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6 PROTECTING UNACCOMPANIED CHILDREN:

7 THE ONGOING IMPACTS OF THE TRUMP

8 ADMINISTRATION'S CRUEL POLICIES

9 THURSDAY, SEPTEMBER 19, 2019

10 House of Representatives

11 Subcommittee on Oversight and Investigations

12 Committee on Energy and Commerce

13 Washington, D.C.

14

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17 The subcommittee met, pursuant to call, at 10:00 a.m., in

18 Room 2123 Rayburn House Office Building, Hon. Diana DeGette

19 [chairwoman of the subcommittee] presiding.

20 Members present: Representatives DeGette, Schakowsky,

21 Kennedy, Ruiz, Kuster, Castor, Clarke, Peters, Pallone (ex

22 officio), Guthrie, Burgess, McKinley, Griffith, Brooks, Mullin,

23 Duncan, and Walden (ex officio).

24 Staff present: Kevin Barstow, Chief Oversight Counsel; Billy

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1 Benjamin, Systems Administrator; Jeff Carroll, Staff Director;
2 Manmeet Dhindsa, Counsel; Waverly Gordon, Deputy Chief Counsel;
3 Tiffany Guarascio, Deputy Staff Director; Zach Kahan, Outreach
4 and Member Service Coordinator; Chris Knauer, Oversight Staff
5 Director; Jourdan Lewis, Policy Analyst; Kevin McAloon,
6 Professional Staff Member; Meghan Mullon, Staff Assistant; Alivia
7 Roberts, Press Assistant; Tim Robinson, Chief Counsel; Benjamin
8 Tabor, Staff Assistant; Rebecca Tomilchik, Staff Assistant; C.J.
9 Young, Press Secretary; Jennifer Barblan, Minority Chief Counsel,
10 O&I; Mike Bloomquist, Minority Staff Director; Adam Buckalew,
11 Minority Director of Coalitions and Deputy Chief Counsel, Health;
12 Margaret Tucker Fogarty, Minority Staff Assistant; Brittany
13 Havens, Minority Professional Staff, O&I; Peter Kielty, Minority
14 General Counsel; and James Paluskiewicz, Minority Chief Counsel,
15 Health.

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

6 The purpose of today's hearing is to examine the Trump
7 administration's care for unaccompanied children in government
8 custody and the impact of administration policies on the health
9 and well-being of children. The chair now recognizes herself
10 for an opening statement.

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

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

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1 We also heard from experts about how separating their
2 children from their parents can cause a host of mental and physical
3 health problems. We feared about the long-term traumatic
4 consequences these children would endure for the rest of their
5 lives. It appears now that we have proof that these fears have
6 come true. A new report from the HHS Office of Inspector General
7 is the first government accounting that details the emotional
8 psychological toll of separation of children from their parents.

9 And we just got this report this week.

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

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

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

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1 country.

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

12 To help alleviate that crisis, ORR eventually stood up an
13 emergency influx facility in Carrizo Springs, Texas, but just
14 as quickly as it got stood up, it got shut down. As the operator
15 of the facility said, "It was much too late." This episode raises
16 important questions about how ORR and CBP are coordinating as
17 they see trends shifting on the ground so that these kids are
18 properly cared for. That ~~'is~~ is the most important thing.

19 We are only beginning to appreciate the carnage that was
20 unleashed by the administration last year, and it appears that
21 unfortunately some have not learned their lesson as we see
22 policies coming from this administration that fails to treat these
23 children with dignity and respect every day. So today is an
24 opportunity to have an accounting of the fallout from these

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1 policies and to hear what is being done to ensure that no child,
2 no child is ever neglected again in the custody of this government.

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

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

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1 So I hope the administration and HHS in particular will show
2 good faith cooperation with Congress and the stonewalling and
3 air all the facts to let the American people see for themselves.

4 And Ranking Member Guthrie and I both agree that documents should
5 be produced. I have talked to the administration several times
6 and asked for narrow categories of documents to be produced and
7 they have not been produced. We once again repeat this demand.

8 And with that I yield back and I recognize the ranking member
9 for his opening statement for 5 minutes.

10 Mr. Guthrie. Thank you. Thank you, Chair DeGette, for
11 holding this hearing. The committee's oversight over the care
12 and treatment of the unaccompanied alien children by the
13 Department of Health and Human Services as well as the sponsorship
14 process for unaccompanied children extends back to 2014 with the
15 first major influx of children and family units coming across
16 our southern border.

17 This influx overwhelmed the previous administration and
18 resulted in children being placed with traffickers within the
19 United States. Because of the work done by this committee and
20 others, reforms were made to the Office of Refugee Resettlement
21 program including improving the medical care available to
22 children while in HHS care and custody. And I believe our member
23 of the committee, Dr. Burgess, was instrumental in that -- well,
24 I know he was and I believe he was.

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

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

20 As highlighted in several Inspector General reports from
21 both DHS and HHS, capacity and resources at CBP and ORR facilities
22 were strained well beyond their limits. The increased number
23 of immigrants including unaccompanied children resulted in
24 overcrowding at CBP facilities as well as ORR facilities being

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1 at or near capacity. Among other problems, these capacity issues
2 caused prolonged detention at CBP facilities that exceeded the
3 72-hour limit under the Flores settlement.

4 Immigration trends are hard, if not impossible, to
5 accurately predict. But influx numbers like the ones we saw in
6 2014 and again this year are examples of why it is critical to
7 ensure that ORR has a capacity model that enables the agency and
8 its grantees to acclimate and be in a position to accept and care
9 for the unpredictable number of children that ebb and flow by
10 the day, let alone month or year. Whether it is bed
11 capacity, challenges with hiring and retaining personnel, or
12 ensuring that grantee staff are appropriately screened and
13 trained before being hired or being allowed to interact with
14 minors, all of these components are critical to ensuring that
15 these children are cared for in the best available and safest
16 way possible.

17 It is not just HHS and ORR though, this process from
18 apprehension all the way to the placement of a child with a safe
19 and appropriate sponsor crosses multiple departments and agencies
20 within the federal government which includes nongovernment
21 entities such as ORR grantees. As a result, it is crucial to
22 understand how CBP and HHS work together regarding their
23 respective capacities, processing referrals, healthcare needs,
24 background checks of potential sponsors and more. Ensuring that

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

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

14 I thank our witnesses for being here today and being part
15 of this important discussion. I thank the chair for holding this
16 and I yield back.

17 Ms. DeGette. The chair will now recognize the chairman of
18 the full committee, Mr. Pallone, for 5 minutes for purposes of
19 an opening statement.

20 The Chairman. Thank you, Madam. I guess I have to talk
21 louder. Is that working? Thank you, Madam Chair.

22 Today we are continuing our ongoing oversight of one of the
23 most shameful actions of the Trump administration. Last year,
24 this administration forcibly separated thousands of innocent

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1 children from their families leading to widespread chaos and
2 untold harm to these children. Experts sounded the alarm about
3 what this would do to the children and some of HHS's own career
4 staff voiced concern at another oversight hearing on this issue
5 earlier this year.

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

13 Children were angry and confused because they believed their
14 parents had left them. They isolated themselves, refused to eat.

15 One separated child suffered such mental distress that he
16 required emergency psychiatric care. These findings sound like
17 they come from a dystopian novel, not a government report in 2019.

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

22 In addition to the family separation issue, there are
23 lingering issues relating to planning and ongoing care for
24 children in U.S. custody. For example, I want to understand how

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1 HH --

2 [Audio malfunction in hearing room.]

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

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

21 Recently, the Departments of Homeland Security and Health
22 and Human Services issued a final regulation that essentially
23 dismantles well-established protections for unaccompanied
24 children known as the Flores Settlement. The regulation states

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1 that children will be treated, and I quote, with dignity, respect,
2 and special concern for their particular vulnerability, unquote.

3 But, frankly, after the way we have seen this administration's
4 approach to these populations, this promise lacks any
5 credibility. We are not here today to attack the men and women
6 who are doing their best to support the missions of these agencies,
7 but the leaders of these departments have deliberately
8 implemented policies that are not in the best interest of these
9 vulnerable children and that is not acceptable.

10 There are many issues we intend to explore at this hearing,
11 but we should not lose sight of the fact that everything comes
12 down to one thing. What is the Trump administration doing to
13 make sure these children are properly cared for, and that should
14 be at the forefront of our minds. We need answers to that question
15 from the administration and we are going to continue to hold the
16 administration accountable to make significant improvements.
17 So I look forward to hearing from the witnesses on how they are
18 prioritizing these kids, and I would like to yield the last minute
19 I have to the gentleman from Massachusetts, Mr. Kennedy.

20 Mr. Kennedy. Thank you, Mr. Chairman.

21 "Every heartbeat hurts." "I can't feel my heart." "Child
22 was under the delusion that his father had been killed and believed
23 that he would also be killed." These are the words included in
24 an Inspector General report released earlier this month which

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1 tell the sickening story of this administration's family
2 separation policy. Kids fleeing unimaginable violence and
3 poverty and destitution arriving at our border to claim asylum
4 and experiencing trauma in our nation's name.

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

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

14 The Chairman. And I yield back, Madam Chair.

15 Ms. DeGette. The gentleman yields back. The chair now
16 recognizes the ranking member of the full committee, Mr. Walden,
17 for 5 minutes for purposes of an opening statement.

18 Mr. Walden. Thank you, Chair DeGette, and thanks for
19 holding this hearing. I want to thank our panel of witnesses.

20 Some of you have been here before. We are appreciative of the
21 work you and your teams are doing. We know it is a tough job.

22 We look forward to continuing to work with you. As Republican
23 Leader Guthrie stated, this committee has conducted oversight
24 of the Office of Refugee Resettlement and Unaccompanied Alien

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1 Children programs since 2014. We saw a lot of problems in the
2 Obama administration and mistakes that were made there and have
3 tried to learn from those and not repeat them.

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

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

18 Earlier this summer, overwhelming numbers of migrants
19 crossed the southwest border. This border crisis more than taxed
20 the resources of every agency involved at each point in the process
21 and that includes CBP and ORR. So I wanted to see for myself
22 again how CBP was handling this new surge of people at our
23 southwest border, so I visited the CBP facility in Yuma, Arizona.

24 By the time I had arrived in Yuma, Congress had finally, finally

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1 acceded to the President's request for emergency funding, which
2 I supported -- I was the only one in the Oregon delegation to
3 do so -- and Yuma had a temporary processing facility in addition
4 to the regular station.

5 But just weeks before, the facility had been overwhelmed,
6 at one point holding more than 1,600 migrants including UACs.

7 CBP agents I met with, they answered every single question I
8 had and they talked to me about the difficulties they face. They
9 also showed me every part of the facility, even the storage rooms
10 which were filled with fresh diapers and clothing and food and
11 other supplies.

