of potential class members—children no longer in ORR care, children who had exited ORR care before June 26, 2018, but who had been separated from their parents on or after July 1, 2017. Working in close partnership with CBP and ICE, we have been working to identify those children. We determined that there were 32,972 children whose referral and discharge dates fell within that range. As of July 9, teams of U.S. Public Health Service Commissioned Corps Officers reporting to me have completed manual case file reviews of every one of those children's case files in the ORR UAC portal, the IT system with care and case management information on children in ORR care. We reviewed the case files of every child for any preliminary indication of separation. We resolved to err on the side of inclusiveness. If there was any plausible indication of separation, however ambiguous, we included that child in the weekly lists of children with preliminary indication of separation which we transmitted to CBP and ICE for follow-up. For every child with a negative result, a different team member conducted an independent re-review, to ensure that we identified every child with any preliminary indication of separation whatsoever.

Pursuant to the Court-approved plan, those weekly lists from HHS went to CBP, who conduct manual review of the circumstances of each child's apprehension, to determine if the child was in fact separated from a parent or legal guardian, and if so, under what circumstances. CBP then provides that data set to ICE, who conduct their own file review and provide additional information. CBP and ICE provide information including relevant criminal history or other information which enables us to determine if the separation was covered by a class exclusion, such as criminality or communicable disease, under the *Ms. L.* order. ICE then provides that information back to us in HHS, and we add information on the family member sponsor to whom the child was released. After a final round of concurrent interagency review, the completed information is provided to the ACLU, who represent the plaintiffs, as part of the rolling delivery of lists ordered by the Judge. To date, the Federal inter-agency group has provided the ACLU with seven lists, comprised of 989 possible children of potential class members for the expanded class period.

Judge Sabraw has given the government until October 25, 2019, to provide the ACLU information on substantially all the possible children of potential class members, and any other separated children covered by an applicable exclusion. At this time, I anticipate we will meet

that deadline set by the Court, so there can be a full accounting of the families who were affected by separation at the Mexican Border.

*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 under the law, and with the values of the United States about how we care for vulnerable children. In the case of this distinct population of children separated from their parents following DHS apprehension, and prior to placement at ORR, we at HHS have been working hard on an unprecedented mission to expedite safe reunifications of children with their parents wherever possible.

The UAC program's mission is a child welfare mission—we seek to serve the best interest of each individual child. In almost all cases, the best interest of the child is to be with their parents or their families. This has guided us also in our work to have each separated child back in his or her parent's arms, or discharged safely to another sponsor where that is the parent's wish. 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 so much, Commander White.

Now I am pleased to recognize Chief Modlin for 5 minutes for purposes of an opening statement. Chief?

**STATEMENT OF JOHN R. MODLIN**

Mr. MODLIN. Thank you, Chair DeGette, Ranking Member Guthrie, and members of the subcommittee. I'm honored to represent the men and women of the Border Patrol before you today. The phenomenon of unaccompanied alien children or UACs crossing our border illegally is relatively new in the 95-year history of the Border Patrol. In an unprecedented surge in fiscal year 2014, Border Patrol encountered more than 68,000 UACs along the southwest border. With just a few weeks remaining in this fiscal year, we have already surpassed 74,000.

This year's record-setting UAC numbers did not happen in a vacuum. At the same time, Border Patrol apprehended more than 289,000 single adults and 465,000 individuals and family units, surpassing total southwest border apprehensions for every year since 2007. This volume and mix of demographics overwhelmed Border Patrol capabilities like nothing we have ever seen.

UAC is a term defined in law, and any child who's apprehended without a parent or legal guardian is processed by Border Patrol as a UAC. Additionally, Congress has assigned HHS as the lead agency to provide care and custody for UACs until sponsors can be identified. Therefore, while Border Patrol is the first to encounter UACs when they cross the border, our role is limited. Beginning when agents apprehend a UAC in the field, we provide transportation to a Border Patrol station, conduct initial processing to prepare an immigration file and a referral to HHS, and arrange transfer to HHS once placement is confirmed.

To accomplish these steps as quickly as possible, generally within 72 hours, agents prioritize UAC for processing followed by family units and then single adults. As we saw earlier this summer, this process only works when both Border Patrol and HHS have the needed capacity. Border Patrol has no way of knowing how many UACs we will apprehend in any location on any day, and we cannot transfer UACs to the custody of any governmental or nongovernmental organization other than HHS. This means the Border Patrol has no control over when UACs come into our custody or how quickly they transfer out. Therefore, we are incredibly reliant on the capacity of HHS.

On May 1st, HHS asked Congress for 2.8 billion in emergency supplemental funding because they could not maintain the level of shelter space needed. They announced they would be cutting services to prioritize remaining funds for basic care. Also in May, Border Patrol saw the highest month of UAC apprehensions in our history. Combined, Border Patrol's rapid increase in apprehensions and HHS's funding challenges resulted in UACs remaining in our custody far longer than they should. By early June, this backup led to as many as 2,700 UACs in Border Patrol custody. Additional resources didn't arrive until early July after Congress passed the supplemental. Now, with HHS fully funded and apprehensions on the decline, we are down to only 100 to 200 UACs in our custody,

and we're generally transferring them to HHS within 24 to 30 hours.

All of us here today agree that a Border Patrol station is not an appropriate place for a child. For the limited time they're in our custody, our processing facilities are set up only to meet the basic necessities of food, water, and shelter. Available space is challenged by the need to safely hold children apart from unrelated adults and appropriately grouped by age and gender. The best thing we can do for these children is to expedite their transfer to the kind of comprehensive care and services that HHS is set up to provide.

All of what I've described speaks only to the treatment and care of children once they are in our custody of the U.S. During interviews, agents are often told horror stories from the journey. Border Patrol sees the cruelty of smugglers firsthand. Agents have rescued more than 550 children so far this year. We need to focus more on how to discourage parents from sending their children on this dangerous journey.

The unique treatment of UACs under our laws, particularly those from noncontiguous countries, is currently being interpreted as guaranteed admission if a child crosses the border before their 18th birthday. Smugglers are capitalizing on this perception, even using it as a tactic. Just 2 weeks ago, agents identified two Mexican adult males who posed as Guatemalan teenagers to avoid detention. One man admitted outright that the smugglers told him this would ensure his release into the U.S. A few days later, the diligent work of our agents led to the identification of a 23-year-old Bangladeshi man posing as a UAC. This trend is concerning.

In total, more than 316,000 children have been apprehended along the southwest border either as UACs or as part of family units this year. More parents are being convinced by smugglers to bring or send their children on this dangerous journey under the belief that children and anyone with children will be released into the U.S. under our laws.

While additional funding for temporary facilities, consumables, and medical support have improved our ability to respond to this crisis, there is simply no substitute for congressional action to address these pull factors in our immigration framework. I thank you for your time, and I look forward to your questions.

[The prepared testimony of Mr. Modlin follows:]

TESTIMONY OF

John R. Modlin
Acting Deputy Chief
Law Enforcement Operational Programs
Law Enforcement Operations Directorate
U.S. Border Patrol
U.S. Customs and Border Protection

BEFORE

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

ON

"Examining the Trump Administration's Care for Unaccompanied Children"

September 19, 2019
Washington, DC

Chairwoman DeGette, Ranking Member Guthrie, and Members of the Subcommittee, thank you for the opportunity to address U.S. Customs and Border Protection's (CBP) role in the short-term custody of migrant children.

CBP is a law enforcement agency. We are charged with keeping terrorists and their weapons out of the United States, while simultaneously facilitating lawful international travel and trade. Our mission combines customs, immigration, border security, and agricultural protection, and we proudly serve as the first line of defense for the nation.

However, an unprecedented and unsustainable situation on the southwest border (SWB) has added a never-intended dimension to our mission: providing humanitarian support for large numbers of aliens, some of whom may be vulnerable.

From October 1, 2018 through July 31, 2019, the U. S. Border Patrol apprehended 760,370 aliens between ports of entry along our southwest border. That is nearly 92 percent higher than the total number of apprehensions for all of Fiscal Year (FY) 2018. The majority of the apprehended aliens are Central American family units and unaccompanied alien children (UAC). In FY 2019 to date, family units and UAC represented 66 percent of all aliens apprehended by the Border Patrol at the southwest border. This influx has led to capacity constraints at some CBP facilities.

To put this in context, it is important to understand Border Patrol's role in the nation's immigration system. Border Patrol agents are often the first people migrants encounter after they have entered the United States. We are the first to meet migrants' basic needs, such as providing food and water to those who may have spent weeks in the desert, but we are only the first point of contact. We process migrants before turning them over to other agencies as expeditiously as possible, and consequently migrants' time in Border Patrol custody is typically brief. Our facilities reflect this role; they are designed for processing, and not intended for long-term custody or care. This custodial brevity is especially pronounced for UAC, who—by law—are transferred to the custody of the Department of Health and Human Services (HHS) within 72 hours, absent exceptional circumstances.

However, due to the unprecedented levels of family units and UAC, Border Patrol has had a sharp increase in custodial responsibilities. Every day, Border Patrol agents are feeding and caring for migrants and rescuing individuals from perilous conditions; every day, Border Patrol upholds its humanitarian mission in addition to the border security mission its members were hired to perform.

The demographic shift to these more vulnerable migrant populations, combined with the overwhelming numbers, profoundly affects our ability to patrol the border and diminishes our ability to prevent deadly narcotics and dangerous people from entering our country. It also detracts from our ability to facilitate lawful trade and travel. CBP currently has approximately 200 officers from ports of entry assigned to the southwest border to help Border Patrol with processing the surge of aliens, and 225 Border Patrol agents from northern border and coastal areas have been temporarily assigned to the southwest border.

However, over the past two months, two important variables have allowed CBP to mitigate the challenging overflow conditions at our border facilities. One is the success of recent initiatives by the Administration and its international partners to address this border security and migration crisis. The second is the emergency supplemental appropriation we received from Congress.

**International Partnerships and Other Initiatives**

Overall, apprehensions of UAC and family units decreased by roughly 50 percent from May to July 2019. In July, CBP observed a 26 percent decline from the previous month in total enforcement actions for individuals from Guatemala, Honduras, and El Salvador. The most significant decline is in the numbers of aliens from Guatemala, with a 42 percent decrease from June.

The reductions may be due in part to recent agreement in June on the part of the Government of Mexico to stem the flow of illegal migration, and the international collaboration with the Central American governments to dismantle and disrupt alien smuggling and human trafficking organizations. We continue to see the Government of Mexico making a significant effort on its southern border with Guatemala, as well as on the transportation routes of migrant smugglers.

By aligning our policies and providing access to protection to those who need it, as close to home as possible, in concert with international organizations, this regional approach limits the ability of migrant smuggling and human trafficking organizations to profit off the exploitation of migrants.

**Emergency Humanitarian Supplemental Appropriations**

The *Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019* was signed into law on July 1, 2019. This Act provided CBP with a total of $1,100,431,000 for humanitarian support, border operations, and mission support.

The significant majority of the CBP portion of the supplemental appropriation is dedicated to humanitarian support; this funding has been allocated to CBP for the establishment of soft-sided facilities in Donna and El Paso, Texas, and Yuma, Arizona; a modular facility in Yuma; a permanent facility in Nogales, Arizona; and single-adult holding facilities in multiple locations. CBP also received approximately $112 million for food, water, sanitary items, blankets, and other consumables for migrants, and for medical assets and support, and $35 million for transportation of migrants in Border Patrol custody to help alleviate overcrowding and expedite processing.

Congress also provided approximately $110.5 million for border operations, specifically for overtime and temporary duty assignments for Border Patrol agents, CBP officers, and other CBP and Department of Homeland Security (DHS) staff. Of that $110.5 million allotment, $19.9 million is also designated for costs associated with the volunteer surge force—personnel from various government agencies who volunteered to deploy to the southwest border to assist with the surge of migrants arriving from Central America.

The supplemental appropriation also provided $50 million for data systems and analysis, which CBP will use to address information technology shortfalls at operating locations and to better integrate immigration processing and reporting.

The supplemental appropriation has provided much-needed resources for the care and processing of the record-breaking numbers of aliens illegally crossing our southwest border. Much of the funds provided to CBP through the supplemental appropriation helped to replenish the CBP accounts used to provide the necessary facilities and resources needed to respond to the current humanitarian and border crisis. Prior to the passage of the supplemental appropriation, CBP had already used Operations and Support funding to build soft-sided facilities for family units in Donna and El Paso, Texas, and awarded a contract for a soft-sided facility in Yuma, Arizona. The consumables funding will continue replenishing food, water, sanitary items, blankets, and other consumables for migrants. Without the supplemental appropriation, the funding for these humanitarian custodial efforts provided in the *Consolidated Appropriations Act, 2019* would have been exhausted before the end of the fiscal year.

The majority of the emergency supplemental appropriation was allotted to our partners at HHS. Because of that appropriation, wait times at border stations and the number of UAC in CBP custody have been reduced. At the peak of the crisis, HHS shelters were operationally full and could therefore only accept additional UAC transfers from CBP as HHS discharged UAC to sponsors. However, UAC continued to arrive at Border Patrol stations, and we had nowhere to send them. As a result, there were nearly 2,600 UAC in Border Patrol facilities in early June, and more than 1,200 of them were in custody for 72 hours or more. Now, there are roughly 110 UAC in CBP custody at the border, with an average time in custody of fewer than 48 hours.

However, while DHS requested $108 million for single-adult beds at U.S. Immigration and Customs Enforcement (ICE) detention facilities, this request was not funded. Without additional funding for ICE single-adult beds, the ability of CBP to process and transport single adults out of CBP custody and into the long term care and custody of ICE—which has the authority and appropriate facilities for longer-term custody—is further limited. In addition, as a practical matter, single adults are the only demographic that currently can be detained through expedited hearings pursuant to a final order of removal.

**A Broken Immigration System**

Ultimately, we cannot adequately address this crisis by shifting resources or building more facilities. While many factors drive illegal migration, the rise in illegal border crossings is, in part, a consequence of the gaps created by layers of laws, judicial rulings, and policies related to the treatment of minors. While well-intentioned, this mosaic of legal requirements has helped create the conditions underlying the humanitarian and border security crisis at our southwest border today. Our current immigration laws provide clear incentives to cross our southwest border illegally, especially with a child. These well-intentioned statutory requirements left loopholes that require immediate fixes.

These weaknesses in our laws now represent the most significant factors affecting border security and include:

- The asylum gap—Approximately 80 percent of individuals pass the initial credible fear (of torture or persecution on account of race, religion, nationality, membership in a particular social group, or political opinion) standard threshold screening during the expedited removal process, but only 10-15 percent of such aliens are found to have valid asylum claims at the end of immigration court proceedings;
- The disparate treatment of UAC based on their country of origin under the *Trafficking Victims Protection Reauthorization Act of 2008*, which allows for certain UAC from Mexico and Canada to withdraw their application for admission and be quickly repatriated, but not children from other countries, including those from Central America; and
- The *Flores* Settlement Agreement that has led to challenges in keeping families detained together for the time it takes to complete expeditious and fair immigration proceedings,

All of these things encourage crossing the border with a child as a near guarantee of a speedy release and an indefinite stay in the United States.

***Flores Settlement Agreement***

The 1997 *Flores* Settlement Agreement, as interpreted by the courts, provides certain standards governing the treatment, detention, and release of all alien minors in U.S. Government custody. The Agreement requires the government to release alien minors from detention without unnecessary delay, or, if detention is required, to transfer them to non-secure, licensed programs "as expeditiously as possible." *Flores* also sets certain standards for the holding and detention of minors, and requires that alien minors be treated with dignity, respect, and special concern for their particular vulnerability. CBP complies with the *Flores* Settlement Agreement and treats all alien minors in its custody in accordance with its terms.

In 2014, in response to the surge of alien families crossing the border, DHS increased the number of family detention facilities. Soon after, the U.S. District Court for the Central District of California interpreted *Flores* as applying not only to unaccompanied minors who arrive in the United States, but also to those children who arrive with their parents or legal guardians.[1] The court also stated that ICE's family detention facilities are not licensed and are secure facilities. These rulings limited DHS's ability to detain family units for the duration of their immigration proceedings. Pursuant to this and other court decisions interpreting the *Flores* Settlement Agreement, DHS rarely detains accompanied children and their parents or legal guardians for longer than approximately twenty days.

In part as a consequence of the limitations on time-in-custody mandated by *Flores* and court decisions interpreting it, custody determinations for adults who arrive in this country alone are different than those for adults who are parents or legal guardians who arrive with a child.

On August 23, 2019, DHS and HHS published a final rule promulgating regulations that implement the relevant and substantive terms of the *Flores* Settlement Agreement. The rule

[1] *Flores v. Johnson*, 212 F. Supp. 3d 864 (C.D. Cal. 2015).

allows for termination of *Flores* and allows DHS to respond to significant statutory and operational changes that have occurred since the agreement has been in place. This rule also codifies CBP's National Standards on Transport, Escort, Detention, and Search. The rule is scheduled to take effect on October 22, 2019.

***UAC Provision of Trafficking Victims Protection Reauthorization Act of 2008***

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, also requires that the U.S. government provide certain protections to UAC. Specifically, the TVPRA requires that, once a child is determined to be a UAC, the child must be transferred to HHS within 72 hours, absent exceptional circumstances, unless the UAC is a national or habitual resident of a contiguous country and is determined to be eligible to withdraw his or her application for admission voluntarily (i.e., not a trafficking victim, does not have a fear of return, and is able to make an independent decision to withdraw). UAC from countries other than Canada and Mexico are exempt from the TVPRA provision allowing for the withdrawal of application for admission of Canadian and Mexican UAC. Currently, more than 80 percent of UAC encountered by Border Patrol are from Guatemala, Honduras, and El Salvador; therefore, they fall outside the TVPRA expeditious withdrawal framework, cannot avail themselves of a voluntary withdrawal provision like UAC from Canada or Mexico, and further encumber the already-overburdened immigration courts.

***Asylum Claims***

In recent years, CBP has seen a significant increase in the number and percentage of aliens who seek admission or unlawfully enter the United States, are processed for expedited removal, and then assert an intent to apply for asylum or express a fear of return, torture or persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. This dramatic increase strains border security resources, immigration enforcement, courts, and other federal resources.

CBP carries out its mission of border security while adhering to legal obligations for the protection of vulnerable and persecuted persons. The laws of the United States, which are consistent with international treaties to which we are a party, allow people to seek asylum on the grounds that they have suffered persecution or have a well-founded fear of persecution in their country of nationality (or of last habitual residence, if stateless) on account of their race, religion, nationality, membership in a particular social group, or political opinion. Our laws also prohibit the removal of individuals to countries where it is more likely than not that they would be tortured. CBP understands the importance of complying with the law and takes its legal obligations seriously.

