

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

**Hearing on  
“Protecting Unaccompanied Children: The Ongoing Impacts of the Trump  
Administration’s Cruel Policies”**

**September 19, 2019**

**Commander Jonathan White, United States Public Health Service Commissioned Corps,  
Office of the Assistant Secretary for Preparedness and Response, U.S. Department of  
Health and Human Services**

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

1. According to the ORR Policy Manual the use of physical restraint for any child in custody must be "the least restrictive intervention that will be effective to protect the unaccompanied alien child and others from immediate physical harm."

a. Do you keep statistics on the use of isolation and other physical restraints of children in care?

**RESPONSE:** Generally, ORR care providers are required to report within four hours any safety measures, including the use of restraints or isolation, as a Significant Incident Report (SIR) to ORR, and other authorities as appropriate, which depending on the jurisdiction may include notification to state licensing or Child Protective Services (CPS). ORR tracks individual SIRs, and that each SIR is reported appropriately, within a child’s case file, but does not maintain statistics on the use of isolation or physical restraints in a reportable format.

i. If so, how frequently are these techniques employed?

**RESPONSE:** Generally, incidents involving the use of restraints or isolation is low across ORR’s shelter network. ORR care provider staff are trained in the use of de-escalation techniques in order to avoid situations where a child would require restraint or isolation. In situations where restraints or other measures are inappropriately used, ORR takes corrective action, as necessary.

b. What recourse do children have to challenge the use of these restraints?

**RESPONSE:** All ORR care providers are required to have a grievance policy that is explained to the child at intake into the facility. For additional information, please refer to ORR Policy Guide, section 3.2.2, available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states->

[unaccompanied-section-3#3.2.2](#). Children may also report incidents of abuse to their attorney of record, legal service provider, and child advocate (if applicable), who in turn are able to challenge the use of restraints.

2. How do you currently track the administration of psychotropic medications to children in custody?

**RESPONSE:** All medication, including psychotropic and over-the-counter, must be logged in accordance with state licensing requirements and ORR policy. For more information on medication management, see ORR Policy Guide, section 3.4.4 Medication Administration and Management, available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.4.4>. For record keeping requirements, see section 5.6.2 Maintaining Case Files, available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.6.2>.

3. On what legal authority does ORR or its contracted providers, authorize the use of psychotropic medications without parental or patient consent?

**RESPONSE:** ORR is the recognized legal custodian of UAC in HHS custody by authority delegated by Congress under 8 U.S.C. 1232(b). Psychotropic medication is prescribed by a physician, not by ORR staff.

4. Is there any independent review or oversight of non-consensual administration of psychotropic medication to children in ORR's custody?

**RESPONSE:** ORR policy allows the use of chemical restraints in emergency safety situations in accordance with state law and licensing requirements. Most states prohibit the use of chemical restraints for children. See ORR Policy Guide, section 3.3.15 Use of Restraints or Seclusion in Emergency Safety Situations in Residential Treatment Centers (RTCs), available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.3.15>

### **The Honorable Joseph P. Kennedy III (D-MA)**

1. Is there a system in place today to track family separations and why was there not one in place when this policy was implemented?

**RESPONSE:** Since June 2018, ORR has implemented processes and procedures to facilitate identification of children who are referred to ORR by DHS subsequent to separation from parents. These processes and procedures include both a data field added to the referral screen in the UAC Portal case record system to identify separated children at referral from DHS, as well as guidance and procedures for ORR care providers to identify children as having been separated in the course of providing care.

There was no automated data system in place when the Zero Tolerance Policy and pre-Zero Tolerance Policy pilot project was implemented because HHS was not formally notified that

the Zero Tolerance Policy would be implemented, and ORR staff were informed by their leadership that there would not be family separation. Moreover, prior to the preliminary injunction in *Ms. L v. U.S. Immigration & Customs Enft* (“ICE”), 3:18-cv-00428 (S.D. Cal. 2018), issued on June 26, 2018, ORR and its grantee care providers did not have a mechanism to reunify children with parents in ICE custody and were required by statute to identify qualified family member sponsors who were not detained to provide care to the child. Instead, before the *Ms. L* injunction, ORR tracked the care of individual children on an individualized basis through the ORR portal. Before the *Ms. L* injunction, the individual case files for individual children on the ORR portal contain information about the history of the child, including indicia of separation.

- a. When this policy was implemented, were there clear standards put in place for CBP officers to determine what merited the separation of a family or was it merely guess work caused by an ill-advised policy?

**RESPONSE:** HHS has no role in immigration enforcement and did not separate any children from their parents. HHS defers to CBP to answer questions about standards and procedures in place for CBP agents.

### **The Honorable Brett Guthrie (R-KY)**

1. Based on your experience working at ORR, is there a need to examine, and possibly amend, the TVPRA with respect to the definition of a UAC so that in addition to parents and legal guardians, children are not separated by DHS from other family members, such as a grandparent or adult sibling?

**RESPONSE:** HHS does not have a formal position on amending the TVPRA to treat other family members as parents and legal guardians.

- a. Based on your experience at ORR, would you have any concerns or foresee possible unintended consequences of amending that definition?

**RESPONSE:** Parental relationship may be more readily verified by consular-verified birth certificates or in some cases by DNA confirmation of biological maternity or paternity. Appropriate policies, procedures, and resources to verify relationship of other kinds of close relatives would need to be developed to ensure child safety.

- b. Is there a need to further specify when a child can or cannot be separated for cause? For example, specifying what past criminal convictions pose a danger to the child and/or what communicable diseases would warrant a temporary separation?

**RESPONSE:** HHS does not have a formal position on legislation to specify when a child can or cannot be separated for cause. However, we would note that if Congress were to define in statute the conditions under which a child may be separated for cause, then litigation and other disputes about separations might be reduced.

2. Given you were the point person at HHS for the reunification effort of those included in the *Ms. L* class, are there any issues that ORR faced during the reunification process with respect to interagency coordination and communication that are still unresolved? If so, please describe them.

a. Is there anything that Congress can do to help resolve those issues?

**RESPONSE:** I am not aware of interagency coordination and communication issues that are still unresolved for the reunification effort.