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

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

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1 also medical, educational, and counseling services.

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

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

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

24 I hope that HHS and CBP will also update us today on how

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1 they are using the funds provided by Congress earlier this year
2 in the emergency supplemental, which the President requested and
3 I supported, and how each agency is preparing for a likely increase
4 in migrants in the coming months. We know there would be a drop
5 off in the extremely hot times in the summer, but we also know
6 there will be a pick up. While immigration numbers are difficult
7 to predict, there are patterns and we must learn from this summer's
8 crisis.

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

15 Ms. DeGette. The gentleman yields back. The chair now asks
16 unanimous consent that the members' written opening statements
17 be made part of the record. Without objection, so ordered.

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

23 Mr. Jonathan Hayes, Director, Office of Refugee
24 Resettlement, Administration for Children and Families, U.S.

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1 Department of Health and Human Services.

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

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

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

11 But I do want to thank each one of you for appearing today.

12 It is important that we hear all of your testimony. And I am
13 sure all of you are aware, this committee takes hearings, it is
14 an investigative hearing and so we have the practice of taking
15 testimony under oath. Does anyone have an objection to
16 testifying under oath?

17 Let the record reflect that the witnesses have responded
18 no.

19 The chair then advises you that under the rules of the House
20 and the rules of the committee, you are entitled to be accompanied
21 by counsel. Does anybody wish to be accompanied by counsel today?

22 Let the record reflect the witnesses have responded no.

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

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1 [Witnesses sworn.]

2 Ms. DeGette. Let the record reflect that the witnesses have
3 responded affirmatively, and you may be seated. You are all now
4 under oath and subject to the penalties set forth under Title
5 18, Section 1001 of the United States Code.

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

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

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1 TESTIMONY OF ANN MAXWELL, ASSISTANT INSPECTOR GENERAL FOR
2 EVALUATION AND INSPECTIONS, OFFICE OF EVALUATION AND INSPECTIONS,
3 OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF HEALTH AND HUMAN
4 SERVICES; JONATHAN HAYES, DIRECTOR, OFFICE OF REFUGEE
5 RESETTLEMENT, ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S.
6 DEPARTMENT OF HEALTH AND HUMAN SERVICES; COMMANDER JONATHAN
7 WHITE, UNITED STATES PUBLIC HEALTH SERVICE COMMISSIONED CORPS,
8 U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND, JOHN R. MODLIN,
9 ACTING DEPUTY CHIEF OF LAW ENFORCEMENT OPERATIONAL PROGRAMS, LAW
10 ENFORCEMENT OPERATIONS DIRECTORATE, U.S. BORDER PATROL, U.S.
11 CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND
12 SECURITY

13
14 TESTIMONY OF ANN MAXWELL

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

22 These facilities serve migrant children who arrive in the
23 U.S. on their own or who are separated from their parents by
24 immigration officials. These children have often experienced

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1 intense trauma before coming into ORR care, which is why prompt
2 medical health treatment is not only required by ORR but is
3 essential for children's well-being. My testimony reflects what
4 we heard firsthand from facility staff across the country about
5 the obstacles they face.

6 We were told that there a number of systemic challenges that
7 make it difficult for staff to address the mental health needs
8 of children. These include the ability to employ and support
9 clinical staff. Mental health clinicians reported heavy
10 caseloads. They also asked for more training and support to treat
11 traumatized children. In addition, staff faced difficulties
12 accessing specialty care such as psychologists and psychiatrists
13 to treat children with greater needs. In one example, the only
14 bilingual specialist a facility could find was located in another
15 state. Finally, staff reported a lack of therapeutic placement
16 options within ORR's network equipped to treat children who needed
17 a higher level of care. This was especially acute for children
18 who needed secure therapeutic settings due to their history of
19 behavioral problems.

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

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1 according to facility staff were exacerbated by policy changes
2 made in 2018. In the spring of 2018, the Department of Homeland
3 Security formally adopted the zero-tolerance policy of criminally
4 prosecuting all adults for illegal entry and placing their
5 children in ORR facilities. Facilities reported that
6 addressing the needs of children who have been separated from
7 their parents unexpectedly was particularly challenging because
8 these children exhibited more fear, feelings of abandonment, and
9 post-traumatic stress than did children who were not separated.

10 One medical doctor told us separated children would present
11 physical symptoms as manifestations of their psychological pain.

12 These children would say their chest hurt even though there was
13 medically nothing wrong with them. One child said, "Every
14 heartbeat hurts."

15 These children didn't understand why they were separated.

16 As a result, some were angry, believing their parents had
17 abandoned them. Others were anxious, concerned for their
18 parents' safety. And as we've heard, one 8-year-old boy
19 separated from his father was under the delusion that his father
20 had been killed and that he was next, and he required emergency
21 psychiatric care.

22 Caring for separated children was additionally challenging
23 because they were often younger than the teenagers the facilities
24 were used to serving. Staff reported that younger children had

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1 shorter attention spans, needed greater supervision, and were
2 more commonly exhibited defiance and other negative behaviors.

3 They couldn't always accurately communicate. The little ones,
4 as one program director said, don't know how to express what they
5 are feeling.

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

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

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1 demands.

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

5 [The prepared testimony of Ms. Maxwell follows:]

6

7 *****INSERT 1*****

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1 Ms. DeGette. Thank you so much, Ms. Maxwell.

2 The chair now recognizes Mr. Hayes for 5 minutes for purposes
3 of an opening statement.

4

5 TESTIMONY OF JONATHAN HAYES

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

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

20 I have visited over 50 UAC care providers over the last year
21 so that I can see firsthand the quality of care that the ORR staff
22 and grantees provide to the UAC. I also heard the perspectives
23 and input from our field team which allowed me to better understand
24 ways to improve our services and overall mission. My strong

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1 desire is to ensure the safety and well-being of the children
2 in our care in a manner that is consistent with both the law and
3 the prevailing child welfare best practices and one that empowers
4 the career professionals and senior staff at ORR.

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

12 I apologize.

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

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1 care.

2 To that end, based on the provisions of the Homeland Security
3 Act, the Trafficking Victim Protection Reauthorization Act of
4 2008, and the provisions of the Flores Settlement Agreement, HHS
5 has built a network of dedicated care providers, developed rules
6 and standards for care for those providers, and created mechanisms
7 of oversight to ensure compliance.

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

17 The number of UAC entering the United States during this
18 fiscal year has risen to levels we have never seen before. As
19 of September 16th of this year, DHS has referred more than 67,000
20 UAC to us at ORR, which is the highest number in the program's
21 history. By comparison, HHS received just over 59,000 referrals
22 in fiscal year 2016, which is the second highest number on record.

23 ORR operates nearly 170 state-licensed care provider facilities
24 and programs in 23 states. ORR has different types of facilities

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1 in order to meet the different needs of the minors in our care.

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

9 Care provider staff are trained to identify children who
10 have been smuggled and/or trafficked into the United States.
11 Care providers must provide services that are sensitive to the
12 age, culture, and native language of each child. ORR provides
13 a wide range of medical services to the children in our care.

14 These services include a complete medical examination, routine
15 medical and dental care, and emergency health services.

16 Mental health services are available at all of our
17 facilities. ORR policy requires at a minimum that the UAC and
18 ORR state-licensed facilities receive an individual counseling
19 session and two group counseling sessions with a clinician every
20 week. Additional mental health services are available as needed.

21 I believe that a child should not remain in ORR care any longer
22 than the time needed to find an appropriate sponsor. A central
23 part of ORR's mission is to discharge children from care as quickly
24 as possible while ensuring their safety.

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

8 Again, my top priority of that of me and my team is the safety
9 and well-being of the children in the temporary care of HHS as
10 we work quickly and safely to release them to a suitable sponsor.

11 Thank you for the opportunity to discuss our important work.

12 I'll be happy to answer questions that you may have.

13 [The prepared testimony of Mr. Hayes follows:]

14

15 *****INSERT 2*****

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1 Ms. DeGette. Thank you so much, Mr. Hayes.

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

4

5 TESTIMONY OF JONATHAN WHITE

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

16 Shortly after the Ms. L court issued its orders, Secretary
17 Azar directed HHS and the Incident Management Team, which I led
18 in particular, to take all reasonable actions to comply. The
19 IMT worked closely with Department of Homeland Security including
20 CBP and our colleagues at ICE to try to identify all parents of
21 children in ORR care who potentially met the court's criteria
22 for class membership. And as a result, the current reporting
23 of possible children of potential Ms. L class members to the Ms.
24 L court is 2,814 children. To be clear, that count of 2,814

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1 children does not include children who had already been discharged
2 by ORR before June 26th, 2018, nor does it include separated
3 children referred to ORR care after that date.

4 Working in close partnership with colleagues in ICE, DOJ,
5 and the Department of State, we first worked to reunify children
6 and parents in ICE custody. This was an unprecedented effort.

7 It required a novel process which we developed and which the
8 court approved. And under the compressed schedule required by
9 court order of 15 days for children under the age of 5, and 30
10 days for children age 5 to 17, we reunified 1,441 children with
11 parents in ICE custody, all of the children of eligible and
12 available Ms. L class members who are in ICE custody.

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

24 Of the 2,814 children reported to the Ms. L court, as of

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1 September 6th, 2,787 have been discharged from ORR care. We
2 reunified 2,168 of them with the parent from whom they were
3 separated, another 619 children have left ORR care through other
4 appropriate discharges. There are 12 children still in ORR care
5 whose parents are outside the U.S. and have waived reunification.

6 There are four children in care who we later determined hadn't
7 been separated.

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

17 As of April 25th of this year, the court also approved our
18 plan to identify those children who had been separated from DHS
19 starting on July 1st, 2017, referred to ORR, but had already been
20 discharged pursuant to the TVPRA process before June 26, 2018.

21 Teams of U.S. Public Health Service Commissioned Corps officers
22 reporting to me have completed manual review of the UAC portal,
23 the UAC program's official record, case file review for every
24 child whose referral and discharge dates fell in that range.

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1 We resolve to err on the side of inclusiveness in identifying
2 any potential preliminary indication of separation.

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

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

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

20 [The prepared testimony of Mr. White follows:]

21

22 *****INSERT 3*****

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1 Ms. DeGette. Thank you so much, Commander White.

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

4

5 TESTIMONY OF JOHN MODLIN

6 Mr. Modlin. Thank you, Chair DeGette, Ranking Member
7 Guthrie, and members of the subcommittee. I'm honored to
8 represent the men and women of the Border Patrol before you today.