CBP has designed policies and procedures based on these legal standards to protect vulnerable and persecuted persons in accordance with these legal obligations.

If a CBP officer or agent encounters an alien who is subject to expedited removal at or between ports of entry, and the person expresses an intention to apply for asylum, a fear of persecution or torture, or a fear of being returned to his or her home country, CBP processes and refers the

individual for a credible fear screening interview with an asylum officer to determine whether the individual possesses a "credible fear" of torture or persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Congress must address the asylum gap—where approximately 80 percent of individuals pass the initial credible fear standard threshold screening to the expedited removal process, while only 10-15 percent of such aliens are found to have valid asylum claims at the end of immigration court proceedings.

**We Need Congress to Act**

These legal and statutory requirements have significant ramifications. Central American families are coming to our border now because they know that DHS must release them quickly—generally after no more than 20 days—and that they will be allowed to stay in the United States indefinitely while awaiting inevitably protracted immigration court proceedings. To be clear, these families, and those posing as families, are generally not concerned with being caught by the Border Patrol—they are actually turning themselves in, knowing that they will be processed and released rather expeditiously with a court date years in the future, often obtaining permission to work while their case is pending. Smugglers are exploiting this dynamic to encourage more illegal migration and are financially benefiting from it every day under the current, outdated laws that are encouraging migration.

The perception that our system will allow families to stay in the United States indefinitely is clearly a major pull factor used by smugglers to convince individuals to make the dangerous journey to our border. Migrating in pursuit of improved economic opportunities is not, and has never been, a basis for asylum, and those who exploit the low credible fear threshold deprive qualified individuals of the asylum, and the humanitarian protection they deserve.

Along with important push factors, which include high levels of insecurity, limited economic opportunity, and weak governance in many parts of Central America, this perception about our immigration system incentivizes migrants to put their lives in the hands of smugglers and make the dangerous trek north to our southwest border. We see the cost of these pull and push factors every day in profits derived by transnational criminal organizations, in the lives lost along the journey, and in the flight of generations of youth from El Salvador, Guatemala, and Honduras.

Additionally, regardless of whether an alien who has entered illegally has made a credible fear claim, aliens—particularly family units—are increasingly unlikely to be repatriated quickly. Near-assurance of release due to court rulings, compounded by a multi-year immigration court backlog, means that there has been virtually no meaningful immigration enforcement for family units crossing illegally in a timely fashion. While DHS and its components are taking every possible measure to address the illegal border crossing crisis and the absence of immigration consequences for family units, it is simply no substitute for substantial congressional action.

**Conclusion**

CBP is a law enforcement agency that will continue to uphold the laws of the United States. While we treat every migrant in our care humanely, our primary responsibility is protecting the nation by enforcing the law.

We have seen a marked decrease in levels of illegal border crossing this summer. To see lasting change, we must continue to collaborate with our international partners and seek targeted solutions to our immigration laws. We must also ask Congress to help us by taking legislative action in support of CBP, our partners, and the rule of law.

Thank you for the opportunity to testify. I look forward to your questions.

Ms. DEGETTE. Thank you so much, Chief Modlin, and thanks to the entire panel for your testimony. The Chair now recognizes herself for purposes of questioning for 5 minutes.

During our February hearing on family separations, we heard from child welfare experts about the decades of research showing that family separations lead to toxic stress and result in long-term traumatic consequences. And in fact, Ms. Maxwell, your investigation seemed to confirm our worst fears about the harms that this cruel separation policy had on the children.

According to the program directors and mental health clinicians who cared for the separated children, these children exhibited more fear, feelings of abandonment, and post-traumatic stress than children who were not separated. Is that correct?

Ms. MAXWELL. That's correct.

Ms. DEGETTE. And you also found that the children who—you found children who believed their parents who abandoned them were angry and confused. Some children expressed feelings of fear or guilt and even became concerned for their parents' welfare, and some children expressed acute grief that caused them to cry inconsolably. Is that correct?

Ms. MAXWELL. That's what we heard from the mental health clinicians that took care of these children, yes.

Ms. DEGETTE. Now one program director told you that—and several of us talked about it—a 7- or 8-year-old boy who was separated from his father without any explanation was under the delusion that his father had been killed, and he also thought that he would be killed. The child had to receive emergency psychiatric care to address his mental health needs. Is that correct?

Ms. MAXWELL. Yes, that's what we heard.

Ms. DEGETTE. And one medical director told you how physical symptoms felt by separated children are manifestations of how—other psychological pain, and separated children would often say their chest hurt when in fact they were actually medically fine. And they said—as Congressman Kennedy said—they said, "Every heartbeat hurts," and, "I can't feel my heart." Is that correct?

Ms. MAXWELL. Again, that is what we heard from the staff that treated the children, yes.

Ms. DEGETTE. Now, Commander White, in February, you told us that you had raised concerns with HHS leadership about what a family separation policy would mean for children in the capacity of the program. And some of the documents that we got from HHS show that, while this was all going on, you were increasingly raising the alarm about separations within HHS.

So I want to just make a guess here that you are not really surprised about some of these findings in the IG's report about the reactions of the children.

Mr. WHITE. The findings in HHS OIG's report are absolutely consistent with what all the best available evidence and science would tell us that we should anticipate when children experience the traumatic event of separation from parents. Unfortunately, we have extensive scientific research that would allow us to know what we would expect to see. The consequence of this for the child's health and behavioral health are severe. The risks are profound, and the effects are often lifelong.

Ms. DEGETTE. So that was what I wanted to follow up with you, is we heard from the experts back before and now from Ms. Maxwell about the immediate manifestations. But in your professional experience, what is the prognosis, the lifelong prognosis for these kids?

Mr. WHITE. The prognosis for each child will be very different.

Ms. DEGETTE. Obviously.

Mr. WHITE. However, what we know about the particular trauma of prolonged separation of a child from a parent is that children both are at lifetime risk for trauma-related mental health problems and also a whole set of toxic stress-created effects that can have lifetime effects on them cognitively, in terms of their cardiac health. Overall, the consequences for many of these children, even if they are able to receive robust clinical services, will be quite severe. And this speaks to the harm that is involved when you have separation of children except strictly for cause.

Ms. DEGETTE. Thank you.

Chief Modlin, I was glad to hear that the amount of time that it is taking to transfer the children from CBP to ORR has decreased now, but something that I talked to several people about over the summer is what kind of guidance the Border Patrol was being given when they are taking these children into custody before they can be transferred.

Has there been a coordination between CBP and ORR about the minimum conditions that need to be given to the children?

Mr. MODLIN. Sure. I'm a little unclear on the question. Is the question about the guidance given at the separation, or whatever's the coordination between CBP and HHS?

Ms. DEGETTE. Well, my time has expired so I will explore this later. But this is what I am just shocked by is the report, the reports that I saw that I mentioned in my opening statement about children wearing dirty diapers, about them not getting showers or cleanliness, about 6- and 7-year-olds having to take care of infants and toddlers.

And what I am just wondering is, because of the different agencies that we have got, if CBP didn't get guidance from ORR about the standards that you have to have for children.

So my time has expired, but I will ask you more about that later. I will now recognize the ranking member, Mr. Guthrie, for 5 minutes.

Mr. GUTHRIE. Thank you, Madam Chair, for the recognition, and I will start.

Commander White, you were before this subcommittee last February. One of the issues that you discussed at the hearing was whether HHS receives adequate information from CBP when a child is separated from a parent or legal guardian. Is HHS now receiving sufficient information from CBP when a child is separated, and what steps is ORR taking from a policy or technology perspective to ensure ORR is receiving sufficient information?

Mr. WHITE. Respectfully, Congressman, I'll defer to Mr. Hayes——

Mr. GUTHRIE. OK.

Mr. WHITE [continuing]. Since he currently directs ORR and I don't work there anymore.

Mr. HAYES. Thank you, Commander.

Yes, Congressman. We do have a specific team now inside of the Office of Refugee Resettlement with both Public Health Service officers that are inside of ORR as well as career, senior career officials that track very closely the number of separations that we have since June 27th after the court injunction last year. These are separations for cause. We get updates every couple of weeks, and we do have a very close monitoring of this. And, you know, there are questions that our intakes team will go back and forth with at times with CBP to get additional information, but the information we are receiving from CBP is allowing us to keep a close track of this record, and we are.

Mr. GUTHRIE. Thank you. And do you—so, Director Hayes as well, do you believe there is a need for Congress to clarify when it is and isn't OK to separate a child? Are ORR's sponsors' evaluation policies and procedures an appropriate guide for CBP agents to determine when to separate a child, and would these same policies and procedures be a good guide for legislation to clarify the issue?

Mr. HAYES. Yes. I would answer that question in two ways, Congressman. I think some additional clarity or clear boundaries or guardrails as Ann Maxwell suggested would be wise, but this also gets into the area of law enforcement, and I would defer to my colleagues at CBP on that.

Mr. GUTHRIE. Do you think that Congress should clarify when it is appropriate for you to separate a child?

Mr. HAYES. Sir, the times that children are separated right now, which has existed throughout my 24 years in the Border Patrol, are guided by the results of the *Ms. L* case. So we're already following the outcome of that case, sir.

Mr. GUTHRIE. My understanding under the zero-tolerance policy, that was legal to do in the law. That was zero tolerance was—we were enforcing the law without prosecutorial discretion, so Congress could clarify that you can't separate a child from a parent or legal guardian if the infraction is merely an immigration violation.

Mr. MODLIN. Yes, sir.

Mr. GUTHRIE. Congress could clarify that. But right now, you can do that under the law. Not that you are doing it, but you can do that under the law.

Mr. MODLIN. Yes, sir. As I'm sure you're aware that the zero-tolerance prosecution initiative was to prosecute everyone that crossed the border illegally for a violation of 8 U.S.C. 1325.

Mr. GUTHRIE. Right.

Mr. MODLIN. After the executive order on maintaining family unity, those processes were stopped, and now we follow the guidance of the *Ms. L* litigation.

Mr. GUTHRIE. Right. And I won't—you don't have to add, but Congress could clarify, that is my point. So, Chief Modlin, this year we have seen a record number of migrants apprehended at the southwest border. The system was completely unprepared to handle this. How did CBP work with HHS at the height of this crisis to move children out of CBP facilities into ORR facilities as quickly as possible?

Mr. MODLIN. So what I would first like to say, sir, is that the men and women of the Border Patrol are professional and compassionate. We follow the guidelines that are set forth in our TEDS policy that's been spoken about many times in these hearings, the Flores litigation, TVPRA, PREA. In addition to that, at the height of this crisis, our communication with HHS, as I'm sure you're aware, is always difficult. As a law enforcement agency communicating with a non-law-enforcement agency, our systems can't speak directly to each other for many reasons, that being one of them.

But what it was, we put procedures in place to get as much of the pertinent information that we could to HHS while preventing the law-enforcement-sensitive information from going forward, and at the same time not receiving information from them that they wouldn't want to go to a law enforcement agency.

Mr. GUTHRIE. This may be more for Director Hayes. But, Chief Modlin, because you brought it up, Congress spent I guess from sometime early—I don't know the exact dates—early May to right before the 4th of July break, the administration begging for a supplemental funding bill because of the crisis at the border.

You said that you have had relief, Chief Modlin, because of the supplemental. We wasted about 2 months arguing for I don't know what about getting a bill to the floor to help you out. So how has that improved? What issues did that cause and how has that improved since you have had it passed? And Congress has been late getting it to you.

Mr. MODLIN. Yes, sir, Congressman. So what you say is correct. There was a delay in getting us the additional supplemental funding that we requested. I don't remember the exact timeline, but there was a period where we entered into a deficiency.

Mr. GUTHRIE. At least 6 weeks.

Mr. MODLIN. Yes. There was a period where we entered into a deficiency, meaning we knew we would not make it to the end of the fiscal year with our current appropriation. That absolutely created a potential limitation on some services, created a lot of uncertainty in the program and across our grantees, many of which are, you know, very small, not-for-profit facilities and programs, I know, that don't have a lot of resources other than the grants that we give them to care for these children. So, once we got those resources, it absolutely brought certainty and you gave us the additional resources we needed.

Mr. GUTHRIE. Thanks. My time has expired——

Mr. MODLIN. Yes.

Mr. GUTHRIE [continuing]. And I yield back. Thank you.

Ms. DEGETTE. The Chair now recognizes the gentleman from Massachusetts, Mr. Kennedy, for 5 minutes.

Mr. KENNEDY. Thank you, Madam Chair.

Chief Modlin, just to begin with you, you said that there was challenges getting your systems, because you are a law enforcement agency, to interact with HHS. Is that right?

Mr. MODLIN. Yes, sir.

Mr. KENNEDY. Do your systems include a telephone?

Mr. MODLIN. I'm sorry?

Mr. KENNEDY. Do your systems include a telephone?

Mr. MODLIN. Yes, telephones are used to contact that agency, sir. What cannot——

Mr. KENNEDY. And how about email?

Mr. MODLIN. What cannot pass back and forth is law-enforcement-sensitive information. So IT solutions that are normally a solution between non-law-enforcement entities can't be used——

Mr. KENNEDY. Understood, sir. But that could be perhaps a telephone call saying, "Hey, we have a crisis. This needs to stop. This needs to change." Did those conversations happen?

Mr. MODLIN. Absolutely, sir. They happen between the agency. They happen from our leadership to Congress. They happen from our leadership to the press. Absolutely, those conversations took place, sir.

Mr. KENNEDY. Well, I don't believe that is what evidence has indicated from prior testimony here, from prior hearings, but we will get back to that in a second.

Ms. Maxwell, I would like to talk to you more about the impact of the 2018 family separation policy on ORR's ability to care for children in their custody. Your report found that ORR care providers found it particularly challenging to provide age-appropriate mental health services for the very young and the many very young children it had to care for because of the forced separation policy by this administration. Ms. Maxwell, is that correct?

Ms. MAXWELL. That's correct, what we heard.

Mr. KENNEDY. Ms. Maxwell, in fact you found in your report that the number of young children which you defined as 12 and younger requiring ORR care increased sharply in May of 2018 when DHS formally began implementing a zero-tolerance policy that led to family separation. Is that correct?

Ms. MAXWELL. That's correct.

Mr. KENNEDY. In fact, your report notes that "faced with a sudden and dramatic increase in young children, staff reported feeling challenged to care for children who presented different needs from the teenagers that they typically served." Is that correct?

Ms. MAXWELL. Indeed, it is.

Mr. KENNEDY. Ms. Maxwell, briefly, what were some of those challenges?

Ms. MAXWELL. Well, I think there's two things to keep in mind when we think about the increase in the younger children in ORR population. The first, as you mentioned, is the dramatic increase. We were looking at over 164 percent increase from April to May of the 6- to 12-year-olds, and 80 percent from April to May for the 0 to 5. So just the dramatic and sudden increase was a challenge in and of itself.

And then of course the younger children presented different needs. As I mentioned, they have shorter attention spans, they need more supervision, and they can't always communicate. So the normal methods, the modalities of treatment are different for a younger population than for the teenagers the facilities are used to treating.

Mr. KENNEDY. And, Ms. Maxwell, you—to quote you on—excuse me. You quoted an ORR program director in your report who said, "A 7- or 8-year-old boy was separated from his father without any explanation as to why the separation occurred. The child was

under the delusion that his father had been killed and believed that he would also be killed. This child ultimately required emergency psychiatric care to address his mental health distress."

Ms. Maxwell, is it common for separated children to face serious mental health issues?

Ms. MAXWELL. We heard that from the staff that treat them that they were more difficult and more challenging to treat because of the separation than children who weren't separated.

Mr. KENNEDY. And, Commander White, this is your area of expertise. What kind of challenges did the separations pose to the providers who had to care for those children?

Mr. WHITE. So the separated children pose really sort of multiple problems for program providers, some of which are merely capacitation issues. But to focus—if I understand your question—focus narrowly on the additional clinical requirements, while the ORR program providers are trauma-informed programs, the level of trauma and the type of trauma experienced by unaccompanied children really is dwarfed by the reality of separated children.

Separated children's needs are very different in four important ways. First, their trauma is uniformly recent. Second, it is currently ongoing, it is not a past event. That separation is happening right now in the moment. Third, it involves a disruption of family systems that are very different from what we see from unaccompanied children. And third and most importantly, it is very difficult for the child to distinguish that the people there, such as the clinician in the shelter, are not part of the separation process. They see us as one government and one entity, so their ability to establish therapeutic rapport and to benefit from clinical intervention is much less. Separated children cannot be served effectively in an ORR or UAC program setting.

Mr. KENNEDY. Commander, if I remember your testimony from your prior appearance here, you indicated that—did you get advanced notice of a family separation policy before you started seeing an increase in separated children?

Mr. WHITE. We did not receive any notice of a policy prior to its announcement on television. Discussions——

Mr. KENNEDY. Which was after the policy was in place?

Mr. WHITE. Correct. Discussions of possible future policy options which would include separation began in February of 2017. We began to observe significant, or essentially a tenfold increase in separation over historic norms beginning in July of 2017.

Mr. KENNEDY. And presumably your phones and emails were working at that point too. You could have received a phone call from anybody within the administration announcing this policy change?

Mr. WHITE. At the field level, coordination between ORR's intakes desk and CBP border stations is an everyday process and is very robust.

Mr. KENNEDY. Yield back.

Ms. DEGETTE. Commander, just to clarify, during those conversations about a potential separation policy in 2017, you continually raised the red flag that this would be detrimental to the children. Isn't that correct?

Mr. WHITE. My consistent recommendation and that of the entire ORR career team was that separation of children from family units and their designation as UAC would pose an unacceptable danger to the child and, moreover, would pose a set of capacity problems that would overwhelm the program operationally.

Ms. DEGETTE. Thank you. The Chair now recognizes the ranking member of the full committee, Mr. Walden, for 5 minutes.

Mr. WALDEN. Thank you, Madam Chair, and thanks again for having this hearing. And once again, I want to be unequivocal too: None of us supported this child separation policy. We agree with your leadership and that of your career team on this matter.

And Madam Chair, thanks again for having this hearing. I am sorry, I had to step upstairs. They are having one on pharmaceutical drugs. And as I said up there and I will say here before I get into this issue, I beg of the majority to share with us the legislation that is going to completely rewrite pharmaceutical law in America. We have just been told there is a hearing already scheduled for next Wednesday. There is no legislative text, and we have been completely excluded from the process. It has all been written in the Speaker's office.

And our committee has a proud and thorough tradition of working together on these issues. And I am——

Ms. DEGETTE. I would certainly give it to you if I had written it, don't worry.

