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

Before the

Energy and Commerce Committee
Subcommittee on Oversight and Investigations

United States House of Representatives
September 19, 2019

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

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

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

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

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

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

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

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

The IMT faced a formidable challenge at the start of this mission. On the one hand, ORR knew the identity and location of every one of the more than 11,800 children in ORR care as of June

26, 2018, and could access individualized biographical and clinical information regarding any one of those children at any time by logging onto the ORR UAC portal and pulling up the child's case management record. ORR sometimes received information from DHS regarding any separation of the individual child through the ORR UAC portal, on an *ad hoc* basis, for use in ordinary program operations.

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

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

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

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

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

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

Similarly, the new case management information that ORR amassed between July and December 2018 led us to conclude that a total of 162 other children who were in ORR care as of June 26, 2018—but who we did not initially identify as potentially separated—should be re-categorized and added to the list of possible children of potential class members reported to the *Ms. L.* Court. Also, in March 2019, ORR discovered that two separated children it previously reported as possible children of potential class members were in fact referred to its care in July 2018. These

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

As a result of these updates, the current reporting of 2,814 possible children of potential *Ms. L.* class members to the *Ms. L.* Court is accurate."

That is, we have fully accounted for such children who were in ORR care as of June 26, 2018. To be clear, the count of 2,814 children does not include children who were discharged by ORR before June 26, 2018. Nor does it include separated children referred to ORR care after that date.

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

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

Reunification of Ms. L. class members with their children

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

Working in close partnership with colleagues in ICE, the Department of Justice (DOJ), and the Department of State, we first worked to reunify children with parents in ICE custody. This was an unprecedented effort, requiring a novel process which we developed and which the *Ms. L.* Court approved. Under the compressed schedule required by court order of 15 days for children under the age of 5, and 30 days for children between the ages of 5 and 17, we reunified 1,441 children with parents in ICE custody—all of the children of eligible and available *Ms. L.* class members in ICE custody. Absent red flags that would lead to specific doubts about parentage or about child safety, adults in ICE custody were transported to reunification locations run by ICE, where deployed field teams from HHS interviewed them. During the interviews, HHS sought verbal confirmation of parentage and the desire to reunify, and after that, HHS transported the child for physical reunification with the parent in ICE custody. Some reunified family units remained in ICE family detention, while others were released by ICE to the community, after connecting them with nonprofits serving immigrant families.

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

For parents who had departed the United States, we developed a different operational plan, which was also approved by the *Ms. L.* Court. First, HHS identified and resolved any "red flags"—doubts about parentage or child safety and well-being. ORR care provider case managers established contact with the parents in their home countries and provided contact information for all the parents to the American Civil Liberties Union (ACLU), which serves as plaintiffs' counsel for the *Ms. L.* class. The ACLU counseled parents about their options and their rights, and then obtained from the parents their desire for either reunification in their home country, or waiving reunification for the child to undergo standard ORR sponsorship processes. Once we received a parent's desire for reunification, we worked with DOJ and ICE to expeditiously resolve the children's immigration cases, and worked with the consulates and embassies of the child's home country to prepare their return. HHS and ICE coordinated with the ACLU's steering committee for the *Ms. L.* litigation, the government of the home country, and the child's family to ensure safe physical reunification, and then transported the child to his/her country and into the care of his/her parents.

Of the 2,814 children reported to the *Ms. L.* Court, as of September 6, 2019, 2,787 have been discharged from ORR care. We have reunified 2,168 with the parent from whom they were separated. Another 619 children have left ORR care through other appropriate discharges—in most cases, release to a family sponsor such as the other parent, an adult sibling, an aunt or uncle, a grandparent, a more distant relative, or a family friend.

Of the 2,814 children reported to the *Ms. L.* Court, there are 8 children still in ORR care who were separated but cannot be reunified with their parent because ORR has made a final determination that the parent meets the criteria for exclusion from the class or is not eligible for reunification. That is, the parent has a criminal history that poses a specific threat to child safety in the judgment of social work child welfare professionals, or the parent is otherwise unfit or poses an unacceptable risk to the safety and well-being of the child, such as when a case file review shows that the child has made credible allegations of abuse by the parent. There are 12 children still in ORR care whose parents are outside the U.S. who have waived reunification and chosen for their children to remain in the U.S. and go to a sponsor in this country under the ordinary TVPRA process. There are 4 children in care where further review determined that the child was not a separation. There is one child in care whose parents are in the U.S. and have waived reunification.

As of this morning, of the 2,814 children reported to the *Ms. L.* Court, there is only one child left for whom the ACLU has advised that the resolution of the parent's wishes will be delayed, and one child whom the ACLU could not obtain the parents' preference. We cannot reunify those children until their parent's legal counsel allows us to do so.

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

Ms. L. Expansion Class Identification

As I indicated earlier in my testimony, the 2,814 children reported to the *Ms. L.* Court do not include all children who have ever been separated at the border by DHS and referred to ORR. It

is only the number of possible children of potential class members who were in ORR care as of June 26, 2018. It is based on how the *Ms. L.* Court defined the class at that time.
Early this year, the Ms. L. Court expanded the class to include parents of children who were separated by DHS starting July 1, 2017, referred to ORR, and discharged pursuant to the TVPRA process before June 26, 2018.

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

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

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

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

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

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

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

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