9 The phenomenon of unaccompanied alien children or UACs crossing
10 our border illegally is relatively new in the 95-year history
11 of the Border Patrol. In an unprecedented surge in fiscal year
12 2014, Border Patrol encountered more than 68,000 UACs along the
13 southwest border. With just a few weeks remaining in this fiscal
14 year, we have already surpassed 74,000.

15 This year's record-setting UAC numbers did not happen in
16 a vacuum. At the same time, Border Patrol apprehended more than
17 289,000 single adults and 465,000 individuals and family units,
18 surpassing total southwest border apprehensions for every year
19 since 2007. This volume and mix of demographics overwhelmed
20 Border Patrol capabilities like nothing we have ever seen.

21 UAC is a term defined in law and any child who's apprehended
22 without a parent or legal guardian is processed by Border Patrol
23 as a UAC. Additionally, Congress has assigned HHS as the lead
24 agency to provide care and custody for UACs until sponsors can

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1 be identified. Therefore, while Border Patrol is the first to
2 encounter UACs when they cross the border, our role is limited.

3 Beginning when agents apprehend a UAC in the field, we provide
4 transportation to a Border Patrol station, conduct initial
5 processing to prepare an immigration file and a referral to HHS,
6 and arrange transfer to HHS once placement is confirmed.

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

18 On May 1st, HHS asked Congress for 2.8 billion in emergency
19 supplemental funding because they could not maintain the level
20 of shelter space needed. They announced they would be cutting
21 services to prioritize remaining funds for basic care. Also in
22 May, Border Patrol saw the highest month of UAC apprehensions
23 in our history. Combined, Border Patrol's rapid increase in
24 apprehensions and HHS's funding challenges resulted in UACs

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1 remaining in our custody far longer than they should. By early
2 June, this backup led to as many as 2,700 UACs in Border Patrol
3 custody. Additional resources didn't arrive until early July
4 after Congress passed the supplemental. Now, with HHS fully
5 funded and apprehensions on the decline, we are down to only 100
6 to 200 UACs in our custody and we're generally transferring them
7 to HHS within 24 to 30 hours.

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

17 All of what I've described speaks only to the treatment and
18 care of children once they are in our custody of the U.S. During
19 interviews, agents are often told horror stories from the journey.

20 Border Patrol sees the cruelty of smugglers firsthand. Agents
21 have rescued more than 550 children so far this year. We need
22 to focus more on how to discourage parents from sending their
23 children on this dangerous journey.

24 The unique treatment of UACs under our laws, particularly

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

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

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

23 [The prepared testimony of Mr. Modlin follows:]

24

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1 Ms. DeGette. Thank you so much, Chief Modlin, and thanks
2 to the entire panel for your testimony. The chair now recognizes
3 herself for purposes of questioning for 5 minutes.

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

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

14 Ms. Maxwell. That's correct.

15 Ms. DeGette. And you also found that the children who --
16 -- you found children who believed their parents who abandoned
17 them were angry and confused. Some children expressed feelings
18 of fear or guilt and even became concerned for their parents'
19 welfare and some children expressed acute grief that caused them
20 to cry inconsolably; is that correct?

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

23 Ms. DeGette. Now one program director told you that and
24 several of us talked about it, a 7- or 8-year-old boy who was

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1 separated from his father without any explanation was under the
2 delusion that his father had been killed and he also thought that
3 he would be killed. The child had to receive emergency
4 psychiatric care to address his mental health needs; is that
5 correct?

6 Ms. Maxwell. Yes, that's what we heard.

7 Ms. DeGette. And one medical director told you how physical
8 symptoms felt by separated children are manifestations of how
9 other psychological pain, and separated children would often say
10 their chest hurt when in fact they were actually medically fine.

11 And they said, as Congressman Kennedy said, they said, "Every
12 heartbeat hurts," and, "I can't feel my heart;" is that correct?

13 Ms. Maxwell. Again that is what we heard from the staff
14 that treated the children, yes.

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

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

24 Mr. White. The findings in HHS OIG's report are absolutely

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1 consistent with what all the best available evidence and science
2 would tell us that we should anticipate when children experience
3 the traumatic event of separation from parents. Unfortunately,
4 we have extensive scientific research that would allow us to know
5 what we would expect to see. The consequence of this for the
6 child's health and behavioral health are severe. The risks are
7 profound and the effects are often lifelong.

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

13 Mr. White. The prognosis for each child will be very
14 different.

15 Ms. DeGette. Obviously.

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

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1 strictly for cause.

2 Ms. DeGette. Thank you.

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

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

11 Mr. Modlin. Sure. I'm a little unclear on the question.

12 Is the question about the guidance given at the separation or
13 whatever's the coordination between CBP and HHS?

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

20 And what I am just wondering is because of the different
21 agencies that we have got if CBP didn't get guidance from ORR
22 about the standards that you have to have for children. So my
23 time has expired, but I will ask you more about that later. I
24 will now recognize the ranking member, Mr. Guthrie, for 5 minutes.

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1 Mr. Guthrie. Thank you, Madam Chair, for the recognition
2 and I will start.

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

10 Mr. White. Respectfully, Congressman, I'll defer to Mr.
11 Hayes --

12 Mr. Guthrie. Okay.

13 Mr. White. -- since he currently directs ORR and I don't
14 work there anymore.

15 Mr. Hayes. Thank you, Commander.

16 Yes, Congressman. We do have a specific team now inside
17 of the Office of Refugee Resettlement with both Public Health
18 Service officers that are inside of ORR as well as career, senior
19 career officials that track very closely the number of separations
20 that we have since June 27th after the court injunction last year.

21 These are separations for cause. We get updates every couple
22 of weeks and we do have a very close monitoring of this. And,
23 you know, there are questions that our intakes team will go back
24 and forth with at times with CBP to get additional information,

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1 but the information we are receiving from CBP is allowing us to
2 keep a close track of this record and we are.

3 Mr. Guthrie. Thank you. And do you -- so, Director Hayes
4 as well, do you believe there is a need for Congress to clarify
5 when it is and isn't okay to separate a child? Are ORR's sponsors
6 evaluation policies and procedures an appropriate guide for CBP
7 agents to determine when to separate a child, and would these
8 same policies and procedures be a good guide for legislation to
9 clarify the issue?

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

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

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

21 Mr. Guthrie. My understanding under the zero-tolerance
22 policy that was legal to do in the law. That was zero tolerance
23 was we were enforcing the law without prosecutorial discretion
24 so Congress could clarify that you can't separate a child from

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1 a parent or legal guardian if the infraction is merely an
2 immigration violation.

3 Mr. Modlin. Yes, sir.

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

7 Mr. Modlin. Yes, sir. As I'm sure you're aware that the
8 zero-tolerance prosecution initiative was to prosecute everyone
9 that crossed the border illegally for a violation of 8 U.S.C.
10 1325.

11 Mr. Guthrie. Right.

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

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

22 Mr. Modlin. So what I would first like to say, sir, is that
23 the men and women of the Border Patrol are professional and
24 compassionate. We follow the guidelines that are set forth in

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1 our TEDS policy that's been spoken about many times in these
2 hearings, the Flores litigation, TVPRA, PREA. In addition to
3 that, at the height of this crisis our communication with HHS
4 as I'm sure you're aware is always difficult. As a law
5 enforcement agency communicating with a non-law enforcement
6 agency our systems can't speak directly to each other for many
7 reasons, that being one of them.

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

13 Mr. Guthrie. This may be more for Director Hayes. But,
14 Chief Modlin, because you brought it up, Congress spent I guess
15 from sometime early -- I don't know the exact dates -- early May
16 to right before the 4th of July break, the administration begging
17 for a supplemental funding bill because of the crisis at the
18 border. You said that you have had relief, Chief Modlin, because
19 of the supplemental. We wasted about 2 months arguing for I don't
20 know what about getting a bill to the floor to help you out.
21 So how has that improved? What issues did that cause and how
22 has that improved since you have had it passed? And Congress
23 has been late getting it to you.

24 Mr. Modlin. Yes, sir, Congressman. So what you say is correct.

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1 There was a delay in getting us the additional supplemental
2 funding that we requested. I don't remember the exact timeline,
3 but there was a period where we entered into a deficiency.

4 Mr. Guthrie. At least 6 weeks.

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

15 Mr. Guthrie. Thanks. My time has expired --

16 Mr. Modlin. Yeah.

17 Mr. Guthrie. -- and I yield back. Thank you.

18 Ms. DeGette. The chair now recognizes the gentleman from
19 Massachusetts, Mr. Kennedy, for 5 minutes.

20 Mr. Kennedy. Thank you, Madam Chair.

21 Chief Modlin, just to begin with you, you said that there
22 was challenges getting your systems, because you are a law
23 enforcement agency, to interact with HHS; is that right?

24 Mr. Modlin. Yes, sir.

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1 Mr. Kennedy. Do your systems include a telephone?

2 Mr. Modlin. I'm sorry?

3 Mr. Kennedy. Do your systems include a telephone?

4 Mr. Modlin. Yes, telephones are used to contact that
5 agency, sir. What cannot --

6 Mr. Kennedy. And how about email?

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

11 Mr. Kennedy. Understood, sir. But that could be perhaps
12 a telephone call saying, hey, we have a crisis. This needs to
13 stop. This needs to change. Did those conversations happen?

14 Mr. Modlin. Absolutely, sir. They happen between the
15 agency. They happen from our leadership to Congress. They
16 happen from our leadership to the press. Absolutely, those
17 conversations took place, sir.

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

21 Ms. Maxwell, I would like to talk to you more about the impact
22 of the 2018 family separation policy on ORR's ability to care
23 for children in their custody. Your report found that ORR care
24 providers found it particularly challenging to provide

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1 age-appropriate mental health services for the very young and
2 the many very young children it had to care for because of the
3 forced separation policy by this administration. Ms. Maxwell,
4 is that correct?

5 Ms. Maxwell. That's correct, what we heard.

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

11 Ms. Maxwell. That's correct.

12 Mr. Kennedy. In fact, your report notes that "faced with
13 a sudden and dramatic increase in young children, staff reported
14 feeling challenged to care for children who presented different
15 needs from the teenagers that they typically served;" is that
16 correct?

17 Ms. Maxwell. Indeed, it is.

18 Mr. Kennedy. Ms. Maxwell, briefly, what were some of those
19 challenges?

20 Ms. Maxwell. Well, I think there's two things to keep in
21 mind when we think about the increase in the younger children
22 in ORR population. The first as you mentioned is the dramatic
23 increase. We were looking at over 164 percent increase from April
24 to May of the 6- to 12-year-olds, and 80 percent from April to

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1 May for the 0 to 5. So just the dramatic and sudden increase
2 was a challenge in and of itself.