Mr. WALDEN. And I know you would. That is because I know the work you have done on Cures in a bipartisan way and on CREATES and other things. And this doesn't have to be this way. We have a great tradition of working together. We have a lot of good brains on both sides of the committee. This is a common issue we need to tackle like this one is, and so I am deeply disappointed. We will maybe get one witness next Wednesday and no time to prepare, no view of the legislative text. Thank you.

Now, let me get on to this. When I was down in Yuma, Chief Modlin, I was—we looked at the facility. Your team, by the way, was terrific. Anything I asked they answered. They didn't try and stop me from seeing anything. By the way, we had followed the rules, planned ahead of time, worked with your folks. They were terrific. And I want to tell you that they were very accommodating and did a great job.

But what they did tell me that was really a disturbing piece of this puzzle was about the challenges they faced in identifying false families. False families. And that they had encountered not a lot, not a lot, but enough adults who were pretending to be the parent of a minor child in hopes of being released into the United States. One agent told us about a father who was apprehended with an infant child that he claimed to be his. And while the Border Patrol agents strongly suspected he was not actually the father, they had no way to prove this.

Another agent told me about an ongoing prosecution where children were paired with adults—and this is important for our committee to hear—paired with adults multiple times, same kids multiple times, to create false family units. And after the purported family unit entered the United States, was apprehended and re-

leased, the child was sent back out of the country and made the journey over again.

So my question is, how frequently do CBP patrol agents encounter these types of situations—I cannot imagine the trauma those poor children go through—where an adult claims to be the parent of a minor but isn't? How difficult is it for you and your team to ferret these traffickers, I will call them, these abusers, which is what they are, and my God, what happens to those kids? Can you enlighten us, because your team brought this to my attention.

Mr. MODLIN. Absolutely. Thank you, sir, for the question. What I can say is, to your point, it is very difficult to discern that, especially if you can put yourself in the position of the Border Patrol agents in those crowded facilities during that time, during the height of this crisis. What I can tell you is that the diligent work of the men and women of the Border Patrol, their attention to detail, their caring for these children, they recognize when things aren't right between what's purported to be a family member and a child. They notice things that don't occur in a normal familial situation. To date we have identified more than 6,100 individuals that have made fraudulent claims as to being a family member in order to gain the benefit that you speak of.

Mr. WALDEN. Six thousand one hundred individuals?

Mr. MODLIN. Over 6,100, sir. Yes. And that's just what the Border Patrol has found, as I'm sure you're aware that ICE HSI would be glad to talk to. They investigate these same claims as well and their numbers would be apart from the numbers that I——

Mr. WALDEN. You said ICE investigates these claims?

Mr. MODLIN. ICE HSI. Yes, sir.

Mr. WALDEN. All right, because there are members of this body that want to eliminate the funding for ICE and wipe them out, so they would not be available to investigate this kind of human trafficking. That is my own statement. You don't have to comment on that.

But 6,100. So how often are we seeing this recycling of the same kids where they are being abused and used and sent back and then they——

Mr. MODLIN. So it's a daily occurrence, sir. What I would say to your earlier comment is that, without the abilities of ICE to then further investigate these claims and find where the kids are being recycled as you're talking about, where it is the children are being used as nothing more than a commodity in this, and this of course goes to the interior of the country to locations where the cartels and these TCOs are using these kids over and over. ICE is critical for that. Without ICE, we would never be able to investigate and then prosecute those people.

Mr. WALDEN. All right, my time has expired. Thank you, Madam Chair.

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

Mr. RUIZ. Thank you very much. As a father and a physician with training in humanitarian aid, I am outraged not only by the inhumane family separation policies that derive from the zero-tolerance policies, but the conditions that affect the mental health of migrant children while in the custody of our Federal Government.

We have been talking and sounding the alarm before this report came out about toxic stress and how those extreme conditions without an infant's, a toddler's, a child's ability to be consoled by their parent aggravates this and will have permanent damage not only to their ability to relate to others, but also in a physical form with diabetes, cardiac problems, and other ailments, and that is no condition that we want any child of ours or any of our neighbors to experience. And so, let me get to some specific scenarios.

Commander White, what does lack of sleep do to mental health, because this is what this report is focused on, is the mental health of these children. What does lack of sleep do to mental health of an individual?

Mr. WHITE. So, as you know, Dr. Ruiz, in both children, adolescents, and adults, lack of sleep both exacerbates behavioral health conditions and is a symptom of many behavioral health conditions.

Mr. RUIZ. An extreme lack of sleep can even lead to hallucinations.

Mr. WHITE. Certainly.

Mr. RUIZ. And other psychoses, correct?

Mr. WHITE. Certainly.

Mr. RUIZ. OK, so now what if you get a child who has experienced traumatic events and you keep them in a freezing temperature, about 56 degrees Fahrenheit, the lights always on, OK, constantly interrupted with noise during the night, lay them on a hard concrete floor in a room with these lights always on in a crowded quarter, what would that do to a child's mental health?

Mr. WHITE. So that would potentially be deleterious to a child's mental health. But to be clear, those conditions are nowhere present in any ORR facility.

Mr. RUIZ. Correct. But they are at CBP, and I have witnessed them. And this is an issue that we hear reports from children from many CBP facilities.

So let me ask you, Chief Modlin, is it a policy to keep a room at that freezing temperature? Is it a policy intentionally that you are keeping the lights 24/7? Is it a policy that you do routine spontaneous checks to wake up children who are laying on a crowded floor in close quarters, is it a policy from CBP? Is it intentional?

Mr. MODLIN. Doctor, I'm unaware of any freezing rooms. I can tell you——

Mr. RUIZ. I have been there. I have felt them in New Mexico, and I have heard reports from Yuma and El Centro.

Mr. MODLIN. Doctor, what I can tell you is that——

Mr. RUIZ. Is it—just answer my—is it a policy? Are you intentionally doing that? If it is not a policy, then would it be simple enough to make some changes?

Mr. MODLIN. Temperature is in accordance with the Flores Settlement, sir.

Mr. RUIZ. OK. Well, they are 56 degrees Fahrenheit, and they are freezing. Is it a policy to keep the lights on all night and interrupt their sleep?

Mr. MODLIN. Lights being on, sir, are a result of PREA, the Prison Rape Act, to avoid——

Mr. RUIZ. OK, so you need legislative changes to fix that, or can that be done administratively for the best interest of the children?

Because the conditions right now that they are experiencing is promulgating and causing more harm to these children. Let me move on to another question.

Director Hayes, is it in the best interest of a child to be detained in large facilities for long periods of time, or is it in the best interest to place them in a more individualistic approach to address their mental health care through foster homes and small group nonprofits?

Mr. HAYES. So, Congressman, the desire of ORR in the best interest of child welfare concerns would be to have more smaller and medium-sized shelters and foster——

Mr. RUIZ. OK, so then why are you proposing to lease a large space that would warehouse many children in the Inland Empire in my region where it is 74,000 to 91,000 square feet to house and warehouse over 400 kids?

Mr. HAYES. So, sir, you are referencing the efforts that were underway right now with the——

Mr. RUIZ. In the Inland Empire, you purposely are right now looking to house children and lease this for 17 years. And let me remind you that the border supplemental gave you $2.88 billion to the Office of Refugee Resettlement. That same border supplemental required the Department of Health and Human Services, or HHS, to "prioritize use of community-based residential care including long-term and transitional foster care in small group homes and shelter care other than large-scale institutional shelter facilities to house unaccompanied alien children in its custody."

Why are you defying the law by searching for a 74- to 91,000 square foot warehouse facility to keep unaccompanied children in the Inland Empire?

Mr. HAYES. All right, let me be clear, Congressman. We are looking at about seven or eight different locations around the country. And I want to be crystal clear, sir.

Mr. RUIZ. I don't care where they are at.

Mr. HAYES. May I answer the question?

Mr. RUIZ. As long as they are not large warehouse facilities.

Mr. HAYES. May I answer the question, Chairwoman?

OK. We're—I just want to be crystal clear for this committee. We are looking to expand our permanent State license network, and the cities that you mentioned in your area as well as across the country we are looking to find small to medium-sized shelters that will be State-licensed by the respective States and towns we reside in.

Mr. RUIZ. Yes, but housing them in intentionally 17 years——

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

Mr. RUIZ [continuing]. Is not in the best interest of the children.

Ms. DEGETTE. The gentleman's time has expired. The Chair now recognizes Mr. Burgess for 5 minutes.

Mr. BURGESS. Thank you.

And, Mr. Hayes, that is an important point, because Chief Modlin told us in his testimony that they are entirely—they don't have control over their population. The people that walk in and turn themselves in to Customs and Border Protection, they are obligated to process. They cannot send someone out who is under the age of 18 until you have an open bed for them.

Mr. HAYES. That is correct, sir. And I just want to clarify. We are seeking to increase our foster care network. We are seeking to increase specialty-type shelters. We are seeking to increase State-licensed permanent network, and in order to timely accept these children when referred to us from DHS, we absolutely need the flexibility in both large, special and—I'm sorry, not large—small, medium, and specialty-type shelters in order to timely receive these children. That is our goal.

Mr. BURGESS. Right, because you have got to relieve the burden, the bottleneck that is occurring in Customs and Border Protection. They are not set up for the long term, anything longer than the very, very acute care of a child during the time that the processing occurs that Congress has determined that Customs and Border Protection shall provide.

Now, there is some talk about maybe we don't need a law that prevents someone from coming into this country without authorization. I suppose that is a discussion that we are going to have during a presidential election year. But until Congress changes the law, Chief, you have got to follow the law, right?

Mr. MODLIN. Yes, absolutely, Congressman.

Mr. BURGESS. And, really, one of the tragic situations of May and June of this year was you were caught. Mr. Hayes doesn't have any beds. Cartels are bringing people across the river in places that I visited in south Texas, the lower Rio Grande Valley in particular. They don't call you and say, "Hey, you have some incoming," you just have to be prepared to accept them, correct, at McAllen and Weslaco and all of the Custom Border Protection facilities?

Mr. MODLIN. Yes, sir.

Mr. BURGESS. And if they are out of space and you are out of money for disposables and things that you might need to take care of people, you are in a world of hurt, right?

Mr. MODLIN. Yes, sir. If I could, in fact when the crisis was ramping up, we were expending our operational funds on those consumables, on diapers, on food, all those things that we were not prepared to deal with. And I believe it was your statement earlier about unclear on the time between the request and the appropriation, that was 57 days, 57 days at the height of this crisis that our agents were bringing in diapers from home. They were buying toys for these children. They were bringing clothes to give to these children. That's what the compassionate and professional men and women of the U.S. Border Patrol did on their own while we were waiting for action so that the capacity at HHS and further upstream could open up so that we could release all these subjects from our custody and get them to where they need to be.

Mr. BURGESS. And just for the record, I have made multiple trips over the past 12 or 14 months. I have been to McAllen two or three times. I have been to Brownsville and Casa Padre. I went to Tornillo twice, was at Clint earlier this summer right after you got the supplemental funding.

At the station that I guess is called Ursula in Mission, Texas, I was there right at the end of May when you were at the height of the influx and Mr. Hayes was unable to take the number of people that you had prepared to send them, and it was tough. I mean, it was tough sledding. It was hard on your men and women who work

in Customs and Border Protection. Most of them have children themselves.

It was—you could see it in the eyes of Chief Garza when I was down there that this is hard on them and they wanted Congress to do something. And you are caught, we won't help? And we are not allowed to secure the border? We won't provide you any additional funding and, guess what, it gets bad in a big hurry.

I do just want to reference one thing. And, Commander White, I respect the fact that there is a difference between a child who has to go through acute separation, but I will tell you in 2014 visiting the Weslaco station down at the lower Rio Grande Valley sector and the time that the surge of unaccompanied minors was at one of its heights and seeing the young boys that I saw sitting on cement benches, they weren't punching each other. They weren't pulling each other's hair. They were sitting, staring straight ahead.

Now, these were not children who had been there for a while. These were children who had just arrived that day. And it told me that the trauma that they endured on the trip up to the United States had to have been significant. They looked like victims of child abuse. I think that there is significant danger to children in making that journey.

And, Chief Modlin, you did an excellent job in your testimony. I encourage everybody to read that about the problems that are extant in the fact that we have legislation and court decrees that do not make sense and we need to straighten it out. And we need to do it, you can't do it.

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

Mr. BURGESS. It can't be done administratively.

I yield back.

Ms. DEGETTE. The Chair now recognizes the gentlelady from New Hampshire, Ms. Kuster, for 5 minutes.

Ms. KUSTER. Thank you very much. And I too have been to these facilities at the border. And these children are traumatized, and all the more reason to treat them with respect and not engage in furthering their trauma. So I think this is an incredibly important topic for us to be considering at this point because these children are in our custody and life is getting much worse for them with the trauma of separation. I was there with the mothers whose nursing babies had been ripped from their arms. So we have got to do better, and that is why Congress has acted to give you the resources that you need.

I want to focus in on a very specific issue, if I could, which is with regard to sexual assault in the custody of our Government. And following up on this report, which is devastating—I recommend it to everyone. Thank God we have an Inspector General. Thank God we have courts that are creating standards for people in our custody, particularly young children.

But in July of this year, NBC reported allegations of physical and sexual abuse at the hands of CBP officers. Now, Chief Modlin, you have standards for the prevention, detection, and response to sexual assault and in confinement, and that requires CBP to publish annual reports on the effectiveness of your own sexual assault prevention strategies. But I am wondering why that report has not

been filed. It is now 11 months after the end of the fiscal year 2018 and CBP has failed to publish that report.

Mr. MODLIN. Ma'am, thanks for the question. What I can tell you is that here I represent the United States Border Patrol, not CBP at large, but what I'm more than happy to do is go back to CBP for you and get the status of that report and have that reported back to you.

Ms. KUSTER. Because that report is well overdue to Congress. And I think the actions reflect the priorities and the concerns, and combating sexual violence is a priority of mine and I think one that we need to take very seriously. So I reviewed CBP's most recently published report and found in fiscal year 2017 seven allegations of sexual abuse. If you could take back as well to the people in the CBP, there are now 23 complaints of sexual abuse in fiscal year 2018, and we want to make sure that that is thoroughly investigated and reported.

Mr. MODLIN. Yes, ma'am. We absolutely will. And as I'm sure you know, none of that would comport to our standards and what we expect from our agents, and we will look into that and I'll be happy to get those answers to you.

Ms. KUSTER. So switching gears to Director Hayes, what is the criteria for determining which out-of-network facilities are used, and what is the oversight for these facilities? And in particular we had a network shelter, Rolling Hills Hospital in Oklahoma. In May of 2017 there were serious safety violations, including a neglect and abuse by the staff at the facility, January of 2018, resulting in a patient being left with a fractured vertebra, broken foot, and bruising all over the body.

So two questions: What is the criteria for choosing the facilities, and what is the oversight?

Mr. HAYES. So, thank you, Congresswoman. First off, I just want to be crystal clear that any child that would be abused is one too many, and we have policies and procedures in place at the Office of Refugee Resettlement to prevent that. And in the unfortunate occurrence where it might, we have very strict reporting procedures up to the chain of command to the leadership of ORR.

Ms. KUSTER. And what is the oversight for monitoring the out-of-network facilities?

Mr. HAYES. So, I don't have specifics on some of the out-of-network, but I do know that we have a very—because I am not specifically familiar with this facility you're referencing—but we have a very robust monitoring program that includes both monitoring from our headquarters in DC, onsite monitoring unannounced, as well as weeklong monitoring visits.

I think what you're referencing is probably where a medical professional has referred a child for out-of-network care because the needs of that child, either mental health or medical help, cannot be met inside our shelter or particular community. And, honestly, I would not speculate why a medical professional chose that particular facility. I'm sure there are a lot of subjective reasons from a medical perspective, and I would not want to speak for the medical person that made that situation.

Ms. KUSTER. OK, switching gears again, Commander White, thank you. You are an American hero. You tried to issue an alarm

when you learned that children were being separated from their parents. What we need to focus in on is that apparently that alarm was not heard, and I want to understand specifically where and how. Secretary Azar said that he did not know that children were being separated. And I want to understand, if you could, and very briefly I will ask the indulgence of the Chair, because the committee staff would like to understand what happened with your warning, and why wasn't it heard?

Mr. WHITE. So, I can only speak to the conversations that I was in. I elevated my concerns and those of my entire team to three levels above me in the hierarchy. That would be to my immediate supervisor, then-Director of ORR Scott Lloyd; to his supervisor, my agency head, then-Acting Assistant Secretary for the Administration for Children and Families Steven Wagner; and to his managerial POC on the team in the immediate Office of the Secretary, that was Maggie Wynne, the counselor for Human Services to the Secretary. So I elevated these concerns as high as it was possible for me to reach. I really couldn't speak to what conversations occurred other than those that I was in myself.

Ms. DEGETTE. The gentlelady's time has expired. The gentleman from West Virginia is now recognized.

Mr. MCKINLEY. Thank you, Madam Chairman. I thought this panel was all about unaccompanied children, but you can see this conversation has drifted to other matters of the separation, the children being grasped away from their parents or whatever. So if we could just get back, and I appreciate, Commander White, you are trying to clarify the difference in this debate between separated children and unaccompanied children, because I think that is what we were supposed to be talking about here today.

So, but I would like to go back to where we begin on this whole discussion about crisis. Several of you have talked about that this is a crisis at the border, so I would like to if you could just quickly, the four of you, it is a yes or no, in the past 9 months during this year 2019, has there been a crisis at the border?

Ms. Maxwell?

Ms. MAXWELL. As the Inspector General for HHS, our focus is solely on HHS's mission, which is the Unaccompanied Alien Children, so——

Mr. MCKINLEY. It is a yes or no. Has there been a crisis at the border?

Ms. MAXWELL. I don't have any immigration expertise in which to make that judgment.

Mr. MCKINLEY. OK, you ducked it.

Mr. Hayes?

Mr. HAYES. Yes, Congressman. There's absolutely a crisis at the southern border.

Mr. MCKINLEY. Mr. White?

Mr. WHITE. Yes, Congressman. Anytime we cannot timely place children in custody it's a crisis.

Mr. MCKINLEY. Thank you.

Chief?

Mr. MODLIN. Yes, sir. A border security and a humanitarian crisis at the border.

Mr. MCKINLEY. Well, but yet part of what we are fighting here in Washington, that is what shows this, the unfortunate divide on this is that we have other folks that don't agree with you, that there has not been. It is all a fabricated story.