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

9 Mr. Kennedy. And, Ms. Maxwell, you -- to quote you on --
10 excuse me. You quoted an ORR program director in your report
11 who said, "A 7- or 8-year-old boy was separated from his father
12 without any explanation as to why the separation occurred. The
13 child was under the delusion that his father had been killed and
14 believed that he would also be killed. This child ultimately
15 required emergency psychiatric care to address his mental health
16 distress."

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

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

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

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

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

22 Mr. Kennedy. Commander, if I remember your testimony from
23 your prior appearance here, you indicated that -- did you get
24 advanced notice of a family separation policy before you started

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1 seeing an increase in separated children?

2 Mr. White. We did not receive any notice of a policy prior
3 to its announcement on television. Discussions --

4 Mr. Kennedy. Which was after the policy was in place?

5 Mr. White. Correct. Discussions of possible future policy
6 options which would include separation began in February of 2017.

7 We began to observe significant, or essentially a tenfold
8 increase in separation over historic norms beginning in July of
9 2017.

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

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

17 Mr. Kennedy. Yield back.

18 Ms. DeGette. Commander, just to clarify, during those
19 conversations about a potential separation policy in 2017, you
20 continually raised the red flag that this would be detrimental
21 to the children; isn't that correct?

22 Mr. White. My consistent recommendation and that of the
23 entire ORR career team was that separation of children from family
24 units and their designation as UAC would pose an unacceptable

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1 danger to the child and, moreover, would pose a set of capacity
2 problems that would overwhelm the program operationally.

3 Ms. DeGette. Thank you. The chair now recognizes the
4 ranking member of the full committee, Mr. Walden, for 5 minutes.

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

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

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

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

22 Mr. Walden. And I know you would. That is because I know
23 the work you have done on Cures in a bipartisan way and on CREATES
24 and other things. And this doesn't have to be this way. We have

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1 a great tradition of working together. We have a lot of good
2 brains on both sides of the committee. This is a common issue
3 we need to tackle like this one is, and so I am deeply disappointed.

4 We will maybe get one witness next Wednesday and no time to
5 prepare, no view of the legislative text. Thank you.

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

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

22 Another agent told me about an ongoing prosecution where
23 children were paired with adults -- and this is important for
24 our committee to hear -- paired with adults multiple times, same

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1 kids multiple times, to create false family units. And after
2 the purported family unit entered the United States, was
3 apprehended and released, the child was sent back out of the
4 country and made the journey over again.

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

13 Mr. Modlin. Absolutely. Thank you, sir, for the question.

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

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1 speak of.

2 Mr. Walden. Six thousand one hundred individuals?

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

8 Mr. Walden. You said ICE investigates these claims?

9 Mr. Modlin. ICE HSI. Yes, sir.

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

15 But 6,100, so how often are we seeing this recycling of the
16 same kids where they are being abused and used and sent back and
17 then they --

18 Mr. Modlin. So it's a daily occurrence, sir. What I would
19 say to your earlier comment is that without the abilities of ICE
20 to then further investigate these claims and find where the kids
21 are being recycled as you're talking about, where it is the
22 children are being used as nothing more than a commodity in this,
23 and this of course goes to the interior of the country to locations
24 where the cartels and these TCOs are using these kids over and

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1 over. ICE is critical for that. Without ICE, we would never
2 be able to investigate and then prosecute those people.

3 Mr. Walden. All right, my time has expired. Thank you,
4 Madam Chair.

5 Ms. DeGette. The chair now recognizes the gentleman from
6 California, Mr. Ruiz, for 5 minutes.

7 Mr. Ruiz. Thank you very much. As a father and a physician
8 with training in humanitarian aid, I am outraged not only by the
9 inhumane family separation policies that derive from the
10 zero-tolerance policies, but the conditions that affect the
11 mental health of migrant children while in the custody of our
12 federal government. We have been talking and sounding the alarm
13 before this report came out about toxic stress and how those
14 extreme conditions without an infant's, a toddler's, a child's
15 ability to be consoled by their parent aggravates this and will
16 have permanent damage not only to their ability to relate to
17 others, but also in a physical form with diabetes, cardiac
18 problems, and other ailments, and that is no condition that we
19 want any child of ours or any of our neighbors to experience.

20 And so, let me get to some specific scenarios.

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

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

5 Mr. Ruiz. An extreme lack of sleep can even lead to
6 hallucinations.

7 Mr. White. Certainly.

8 Mr. Ruiz. And other psychoses, correct?

9 Mr. White. Certainly.

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

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

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

23 So let me ask you, Chief Modlin, is it a policy to keep a
24 room at that freezing temperature? Is it a policy intentionally

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1 that you are keeping the lights 24/7? Is it a policy that you
2 do routine spontaneous checks to wake up children who are laying
3 on a crowded floor in close quarters, is it a policy from CBP?
4 Is it intentional?

5 Mr. Modlin. Doctor, I'm unaware of any freezing rooms.
6 I can tell you --

7 Mr. Ruiz. I have been there. I have felt them in New Mexico
8 and I have heard reports from Yuma and El Centro.

9 Mr. Modlin. Doctor, what I can tell you is that --

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

13 Mr. Modlin. Temperature is in accordance with the Flores
14 Settlement, sir.

15 Mr. Ruiz. Okay. Well, they are 56 degrees Fahrenheit and
16 they are freezing. Is it a policy to keep the lights on all night
17 and interrupt their sleep?

18 Mr. Modlin. Lights being on, sir, are a result of PREA,
19 the Prison Rape Act to avoid --

20 Mr. Ruiz. Okay, so you need legislative changes to fix that
21 or can that be done administratively for the best interest of
22 the children? Because the conditions right now that they are
23 experiencing is promulgating and causing more harm to these
24 children. Let me move on to another question.

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

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

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

13 Mr. Hayes. So, sir, you are referencing the efforts that
14 were underway right now with the --

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

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

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

7 Mr. Ruiz. I don't care where they are at.

8 Mr. Hayes. May I answer the question?

9 Mr. Ruiz. As long as they are not large warehouse
10 facilities.

11 Mr. Hayes. May I answer the question, Chairwoman?

12 Okay. We're -- I just want to be crystal clear for this
13 committee. We are looking to expand our permanent state license
14 network and the cities that you mentioned in your area as well
15 as across the country we are looking to find small to medium-sized
16 shelters that will be state licensed by the respective states
17 and towns we reside in.

18 Mr. Ruiz. Yes, but housing them in intentionally 17 years
19 --

20 Ms. DeGette. The gentleman's time has expired.

21 Mr. Ruiz. -- is not in the best interest of the children.

22 Ms. DeGette. The gentleman's time has expired. The chair
23 now recognizes Mr. Burgess for 5 minutes.

24 Mr. Burgess. Thank you.

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

7 Mr. Hayes. That is correct, sir. And I just want to
8 clarify. We are seeking to increase our foster care network.

9 We are seeking to increase specialty-type shelters. We are
10 seeking to increase state-licensed permanent network and in order
11 to timely accept these children when referred to us from DHS,
12 we absolutely need the flexibility in both large, special and
13 -- I'm sorry, not large -- small, medium, and specialty-type
14 shelters in order to timely receive these children. That is our
15 goal.

16 Mr. Burgess. Right, because you have got to relieve the
17 burden, the bottleneck that is occurring in Customs and Border
18 Protection. They are not set up for the long-term, anything
19 longer than the very, very acute care of a child during the time
20 that the processing occurs that Congress has determined that
21 Customs and Border Protection shall provide. Now there is
22 some talk about maybe we don't need a law that prevents someone
23 from coming into this country without authorization. I suppose
24 that is a discussion that we are going to have during a

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1 presidential election year. But until Congress changes the law,
2 Chief, you have got to follow the law, right?

3 Mr. Modlin. Yes, absolutely, Congressman.

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

12 Mr. Modlin. Yes, sir.

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

16 Mr. Modlin. Yes, sir. If I could, in fact when the crisis
17 was ramping up, we were expending our operational funds on those
18 consumables, on diapers, on food, all those things that we were
19 not prepared to deal with. And I believe it was your statement
20 earlier about unclear on the time between the request and the
21 appropriation, that was 57 days, 57 days at the height of this
22 crisis that our agents were bringing in diapers from home. They
23 were buying toys for these children. They were bringing clothes
24 to give to these children. That's what the compassionate and

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1 professional men and women of the U.S. Border Patrol did on their
2 own while we were waiting for action so that the capacity at HHS
3 and further upstream could open up so that we could release all
4 these subjects from our custody and get them to where they need
5 to be.

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

11 At the station that I guess is called Ursula in Mission,
12 Texas, I was there right at the end of May when you were at the
13 height of the influx and Mr. Hayes was unable to take the number
14 of people that you had prepared to send them, and it was tough.

15 I mean it was tough sledding. It was hard on your men and women
16 who work in Customs and Border Protection. Most of them have
17 children themselves.

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

23 I do just want to reference one thing. And, Commander White,
24 I respect the fact that there is a difference between a child

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1 who has to go through acute separation, but I will tell you in
2 2014 visiting the Weslaco station down at the lower Rio Grande
3 Valley sector and the time that the surge of unaccompanied minors
4 was at one of its heights and seeing the young boys that I saw
5 sitting on cement benches, they weren't punching each other.
6 They weren't pulling each other's hair. They were sitting,
7 staring straight ahead.

8 Now these were not children who had been there for a while.

9 These were children who had just arrived that day. And it told
10 me that the trauma that they endured on the trip up to the United
11 States had to have been significant. They looked like victims
12 of child abuse. I think that there is significant danger to
13 children in making that journey.

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

18 And we need to do it, you can't do it.

19 Ms. DeGette. The gentleman's time is expired.

20 Mr. Burgess. It can't be done administratively.

21 I yield back.

22 Ms. DeGette. The chair now recognizes the gentlelady from
23 New Hampshire, Ms. Kuster, for 5 minutes.

24 Ms. Kuster. Thank you very much. And I too have been to

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

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

16 But in July of this year, NBC reported allegations of
17 physical and sexual abuse at the hands of CBP officers. Now,
18 Chief Modlin, you have standards for the prevention, detection,
19 and response to sexual assault and in confinement, and that
20 requires CBP to publish annual reports on the effectiveness of
21 your own sexual assault prevention strategies. But I am
22 wondering why that report has not been filed. It is now 11 months
23 after the end of the fiscal year 2018 and CBP has failed to publish
24 that report.

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

6 Ms. Kuster. Because that report is well overdue to
7 Congress. And I think the actions reflect the priorities and
8 the concerns and combating sexual violence is a priority of mine
9 and I think one that we need to take very seriously. So I reviewed
10 CBP's most recently published report and found in fiscal year
11 2017 seven allegations of sexual abuse. If you could take back
12 as well to the people in the CBP, there are now 23 complaints
13 of sexual abuse in fiscal year 2018 and we want to make sure that
14 that is thoroughly investigated and reported.

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

19 Ms. Kuster. So switching gears to Director Hayes, what is
20 the criteria for determining which out-of-network facilities are
21 used and what is the oversight for these facilities? And in
22 particular we had a network shelter, Rolling Hills Hospital in
23 Oklahoma. In May of 2017 there were serious safety violations
24 including a neglect and abuse by the staff at the facility, January

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1 of 2018, resulting in a patient being left with a fractured
2 vertebra, broken foot, and bruising all over the body.

3 So two questions, what is the criteria for choosing the
4 facilities and what is the oversight?

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

12 Ms. Kuster. And what is the oversight for monitoring the
13 out-of-network facilities?

14 Mr. Hayes. So, I don't have specifics on some of the
15 out-of-network, but I do know that we have a very, because I am
16 not specifically familiar with this facility you're referencing,
17 but we have a very robust monitoring program that includes both
18 monitoring from our headquarters in D.C., onsite monitoring
19 unannounced, as well as week-long monitoring visits. I think
20 what you're referencing is probably where a medical professional
21 has referred a child for out-of-network care because the needs
22 of that child either mental health or medical help cannot be met
23 inside our shelter or particular community. And, honestly, I
24 would not speculate why a medical professional chose that

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1 particular facility. I'm sure there are a lot of subjective
2 reasons from a medical perspective and I would not want to speak
3 for the medical person that made that situation.

4 Ms. Kuster. Okay, switching gears again, Commander White,
5 thank you. You are an American hero. You tried to issue an alarm
6 when you learned that children were being separated from their
7 parents. What we need to focus in on is that apparently that
8 alarm was not heard and I want to understand specifically where
9 and how. Secretary Azar said that he did not know that children
10 were being separated. And I want to understand, if you could,
11 and very briefly I will ask the indulgence of the chair because
12 the committee staff would like to understand what happened with
13 your warning and why wasn't it heard?

14 Mr. White. So, I can only speak to the conversations that
15 I was in. I elevated my concerns and those of my entire team
16 to three levels above me in the hierarchy. That would be to my
17 immediate supervisor, then director of ORR, Scott Lloyd; to his
18 supervisor, my agency head, then acting assistant secretary for
19 the Administration for Children and Families Steven Wagner; and
20 to his managerial POC on the team in the immediate Office of the
21 Secretary that was Maggie Wynne, the counselor for Human Services
22 to the secretary. So I elevated these concerns as high as it
23 was possible for me to reach. I really couldn't speak to what
24 conversations occurred other than those that I was in myself.

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

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

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

17 Ms. Maxwell?

18 Ms. Maxwell. As the Inspector General for HHS, our focus
19 is solely on HHS's mission which is the Unaccompanied Alien
20 Children, so --

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

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

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1 Mr. McKinley. Okay, you ducked it.

2 Mr. Hayes?

3 Mr. Hayes. Yes, Congressman. There's absolutely a crisis
4 at the southern border.

5 Mr. McKinley. White?

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

8 Mr. McKinley. Thank you.

9 Chief?

10 Mr. Modlin. Yes, sir. A border security and a humanitarian
11 crisis at the border.

12 Mr. McKinley. Well, but yet part of what we are fighting
13 here in Washington, that is what shows this, the unfortunate
14 divide on this is that we have other folks that don't agree with
15 you, that there has not been. It is all a fabricated story.
16 This was an article that came out in July. It said that this
17 was a manufactured crisis, and even Steny Hoyer went on to say
18 that there is no crisis; there has not been a crisis at the border.

19 The quotes all through this, it is a made-up crisis. It does
20 not exist at the border. It is a fake crisis, doesn't exist.

21 That is a lie. It couldn't be further from the truth. There
22 is no crisis in arrivals, they are fiction. I could on and on
23 with people saying there is no -- so it is no wonder we have had
24 this problem dealing with because people won't accept the reality

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1 of what is happening down there by trying to cover up for it.

2 So if I could, and then we have a problem with the reluctance
3 of people, communities to talk about taking care of these
4 unaccompanied minors. That the funding for -- here is an article
5 that came out in late July. The Democrats call for closures of
6 shelters for unaccompanied minors. Not the separated,
7 unaccompanied. They want to close those facilities. I think
8 we have to be -- then we go to the third, which is where the
9 unaccompanied minors could go to other communities where they
10 could be housed. But then you just came out in August, Washington
11 D.C. says, not here. We are not going to house unaccompanied
12 minors in Washington, D.C. So this whole issue of one after
13 another, it concerns me about where we are going, because if we
14 don't expand the shelters what are we supposed to do? What are
15 you telling this committee? What are we supposed to do if we
16 are not going to expand the shelters and we are not going to build
17 and occupy facilities around the country? What are we supposed
18 to do, turn these children loose? Is that what it is? Can
19 someone give me some direction as to what we are supposed to do?

20 If we can't build them and they can't put them in a different
21 community, what are we supposed to do? Because -- I see
22 some hesitation on your part. Because the problem that could
23 go to if these kids aren't in a controlled environment in either
24 Washington, D.C. or wherever else that we have heard some of the

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1 other communities in Texas, what kind of medical and psychological
2 care will these kids get if they are not in our control somehow?

3 Will they get it by just drifting on the streets? I need to
4 see it. I am from West Virginia. I don't see this thing on an
5 everyday basis. So tell me, what happens if we don't put these
6 children in a shelter where do they go? Unaccompanied minors.

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

16 Mr. McKinley. And, Mr. Hayes, you are not getting the
17 support to expand the facilities and we are not getting
18 communities willing to accept them. So my question, I understand
19 the policy, but how do we make it work if no one is helping?

20 Mr. Hayes. Yeah. So the same ask I made yesterday of the
21 Labor H Committee. I would appreciate help and support from
22 Members of Congress in helping educate the communities across
23 this nation, especially here in our own backyard in D.C. and
24 Northern Virginia, as to the critical role and child welfare

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1 mission that ORR has and that the majority of the children in
2 our care are indeed unaccompanied and by statute are required
3 to come into our care and custody as we work to safely find them
4 a sponsor while there are immigration proceedings.

5 Ms. DeGette. Thank you.

6 Mr. McKinley. Thank you.

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

10 Ms. DeGette. The gentleman's time has expired. The chair
11 now recognizes the gentlelady from New York, Ms. Clarke, for 5
12 minutes.

13 Ms. Clarke. I thank you, Madam Chairwoman and our Ranking
14 Member Guthrie.

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

24 Mr. Hayes. Yes, Congresswoman, we are. We've issued two

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1 clarifications this calendar year, one in January and again in
2 March, and I believe the OIG referenced that in their report
3 clarifying to our grantees the requirements for background checks
4 and investigations of staff prior to coming on board to help care
5 for these children.

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

8 Mr. Hayes. Right, so we're continuing to follow up on that.

9 And again, you know, to the conversation --

10 Ms. Clarke. How?

11 Mr. Hayes. -- I had with Ms. Kuster we continue --

12 Ms. Clarke. How is that being done?

13 Mr. Hayes. Yeah, we continue to do monitoring. We are
14 increasing our monitoring team. And again we do monitoring both
15 here from D.C., desk monitoring, we do onsite unannounced
16 monitoring of our grantees as well as week-long, very in-depth
17 monitoring. We will continue this.

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

24 Do you believe self-certifications are an adequate

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1 replacement for background checks in ensuring the health and
2 safety of children?

3 Mr. Hayes. I would not support self-certification. And
4 I'll just point out you're referencing the CAN checks, Child Abuse
5 and Neglect checks. And I think the OIG report also acknowledged
6 that that is a challenge across the entire nation in regards to
7 certain facilities and the access that states and federal
8 government have to that.

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

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

20 Ms. Clarke. So there is no self-certification?

21 Mr. Hayes. Not that I'm aware of.

22 Ms. Clarke. Okay.

23 Ms. Maxwell, the OIG report indicates that the hirings that
24 are over half of the ORR facilities are facing challenges in hiring

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1 and retaining employees including mental health clinicians and
2 youth care workers. These reports point to hiring issues such
3 as difficulties finding bilingual and qualified candidates,
4 retention issues due to salaries, hours, and competing jobs
5 opportunities. And your report indicates that these hirings and
6 retention challenges can affect facilities' ability to meet ORR's
7 required staffing ratios.

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

10 Ms. Maxwell. Thank you for that question. You are right.

11 We looked at the facilities' compliance with the clinical ratios
12 and found about 15 facilities were unable to meet the clinical
13 ratios required by ORR in certain periods of time. And what we
14 heard from the clinicians is that this results in large caseloads,
15 and large caseloads certainly mean that they have challenges
16 providing care that they would like to provide to all the children
17 underneath their supervision.

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

22 Ms. Maxwell. We make recommendations that ORR support the
23 facilities in overcoming the challenges to hiring clinical
24 professionals, screening them, as well as retaining them. And

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1 we also make recommendations that they think about the possibility
2 of implementing maximum caseloads for these clinicians.

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

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

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

10 Ms. Clarke. With background checks?

11 Mr. Hayes. I'm sorry. What, ma'am?

12 Ms. Clarke. You say you want to put interns into these
13 facilities.

14 Mr. Hayes. No, working with colleges to identify interns
15 that are working through the clinical field of education in order
16 to educate them at what we do at ORR so that they might after
17 post-graduate come and serve as at ORR, because again there's
18 a national shortage of clinical professionals. Obviously, any
19 -- again, I want to reiterate, any potential staff person that
20 would have access to the unaccompanied alien children is expected
21 to have undergone an FBI background check.

22 Ms. DeGette. The gentlelady's time has expired. The chair
23 recognizes the gentleman from Virginia --

24 Ms. Clarke. I yield back, Madam Chair.

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1 Ms. DeGette. -- Mr. Griffith, for 5 minutes.

2 Mr. Griffith. Thank you, Madam Chair.

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

4 Mr. Hayes. Yes, sir. Thank you, Congressman. I just want
5 to add we're also working with additional funding for continuing
6 for continuing education to our licensed clinician as a retention
7 strategy. We're working to expand our presence at job fairs.

8 We've partnered with the National Child Traumatic Stress Network
9 to develop a webinar series on trauma in UAC. And in April of
10 this year, we also hired a board-certified adolescent adult
11 psychiatrist in the division of health for unaccompanied children
12 inside ORR.

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

17 Mr. Griffith. Continuing with you, Mr. Hayes, you know,
18 we understand migration patterns are unpredictable. You
19 previously testified that you are trying to expand your permanent
20 bed capacity --

21 Mr. Hayes. Yes, sir.

22 Mr. Griffith. -- to account for some of these fluctuations
23 and the influx of unaccompanied children. You asked for some
24 flexibility. What kind of flexibility are you looking for and

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1 what do we need to do?