This was an article that came out in July. It said that this was a manufactured crisis, and even Steny Hoyer went on to say that there is no crisis, there has not been a crisis at the border. The quotes all through this, it is a made-up crisis. It does not exist at the border. It is a fake crisis, doesn't exist. That is a lie. It couldn't be further from the truth. There is no crisis in arrivals, they are fiction. I could on and on with people saying there is no—so it is no wonder we have had this problem dealing with, because people won't accept the reality of what is happening down there by trying to cover up for it.

So, if I could, and then we have a problem with the reluctance of people, communities to talk about taking care of these unaccompanied minors. That the funding for—here is an article that came out in late July. The Democrats call for closures of shelters for unaccompanied minors. Not the separated, unaccompanied. They want to close those facilities. I think we have to be—then we go to the third, which is where the unaccompanied minors could go to other communities where they could be housed. But then you just came out in August, Washington DC says, "Not here. We are not going to house unaccompanied minors in Washington, DC."

So this whole issue of one after another, it concerns me about where we are going, because if we don't expand the shelters, what are we supposed to do? What are you telling this committee? What are we supposed to do if we are not going to expand the shelters and we are not going to build and occupy facilities around the country? What are we supposed to do, turn these children loose? Is that what it is? Can someone give me some direction as to what we are supposed to do? If we can't build them and they can't put them in a different community, what are we supposed to do?

Because—I see some hesitation on your part. Because the problem that could—goes to, if these kids aren't in a controlled environment in either Washington, DC, or wherever else that we have heard—some of the other communities in Texas—what kind of medical and psychological care will these kids get if they are not in our control somehow? Will they get it by just drifting on the streets? I need to see it. I am from West Virginia. I don't see this thing on an everyday basis. So tell me, what happens if we don't put these children in a shelter, where do they go? Unaccompanied minors.

Mr. HAYES. Congressman, I see your point. And I would just say that I think that is why Congress moved the unaccompanied children program to HHS back in 2003 with the Homeland Security Act of 2002. And the commitment of ORR and the leadership of HHS is to increase our permanent network capacity so that we can receive these children as quick as possible and provide for them the care that we need as we work to get them to a sponsor. So that's our mission, and we would appreciate a continued partnership with Congress in order to move in that direction.

Mr. MCKINLEY. And, Mr. Hayes, you are not getting the support to expand the facilities and we are not getting communities willing

to accept them. So my question—I understand the policy—but how do we make it work if no one is helping?

Mr. HAYES. Yes. So the same ask I made yesterday of the Labor H Committee. I would appreciate help and support from Members of Congress in helping educate the communities across this Nation, especially here in our own backyard in DC and Northern Virginia, as to the critical role and child welfare mission that ORR has, and that the majority of the children in our care are indeed unaccompanied and by statute are required to come into our care and custody as we work to safely find them a sponsor while there are immigration proceedings.

Ms. DEGETTE. Thank you.

Mr. MCKINLEY. Thank you.

Mr. HAYES. I think there's a lot of misunderstanding about our program, sir, and we can have Congress help us educate the American public on it and the community leaders.

Ms. DEGETTE. The gentleman's time has expired. The Chair now recognizes the gentlelady from New York, Ms. Clarke, for 5 minutes.

Ms. CLARKE. I thank you, Madam Chairwoman and our Ranking Member Guthrie.

One of the issues highlighted across multiple OIG reports relates to certain facilities' failures to conduct background checks as required by ORR policy. So, Mr. Hayes, an OIG report on the Tornillo influx facility that ORR was unaware—found that ORR was unaware that the facility was not conducting required background checks. While we understand that ORR policy now requires facilities to inform ORR of an inability to complete required background checks, is ORR implementing any other tool to ensure that each facility is conducting the required checks?

Mr. HAYES. Yes, Congresswoman, we are. We've issued two clarifications this calendar year, one in January and again in March, and I believe the OIG referenced that in their report clarifying to our grantees the requirements for background checks and investigations of staff prior to coming on board to help care for these children.

Ms. CLARKE. And how are you following up on that? I mean, because clearly there is a violation of that.

Mr. HAYES. Right, so we're continuing to follow up on that. And again, you know, to the conversation——

Ms. CLARKE. How?

Mr. HAYES [continuing]. I had with Ms. Kuster we continue——

Ms. CLARKE. How is that being done?

Mr. HAYES. Yes, we continue to do monitoring. We are increasing our monitoring team. And, again, we do monitoring both here from DC, desk monitoring, we do onsite, unannounced monitoring of our grantees as well as weeklong, very in-depth monitoring. We will continue this.

Ms. CLARKE. Mr. Hayes, another report noted that ORR granted waivers to certain noninflux facilities, allowing these facilities to hire employees without conducting Child Protective Services checks. Instead, in these cases, ORR relied on an employee's self-certification that the employee had a clean child abuse and neglect history.

Do you believe self-certifications are an adequate replacement for background checks in ensuring the health and safety of children?

Mr. HAYES. I would not support self-certification. And I'll just point out you're referencing the CAN checks, Child Abuse and Neglect checks. And I think the OIG report also acknowledged that that is a challenge across the entire Nation in regards to certain facilities and the access that States and Federal Government have to that.

Ms. CLARKE. Well, I think you have a very specific role here, right. We are not talking about every other instance, right. We are talking specifically about a humanitarian challenge, right. And so my question to you is whether you believe self-certification is adequate given the very special circumstances that we find ourselves in.

Mr. HAYES. Well, I want every single employee that works at our shelters that have access to children to have undergone an FBI background check, and I can ensure you that that is the practice and the policies and procedures of ORR to ensure that the children are in a safe environment.

Ms. CLARKE. So there is no self-certification?

Mr. HAYES. Not that I'm aware of.

Ms. CLARKE. OK.

Ms. Maxwell, the OIG report indicates that the hirings that are—over half of the ORR facilities are facing challenges in hiring and retaining employees, including mental health clinicians and youth care workers. These reports point to hiring issues such as difficulties finding bilingual and qualified candidates, retention issues due to salaries, hours, and competing jobs opportunities. And your report indicates that these hirings and retention challenges can affect facilities' ability to meet ORR's required staffing ratios.

How does an inability to meet these ratios affect the health and safety of unaccompanied children?

Ms. MAXWELL. Thank you for that question. You are right. We looked at the facilities' compliance with the clinical ratios and found about 15 facilities were unable to meet the clinical ratios required by ORR in certain periods of time. And what we heard from the clinicians is that this results in large caseloads, and large caseloads certainly mean that they have challenges providing care that they would like to provide to all the children underneath their supervision.

Ms. CLARKE. It appears that the issues that we have discussed today span across multiple facilities. So, in your opinion, what should ORR do to improve its oversight of the facilities and their compliance?

Ms. MAXWELL. We make recommendations that ORR support the facilities in overcoming the challenges to hiring clinical professionals, screening them, as well as retaining them. And we also make recommendations that they think about the possibility of implementing maximum caseloads for these clinicians.

Ms. CLARKE. Mr. Hayes, do you believe that your directorate is capable of doing this?

Mr. HAYES. I do, ma'am. And if I could share a few things of what we're working on and have already implemented at ORR? We

have, we're working on developing an intern program with colleges and universities in order to place interested students in our facilities, in our programs.

Ms. CLARKE. With background checks?

Mr. HAYES. I'm sorry. What, ma'am?

Ms. CLARKE. You say you want to put interns into these facilities.

Mr. HAYES. No, working with colleges to identify interns that are working through the clinical field of education in order to educate them at what we do at ORR so that they might after postgraduate come and serve us at ORR, because again there's a national shortage of clinical professionals. Obviously, any—again, I want to reiterate, any potential staff person that would have access to the unaccompanied alien children is expected to have undergone an FBI background check.

Ms. DEGETTE. The gentlelady's time has expired. The Chair recognizes the gentleman from Virginia——

Ms. CLARKE. I yield back, Madam Chair.

Ms. DEGETTE [continuing]. Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you, Madam Chair.

Mr. Hayes, is there anything else you wanted to add on that?

Mr. HAYES. Yes, sir. Thank you, Congressman. I just want to add we're also working with additional funding for continuing for continuing education to our licensed clinician as a retention strategy. We're working to expand our presence at job fairs. We've partnered with the National Child Traumatic Stress Network to develop a webinar series on trauma in UAC. And in April of this year, we also hired a board-certified adolescent adult psychiatrist in the division of health for unaccompanied children inside ORR.

Again, to the OIG report, there is an overall nationwide shortage of licensed mental health professionals available and that does, you know, present challenges, or cause challenges at ORR as well.

Mr. GRIFFITH. Continuing with you, Mr. Hayes, you know, we understand migration patterns are unpredictable. You previously testified that you are trying to expand your permanent bed capacity——

Mr. HAYES. Yes, sir.

Mr. GRIFFITH [continuing]. To account for some of these fluctuations and the influx of unaccompanied children. You asked for some flexibility. What kind of flexibility are you looking for, and what do we need to do?

Mr. HAYES. So that's a great question, Congressman. I think one of the key components that is often missed is that, whenever we want to have a State-licensed permanent shelter, the final say in that shelter of going online and being able to accept children does not lie with the Federal Government. It lies with the State and local communities in which those shelters reside.

And so, you know, I can give a few examples where we've had these smaller-sized shelters like Dr. Ruiz would like to see us have, which we would like to have as well, but when, you know, but when migration patterns are, again, extremely difficult if not impossible to predict, we have to have flexibility, because any HHS ORR shelter is a better environment for an unaccompanied child than a Border Patrol station. I think all of us on the dais today

would agree with that. And so, because those migration patterns are very difficult if not impossible to predict, we need to be able to have the ability to turn on and turn off beds as quick as possible so that we can get those children out of the Border Patrol stations and into the care that we have.

And because I don't have the final say—and, again, your colleague from West Virginia highlighted the struggles we have in finding them right here in our own backyard in DC and Northern Virginia—we want to have these shelters, but if we have reluctance from the local and State officials in doing so, I'm going to have to have flexibility with some larger or medium-sized shelters that would be influx shelters run by the Federal Government.

Mr. GRIFFITH. And Representative McKinley did raise the issue about Washington, DC, and you have now mentioned it a couple of times. Are there other areas where communities are saying, "No, we don't want to house those folks here"?

Mr. HAYES. I know that we've received formal communication. I think I would probably limit my response to formal communication from DC and from the Northern Virginia area, specifically the City of Alexandria and the County of Fairfax.

Mr. GRIFFITH. All right. Now are you all—are folks having to apply to provide these shelters, or are you all going out and looking for existing institutions that already have some expertise in this?

Mr. HAYES. So the answer is both, Congressman. Normally, a grantee will respond to an FOA, a Funding Opportunity Announcement, and, you know, we put forward, our team puts forward the needs that we have. You know, we have numerous types of shelters that I've referenced in my opening statement, but we are also now—and this is something that we've been working on—but we are now going out ourselves and attempting to find some buildings that we would have control over and then seek to find operators to come in. And that would give us more flexibility, and again those would be State-licensed permanent beds.

And that's the one that Dr. Ruiz referenced earlier, you know, the area around L.A. would be a great area for us to open up a shelter. They have a great population there of clinical and social work professionals that can be bilingual that are the requirements of ORR. So we're absolutely doing both. We're seeking folks to come in and provide the full range of services but also finding our own buildings and then finding operators to simply do that, and then we would have the control over those buildings.

Mr. GRIFFITH. I appreciate that.

I am going to switch gears a little bit and mainly going to ask Commander White, but maybe I am happy to get information from anybody. I did domestic relations work. That means child custody, support, et cetera, for probably 10, 11 years of my legal career. I ran into lots of children. I obviously understand the emotional traumas that can happen in all kinds of situations, but also in that, and you referenced in your oral testimony, that there was some long-term cardiac issues, if I understood it correctly.

We don't have time today to go into all that, but could you give me some of those reports? Because even though I haven't represented some of these kids in a long time, it is one of those things that you worry about when you have done domestic relations work

is, you know, what are the long-term prospects for these kids? Can you give me some reports, particularly on the—the emotional side I understand, but particularly on the cardiac or other health besides emotional health, but physical health issues?

Mr. WHITE. Absolutely, Congressman. So the body of current evidence around toxic stress, including the Shonkoff studies and the other works out of the Harvard Center on the Child, really does speak to the range of risks that children who experience sustained trauma and high levels of stress can have on a number of domains of lifelong health functioning. That would include many children in our domestic child welfare systems, which is where a lot of that research has been done. That certainly also applies to unaccompanied children who've often experienced extraordinary levels of traumatic exposures in terms of exposure to violence and poverty in home country. It is—those problems are generally compounded for children who experience separation. So, yes, sir. We'd be glad to provide you with that science.

Mr. GRIFFITH. There you go. Thank you.

Ms. DEGETTE. The gentleman's time has expired. The Chair now recognizes the chair of the full committee, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Madam Chair. This past summer we saw the disturbing reports of the conditions at a CBP facility in Clint, Texas, that held large numbers of unaccompanied children. Toddlers reportedly had to go without diapers, young children had to look after infants, and visitors reported a stench from the lack of showers and clean clothes. CBP officials will explain that its facilities were never meant to house children and they are supposed to be quickly transferred to ORR so that qualified child welfare experts can provide appropriate care, but clearly that broke down.

An El Paso Times article says that CBP officials were trying to warn ORR about the conditions at the facility. When talking about his conversations with ORR at the time, the Border Patrol agent in charge of the Clint station said, and I quote, "We were desperately trying to tell them we don't have the cell space, the holding space, food contracts. If one of us is going to be over capacity, at least you have the basics. There is only one legal avenue for me to transfer those children. They absolutely have to go to ORR by law, so that was my only option."

So let me ask Mr. Hayes, how do you respond to that? CBP is seemingly suggesting ORR could have done more than it did to alleviate the situation.

Mr. HAYES. Thank you, Congressman. So it is a true statement that our capacity was strained operationally this last spring, in May and June specifically. Starting in January of this year we did see an increase in referrals over the last calendar year, and HHS made a large number of efforts to increase our capacity as quick as we can. That's one of the flexibility options that I referenced earlier in talking with your colleague from Virginia that, you know, we do need to have that flexibility and, you know, we operated as best we could, again, with the limited capacity.

But I want to be clear that there wasn't a day that went by that we did not both discharge hundreds of children and also receive

hundreds of children from CBP, even during the times of tight capacity in May and June.

Mr. PALLONE. Well, the article I mentioned quotes another former Border Patrol official who said, and I quote, "HHS and ORR were not holding up their end of the deal. Border Patrol was moving thousands, and they were moving hundreds." So, Mr. Hayes, again it sounds like the Border Patrol officials are saying that HHS is well aware that the volume of the children would be increasing but the HHS wasn't freeing up room fast enough by releasing the kids that had the sponsors.

So again, how do you respond to that official who said that ORR was not accepting the kids fast enough?

Mr. HAYES. Well, I would say two things. Number one, we did continue to accept kids every day. I'm not really sure what thousand kids the CBP would have been moving, because once we designate a child, ICE has the responsibility to bring those kids to us at HHS.

And I just would say that one of the challenges that we saw specifically this spring, sir, was an increase in just a different type of child that was referred to us. We saw an increase in sibling groups. We saw an increase in parenting teens. We saw an increase in, again, the sibling groups, younger, where you had one teenager, one that was, you know, tender age, which is under 12, and that did, you know, present some difficulties in finding the most appropriate shelter for that child.

Mr. PALLONE. Well, let me ask Chief Modlin. I understand that CBP cannot transfer children out of its custody until ORR is prepared to accept them. In this instance, when did you realize you had a problem? Could this crisis have been avoided if CBP had reached out to ORR sooner?

Mr. MODLIN. Yes, sir, so you're absolutely correct. We cannot move the children to anyone other than HHS, and that's as part of TVPRA. I do believe that the Border Patrol and CBP as a whole sort of sounded the alarms as early and often as we could during this. As you're probably aware, there was quite a few people that insisted that there wasn't a crisis, that we weren't over capacity, that maybe these problems were self-generated.

What I do recognize absolutely is that if HHS is not funded and appropriated, and ICE as well, that house our family groups, then there's no place to put them. As I said in my opening statement, we're the only component in this entire chain that has no control over what comes into our custody.

Mr. PALLONE. Well, let me—I know we are running out time. But, you know, based on what you said that I know that the CBP facilities were not intended to house children, but are you going to take any steps to ensure that the children held in the facilities are not faced with similar conditions in the future, or again is the funding the problem? Is that what you are saying?

Mr. MODLIN. So, certainly, during the time at the height of the crisis, sir, the funding was absolutely the problem. If we ever fell short of our standards it was because we were overwhelmed, it wasn't because of callousness.

Mr. PALLONE. Well, what about now and the future?

Mr. MODLIN. I'm unaware of us falling short of any standards now, sir. Since the supplemental funding, we've had shower facilities brought in. We've had washers and dryers brought in. We've had wraparound services. We have a lot of things that we needed during the crisis. What I would also point out is that certainly this crisis is not over. We're still encountering numbers greater than we ever have before. It's certainly down from the May-June numbers, but I would just have everyone please keep that in mind that this is certainly not over, sir.

Mr. PALLONE. All right, thank you. Thank you, Madam Chair.

Ms. DEGETTE. I thank the gentleman. The Chair now recognizes the gentlelady from Indiana, Mrs. Brooks, for 5 minutes.

Mrs. BROOKS. Thank you, Madam Chairwoman, and thank you for holding this really important hearing. I want to build on and ask a little bit more questions about what the chairman of the full committee asked you about, Chief Modlin. You talked about the height of the crisis. And if I am not mistaken, during the height of the crisis CBP and ORR came to the Congress and asked for funding. Is that correct, and asked for help?

Mr. MODLIN. Yes, ma'am. We did.

Mrs. BROOKS. And when CBP and ORR came to Congress and told us that we had what you called the height of the crisis, it took us 6 weeks, didn't it, to get funding?

Mr. MODLIN. Yes, ma'am, 57 days actually.

Mrs. BROOKS. And what happened during those 57 days of lapse of funding after you came to us and said we are in crisis mode?

And, Mr. Hayes, I think you mentioned that for the first time you were in antideficiency mode.

Mr. HAYES. Not the first time in history. It happened in the early '80s at HHS, but it definitely was unprecedented at this time. We were in deficiency, and the Antideficiency Act rules and restrictions kicked in at ORR. Yes, ma'am.

Mrs. BROOKS. And we didn't do anything for 57 days, is that right? And so what happened? What happened with CBP and ORR during that period of time that we did nothing?

Mr. MODLIN. Yes, ma'am. So what happened is, we had to reach back into our operational funds, the funding that's meant to help us secure the border, and pay for these consumables that were being used, whether it's sanitary items, whether it's formula, it's baby food, it's diapers. As I've testified earlier, our agents purchased diapers themselves and brought them in. They brought in clothing from home. They did everything they could to alleviate as much of the crisis as they could while we were waiting.

During that time, we also started to contract with standup soft-sided facilities that you're aware of to increase our capacity. The one thing we never want to do is hold people longer than that 72 hours, but we recognized that we were far over capacity. You know, our—generally our capacity on the southwest border is about 4,000 people. At the height of this we were holding 19,000 people in our facilities. So we had to expand where we could and use the funds, any funds that we could.

Mrs. BROOKS. Thank you.

Mr. Hayes?

Mr. HAYES. So, Congresswoman, some of the nonessential services in a very limited basis were affected at ORR. Thankfully, not to a large level because we fund our grantees often for months out at a time, and so the funding that happened before we went into deficiency did not affect those operations, but had it continued on it could have affected especially new grantees coming on, providing legal services, recreation, education, all things that we absolutely desire to provide for these children and are required to under the Flores Settlement Agreement.

Mrs. BROOKS. Thank you.

Mr. Modlin, one of the concerns that I have always had is the health, the physical health. Not necessarily that I am not incredibly concerned about the mental health and the challenges we have with the mental health. And not only the children coming up and leaving home at the time and what their journey is like and then once they get here, but with respect to flu vaccines and what types of vaccines children might have when they come. Why are flu vaccines not provided when they are in CBP custody?

And I have heard from pediatricians back home of the willingness to have more mobile units that might be able to help CBP, particularly when we have these massive influxes as we have experienced. What are your thoughts of having more mobile units of medical personnel available? Chief Modlin?

Mr. MODLIN. Yes, Congresswoman. What I would say is the Border Patrol's absolutely opposed to vaccinations inside our facilities. It is so far outside of our scope and mission that it's basically inconceivable to me to imagine that. We do not want to do anything that would increase the time that these vulnerable populations are in our facilities, whether that's by an hour, whether that's by 2 or 3 days.

Where all this needs to take place is in the HHS facilities and facilities that are further down the immigration line where the comprehensive care and services can be coordinated. And the physicians at CBP agree.

Mrs. BROOKS. And, Mr. Hayes, the issues around vaccines and the health, physical health of the kids?

Mr. HAYES. Yes, ma'am. So every time a child arrives at one of our shelters, within 2 business days they're required to undergo a full medical examination. We call it an IME, initial medical exam or examination. And according to the American Academy of Pediatrics, we provide all the vaccinations as age-appropriate to each child, and for any child that is 6 months of age or older we also give them the flu vaccine. Again, each doctor has discretion in regards to that, though.

Mrs. BROOKS. Thank you.

And, Madam Chairwoman, I would just like to share that I have also visited the Texas border. I visited an ORR facility in Bristow, Virginia. I visited a new service coming on board in Indianapolis. And one of the things that I heard, which is very troubling, is that part of the reason children are transported in the middle of the night—which people may not realize they are being transported in the middle of the night—it is because our citizens are attacking and chastising ICE and CBP and others and ORR employees who are moving them and who are trying to care for them.

Ms. DEGETTE. And I thank the gentlelady, and her time has expired.

Mrs. BROOKS. Thank you. I yield back.

Ms. DEGETTE. I now recognize the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes.

Ms. SCHAKOWSKY. I just want to say that I think this period in history right now, which I think is characterized by just unimaginable and unnecessary suffering of immigrants in this country that is a nation of immigrants—neither of my parents was born in the United States of America—will be long remembered and long criticized.

In an April of 2018 Memorandum of Agreement, the Department of Health and Human Services agreed to share information about parents and family members coming forward to sponsor refugee children who arrived alone at the southern border with the Department of Homeland Security. And earlier—it is—this cruel and harmful policy sparked fear in many potential spouses, people who now are afraid to come forward. I had an incident at the airport in Chicago on a problem kind of like this.

Earlier this month, HHS Office of the Inspector General found that many ORR facilities "reported that it became more difficult to identify sponsors willing to accept children" and that these difficulties resulted in "delays in placing children with sponsors." These delays caused the average length of stay for children to skyrocket to 93 days in November of 2001.

And I wanted to ask you, Mr. Hayes, has ORR considered withdrawing entirely from that MOA? And if not, why?

Mr. HAYES. Yes. So I would answer that question in two ways, ma'am. Number one, I think it's important to note that there are certain components to the MOA that we can still consider very valuable—referral information, information that is learned by DHS after the child comes to ORR care. That's information that we want to be shared, and so that's how information sharing has happened, happens. It also memorialized abuse reporting to DHS that HHS might learn about after the child comes into our care.

In regards to the negative impact on the average length of care, I became Acting Director at the very end of November of last year, and a few weeks later on December 18th we issued, with my approval, the very first of four operational directives that sought to deal with the—basically the negative child welfare implications that an increase in length of care was, you know, was affecting. That allowed us to discharge some 8,000 children in about 30 days.

Additionally, in March of this year we issued a second operational directive that ended the fingerprinting of moms and dads that were already here seeking to sponsor the children—these are not separations, these are moms and dads that were already here—unless there was a red flag during the public records check, then we would do additional checking.

Ms. SCHAKOWSKY. Thank you.

Mr. HAYES. Yes, ma'am. So, yes.

Ms. SCHAKOWSKY. OK.

Ms. Maxwell, let me just say how appreciative I am of the OIG report, and I think it documents so many of the harmful effects of the policies that we have. And what effects do longer length of

stays have on ORR facilities' ability to provide adequate health and mental health care to children in custody?

Ms. MAXWELL. Thank you for that question. We heard a lot about that from the frontline positions and clinicians that work with these children, and they said that it has a negative effect on their behavior as well as their mental health. And that they saw that children's mental health deteriorated the longer that they were in care, which is why the OIG recommends that ORR look at all current policies with an eye towards trying to figure out if there's anything in there that still negatively impacts the ability to release children in a timely way.

Ms. SCHAKOWSKY. Thank you. What concerns and challenges did the clinicians and providers report with regard to treating children in ORR care, especially those who had been separated from their parents?

Ms. MAXWELL. The clinicians told us that working with children who had been separated from their parents was more challenging than the population they were used to serving who were unaccompanied as they came across the border. They noted that these children experienced a greater sense of fear, abandonment, post-traumatic stress, and that in many cases they were unable to distinguish the Federal employees that had separated them from the Federal employees who were trying to help them.

Ms. SCHAKOWSKY. And these are long-term effects, right? Or can be long-term effects?

Ms. MAXWELL. That is my understanding from research, yes.

Ms. SCHAKOWSKY. Thank you. I yield back.

Ms. DEGETTE. The Chair now recognizes the gentleman from South Carolina, Mr. Duncan, for 5 minutes.

Mr. DUNCAN. Thank you, Madam Chair. The Flores Settlement was, I believe, in 1997, so at least for as far back as 1997 we have had children apprehended at our southern border taken into custody and ultimately released into the country. In 2011, we saw the beginning, I believe, of the modern unaccompanied children migration into this country. It spiked again in 2014. In fact, I remember having a conversation with President Obama at the Summit of the Americas in Panama in April of 2015. I have a great picture of it, he and I talking about this issue. And I surprised him, because I told him I probably agreed with their administration more than some of my Republican colleagues about increased money going to the Northern Triangle countries to take care of the problem there. I remember that conversation vividly.

But to listen to the other side, you would think that the problem of unaccompanied children coming to our border and the separation of children from the adults that they are with only happened with the election of Donald J. Trump. No, it has been going on the past administration, this administration, and as far back as 1997. What concerns me, what I said in the February hearing and I will say again today, is that every adult accompanying a child at the border isn't their parent. Human trafficking is real in this world, and it is happening along our southern border. Not only with women sold into sex slavery, other types of human trafficking, but also child trafficking and possibly child sex trafficking that is unfathomable.

So when a child shows up at a CBP facility or apprehended by officers out in the desert and that child is accompanied by an adult, I think it is very important that our Nation tries to determine who that adult is and what situation that child might be in. Now, there are a lot of situations where family units come and the children are with their parents, but you don't know that by looking at them after they have come across the desert with dirt- and sweat-stained faces. It is important for the health and well-being of that child for us to separate that child from that adult and figure out whether that is their parent or whether that is a coyote bringing them across the border or a trafficker hoping to sell that child into some form of slavery.

So I appreciate this Nation taking the well-being of that child into consideration in determining who that adult is with that child, because I can only imagine some of the horrors that that child has probably seen on his journey north, and I don't like to think about the horrors that that child may have endured on their journey north. And I definitely don't want to think about the children that we don't apprehend that make it into this country with those coyotes, those human traffickers, those sex traffickers, and end up in abominable situations.

Now, we can play politics and we can blame this administration or that administration for separating children at the border in trying to determine who the adults are. We can play the blame game and we can play politics and all that. But I want to applaud the men and women sitting at this table for trying to have the best interest of those children at heart.

Now, the question I have for Mr. Hayes: How do we get DNA testing in this so that we can more rapidly determine the familial relationship between that child and that adult they are with, or the lack thereof, so that we can prosecute that human trafficker? But if they are related, how can we more rapidly reunite those families?

Mr. HAYES. So, Congressman, thank you for that question. ORR does not use DNA testing en masse. We did use it—and I would defer to my colleague Commander White—in some of the reunification efforts that were, you know, under the court-ordered deadline last summer. It was very different from the normal ORR policies and procedures. I also think my colleagues at CBP could address some of what they do on the spot. I know I've had reports that that's happening and there's increasing in that.

Mr. DUNCAN. I am out of time, and maybe the chairwoman will let them answer. But I will say this. I think the goal of all of us is to make sure that those families are reunited as soon as possible.

Madam Chair, I yield back.

Ms. DEGETTE. Thank you. The gentleman yields back. The Chair now recognizes the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. CASTOR. Well, thank you, Madam Chair. And thank you for your efforts to shine a light on this, because this new report chronicles the harm inflicted on children due to the cruel policy of family separation instituted by the Trump administration. This report now confirms it with in a most sweeping fashion and in the most sweeping fashion of any analysis done to date and I want to thank the Office of Inspector General for doing this. And the fact that

these children are likely never to recover from the pain and cruelty will be a stain on this administration forever.

Ms. Maxwell, one of the key findings in your report is that the kids sent to ORR facilities had previously experienced intense trauma such as physical or sexual abuse and other forms of violence within their country of origin even before their entry into the United States. Is that correct?

Ms. MAXWELL. That is correct. That's what we heard.

Ms. CASTOR. And your report found that family separations resulted in a whole new level of trauma inflicted on the children. The report states that "according to program directors and mental health clinicians, separated children exhibited more fear, feelings of abandonment, and post-traumatic stress than did the children who were not separated." Is that correct?

Ms. MAXWELL. That is correct.

Ms. CASTOR. You also found that "separation from parents and a hectic reunification process added to the trauma the children had already experienced and put tremendous pressure on the professionals in the facilities." Is that correct?

Ms. MAXWELL. Indeed it is, yes.

Ms. CASTOR. So let me highlight a few examples of how the family separation policy made the jobs of ORR providers even harder than it normally is. Your report found, for example, that some separated children could not distinguish facility staff from the immigration agents who separated them from their parents. You also quote a program clinician who said, "Every single separated kid has been terrified. We are seen as the enemy." Is that accurate?

Ms. MAXWELL. Yes, we heard a number of heartbreaking stories from the frontline staff who treat these children.

Ms. CASTOR. And we have heard that some within HHS, at least some ORR career officials, were trying to sound the alarm that a forced separation policy would be harmful for the children and would strain ORR, but it is not clear what happened to those concerns. Given that these concerns prove valid, are there lessons for HHS leadership about why these warnings either within the Department or outside the Department were not taken more seriously?

Ms. MAXWELL. The Inspector General has a wide range of work that we are doing looking at the health and safety of children in the facilities. But in addition to that work, we are exploring the factors that challenge the Department as well as the facilities in reunifying the children separated from their parents. And, as part of that work that is upcoming, we are in fact looking at the interagency communication prior to the official adoption of the zero-tolerance policy.

Ms. CASTOR. And we are trying to get those documents as well, but the administration has stonewalled us. Have they stonewalled you as well?

Ms. MAXWELL. To the best of our knowledge, they have been forthcoming with documents to the Inspector General and have made staff available for our interview and discussion.

Ms. CASTOR. How can you ensure that you have gotten all of the documents and correspondence and emails?

Ms. MAXWELL. That is an excellent question that we have asked ourselves many, many times. We have been engaging probably over the last year with the Department, and we have our legal counsel involved in working with the OGC within the Department to assure us that we have received all responsive documents to our requests.

Ms. CASTOR. Are you confident that that has been the case, or do you still have questions about that?

Ms. MAXWELL. We have had in-depth conversations with the Department about how they procure the documents, the algorithms that they used, the technology they used, and at this point we do feel confident that the Department has been responsive to our requests.

Ms. CASTOR. Has HHS leadership conducted an internal lessons-learned assessment about what happened here?

Ms. MAXWELL. I would have to defer that question to the Department.

Ms. CASTOR. Do you think they should?

Ms. MAXWELL. I certainly hope that our report that comes out looking at this will in fact drive positive change and some reassessment and lessons learned for the Department, absolutely.

Ms. CASTOR. Mr. Hayes, have you gone—have you had time to—well, I hate to put it this way. I mean, this is such a sweeping report and such a damning indictment on this policy, I mean, certainly you have gone back and accepted responsibility for what has happened?

Mr. HAYES. Well, I just want to be clear. The family separation and zero tolerance was before my time at HHS. But I will say that myself, and there's a letter from Assistant Secretary Johnson, my immediate supervisor, back to the OIG, we concurred with their recommendations, and we are working on implementing those.

And when I became permanent director earlier this year, ma'am, and I think if you polled any of the career staff at ORR, it was absolutely my desire to change the culture and how we operate inside there. I absolutely, every single day undergo best-practices discussions and rely heavily on the counsel of my senior career staff at ORR, both the child welfare experts and the medical team, our policy team, and the operations team. They're the experts.

Ms. CASTOR. And if that is the case, I encourage you to do a better job with providing the documents to this oversight committee. That needs to happen.

Mr. HAYES. OK. That would be with the Assistant Secretary of Legislation and her team, and it's my understanding that the committee staff and her team are working on that.

Ms. DEGETTE. The gentlelady yields back. The Chair now recognizes the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. MULLIN. Thank you, Madam Chair. And thank you for everyone that is here. Obviously, you are doing the best job you can underneath the conditions, and I just want to tell you thank you. I know it can be difficult, and sometimes you can come up here on the Hill and feel like you have been kicked around a little bit, but I think everybody is passionate about it. It doesn't matter what side of the aisle you are on. We may look at it a little bit different.

But I do want to thank you for your service. It means a lot to all of us.

Mr. Hayes, in response to the surge of the unaccompanied children crossing the border back in '14, did the Obama administration use temporary shelters to house and care for unaccompanied children?

Mr. HAYES. Yes, sir. They did.

Mr. MULLIN. Do we have any of those still open today?

Mr. HAYES. No, sir. We do not.

Mr. MULLIN. I thought Homestead in Florida was stood up.

Mr. HAYES. Homestead was selected as a site and the provider. It was sometime in very late 2015, sir.

Mr. MULLIN. In 2015.

Mr. HAYES. Yes, December, I believe.

Mr. MULLIN. But it was still underneath the Obama administration that it was stood up, though.

Mr. HAYES. That is correct. In the last administration, the site and the provider was chosen at Homestead December 2015.

Mr. MULLIN. And that was specifically in response to the unaccompanied children in the surge of '14 to make sure——

Mr. HAYES. That is correct.

Mr. MULLIN. OK.

Mr. HAYES. It was brought on as an influx shelter, Congressman.

Mr. MULLIN. And just making sure I was clear on there.

Commander White, what was the policy during the Obama administration to determine if the children were indeed with their parents or family members when they were crossing the border?

Mr. WHITE. So the determination as to whether a child is accompanied by a parent or is unaccompanied is a DHS determination, not an HHS determination, unfortunately.

Mr. MULLIN. Well, you stated that you were raising flags about the zero-tolerance policy, so that will tell you that there must have been some separation that was taking place before the zero-tolerance policy came into place underneath the Trump administration. But was there separation taking place underneath the Obama administration?

Mr. WHITE. There have always been for the history of the program a small number of separations for cause. However, no one should confuse that with the reality in the world that changed approximately July of 2017 when there was a tenfold increase in the percentage of referrals per month that were a result of separation. That in turn further increased with the formal announcement of——

Mr. MULLIN. What was the reasoning behind the zero tolerance?

Mr. WHITE. That is a question you'd have to submit to the Department of Justice. I wasn't in that conversation.

Mr. MULLIN. Well, what we were told was because of the threat of human trafficking and the fact that what our Ranking Member Walden has pointed out, was that some of these children are actually being recycled and we were seeing the same children, that they were being trafficked too. And so that is why the zero tolerance, because we had to figure out—and correct me if I am wrong here, Commander White. We had to figure out if they were actually with family, because which is worse: keeping them with a trafficker, or

making sure that they are with their family so that we can make sure they are with a loved one? Because it is not like they are coming across the line with a birth certificate and proof that it is actually their child. How are we supposed to know if we don't have genetics to test that they are actually with them?

Mr. WHITE. Congressman, these are two extremely important but entirely separate issues.

Mr. MULLIN. Not really, because——

Mr. WHITE. The children who experience separation from their parents are not the children who were exclusion cases.

Mr. MULLIN. But how are we—hold on, Commander White. I am not trying to argue with you. I am trying to figure out, how else do you determine them? Are you just supposed to take the individual's word for it? Because I know coyotes don't lie and traffickers don't lie. I mean, they always tell the truth as soon as you get them.

I mean, these are individuals that cross the border illegally, so they already broke the laws. So how is it that we are supposed to do our due diligence on figuring out if the individual is actually related to or is the parent of the child?

Mr. WHITE. That is done both by CBP for its part in the operation and by HHS.

Mr. MULLIN. How else do you do that until you separate?

Mr. WHITE. The method that's used in ORR is verification of relationship through consular-verified birth certificates, or when those are unavailable——

Mr. MULLIN. If it doesn't exist, what do you do?

Mr. WHITE. In those cases, DNA confirmation of biological maternity are——

Mr. MULLIN. In the meantime, do you separate or keep them together?

Mr. WHITE. To be clear, Congressman, you are confusing two issues. One is separation for cause and the other is separation pursuant to ZTP. They are different.

Mr. MULLIN. Well, but there was zero tolerance. I am not confusing the two, in all due respect. I appreciate it. I know darn good and well what I am talking about.