2 Mr. Hayes. So that's a great question, Congressman. I
3 think one of the key components that is often missed is that
4 whenever we want to have a state-licensed permanent shelter, the
5 final say in that shelter of going online and being able to accept
6 children does not lie with the federal government. It lies with
7 the state and local communities in which those shelters reside.

8 And so, you know, I can give a few examples where we've had
9 these smaller-sized shelters like Dr. Ruiz would like to see us
10 have, which we would like to have as well, but when, you know,
11 but when migration patterns are again extremely difficult, if
12 not impossible, to predict we have to have flexibility because
13 any HHS ORR shelter is a better environment for an unaccompanied
14 child than a Border Patrol station. I think all of us on the
15 dais today would agree with that. And so, because those migration
16 patterns are very difficult, if not impossible, to predict, we
17 need to be able to have the ability to turn on and turn off beds
18 as quick as possible so that we can get those children out of
19 the Border Patrol stations and into the care that we have.

20 And because I don't have the final say, and again your
21 colleague from West Virginia highlighted the struggles we have
22 in finding them right here in our own backyard in D.C. and Northern
23 Virginia, we want to have these shelters, but if we have reluctance
24 from the local and state officials in doing so I'm going to have

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1 to have flexibility with some larger or medium-sized shelters
2 that would be influx shelters run by the federal government.

3 Mr. Griffith. And Representative McKinley did raise the
4 issue about Washington, D.C. and you have now mentioned it a couple
5 of times. Are there other areas where communities are saying
6 no, we don't want to house those folks here?

7 Mr. Hayes. I know that we've received formal communication.
8 I think I would probably limit my response to formal
9 communication from D.C. and from the Northern Virginia area,
10 specifically the City of Alexandria and the County of Fairfax.

11 Mr. Griffith. All right. Now are you all -- are folks
12 having to apply to provide these shelters or are you all going
13 out and looking for existing institutions that already have some
14 expertise in this?

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

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

10 Mr. Griffith. I appreciate that.

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

20 We don't have time today to go into all that, but could you
21 give me some of those reports? Because even though I haven't
22 represented some of these kids in a long time, it is one of those
23 things that you worry about when you have done domestic relations
24 work is, you know, what are the long-term prospects for these

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1 kids? Can you give me some reports particularly on the -- the
2 emotional side I understand, but particularly on the cardiac or
3 other health besides emotional health, but physical health
4 issues?

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

18 Mr. Griffith. There you go. Thank you.

19 Ms. DeGette. The gentleman's time has expired. The chair
20 now recognizes the chair of the full committee, Mr. Pallone, for
21 5 minutes.

22 The Chairman. Thank you, Madam Chair. This past summer
23 we saw the disturbing reports of the conditions at a CBP facility
24 in Clint, Texas that held large numbers of unaccompanied children.

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1 Toddlers reportedly had to go without diapers, young children
2 had to look after infants, and visitors reported a stench from
3 the lack of showers and clean clothes. CBP officials will explain
4 that its facilities were never meant to house children and they
5 are supposed to be quickly transferred to ORR so that qualified
6 child welfare experts can provide appropriate care, but clearly
7 that broke down.

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

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

20 Mr. Hayes. Thank you, Congressman. So it is a true
21 statement that our capacity was strained operationally this last
22 spring in May and June specifically. Starting in January of this
23 year we did see an increase in referrals over the last calendar
24 year and HHS made a large number of efforts to increase our

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1 capacity as quick as we can. That's one of the flexibility
2 options that I referenced earlier in talking with your colleague
3 from Virginia that, you know, we do need to have that flexibility
4 and, you know, we operated as best we could again with the limited
5 capacity.

6 But I want to be clear that there wasn't a day that went
7 by that we did not both discharge hundreds of children and also
8 receive hundreds of children from CBP even during the times of
9 tight capacity in May and June.

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

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

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

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

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

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

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

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1 has no control over what comes into our custody.

2 The Chairman. Well, let me -- I know we are running out
3 time. But, you know, based on what you said that I know that
4 the CBP facilities were not intended to house children, but are
5 you going to take any steps to ensure that the children held in
6 the facilities are not faced with similar conditions in the
7 future, or again is the funding the problem? Is that what you
8 are saying?

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

13 The Chairman. Well, what about now and the future?

14 Mr. Modlin. I'm unaware of us falling short of any standards
15 now, sir. Since the supplemental funding we've had shower
16 facilities brought in. We've had washers and dryers brought in.

17 We've had wraparound services. We have a lot of things that
18 we needed during the crisis. What I would also point out is that
19 certainly this crisis is not over. We're still encountering
20 numbers greater than we ever have before. It's certainly down
21 from the May-June numbers, but I would just have everyone please
22 keep that in mind that this is certainly not over, sir.

23 The Chairman. All right, thank you. Thank you, Madam
24 Chair.

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1 Ms. DeGette. I thank the gentleman. The chair now
2 recognizes the gentlelady from Indiana, Mrs. Brooks, for 5
3 minutes.

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

11 Mr. Modlin. Yes, ma'am. We did.

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

15 Mr. Modlin. Yes, ma'am, 57 days actually.

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

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

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

24 Mrs. Brooks. And we didn't do anything for 57 days; is that

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1 right? And so what happened? What happened with CBP and ORR
2 during that period of time that we did nothing?

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

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

20 Mrs. Brooks. Thank you.

21 Mr. Hayes?

22 Mr. Hayes. So, Congresswoman, some of the nonessential
23 services in a very limited basis were affected at ORR.

24 Thankfully, not to a large level because we fund our grantees

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1 often for months out at a time and so the funding that happened
2 before we went into deficiency did not affect those operations,
3 but had it continued on it could have affected especially new
4 grantees coming on, providing legal services, recreation,
5 education, all things that we absolutely desire to provide for
6 these children and are required to under the Flores Settlement
7 Agreement.

8 Mrs. Brooks. Thank you.

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

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

22 Mr. Modlin. Yes, Congresswoman. What I would say is the
23 Border Patrol's absolutely opposed to vaccinations inside our
24 facilities. It is so far outside of our scope and mission that

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1 it's basically inconceivable to me to imagine that. We do not
2 want to do anything that would increase the time that these
3 vulnerable populations are in our facilities, whether that's by
4 an hour, whether that's by 2 or 3 days. Where all this
5 needs to take place is in the HHS facilities and facilities that
6 are further down the immigration line where the comprehensive
7 care and services can be coordinated. And the physicians at CBP
8 agree.

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

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

19 Mrs. Brooks. Thank you.

20 And, Madam Chairwoman, I would just like to share that I
21 have also visited the Texas border. I visited an ORR facility
22 in Bristow, Virginia. I visited a new service coming on board
23 in Indianapolis. And one of the things that I heard, which is
24 very troubling, is that part of the reason children are

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1 transported in the middle of the night, which people may not
2 realize they are being transported in the middle of the night,
3 it is because our citizens are attacking and chastising ICE and
4 CBP and others and ORR employees who are moving them and who are
5 trying to care for them.

6 Ms. DeGette. And I thank the gentlelady and her time has
7 expired.

8 Mrs. Brooks. Thank you. I yield back.

9 Ms. DeGette. I now recognize the gentlelady from Illinois,
10 Ms. Schakowsky, for 5 minutes.

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

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

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

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

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

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

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1 in about 30 days. Additionally, in March of this year we issued
2 a second operational directive that ended the fingerprinting of
3 moms and dads that were already here seeking to sponsor the
4 children -- these are not separations, these are moms and dads
5 that were already here -- unless there was a red flag during the
6 public records check, then we would do additional checking.

7 Ms. Schakowsky. Thank you.

8 Mr. Hayes. Yes, ma'am. So, yeah.

9 Ms. Schakowsky. Okay.

10 Ms. Maxwell, let me just say how appreciative I am of the
11 OIG report and I think it documents so many of the harmful effects
12 of the policies that we have. And what effects do longer length
13 of stays have on ORR facilities' ability to provide adequate
14 health and mental health care to children in custody?

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

24 Ms. Schakowsky. Thank you. What concerns and challenges

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1 did the clinicians and providers report with regard to treating
2 children in ORR care, especially those who had been separated
3 from their parents?

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

13 Ms. Schakowsky. And these are long-term effects, right?
14 Or can be long-term effects?

15 Ms. Maxwell. That is my understanding from research, yes.

16 Ms. Schakowsky. Thank you. I yield back.

17 Ms. DeGette. The chair now recognizes the gentleman from
18 South Carolina, Mr. Duncan, for 5 minutes.

19 Mr. Duncan. Thank you, Madam Chair. The Flores Settlement
20 was, I believe, in 1997, so at least for as far back as 1997 we
21 have had children apprehended at our southern border taken into
22 custody and ultimately released into the country. In 2011, we
23 saw the beginning, I believe, of the modern unaccompanied children
24 migration into this country. It spiked again in 2014. In fact,

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1 I remember having a conversation with President Obama at the
2 Summit of the Americas in Panama in April of 2015. I have a great
3 picture of it, he and I talking about this issue. And I surprised
4 him because I told him I probably agreed with their administration
5 more than some of my Republican colleagues about increased money
6 going to the Northern Triangle countries to take care of the
7 problem there. I remember that conversation vividly.

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

20 So when a child shows up at a CBP facility or apprehended
21 by officers out in the desert and that child is accompanied by
22 an adult, I think it is very important that our nation tries to
23 determine who that adult is and what situation that child might
24 be in. Now there are a lot of situations where family units come

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1 and the children are with their parents, but you don't know that
2 by looking at them after they have come across the desert with
3 dirt- and sweat-stained faces. It is important for the health
4 and well-being of that child for us to separate that child from
5 that adult and figure out whether that is their parent or whether
6 that is a coyote bringing them across the border or a trafficker
7 hoping to sell that child into some form of slavery.

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

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

23 Now the question I have for Mr. Hayes, how do we get DNA
24 testing in this so that we can more rapidly determine the familial

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1 relationship between that child and that adult they are with or
2 the lack thereof, so that we can prosecute that human trafficker?

3 But if they are related, how can we more rapidly reunite those
4 families?

5 Mr. Hayes. So, Congressman, thank you for that question.

6 ORR does not use DNA testing en masse. We did use it, and I
7 would defer to my colleague Commander White in some of the
8 reunification efforts that were, you know, under the
9 court-ordered deadline last summer. It was very different from
10 the normal ORR policies and procedures. I also think my
11 colleagues at CBP could address some of what they do on the spot.

12 I know I've had reports that that's happening and there's
13 increasing in that.

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

18 Madam Chair, I yield back.

19 Ms. DeGette. Thank you. The gentleman yields back. The
20 chair now recognizes the gentlelady from Florida, Ms. Castor,
21 for 5 minutes.

22 Ms. Castor. Well, thank you, Madam Chair. And thank you
23 for your efforts to shine a light on this, because this new report
24 chronicles the harm inflicted on children due to the cruel policy

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1 of family separation instituted by the Trump administration.
2 This report now confirms it with in a most sweeping fashion and
3 in the most sweeping fashion of any analysis done to date and
4 I want to thank the Office of Inspector General for doing this.

5 And the fact that these children are likely never to recover
6 from the pain and cruelty will be a stain on this administration
7 forever.

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

13 Ms. Maxwell. That is correct. That's what we heard.

14 Ms. Castor. And your report found that family separations
15 resulted in a whole new level of trauma inflicted on the children.

16 The report states that "according to program directors and mental
17 health clinicians, separated children exhibited more fear,
18 feelings of abandonment, and post-traumatic stress than did the
19 children who were not separated;" is that correct?

20 Ms. Maxwell. That is correct.

21 Ms. Castor. You also found that "separation from parents
22 and a hectic reunification process added to the trauma the
23 children had already experienced and put tremendous pressure on
24 the professionals in the facilities;" is that correct?

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1 Ms. Maxwell. Indeed it is, yes.

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

9 Is that accurate?

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

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

20 Ms. Maxwell. The Inspector General has a wide range of work
21 that we are doing looking at the health and safety of children
22 in the facilities. But in addition to that work we are exploring
23 the factors that challenge the Department as well as the
24 facilities in reunifying the children separated from their

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1 parents. And as part of that work that is upcoming, we are in
2 fact looking at the interagency communication prior to the
3 official adoption of the zero-tolerance policy.

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

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

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

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

18 Ms. Castor. Are you confident that that has been the case
19 or do you still have questions about that?

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

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

3 Ms. Maxwell. I would have to defer that question to the
4 Department.

5 Ms. Castor. Do you think they should?

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

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

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

20 And when I became permanent director earlier this year,
21 ma'am, and I think if you polled any of the career staff at ORR,
22 it was absolutely my desire to change the culture and how we
23 operate inside there. I absolutely, every single day undergo
24 best-practices discussions and rely heavily on the counsel of

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1 my senior career staff at ORR, both the child welfare experts
2 and the medical team, our policy team, and the operations team.
3 They're the experts.

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

7 Mr. Hayes. Okay. That would be with the Assistant
8 Secretary of Legislation and her team and it's my understanding
9 that the committee staff and her team are working on that.

10 Ms. DeGette. The gentlelady yields back. The chair now
11 recognizes the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

12 Mr. Mullin. Thank you, Madam Chair. And thank you for
13 everyone that is here. Obviously, you are doing the best job
14 you can underneath the conditions and I just want to tell you
15 thank you. I know it can be difficult and sometimes you can come
16 up here on the Hill and feel like you have been kicked around
17 a little bit, but I think everybody is passionate about it. It
18 doesn't matter what side of the aisle you are on we may look at
19 it a little bit different. But I do want to thank you for your
20 service. It means a lot to all of us.

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

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1 Mr. Hayes. Yes, sir. They did.

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

3 Mr. Hayes. No, sir. We do not.

4 Mr. Mullin. I thought Homestead in Florida was stood up.

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

7 Mr. Mullin. In 2015.

8 Mr. Hayes. Yeah, December, I believe.

9 Mr. Mullin. But it was still underneath the Obama
10 administration that it was stood up though.

11 Mr. Hayes. That is correct. In the last administration
12 the site and the provider was chosen at Homestead December 2015.

13 Mr. Mullin. And that was specifically in response to the
14 unaccompanied children in the surge of '14 to make sure --

15 Mr. Hayes. That is correct.

16 Mr. Mullin. Okay.

17 Mr. Hayes. It was brought on as an influx shelter,
18 Congressman.

19 Mr. Mullin. And just making sure I was clear on there.

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

23 Mr. White. So the determination as to whether a child is
24 accompanied by a parent or is unaccompanied is a DHS determination

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1 not an HHS determination, unfortunately.

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

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

15 Mr. Mullin. What was the reasoning behind the zero
16 tolerance?

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

19 Mr. Mullin. Well, what we were told was because of the
20 threat of human trafficking and the fact that what our Ranking
21 Member Walden has pointed out was that some of these children
22 are actually being recycled and we were seeing the same children,
23 that they were being trafficked too. And so that is why the zero
24 tolerance because we had to figure out -- and correct me if I

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1 am wrong here, Commander White. We had to figure out if they
2 were actually with family, because which is worse, keeping them
3 with a trafficker or making sure that they are with their family
4 so that we can make sure they are with a loved one. Because it
5 is not like they are coming across the line with a birth
6 certificate and proof that it is actually their child. How are
7 we supposed to know if we don't have genetics to test that they
8 are actually with them?

9 Mr. White. Congressman, these are two extremely important
10 but entirely separate issues.

11 Mr. Mullin. Not really, because --

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

14 Mr. Mullin. But how are we -- hold on, Commander White.

15 I am not trying to argue with you. I am trying to figure out
16 how else do you determine them? Are you just supposed to take
17 the individual's word for it? Because I know coyotes don't lie
18 and traffickers don't lie. I mean they always tell the truth
19 as soon as you get them. I mean, these are individuals that cross
20 the border illegally so they already broke the laws. So how is
21 it that we are supposed to do our due diligence on figuring out
22 if the individual is actually related to or is the parent of the
23 child?

24 Mr. White. That is done both by CBP for its part in the

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1 operation and by HHS.

2 Mr. Mullin. How else do you do that until you separate?

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

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

7 Mr. White. In those cases, DNA confirmation of biological
8 maternity are --

9 Mr. Mullin. In the meantime, do you separate or keep them
10 together?

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

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

17 Mr. White. You asked me if you were wrong, Congressman.

18 Mr. Mullin. You had specifically said about the zero
19 tolerance. That is what you have referred to multiple times.

20 What I am saying is what was the determination prior to the zero
21 determination to figure it out, and if that didn't exist what
22 do you do at that point? Because you are the one that has been
23 saying that you raised red flags and concerns about it. Well,
24 but at the same time, the Trump administration was raising red

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1 flags as concerns about keeping them with people that they can't
2 verify the individual is actually with them or not.

3 And then there is no such thing as forged documents. You
4 and I both know that -- hahaha. So what is the determination?

5 Because we know coyotes, we know the traffickers, the cartels
6 are not sophisticated enough to understand what our policies are
7 to start making false documentations to actually try pairing them
8 together. So what else are we supposed to do?

9 Ms. DeGette. The gentleman's time has expired, but I will
10 allow as I have with the other members on both sides who have
11 asked the questions, I will allow the witness to answer the
12 questions asked.

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

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1 a separate issue from family separation.

2 Ms. DeGette. I thank the witness. The chair now recognizes
3 the very patient gentlelady from California, Ms. Barragan, for
4 5 minutes.

5 Ms. Barragan. And I thank you, Madam Chair. First of all,
6 just to correct the record since we are talking about what
7 information we are going to get to determine who are adults in
8 this debate, first of all, you know, there have been allegations
9 that separations have been like the one happening under the Trump
10 administration have been happening for a long time under different
11 administrations. Prior administrations used prosecutorial
12 discretion. This administration, specifically Secretary Kelly,
13 came to Congress and said one of the reasons they were doing it
14 was to deter people. It was intentional to deter people and they
15 were going to get rid of using the prosecutorial discretion.
16 So I wanted to just correct that because there is so much false
17 information going around on that. Second of all, children have
18 not died until this current administration. Ms. Maxwell,
19 you testified earlier that children when they come over they have
20 already experienced some type of trauma prior to arrival; is that
21 correct?

22 Ms. Maxwell. That's correct.

23 Ms. Barragan. And would say that if you come here as a child
24 and you are separated from a parent that would cause further

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1 trauma?

2 Ms. Maxwell. That is what we heard from the clinicians in
3 the field.

4 Ms. Barragan. Okay. And would you say that if a child were
5 separated and experienced sexual abuse or assault that that would
6 lead to further trauma?

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

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

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

14 Ms. Barragan. Is it your opinion that if a child is sexually
15 abused they would be further traumatized?

16 Ms. Maxwell. Well, of course.

17 Ms. Barragan. Okay. Is it your opinion that if a child
18 was slapped around and dragged that they would suffer trauma from
19 that interaction?

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

24 Ms. Barragan. Right.

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1 And, Commander White, the Southwest Key location, those are
2 ORR custody; is that correct?

3 Mr. White. Correct.

4 Ms. Barragan. Okay.

5 Mr. White. And I'll defer to Mr. Hayes about the -- but
6 yes, Southwest Key is one of the large providers of ORR services
7 to children.

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

16 It is completely unacceptable.

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

23 Ms. Maxwell. Yes. That is my understanding.

24 Ms. Barragan. Right. So this bill would say that if a child

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1 suffers from mental health issues that they would get ongoing
2 coverage regardless of whether they are in custody or not. If
3 we are causing additional trauma to a child, I think that we have
4 the responsibility to provide services for these children. As
5 one of my colleagues on the other side of the aisle said, we should
6 treat these children like they are ours.

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

14 ORR career staff were sounding the alarm bells to HHS leaders
15 nearly a year before the administration's cruel zero-tolerance
16 policy was enacted. We obtained a July 2017 memo from HHS that
17 in the document binder, that is in the document binder that all
18 of you have. In that memo, nearly a year before family
19 separations began, Commander White warned of family separations
20 that were to be implemented. That is tab number 2 in the binder.

21 In September 2017, HHS staff again referred to a new DHS policy
22 to separate families -- that is binder document 6 -- and leaders
23 within HHS were also talking about family separation policies.

24 In November 2017, still well before the zero-tolerance

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1 policy was enacted, Eric Hargan, the then acting secretary who
2 now serves as deputy secretary, requested a briefing on family
3 separations, tab 10. We even have emails from Mr. Hayes'
4 predecessor, Scott Lloyd, the then director of ORR, who said that
5 ORR noticed CBP was separating families before zero tolerance
6 and ORR was tracking it. ORR and HHS leadership either saw this
7 coming or should have seen this coming and because HHS leadership
8 ignored these warnings, the worst fears were realized.

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

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

17 Ms. Barragan. Thank you, I yield back.

18 Ms. DeGette. The gentlelady's time has expired. The chair
19 now recognizes the gentleman from California, Mr. Cardenas, for
20 5 minutes.

21 Mr. Cardenas. Thank you very much, Madam Chairwoman and
22 colleagues, for having this incredibly important hearing on an
23 issue that affects human beings who are -- who have come to our
24 country in many, many, many cases to flee violence and in some

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1 cases almost certain death. And I hope and pray that we all learn
2 from this both as practitioners in the field and also as
3 policymakers as well as to what should be our path forward to
4 making sure that we respect not only the Constitution, but we
5 respect the human beings that are in our custody and in our care.