Mr. WHITE. You asked me if you were wrong, Congressman.

Mr. MULLIN. You had specifically said about the zero tolerance. That is what you have referred to multiple times. What I am saying is, what was the determination prior to the zero determination to figure it out, and if that didn't exist, what do you do at that point? Because you are the one that has been saying that you raised red flags and concerns about it. Well, but at the same time, the Trump administration was raising red flags as concerns about keeping them with people that they can't verify the individual is actually with them or not.

And then there is no such thing as forged documents. You and I both know that—hahaha. So what is the determination? Because we know coyotes, we know the traffickers, the cartels are not sophisticated enough to understand what our policies are to start making false documentations to actually try pairing them together. So what else are we supposed to do?

Ms. DEGETTE. The gentleman's time has expired, but I will allow as I have with the other Members on both sides who have asked the questions, I will allow the witness to answer the questions asked.

Mr. WHITE. The specific methods used by CBP to determine if there are doubts for parentage or not, which I have tremendous confidence in, I would defer to my colleague from CBP. I certainly can speak to our methods in ORR. But I want to be clear that, in the numbers that we have all reported regarding separations, those exclude all cases where there was any determination that these were not parents. So when we speak of the numbers in the *Ms. L* case, which I provided in my testimony, those are all parental cases not covered by an exclusion such as danger to the child. And I just want to be clear about that because the congressman is exactly right, the issue of false families is a compelling concern for both DHS and HHS, but it's a separate issue from family separation.

Ms. DEGETTE. I thank the witness. The Chair now recognizes the very patient gentlelady from California, Ms. Barragán, for 5 minutes.

Ms. BARRAGÁN. And I thank you, Madam Chair. First of all, just to correct the record since we are talking about what information we are going to get to determine who are adults in this debate, first of all, you know, there have been allegations that separations have been—like, the ones happening under the Trump administration—have been happening for a long time under different administrations. Prior administrations used prosecutorial discretion. This administration, specifically Secretary Kelly, came to Congress and said one of the reasons they were doing it was to deter people. It was intentional to deter people, and they were going to get rid of using the prosecutorial discretion. So I wanted to just correct that because there is so much false information going around on that. Second of all, children have not died until this current administration.

Ms. Maxwell, you testified earlier that children, when they come over, they have already experienced some type of trauma prior to arrival. Is that correct?

Ms. MAXWELL. That's correct.

Ms. BARRAGÁN. And would you say that, if you come here as a child and you are separated from a parent, that would cause further trauma?

Ms. MAXWELL. That is what we heard from the clinicians in the field.

Ms. BARRAGÁN. OK. And would you say that, if a child were separated and experienced sexual abuse or assault, that that would lead to further trauma?

Ms. MAXWELL. We are looking at that in our next study, but certainly that would be another type of trauma.

Ms. BARRAGÁN. Do you not think that if a child is sexually abused that they would experience trauma?

Ms. MAXWELL. It's certainly another type of trauma. It's just not one that we particularly focus on in this study, and we will be focusing on that in a future study.

Ms. BARRAGÁN. Is it your opinion that, if a child is sexually abused, they would be further traumatized?

Ms. MAXWELL. Well, of course.

Ms. BARRAGÁN. OK. Is it your opinion that, if a child was slapped around and dragged, that they would suffer trauma from that interaction?

Ms. MAXWELL. Yes. I would just point out that the benefit of our report is that we are bringing voices from the field and we are really relying on what they're telling us about what they experienced with the children.

Ms. BARRAGÁN. Right.

And, Commander White, the Southwest Key location, those are ORR custody. Is that correct?

Mr. WHITE. Correct.

Ms. BARRAGÁN. OK.

Mr. WHITE. And I'll defer to Mr. Hayes about the—but yes, Southwest Key is one of the large providers of ORR services to children.

Ms. BARRAGÁN. Thank you. The reason I am asking this series of questions is because these are the types of allegations and videos that have shown is happening in ORR custody. And our children, while they may have arrived with some kind of trauma because of the violence in their home country, are being further traumatized, whether it is to separation, whether it is due through sexual abuse, whether it is through being physically abused, through slapped around and dragged around, and it is unacceptable. It is completely unacceptable.

I have introduced a bill, H.R. 1336. It is a mental healthcare bill for children unhumanely separated from their parents by the Federal Government. And we hear that, when children get into ORR, they get some kind of mental health evaluation, but doesn't that mental health service end when the child's detention ends? Ms. Maxwell?

Ms. MAXWELL. Yes. That is my understanding.

Ms. BARRAGÁN. Right. So this bill would say that, if a child suffers from mental health issues, that they would get ongoing coverage regardless of whether they are in custody or not. If we are causing additional trauma to a child, I think that we have the responsibility to provide services for these children. As one of my colleagues on the other side of the aisle said, we should treat these children like they are ours.

I want to follow up on my colleagues' questioning about the new OIG report. It is certainly disturbing. It lays out bare the carnage that the family separations unleashed on these children. HHS claimed innocence in the family separation crisis and has said it did not know about the policy. But the committee has obtained multiple documents that demonstrate this isn't quite the full story.

ORR career staff were sounding the alarm bells to HHS leaders nearly a year before the administration's cruel zero-tolerance policy was enacted. We obtained a July 2017 memo from HHS that is in the document binder that all of you have. In that memo, nearly a year before family separations began, Commander White warned of family separations that were to be implemented. That is tab number 2 in the binder. In September 2017, HHS staff again referred to a new DHS policy to separate families—that is binder document

6—and leaders within HHS were also talking about family separation policies.

In November 2017, still well before the zero-tolerance policy was enacted, Eric Hargan, the then-Acting Secretary who now serves as Deputy Secretary, requested a briefing on family separations, tab 10. We even have emails from Mr. Hayes' predecessor, Scott Lloyd, the then-Director of ORR, who said that ORR noticed CBP was separating families before zero tolerance and ORR was tracking it. ORR and HHS leadership either saw this coming or should have seen this coming, and because HHS leadership ignored these warnings, the worst fears were realized.

Mr. Hayes, just a quick question. I understand you were not in your position at the time, but if you had received these warnings in the year leading up to zero tolerance, what would you have done with that information?

Mr. HAYES. If I receive any information from my senior career staff that raises child welfare concerns, I would share those with my immediate supervisor, Assistant Secretary Lynn Johnson.

Ms. BARRAGÁN. Thank you, I yield back.

Ms. DEGETTE. The gentlelady's time has expired. The Chair now recognizes the gentleman from California, Mr. Cárdenas, for 5 minutes.

Mr. CÁRDENAS. Thank you very much, Madam Chairwoman and colleagues, for having this incredibly important hearing on an issue that affects human beings who have come to our country in many, many, many cases to flee violence and in some cases almost certain death. And I hope and pray that we all learn from this both as practitioners in the field and also as policymakers as well as to what should be our path forward to making sure that we respect not only the Constitution, but we respect the human beings that are in our custody and in our care.

When it comes to traumatic consequences on children's mental health—and it is not just the HHS or OIG that has come to this conclusion, it seems to be a universal understanding and belief based on science and fact. That is why we have protections under the Flores Settlement to prevent children from being indefinitely detained. Despite those protections, the Trump administration has issued a rule that would essentially dismantle Flores and permit DHS to detain children and families beyond the current 20-day limitation.

Ms. Maxwell, in the recently released HHS OIG report, your office notes, and I will quote, "children with longer stays experienced more stress, anxiety, and behavioral issues." The report adds that "some children who did not initially exhibit mental health or behavioral issues began reacting negatively as their stays grew longer." Ms. Maxwell, based on these findings, would you agree or disagree that an increased length of detention can have detrimental effects on children?

Ms. MAXWELL. Certainly, as reflected in our report, we'd show that the length of stay has a negative effect on children's well-being. I'll just note that our focus was on ORR facilities, and the detention policy that you're referencing is for immigration detention centers. So our report speaks only to once they have already gone through the detention center into an ORR facility.

And yes, absolutely what the clinicians at the front line told us is that, the longer the children are in care, the more difficult their behavior becomes and the more disillusioned they become and the more mental health troubles they see, even including self-harm and suicidal ideation.

Mr. CÁRDENAS. Has there ever been an opinion, a professional opinion or a study of value, that actually says that there is a differentiation between what moniker is on the door of the facility that the child is in when they are experiencing this trauma?

Ms. MAXWELL. I would just offer that the facilities that ORR runs are State-licensed child welfare facilities that are governed by Flores and provide a whole host of child-centric services which are different than immigration detention centers that have a different mission.

Mr. CÁRDENAS. OK.

Commander White, when you testified before the subcommittee in February, you stated, and I will quote, "toxic stress has consequences both for children's behavioral health and their physical health, and those consequences are frequently lifelong." Commander White, is there any reason to doubt the decades of research on the long-term traumatic effects on children who are detained, for example, or the U.N.'s position on the detention of children?

Mr. WHITE. The available scientific consensus of the effects of a toxic stress, particularly in the available literature on children in detention, I see no reason to question that scientific consensus. It is well established and supported by evidence.

Mr. CÁRDENAS. OK. Should the stress inflicted on children due to detention be a relevant consideration when drafting rules related to child detainment?

Mr. WHITE. I can't speak to law enforcement or detention. It is fundamental to any discussion of our work in ORR in child welfare.

Mr. CÁRDENAS. OK. With experts in the field emphasizing the detrimental effects of prolonged detention on children, I am concerned about who is looking out for the best interests of the affected children. Mr. Hayes, ORR is the expert on child welfare. What role did your agency play in writing this regulation, especially on the decision to allow prolonged detention of children?

Mr. HAYES. So, Congressman, thank you for the question. So the role or the role that HHS played was very limited in regards to the overall rule. You know, it sought to codify, you know, consistent with the Homeland Security Act and TVPRA rules and regulations. We focused on our part. One of the examples, I think, was kind of the movement of some of the hearings from the Department of Justice over to the Department of Appeals Board, which would be inside HHS, by independent hearing officers in regards to certain discharges. But the overwhelming majority of the Flores rule was DHS.

Mr. CÁRDENAS. OK. Thank you very much. My time has expired. I will yield back.

Ms. DEGETTE. I thank the gentleman. The Chair now yields to the gentleman from Florida, Mr. Soto, 5 minutes for the purpose of questioning.

Mr. SOTO. Thank you, Madam Chair.

Director Hayes, I had sent you all a letter on September 10th regarding the proposed facility in central Florida. We ended up finding out about this because a notice was sent to our local government officials, but not to Members of Congress, folks who have oversight over HHS, so I was really surprised about that, that I would find out through my local mayor rather than directly from HHS.

What is the nature of the detention center that you all are looking to put in central Florida?

Mr. HAYES. So to Ms. Maxwell's point, we don't have any detention facilities at HHS. Ours are child welfare centers that are licensed by the respective State. And I'll just say, Congressman, as we look to expand our permanent State-licensed network, we have a process at HHS where we do notify Members of Congress, local officials, and if you were not notified, I apologize on behalf of our Department.

Mr. SOTO. So what is the nature of the facility, generally speaking, that you are looking to locate in central Florida?

Mr. HAYES. So—absolutely, sir. So we're looking at a number of sites in conjunction with the GSA to identify some smaller to medium-sized facilities where we can, again with prior interactions that I've had with your colleagues on the platform today, where we want to again expand our State-licensed permanent network. We're looking to own or lease some of those buildings ourselves, which is a kind of change of how we operate at HHS, in order to give us more control over the capacity, and then we in turn find operatives to come in and run those as the child welfare folks within each of those shelters. So, yes, sir. Central Florida is an area given the population, the bilingual nature of a lot of the constituents there, the educational opportunities, in order to bring both youth care workers and clinicians on board. We have other areas that we're also looking at here in the DC/Northern Virginia area, New York, L.A.

Mr. SOTO. What would be the age group of the refugees who would be housed there?

Mr. HAYES. You know, it's really too early to say because, again, we have a large number of different types of shelters we're looking at. I will say this, sir. The majority of the children in our care at ORR are teenagers, 13 to 17, and the majority of those are male. But we do need, again, specialty beds for parenting teens, sibling groups, you know, pregnant mothers that will deliver while in our care, and so, you know, so we need a broad array of different type of shelters and beds in order to timely receive these children from CBP so we can care for them.

Mr. SOTO. So you anticipate this center could be used to house children as well as adults based upon your current strategy?

Mr. HAYES. Absolutely not, sir. HHS doesn't have any authority to house adults. These would be—when I say a parenting teen——

Mr. SOTO. So for children or for birthing, for women who are pregnant and having children?

Mr. HAYES. Yes, let me clarify that, sir. I apologize. In that case we are talking about two unaccompanied alien children. The mother herself is a child that is under the age of 18 and is unaccompanied, and either the child that she has with her or the child that

she would deliver would also be a UAC. So we would keep them together.

Mr. SOTO. Well, I would be remiss if I didn't mention the strong opposition locally to putting a center there. I want to turn also to Homestead next.

Mr. HAYES. Yes, sir.

Mr. SOTO. You know, I was welcomed to headlines today about ORR spending $33 million so far since that facility has been vacated. Why do we still—why hasn't this facility been closed yet?

Mr. HAYES. So that's a good question, Congressman. I welcome the opportunity to expand on the article that I think left out a lot of key facts and even misconstrued some things. Number one, there have not been any children there since August 3rd. That is an accurate statement. Shortly thereafter, we did reduce the number of staff and the supportable census from 2,700 down to 1,200.

And in coordination with my planning and logistics team, again, senior career staff whose counsel I value significantly at ORR, and the fact that these migration numbers are difficult if not impossible to predict, those 1,200 beds are something that we wanted to be able to have quick access to in the event of an emergency because a UAC is better off in any HHS facility as opposed to a Border Patrol station.

Mr. SOTO. We also had asked when that facility was at least in part shuttered where the children who were staying there went. Seventy percent, we were informed, were reunited, but we never got a response on where the rest of these children were sent to. I am getting, to this date, requests from my constituents to know the details of this because it happened in our State. And again, a deeply unpopular program and a deeply unpopular center, because it is against a lot of our values in immigration.

I realize you are here to manage it and not direct that policy, but will you commit to me today to get us a response in where the rest of the 30 percent of the children ended up being relocated to?

Mr. HAYES. I won't commit to the specifics out of privacy and concerns and respect for the children. But I will say that the majority of them that were transferred to other sites within ORR's network, sir, were either due to medical reasons or they simply don't have identifiable sponsors here in the United States, and therefore they could not be discharged to family like you said. In fact, I think it ended up being actually more than 80 percent of them were discharged to family members.

Mr. SOTO. Well, without names it would be great to get at least the statistics on where these kids went so I could respond to constituent questions about this.

Mr. HAYES. We've put those numbers forward, sir, and I believe they've even been shared by the media, so I don't see any reason why the Assistant Secretary for Legislation and her team couldn't get those to you in a timely fashion.

Mr. SOTO. Thank you, and I yield back.

Mr. HAYES. Thank you, sir.

Ms. DEGETTE. The gentleman yields back. The Chair now recognizes the ranking member for any closing remarks he might have.

Mr. GUTHRIE. Thank you very much. So we aren't doing questions, just closing remarks, right?

Ms. DEGETTE. Well, you can do questions, whatever you want.

Mr. GUTHRIE. OK.

Ms. DEGETTE. It is your time.

Mr. GUTHRIE. Well, I will just close. So it is important that we do this and have oversight. And we know that there have been issues at the border. There has been crisis at the border. I know, and I know what my friend Mr. McKinley was talking about. People were even on the floor of the House and "there is not a crisis at the border," and the media, "not a crisis at the border," and there was. And so, we need to do oversight. It is our job as Members of Congress to make sure that things, that in our jurisdiction we have the oversight to look to see, look forward and wanting to see what was the problem, how do we solve the problem, and how can Congress help solve the problem.

But the one thing that you want to see is that people are trying to address the problem and not just let it linger until Congress steps in and does something. And I think today, hopefully, people see that there is a big effort to make sure the problems that have happened at the BP facilities, at getting them into ORR, tracking—or not tracking, but understanding the data between the children—is really being, is being addressed. So I really appreciate that.

I think also we need to look in a mirror. I think that we talked about 72 hours, we talked about 50 days, and how long is too long. I thought it was a little over 6 weeks, but I think, Chief, you said 57 days from the time you requested supplemental funding until the time it was approved by Congress?

Mr. MODLIN. Yes, sir, 57 days.

Mr. GUTHRIE. And I am not one to say we should have done it on day 1. Congress has its duty to do due diligence and make sure any budget request, particularly of that size, is appropriate. But if we remember what happened in the spring, it was brought forward, we went through the spring and all of—and we had different debates on the floor, had appropriations bills as Republicans tried motions to recommit.

The appropriate chairman and folks, people on the Appropriations Committee would say, "We know it is important and we are going to do it, but not here, not here, not here." It kept lingering to the point where a group of Republicans would hold time on the floor every day in June to do different tactics to try to bring it to the attention. And it took to right before the break for 4th of July for us to get a bill to you say has made a major difference at the border.

So I think 57 days, 72 hours is—we want to get them out of your facility sooner than 72 hours. We want them out of your facility sooner than 50. But 57 days is way too long for Congress to do its job to give you the resources you need to make the improvements that you have made. And we appreciate that, and I appreciate you being here and we still have a lot of work to do, and we are willing to work with you to do it. And I yield back.

Ms. DEGETTE. I thank the gentleman.

Chief Modlin, your career with the Border Patrol. Is that right? You have been there a long time.

Mr. HAYES. Yes, ma'am, 24 years with the U.S. Border Patrol.

Ms. DEGETTE. Twenty-four years, and I want to thank you for your service. And I also want you to communicate to your agents there at the border and your employees that we really appreciate their service too. And what you are saying, when you said they were bringing diapers from home and, you know, they don't want to be thrust into this anymore than anybody else does, and it is the same thing with the ORR personnel.

You know, when we had the family separation I went down and I talked to some of those personnel, and they were just doing their best. These rank-and-file folks, they are just doing their best, and I understand that. You know, some people have said, "Well, the Democrats don't understand that. They think that the Border Patrol are cruel." We do not think that at all.

Mr. MODLIN. Ma'am, if I could?

Ms. DEGETTE. Yes, go ahead.

Mr. MODLIN. I will definitely bring that message back.

Ms. DEGETTE. Thank you.

Mr. MODLIN. Because, as I know you are aware, there is definitely a vilification of the Border Patrol.

Ms. DEGETTE. Right.

Mr. MODLIN. What I can tell you is that more than 128 agents have died in the line of duty——

Ms. DEGETTE. You bet.

Mr. MODLIN [continuing]. Protecting this country. Some of those agents have died, they've drowned while trying to rescue migrants from the Rio Grande.

Ms. DEGETTE. You are right.

Mr. MODLIN. They've been run over by drug smugglers. They've been shot by drug smugglers and TCOs. These are agents that do everything every day and act professionally, compassionately, and sacrifice. And they're willing to sacrifice their lives for this country, for those migrants, for to secure the——

Ms. DEGETTE. For human rights.

Mr. MODLIN. So I do appreciate your words.

Ms. DEGETTE. And I agree. So, in your years with the Border Patrol, I think you can agree—and I think, Commander White, you would see this too—is we do have a historic waxing and waning of the number of people presenting at the border. It happens at the seasons, isn't that correct? Yes or no will work.

Mr. MODLIN. So there are certainly seasonal trends.

Ms. DEGETTE. Right.

Mr. MODLIN. But these numbers have never been seen before.

Ms. DEGETTE. Right.

Mr. MODLIN. This was not a seasonal trend.

Ms. DEGETTE. But we have the seasonal trends, so then we saw these numbers. My colleagues on the other side of the aisle keep talking about how we had a huge influx of unaccompanied minors in 2014 under the Obama administration, so we have had an uncertainty at the border now for about 5 years or more. And I, myself, am not particularly interested in blaming, you know, one person or another for this influx of people, but today I am worried about the kids.

So then we keep hearing this continual bashing about 57 days for the emergency supplemental, but the fact is, this has been

going on for a long time. And what we need to develop, I think what HHS needs to develop and what Homeland Security needs to develop, is a policy that we can somehow deal with these surges of children that come for whatever reason so that the human rights of these children can be preserved.

And, Commander White, this is what you have been saying for several years, and I want to commend you for saying that. Irrespective of what is happening is, if you have kids that are being held and for whatever reason they are separated from their parents, they are being held without basic cleanliness or anything, this is psychologically damaging in the long run, and that is what the IG report shows.

So my concern is that we develop a policy that has interoperability between the two departments so we can know how to treat the kids that are in the Border Patrol custody and get them transferred, but also so that we can keep them united with their parents or whoever else so that they suffer as little additional trauma as possible after what they have experienced, and I think we should be able to do that on a bipartisan basis.

And so, this leads me to my last point, which is we have got to get these documents, because we have been trying to figure out for 8 months now—documents regarding how far up the chain the knowledge of this family separation went.

Commander White, you saw in the notebook we have gotten some documents that indicate that there was discussion of the family separation for some months before it actually happened. What we are trying to find out is how far up the chain this knowledge went. And the fact that HHS has steadfastly refused to provide those documents to this committee is really disturbing, because we can't move forward until we know exactly what happened.

And so, this is why I am going—Mr. Hayes, I am going to make one more plea. I know you are not the person in charge of this, but I am going to make one more plea. We have narrowed the list down. We need it for investigation, and this is what this committee's role is, and so we are going to keep pushing ahead on this.

And I just want to say one last time, Commander White, I want to commend you for your dedication to these children. I know you have been as a career civil servant fighting for them from day one, and this committee on both sides of the aisle, we appreciate all of the service that you give to this country, and we thank you and we hope you will continue to do that.

And last but not least, I want to ask unanimous consent that the contents of the document binder be introduced into the record and authorize staff to make appropriate redactions. Without objection, so ordered.[1]

Ms. DEGETTE. I want to thank the witnesses for coming today, and I want to remind Members that, pursuant to the 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. I ask that the witnesses agree to respond

[1] The information has been retained in committee files and also is available at https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109953.

promptly to such questions, and with that the subcommittee is adjourned.

[Whereupon, at 12:47 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Committee on Energy and Commerce**
**Subcommittee on Oversight and Investigations**

**Hearing on**
**"Protecting Unaccompanied Children: The Ongoing Impacts of the Trump Administration's Cruel Policies"**

**September 19, 2019**

**Mr. Jonathan Hayes, Director, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services**

**The Honorable Ann Kuster (D-NH)**

1. What criteria is employed in determining which out-of-network facilities are used?

   **RESPONSE:** Where the Office of Refugee Resettlement's (ORR) in-network providers are unable to provide for the individual needs of an unaccompanied alien child (UAC), ORR may determine that an out-of-network (OON) provider is better able to serve the child. A child is usually placed in an OON is due to medical reasons (e.g., the child has significant health needs that require a prolonged stay in a hospital), acute mental health, or behavioral concerns that cannot be met within ORR's network of specialized care providers.

2. Are out-of-network facilities held to the same requirements outlined in ORR policies, as in-network placements?

   **RESPONSE:** OON providers follow the requirements of their licensing authority and applicable federal and state regulations. The ORR care provider "base facility" that made the referral for the OON placement remains responsible for the child's case management services (including family unification services), as these can be managed remotely.

   For children placed in OON for mental health or behavioral reasons, the child's in-network "base facility" is also responsible for the child's case management services, including reporting allegations of abuse, and for providing notice to the child for the reasons for their placement in an OON facility[1] via the *Notice of Placement in a Restrictive Setting* (see ORR Policy Guide, section 1.2.4 Secure and Staff Secure Care Provider Facilities, 1.4.2 30 Day Restrictive Placement Case Review, and 1.4.6. Residential Treatment Center Placements, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1).

   a. If so, how is that monitored?

[1] ORR procedures allow an OON Residential Treatment Center to provide the *Notice of Placement in a Restrictive Setting* as well if the facility so chooses. Otherwise, the responsibility remains with the ORR care provider "base facility."

**RESPONSE:** OON providers are monitored by the state licensing agency that has jurisdiction over the facility. Additionally, ORR's interim guidance provides that ORR Federal Field Specialists visit the child and maintain ongoing contact with the OON provider and child.

3. Have all youth currently placed in out-of-network facilities been determined to be a danger to themselves or others by a licensed psychologist or psychiatrist?

   **RESPONSE:** For those children placed in an OON facility that provides services as a Residential Treatment Center, yes. This is in line with requirements laid out in ORR policy (see ORR Policy Guide, section 1.4.6 Residential Treatment Center Placements, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.4.6).

4. What is ORR's policy around informing Vera-funded legal service providers, including those who have not formally entered an appearance for a child, prior to a child being transferred to an out-of-network facility?

   **RESPONSE:** Attorneys of record, or the ORR-funded legal service provider when a child has no attorney of record, are notified whenever a child is transferred to another facility, including an OON provider, in accordance with the terms of the Flores Settlement Agreement (FSA) and ORR Policy (see ORR Policy Guide, section 1.4 Transfers within the ORR Care Provider Network, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.4).

5. How is ORR accommodating a youth's need to access the court in which their case has been docketed?

   **RESPONSE:** ORR transports children in custody to all proceedings to which they are a party as required by law. When ORR transfers children to a different jurisdiction, the referring care provider requests a change of venue and address with the appropriate DHS chief counsel's office, who in turn notifies the immigration court.

6. How is ORR ensuring that youth at out-of-network facilities have access to counsel, and minimizing the need to transfer counsel?

   **RESPONSE:** ORR's primary mission is to provide for a child's individual needs, which is the underlying basis for their transfer to an OON provider. Children are provided access to counsel regardless of where they are placed, and in some instances ORR has collaborated with a child's counsel to identify an OON provider that can both meet the child's needs and allow the child's attorney to continue effectively representing the child.

7. How do you currently track the administration of psychotropic medications to children in custody?

**RESPONSE:** All medication, including psychotropic and over-the-counter, must be logged in accordance with state licensing requirements and ORR policy. For more information on medication management, see ORR Policy Guide, section 3.4.4 Medication Administration and Management, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.4.4. For record keeping requirements, see section 5.6.2 Maintaining Case Files, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.6.2.

8. On what legal authority does ORR or its contracted providers, authorize the use of psychotropic medications without parental or patient consent?

**RESPONSE:** ORR is the recognized legal custodian of UAC in HHS custody by authority delegated by Congress under 8 U.S.C. 1232(b). Psychotropic medication is prescribed by a physician, not by ORR staff.

9. Is there any independent review or oversight of non-consensual administration of psychotropic medication to children in ORR's custody?

**RESPONSE:** ORR policy allows the use of chemical restraints in emergency safety situations in accordance with state law and licensing requirements. Most states prohibit the use of chemical restraints for children. See ORR Policy Guide, section 3.3.15 Use of Restraints or Seclusion in Emergency Safety Situations in Residential Treatment Centers (RTCs), available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.3.15

10. What is ORR's process for informing Vera when a new contract facility for unaccompanied children is opened to ensure legal services are immediately made available?

**RESPONSE:** The ORR Contract Officer Representative for the legal service contract is in weekly contact with Vera and provides regular updates as to where and when ORR care providers are coming online.

**The Honorable Joseph P. Kennedy III (D-MA)**

1. Is HHS still using unreliable, invasive dental exams as an age verification method to move children out of ORR care and into adult detention facilities?

**RESPONSE:** ORR may use dental exams (specifically radiographs to determine age) in conjunction with other evidence to determine whether an unidentified alien child in ORR custody is a minor or an adult. Maintaining custody of an adult in a state licensed facility is a serious licensing violation that may lead to punitive action against the facility including loss of license. There are also prohibitions of maintaining children with adults as well under the terms of the FSA.

a. Are you comfortable with the fact that there are most likely children in adult facilities because the OIG's own report recognizes that the science used in those reports cannot pinpoint a child's age, and instead can only provide broad age ranges?

**RESPONSE:** As required by law and ORR policy, ORR does not rely exclusively on radiographs, including dental radiographs. See 8 U.S.C. 1232(b)(4); and ORR policy (see ORR Policy Guide, section 1.6 Determining the Age of an Individual without Lawful Immigration Status, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.6). The TVPRA requires the age determination procedures, at a minimum, to take into account multiple forms of evidence, and specifically says such evidence include radiographs. Accordingly, under these procedures, each case must be evaluated carefully based on the totality of all available evidence, including the statement of the individual in question. Specifically, in regards to medical age determinations, please refer to ORR Policy Guide, section 1.6.2 Instructions, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.6.2).

2. Are children still being separated from their parents and if so, how many children currently in your custody have been separated from their parents?

**RESPONSE:** HHS has no role in immigration enforcement and does not separate parents and children. ORR publishes reports to Congress on separations, which can be viewed online. For information on parental separations, including numbers of children in ORR custody who were separated from their parents for cause, please visit: https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/report-to-congress-on-separated-children/index.html.

a. If a child is separated from their parent, what legal recourse does that parent and child have to immediately challenge that decision?

**RESPONSE:** ORR defers to the Departments of Homeland Security and Justice for questions pertaining to the separation of parents and children.

3. Earlier this month, it was reported that ORR was not funding legal services for detained immigrant children in at least 3 facilities. Are there currently any licensed detention facilities that do not maintain a contract with a legal aid organization to meet your legal obligations to detained children?

**RESPONSE:** Under the terms of the FSA, ORR must provide children in custody with a notice of their rights, the right to be represented by counsel at no expense to the government, the right to a removal hearing before an immigration judge, and the right to apply for political asylum or to request voluntary departure in lieu of deportation. ORR typically provides such notice to all children upon entry into an ORR care provider via a Know Your

Rights (KYR) presentation by a contracted legal service provider, but can provide the KYR via video if necessary.

Please note that the contract with the legal service provider is between ORR and the legal service provider contractor, not between the ORR care provider and a legal service provider. The legal service provider, in turn, subcontracts services to local legal service providers who provide KYRs, legal screenings for children (to determine potential eligibility for legal immigration relief), referrals to pro bono counsel, training of pro bono counsel, and in some instances direct representation for children in their immigration proceedings.

At this time all ORR care providers have coverage from a local legal service provider. Because of the difficulty in predicting when new beds (or additional beds at an existing ORR care provider) may come online, the time between modifying the legal service contract and the opening of a facility may not always align. Historically, this gap has been temporary. Where there have been temporary gaps in coverage, in some instances ORR has requested the nearest contracted legal service providers to travel to new facilities to provide the required notices or else provided the notifications via video presentations. When legal service providers for new care provider facilities are contracted, they immediately visit the facilities and provide all required services. As a result, all children in ORR custody receive all legally mandated notices regarding availability of legal services, access to counsel, and notices regarding their rights.

**The Honorable Brett Guthrie (R-KY)**

1. Under the TVPRA, except in exceptional circumstances, unaccompanied children must be transferred to ORR within 72 hours of determining a child is an unaccompanied child. CBP and ORR appear to have a difference of opinion regarding when the clock starts on the 72-hour limit. What is ORR's view is on when that 72-hour clock starts?

   **RESPONSE:** DHS may make the UAC determination at or after the point of apprehending the child. The start time for the 72-hour clock may thus vary based on the facts and circumstances of each individual case.

   a. Does Congress need to more clearly define how much time each agency has for their respective role in the process? If so, what is ORR's suggestion on what those allotted times should be for each agency?

      **RESPONSE:** Congressional action on comprehensive immigration reform could prevent future surges at the border.

2. Is there a need to examine, and possibly amend, the TVPRA with respect to the definition of a UAC so that in addition to parents and legal guardians, children are not separated by DHS from other family members, such as a grandparent or adult sibling?

   **RESPONSE:** HHS does not have a formal position on amending the TVPRA to treat other family members as parents and legal guardians.

a. As child welfare experts, does ORR have any concerns or possible unintended consequences of amending that definition?

**RESPONSE:** Confirming a parent-child relationship is less difficult than confirming other familial relationships. If other family members were treated the same as parents and legal guardians, there would need to be adequate safeguards to prevent fraudulent claims of familial relationships. ORR is concerned such a change could encourage fraudulent claims of familial relationships and place children at risk. Additionally, even where there is a confirmed familial relationship, relatives may have little, if any, connection to the child, other than having been apprehended together. It may not be in the child's best interest to be placed with an adult who may essentially be a stranger to the child.

b. Is there a need to further specify when a child can or cannot be separated for cause? For example, specifying what past criminal convictions pose a danger to the child and/or what communicable diseases would warrant a temporary separation?

**RESPONSE:** ORR is not responsible or involved in the decision to separate families. With this in mind in order to ensure the safety of children, ORR recommends tying the criteria described in Section 2.7.4 of the ORR Policy Guide as the basis for denying sponsorship, as the basis for separating families. (See https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.7.4.).

3. Understanding that migration patterns are unpredictable, what steps is ORR taking to evaluate its capacity modeling to ensure ORR has sufficient capacity and there isn't a backlog at CBP facilities when referrals inevitably go up again?

**RESPONSE:** ORR continually evaluates its capacity modeling to ensure there is not a backlog of UAC at CBP facilities, utilizing data from DHS and HHS. ORR uses a series of data points and trends to determine its capacity needs, including its statistics describing placements, referrals, and discharges over previous months and years. However, ORR's short-term capacity needs are always subject to change, as there is no definitive method to predict the amount of future UAC that will come into ORR care.

a. What would an ideal capacity model be given ORR's experience with the ebb and flow of referrals they receive?

**RESPONSE**: It is in the best interest of every child to be with their family or a caregiver. And when family or a caregiver is not available – even temporarily – it is in the best interest of the child to be in the least restrictive environment and most child friendly setting available. To this end, ORR is working to build permanent capacity composed of family-foster care and small-or medium-sized permanent shelters. While efforts to build such capacity are underway, HHS-run facilities, whether licensed or unlicensed, large or small, are always better equipped to serve

children than any border patrol facility. Therefore, we have made it an equal priority to obtain as much capacity as necessary, both using traditional state-licensed beds as well as influx shelter beds (in facilities that may or may not be state-licensed), in order to ensure children are expeditiously placed with an ORR-care provider facility. Our long-term goal is to create a system where ORR is able to carry sufficient permanent hard-sided state-licensed capacity that can adapt to changing needs efficiently, such that influx care facilities are needed only in extreme circumstances. Our short-term goal is to ensure that children spend as little time in border patrol facilities as possible and are safely released or reunified with family or other sponsors as quickly as possible.

As ORR's mission is to provide temporary care of all minors referred to our care, ORR must maintain sufficient bed space to accommodate regular seasonal fluctuations in migrations as well as any future influxes that may occur. Since passage of the TVPRA in 2008, the Federal Government has seen a continued increase in border crossings by UAC. Unfortunately, while migration patterns have shown a historic upward trend for this population, the relative rate of increase in referrals from year-to-year has been difficult to predict.

4. On average, how long does it take for a new ORR grantee facility to come online from the time HHS posts a funding opportunity announcement, to the time a facility is approved to accept and provide direct care for unaccompanied children?

   **RESPONSE:** The average time from announcing a grant via a Funding Opportunity Announcement (FOA), to providing a notice of award, to the time a facility is able to accept children varies considerably based on several factors including, but not limited to: internal administrative requirements inherent to the competitive grant review process; state/local licensing agencies awarding of a license in certain circumstances; and the extent of any community opposition.

   Typically ORR uses a 60-day FOA announcement (in some instances, the office has used a 45-day announcement). It takes roughly four to five months after an FOA closes to send notice of awards to selected grantees. During this four to five month period, grant panels review applications and make selections following the competitive process. If an awardee already has a license in good standing, the program typically is able to hire staff and be ready for placements within anywhere of 60-120 days of the notice of award. If the grantee awardee needs to obtain a license, the process can take upwards of one year from the date of the notice of award before the facility may accept UAC placements. ORR notes that the recent trend has been it takes longer to bring licensed capacity, especially for new grantees, based on increased scrutiny from state and local officials over the licensing process.

   a. How does that compare to the temporary influx facilities that ORR has used in the past?

**RESPONSE:** ORR utilizes an influx care facility to provide temporary emergency shelter and services for UAC during an influx, natural disaster, or other emergency event (e.g., fire, terrorism). Depending on state law, influx care facilities may not require licensure or may be exempted from licensing requirements because they are operated on federally-owned or leased properties. Because influx facilities may not need state licensing, historically ORR has been able to bring influx facility beds online more quickly than permanent facility beds.

Comparing specific influx care facilities is difficult because each site ORR has used in the past has presented unique circumstances that either helped or hindered bringing the beds online. Generally, it can take anywhere from a few weeks to a few months to prepare an influx care facility, depending on many factors, including: site preparation; paperwork (e.g., Memoranda of Agreement, leases/licenses, fire life safety reporting requirements, and contracts/grant supplements, as needed); and site operator requirements (e.g., hiring, materials).

5. When did ORR first start trying to bring Carrizo Springs online, how long did that process take, and what is the status of Carrizo Springs?