6 When it comes to traumatic consequences on children's mental
7 health and it is not just the HHS or OIG that has come to this
8 conclusion, it seems to be a universal understanding and belief
9 based on science and fact. That is why we have protections under
10 the Flores Settlement to prevent children from being indefinitely
11 detained. Despite those protections, the Trump administration
12 has issued a rule that would essentially dismantle Flores and
13 permit DHS to detain children and families beyond the current
14 20-day limitation. Ms. Maxwell, in the recently released
15 HHS OIG report your office notes, and I will quote, children with
16 longer stays experienced more stress, anxiety, and behavioral
17 issues. The report adds that "some children who did not initially
18 exhibit mental health or behavioral issues began reacting
19 negatively as their stays grew longer." Ms. Maxwell, based on
20 these findings, would you agree or disagree that an increased
21 length of detention can have detrimental effects on children?

22 Ms. Maxwell. Certainly as reflected in our report, we'd
23 show that the length of stay has a negative effect on children's
24 well-being. I'll just note that our focus was on ORR facilities,

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1 and the detention policy that you're referencing is for
2 immigration detention centers. So our report speaks only to once
3 they have already gone through the detention center into an ORR
4 facility.

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

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

15 Ms. Maxwell. I would just offer that the facilities that
16 ORR runs are state-licensed child welfare facilities that are
17 governed by Flores and provide a whole host of child-centric
18 services which are different than immigration detention centers
19 that have a different mission.

20 Mr. Cardenas. Okay.

21 Commander White, when you testified before the subcommittee
22 in February, you stated and I will quote, toxic stress has
23 consequences both for children's behavioral health and their
24 physical health, and those consequences are frequently lifelong.

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1 Commander White, is there any reason to doubt the decades of
2 research on the long-term traumatic effects on children who are
3 detained or, for example, or the U.N.'s position on the detention
4 of children?

5 Mr. White. The available scientific consensus of the
6 effects of a toxic stress particularly in the available literature
7 on children in detention I see no reason to question that
8 scientific consensus. It is well-established and supported by
9 evidence.

10 Mr. Cardenas. Okay. Should the stress inflicted on
11 children due to detention be a relevant consideration when
12 drafting rules related to child detainment?

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

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

23 Mr. Hayes. So, Congressman, thank you for the question.
24 So the role or the role that HHS played was very limited in regards

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1 to the overall rule. You know, it sought to codify, you know,
2 consistent with the Homeland Security Act and TVPRA rules and
3 regulations. We focused on our part. One of the examples, I
4 think, was kind of the movement of some of the hearings from the
5 Department of Justice over to the Department of Appeals Board,
6 which would be inside HHS, by independent hearing officers in
7 regards to certain discharges. But the overwhelming majority
8 of the Flores rule was DHS.

9 Mr. Cardenas. Okay. Thank you very much. My time has
10 expired. I will yield back.

11 Ms. DeGette. I thank the gentleman. The chair now yields
12 to the gentleman from Florida, Mr. Soto, 5 minutes for the purpose
13 of questioning.

14 Mr. Soto. Thank you, Madam Chair.

15 Director Hayes, I had sent you all a letter on September
16 10th regarding the proposed facility in central Florida. We
17 ended up finding out about this because a notice was sent to our
18 local government officials, but not to Members of Congress, folks
19 who have oversight over HHS, so I was really surprised about that
20 that I would find out through my local mayor rather than directly
21 from HHS.

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

24 Mr. Hayes. So to Ms. Maxwell's point, we don't have any

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1 detention facilities at HHS. Ours are child welfare centers that
2 are licensed by the respective state. And I'll just say,
3 Congressman, as we look to expand our permanent state-licensed
4 network we have a process at HHS where we do notify Members of
5 Congress, local officials, and if you were not notified, I
6 apologize on behalf of our Department.

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

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

24 Mr. Soto. What would be the age group of the refugees who

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1 would be housed there?

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

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

13 Mr. Hayes. Absolutely not, sir. HHS doesn't have any
14 authority to house adults. These would be -- when I say a
15 parenting teen --

16 Mr. Soto. So for children or for birthing, for women who
17 are pregnant and having children?

18 Mr. Hayes. Yeah, let me clarify that, sir. I apologize.

19 In that case we are talking about two unaccompanied alien
20 children. The mother herself is a child that is under the age
21 of 18 and is unaccompanied, and either the child that she has
22 with her or the child that she would deliver would also be a UAC.

23 So we would keep them together.

24 Mr. Soto. Well, I would be remiss if I didn't mention the

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1 strong opposition locally to putting a center there. I want to
2 turn also to Homestead next.

3 Mr. Hayes. Yes, sir.

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

8 Mr. Hayes. So that's a good question, Congressman. I
9 welcome the opportunity to expand on the article that I think
10 left out a lot of key facts and even misconstrued some things.

11 Number one, there have not been any children there since August
12 3rd. That is an accurate statement. Shortly thereafter, we did
13 reduce the number of staff and the supportable census from 2,700
14 down to 1,200.

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

22 Mr. Soto. We also had asked when that facility was at least
23 in part shuttered where the children who were staying there went.

24 Seventy percent, we were informed, were reunited, but we never

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1 got a response on where the rest of these children were sent to.

2 I am getting, to this date, requests from my constituents to
3 know the details of this because it happened in our state. And
4 again, a deeply unpopular program and a deeply unpopular center
5 because it is against a lot of our values in immigration.

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

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

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

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

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1 Mr. Soto. Thank you, and I yield back.

2 Mr. Hayes. Thank you, sir.

3 Ms. DeGette. The gentleman yields back. The chair now
4 recognizes the ranking member for any closing remarks he might
5 have.

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

8 Ms. DeGette. Well, you can do questions, whatever you want.

9 Mr. Guthrie. Okay.

10 Ms. DeGette. It is your time.

11 Mr. Guthrie. Well, I will just close. So it is important
12 that we do this and have oversight. And we know that there has
13 been issues at the border. There has been crisis at the border.

14 I know, and I know what my friend Mr. McKinley was talking about.
15 People were even on the floor of the House and there is not a
16 crisis at the border, and the media, not a crisis at the border,
17 and there was. And so, we need to do oversight. It is our job
18 as Members of Congress to make sure that things, that in our
19 jurisdiction we have the oversight to look to see, look forward
20 and wanting to see what was the problem, how do we solve the
21 problem, and how can Congress help solve the problem.

22 But the one thing that you want to see is that people are
23 trying to address the problem and not just let it linger until
24 Congress steps in and does something. And I think today hopefully

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1 people see that there is a big effort to make sure the problems
2 that have happened at the BP facilities, at getting them into
3 ORR, tracking -- or not tracking, but understanding the data
4 between the children is really being, is being addressed. So
5 I really appreciate that.

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

11 Mr. Modlin. Yes, sir, 57 days.

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

19 The appropriate chairman and folks, people on the
20 Appropriations Committee would say we know it is important and
21 we are going to do it, but not here, not here, not here. It kept
22 lingering to the point where a group of Republicans would hold
23 time on the floor every day in June to try to -- to do different
24 tactics to try to bring it to the attention. And it took to right

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1 before the break for 4th of July for us to get a bill to you say
2 has made a major difference at the border.

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

10 Ms. DeGette. I thank the gentleman.

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

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

14 Ms. DeGette. 24 years, and I want to thank you for your
15 service. And I also want you to communicate to your agents there
16 at the border and your employees that we really appreciate their
17 service too. And what you are saying, when you said they were
18 bringing diapers from home and, you know, they don't want to be
19 thrust into this anymore than anybody else does and it is the
20 same thing with the ORR personnel.

21 You know, when we had the family separation I went down and
22 I talked to some of those personnel and they were just doing their
23 best. These rank-and-file folks they are just doing their best
24 and I understand that. You know, some people have said, well,

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1 the Democrats don't understand that. They think that the Border
2 Patrol are cruel. We do not think that at all.

3 Mr. Modlin. Ma'am, if I could?

4 Ms. DeGette. Yes, go ahead.

5 Mr. Modlin. I will definitely bring that message back.

6 Ms. DeGette. Thank you.

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

9 Ms. DeGette. Right.

10 Mr. Modlin. What I can tell you is that more than 128 agents
11 have died in the line of duty --

12 Ms. DeGette. You bet.

13 Mr. Modlin. -- protecting this country. Some of those
14 agents have died, they've drowned while trying to rescue migrants
15 from the Rio Grande.

16 Ms. DeGette. You are right.

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

23 Ms. DeGette. For human rights.

24 Mr. Modlin. So I do appreciate your words.

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

6 Mr. Modlin. So there is certainly seasonal trends.

7 Ms. DeGette. Right.

8 Mr. Modlin. But these numbers have never been seen before.

9 Ms. DeGette. Right.

10 Mr. Modlin. This was not a seasonal trend.

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

19 So then we keep hearing this continual bashing about 57 days
20 for the emergency supplemental, but the fact is this has been
21 going on for a long time. And what we need to develop, I think
22 what HHS needs to develop and what Homeland Security needs to
23 develop is a policy that we can somehow deal with these surges
24 of children that come for whatever reason so that the human rights

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1 of these children can be preserved.

2 And, Commander White, this is what you have been saying for
3 several years and I want to commend you for saying that.

4 Irrespective of what is happening is if you have kids that are
5 being held and for whatever reason they ~~'-are~~ separated from their
6 parents, they are being held without basic cleanliness or
7 anything, this is psychologically damaging in the long run and
8 that is what the IG report shows.

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

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

20 Commander White, you saw in the notebook we have gotten some
21 documents that indicate that there was discussion of the family
22 separation for some months before it actually happened. What
23 we are trying to find out is how far up the chain this knowledge
24 went. And the fact that HHS has steadfastly refused to provide

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1 those documents to this committee is really disturbing because
2 we can't move forward until we know exactly what happened.

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

9 And I just want to say one last time, Commander White, I
10 want to commend you for your dedication to these children. I
11 know you have been as a career civil servant fighting for them
12 from day 1, and this committee on both sides of the aisle we
13 appreciate all of the service that you give to this country and
14 we thank you and we hope you will continue to do that.

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

19 [The information follows:]

20

21 *****COMMITTEE INSERT*****

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1 Ms. DeGette. I want to thank the witnesses for coming today
2 and I want to remind members that pursuant to the committee rules
3 they have 10 business days to submit additional questions for
4 the record to be answered by witnesses who have appeared before
5 the subcommittee. I ask that the witnesses agree to respond
6 promptly to such questions, and with that the subcommittee is
7 adjourned.

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

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