   **RESPONSE:** ORR began exploring options to acquire the Carrizo Springs site for possible influx beds in May 2019. The first UAC arrived at Carrizo Springs on June 30, 2019, and the last UAC left by July 25, 2019. Carrizo Springs is currently on "warm" status, meaning that ORR does not currently place any children at the facility, but that it nevertheless continues to fund a minimum number of support staff sufficient to secure and maintain the facility in case ORR needs influx beds on short notice.

   a. Unlike traditional influx facilities, HHS holds a three-year lease on the Carrizo Springs facility. What will holding this lease mean going forward? For instance, will HHS be able to activate Carrizo Springs when you reach influx levels quicker than ORR was able to stand-up previous influx facilities?

      **RESPONSE:** Because of the three-year lease and the improvements to the infrastructure, ORR believes it has the ability to quickly activate Carrizo Springs if influx beds are needed.

   b. How does ORR see Carrizo Springs helping with the inevitable ebb and flow of the referrals that it receives?

      **RESPONSE:** Carrizo Springs is critical for ORR's planning purposes, which project a need for up to 3,000 beds at temporary influx facilities.

      As stated above, ORR is expanding state-licensed permanent capacity with the goal of decreasing reliance on temporary unlicensed influx care facilities, using a series of

data points and trends to determine its capacity needs, including the need for temporary influx care facility beds for events not related to an influx, such as a natural disaster or other emergency event that would disable a permanent facility's ability to care for children or operate. But ORR's short-term capacity needs are always subject to change, so it is important to maintain the ability to quickly activate new beds in the event they are needed.

6. One of the OIG reports released in September states that ORR facilities reported challenges in accessing external mental health specialists. One of the reasons cited is specialists hesitated to continue treatment of children, or initiate new treatment, because prior reimbursements had been delayed. How are providers reimbursed through the ORR program?

   **RESPONSE:** ORR uses a third party administrator and the Veteran's Administration's Financial Services Center (VAFSC) to manage the medical services for UAC. Point Comfort Underwriters, Inc. (PCU) is a licensed insurance underwriter and third party administrator responsible for administrative functions related to medical (including mental health and prescription drugs), and dental services for UAC. PCU's functions include approval of Treatment Authorization Requests (TAR) required for services, processing, and payment of claims.

   A Treatment Authorization Request (TAR) is a document used by ORR care providers to request approval of medical services for UAC placed at that facility. The ORR care provider must describe the circumstances giving rise to the need for services on the TAR. The TAR is then submitted by the ORR care provider to PCU. TARs are reviewed and adjudicated by PCU, and returned to the care provider with confirmation of approval, disapproval or request for additional information (see ORR Policy Guide, section 3.4.9 Provider Reimbursement at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.4.9).

   TARs for non-emergency office visits (primary care, specialty consultations, mental health, and dental care), laboratory tests, surgeries and procedures, physical therapy, and other specialized health treatments must be pre-approved before services are rendered. Some services are not covered (e.g., cosmetic treatment, experimental treatment). Each UAC undergoes an Initial Medical Examination (IME) upon admission to an ORR Care Provider program. All IME components are pre-authorized (see ORR Policy Guide, section 3.4.2 Initial Medical Examination at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.4.2).

   PCU maintains a network of doctors, hospitals, urgent care facilities and other medical and mental health providers who will provide services to children in custody at a discounted rate. Their goal is to ensure that quality medical service providers, encompassing a full range of specialties and sub-specialties, are available and accessible at all times. Reimbursement for medical services are paid through VAFSC.

a. Is ORR looking at ways to improve this process?

**RESPONSE:** Although ORR is aware of anecdotal reports on delays for payment, to the office's knowledge the issues reported by OIG are unusual. If medical providers report concerns to ORR, ORR works with PCU to ensure that payment is made expeditiously.

7. One of the recent HHS OIG reports focused on required background checks, and challenges in hiring, screening, and retaining employees. Specifically, HHS OIG found that ORR granted six facilities waivers from conducting child protective services checks, for employees with direct access to children. Why were these waivers were granted?

**Response:** OIG identified six care providers for which ORR waived child abuse and neglect checks (CA/N checks), also known as child protective services checks, at the time of their review. Four of the six care providers were licensed as behavioral health residential facilities by the state of Arizona, and the state did not require CA/N checks and, therefore, refused do to the background checks.

Two of the six facilities were influx care facilities (ICF): Homestead ICF in Florida and Tornillo ICF in Texas. The state residential licensing agency in Florida does not have jurisdiction to license an influx facility because it is operated on federal land. The applicable Florida statutes and regulations only allow access to the child abuse and neglect registry for licensed providers. Therefore, ORR and the contractor operating Homestead ICF were unable to run CA/N checks on Homestead employees. ORR's ICF provider in Texas was similarly denied access to child abuse and neglect registries based on similar restrictions in state law and regulations.

a. Do the waivers still exist? If not, when were they terminated?

**Response:** ORR rescinded all waivers to non-influx care providers for CA/N checks on May 23, 2019. ORR also notes that the Tornillo ICF closed in January of 2019, and Homestead ICF is on warm status with no direct care staff onsite. No children have been placed at Homestead since July 3, 2019.

b. Under what circumstances would ORR grant additional waivers in the future?

**Response:** Care providers must notify ORR's Prevention of Sexual Abuse Coordinator if they cannot complete required background investigation components. ORR provides technical assistance to ensure that all background investigation components are completed, rather than providing waivers to non-influx care providers. For example, when a non-influx care provider requested a waiver for an applicant pending a lengthy interstate CA/N check, ORR declined to provide the waiver.

If ORR operates an ICF in the future, and the facility is unable to conduct CA/N checks, ORR may use its regulatory authority to waive CA/N checks. ORR

regulations allow the ORR Director to waive or modify background check requirements for influx care facilities for good cause. (See 45 C.F.R. § 411.10(c)).

c. Has ORR or its grantees had any challenges with the states and/or the FBI with regards to completing the required background checks?
   i. If so, what are the challenges and which states are there issues with?

**Response:** ORR and our grantees have faced a number of challenges related to required background checks. As noted in the OIG report, records are state-specific and the check is performed by state officials. There is no central database of CA/N records and states can take anywhere from three weeks to three months to process CA/N checks. Additionally, interstate CA/N checks can be particularly challenging. Interstate CA/N checks are required for employees who moved from another state or territory within five years prior to employment with the care provider. Some states do not share information in their CA/N registry with other states. Some state officials experience delayed responses, or a lack of response, when they request information from other states. ACF is working to identify ways to facilitate the implementation of federally required CA/N checks by conducting outreach to state CA/N registry officials. Generally, ORR has not had challenges with the FBI in performing background checks for state licensed facilities.

8. One of the HHS OIG reports released in September focused on employee ratio issues, both for case managers and mental health clinicians. A chart in the report shows many facilities being out of ratio for these personnel. Given this was based on a sample of ORR facilities, how common is it across all of ORR's network for the staff to child ratios to exceed 1:12 for mental health clinicians and 1:8 for case managers respectively?

**RESPONSE:** ORR maintains one of the most robust clinician to child ratios of any child welfare program in the nation. Historically, ORR's clinical ratio was 1:25 for clinicians and 1:20 for case managers. The ratios set in more recent years were adjusted to better serve children and to help concentrate resources on release from custody. While ORR care providers occasionally may not meet clinical ratios as maintained in their cooperative agreements, ORR has been able to ensure that all children are receiving legally mandated services in a timely fashion in accordance with the FSA. The same is true for case management ratios. While maintaining such a high ratio may be difficult on a facility-by-facility basis, generally the provision of case management services to UAC follows all legally mandated requirements under the FSA.

   a. What happens when a facility is out of ratio? Is there risk of losing their license? Can they still care for children?

**RESPONSE:** ORR care provider requirements for case manager and clinician ratios far exceed those of state licensing requirements, and some states do not specify a specific number of clinicians for a residential facility. If a specific care provider does not maintain adequate clinical or case management ratios to such an extent that the care provider is at risk of not being able to meet FSA mandated service requirements, ORR may stop placement at the facility or reduce the bed capacity.

State licensing does address direct care staffing ratios (i.e., the direct supervision of children). ORR requires that care providers supervise children and youth in their facilities in accordance with these state licensing requirements. Additionally, ORR policy requires minimum supervision ratios. Direct care staff-to-children ratios must be maintained at a minimum of:

- One on-duty youth care worker for every eight children or youth during waking hours; and
- One on-duty youth care worker for every 16 children or youth during sleeping hours

(See ORR Policy Guide, section 4.4.1 Staffing Levels at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.4.1).

An inability to maintain the supervision ratio required by licensing would lead to disciplinary action by state licensing officials. Specific sanctions would vary by state, and the specific reason for being out of ratio. ORR's response would also vary depending on the nature of the concern but may lead to a stop in placements or a reduction in bed capacity.

**Committee on Energy and Commerce**
**Subcommittee on Oversight and Investigations**

**Hearing on**
**"Protecting Unaccompanied Children: The Ongoing Impacts of the Trump Administration's Cruel Policies"**

**September 19, 2019**

**Commander Jonathan White, United States Public Health Service Commissioned Corps, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services**

**The Honorable Ann Kuster (D-NH)**

1. According to the ORR Policy Manual the use of physical restraint for any child in custody must be "the least restrictive intervention that will be effective to protect the unaccompanied alien child and others from immediate physical harm."

    a. Do you keep statistics on the use of isolation and other physical restraints of children in care?

    **RESPONSE:** Generally, ORR care providers are required to report within four hours any safety measures, including the use of restraints or isolation, as a Significant Incident Report (SIR) to ORR, and other authorities as appropriate, which depending on the jurisdiction may include notification to state licensing or Child Protective Services (CPS). ORR tracks individual SIRs, and that each SIR is reported appropriately, within a child's case file, but does not maintain statistics on the use of isolation or physical restraints in a reportable format.

        i. If so, how frequently are these techniques employed?

    **RESPONSE:** Generally, incidents involving the use of restraints or isolation is low across ORR's shelter network. ORR care provider staff are trained in the use of de-escalation techniques in order to avoid situations where a child would require restraint or isolation. In situations where restraints or other measures are inappropriately used, ORR takes corrective action, as necessary.

    b. What recourse do children have to challenge the use of these restraints?

    **RESPONSE:** All ORR care providers are required to have a grievance policy that is explained to the child at intake into the facility. For additional information, please refer to ORR Policy Guide, section 3.2.2, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-

unaccompanied-section-3#3.2.2. Children may also report incidents of abuse to their attorney of record, legal service provider, and child advocate (if applicable), who in turn are able to challenge the use of restraints.

2. How do you currently track the administration of psychotropic medications to children in custody?

   **RESPONSE:** All medication, including psychotropic and over-the-counter, must be logged in accordance with state licensing requirements and ORR policy. For more information on medication management, see ORR Policy Guide, section 3.4.4 Medication Administration and Management, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.4.4. For record keeping requirements, see section 5.6.2 Maintaining Case Files, available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.6.2.

3. On what legal authority does ORR or its contracted providers, authorize the use of psychotropic medications without parental or patient consent?

   **RESPONSE:** ORR is the recognized legal custodian of UAC in HHS custody by authority delegated by Congress under 8 U.S.C. 1232(b). Psychotropic medication is prescribed by a physician, not by ORR staff.

4. Is there any independent review or oversight of non-consensual administration of psychotropic medication to children in ORR's custody?

   **RESPONSE:** ORR policy allows the use of chemical restraints in emergency safety situations in accordance with state law and licensing requirements. Most states prohibit the use of chemical restraints for children. See ORR Policy Guide, section 3.3.15 Use of Restraints or Seclusion in Emergency Safety Situations in Residential Treatment Centers (RTCs), available at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.3.15

**The Honorable Joseph P. Kennedy III (D-MA)**

1. Is there a system in place today to track family separations and why was there not one in place when this policy was implemented?

   **RESPONSE:** Since June 2018, ORR has implemented processes and procedures to facilitate identification of children who are referred to ORR by DHS subsequent to separation from parents. These processes and procedures include both a data field added to the referral screen in the UAC Portal case record system to identify separated children at referral from DHS, as well as guidance and procedures for ORR care providers to identify children as having been separated in the course of providing care.

   There was no automated data system in place when the Zero Tolerance Policy and pre-Zero Tolerance Policy pilot project was implemented because HHS was not formally notified that

the Zero Tolerance Policy would be implemented, and ORR staff were informed by their leadership that there would not be family separation. Moreover, prior to the preliminary injunction in *Ms. L v. U.S. Immigration & Customs Enf't ("ICE"),* 3:18-cv-00428 (S.D. Cal. 2018), issued on June 26, 2018, ORR and its grantee care providers did not have a mechanism to reunify children with parents in ICE custody and were required by statute to identify qualified family member sponsors who were not detained to provide care to the child. Instead, before the *Ms. L.* injunction, ORR tracked the care of individual children on an individualized basis through the ORR portal. Before the *Ms. L* injunction, the individual case files for individual children on the ORR portal contain information about the history of the child, including indicia of separation.

a. When this policy was implemented, were there clear standards put in place for CBP officers to determine what merited the separation of a family or was it merely guess work caused by an ill-advised policy?

**RESPONSE:** HHS has no role in immigration enforcement and did not separate any children from their parents. HHS defers to CBP to answer questions about standards and procedures in place for CBP agents.

**The Honorable Brett Guthrie (R-KY)**

1. Based on your experience working at ORR, is there a need to examine, and possibly amend, the TVPRA with respect to the definition of a UAC so that in addition to parents and legal guardians, children are not separated by DHS from other family members, such as a grandparent or adult sibling?

**RESPONSE:** HHS does not have a formal position on amending the TVPRA to treat other family members as parents and legal guardians.

a. Based on your experience at ORR, would you have any concerns or foresee possible unintended consequences of amending that definition?

**RESPONSE:** Parental relationship may be more readily verified by consular-verified birth certificates or in some cases by DNA confirmation of biological maternity or paternity. Appropriate policies, procedures, and resources to verify relationship of other kinds of close relatives would need to be developed to ensure child safety.

b. Is there a need to further specify when a child can or cannot be separated for cause? For example, specifying what past criminal convictions pose a danger to the child and/or what communicable diseases would warrant a temporary separation?

**RESPONSE:** HHS does not have a formal position on legislation to specify when a child can or cannot be separated for cause. However, we would note that if Congress were to define in statute the conditions under which a child may be separated for cause, then litigation and other disputes about separations might be reduced.

2. Given you were the point person at HHS for the reunification effort of those included in the *Ms. L* class, are there any issues that ORR faced during the reunification process with respect to interagency coordination and communication that are still unresolved? If so, please describe them.

    a. Is there anything that Congress can do to help resolve those issues?

    **RESPONSE:** I am not aware of interagency coordination and communication issues that are still unresolved for the reunification effort.

**Committee on Energy and Commerce**
**Subcommittee on Oversight and Investigations**

**Hearing on**
**"Protecting Unaccompanied Children: The Ongoing Impacts of the Trump Administration's Cruel Policies"**

**September 19, 2019**

**Mr. John R. Modlin**
**Acting Deputy Chief, Law Enforcement Operational Programs,**
**Law Enforcement Operations Directorate,**
**U.S. Border Patrol, U.S. Customs and Border Protection,**
**U.S. Department of Homeland Security**

**The Honorable Brett Guthrie (R-KY):**

1. Under the TVPRA, except in exceptional circumstances, unaccompanied children must be transferred to ORR within 72 hours of determining a child is an unaccompanied child. CBP and ORR appear to have a difference of opinion regarding when the clock starts on the 72-hour limit. What is CBP's view is on when that 72-hour clock starts?

   Does Congress need to more clearly define how much time each agency has for their respective role in the process? If so, what is CBP's suggestion on what those allotted times should be for each agency?

**RESPONSE:** In accordance with the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), the 72 hour clock begins when the minor is determined to be an unaccompanied alien child as defined in the Homeland Security Act of 2002. The TVPRA reads, "Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child." As an example, if a minor is determined to be an unaccompanied alien child (UAC) at the time of apprehension, then the 72-hour clock would begin at that time.

As a matter of policy, CBP processes all juveniles expeditiously and gives priority to the processing of juveniles over all other aliens in custody except those requiring immediate or special attention. By processing all juveniles expeditiously, CBP attempts to accelerate the transfer of custody of juveniles to ORR. However, CBP is completely reliant on ORR operational capabilities to transfer custody to ORR.

2. Is there a need to examine, and possibly amend, the TVPRA with respect to the definition of a UAC so that in addition to parents and legal guardians, children are not separated by DHS from other family members, such as a grandparent or adult sibling?

   Does DHS have any concerns or possible unintended consequences of amending that definition?

Is there a need to further specify when a child can or cannot be separated for cause? For example, specifying what past criminal convictions pose a danger to the child and/or what communicable diseases would warrant a temporary separation?

**RESPONSE:** CBP currently adheres to the preliminary injunction in the *Ms. L v ICE* case which provides the circumstances under which a parent/legal guardian can be separated from a child. When making the decision as to whether separation may be appropriate at the time of encounter, USBP considers the severity of the parent's criminal history. As outlined in CBP's June 27, 2018 *Interim Guidance on Preliminary Injunction in Ms. L v. ICE* (CBP's *Interim Guidance)*, separation may occur when the parent/legal guardian has a domestic conviction for a felony or violent misdemeanor (such as assault, battery, or hit and run).

When CBP encounters an alien family unit (consisting of either one or two parents/legal guardians and minor children), CBP will not separate the child from either parent/legal guardian unless the specific criteria provided in CBP's *Interim Guidance* are met. With the appropriate approvals, CBP officers can separate where a parent/legal guardian is being referred for a felony prosecution, the parent/legal guardian presents a danger to the child, the parent/legal guardian has a criminal conviction(s) for felonies or violent misdemeanors, or the parent/legal guardian has a communicable disease. Situations where CBP encounters fraudulent claims of parental/legal guardianship are processed under current policies consistent with TVPRA and should be well-documented to support such claims. Additionally, CBP will not separate two-parent families unless both adults meet the criteria to require separation from the child(ren).

The decision of whether separation is warranted is based on the information available to CBP at the time of encounter. To ascertain whether an alien has a criminal history in the United States, CBP conducts a biographic search of the National Crime Information Center (NCIC) Interstate Identification Index (III) through the TECS system. Additionally, CBP conducts a biometric search of the FBI Next Generation Identification (NGI) system. Based on what has been reported to both NCIC/III and IAFIS, CBP will determine whether the criminal history rises to a level which would warrant a separation of a parent from a child under CBP's *Interim Guidance*.

CBP guidance issued for compliance with the *Ms. L v. ICE* injunction issued on June 27, 2018, states in part, "Any questions on what constitutes a violent misdemeanor or felony should be directed to the local Office of Chief Counsel."

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