



Statement of
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Chairman Nadler and Ranking Member Collins, thank you for the opportunity to speak to you today regarding my past efforts as Director of the Office of Refugee Resettlement (ORR). It is an honor to appear before you today. ORR is a program office within the Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS). While I was Director of ORR, I coordinated refugee resettlement efforts for HHS and oversaw the Unaccompanied Alien Children's (UAC) Program. I left ORR in December 2018 to take a position with the HHS Center for Faith and Opportunity Initiatives as a Senior Advisor. My testimony today focuses on how ORR cares for UAC and places them with sponsors, as well as how ORR reunifies children separated from their parents by DHS.

Referrals of UAC to ORR--Historically

The UAC Program operated by ORR provides care, food, shelter, and services to alien children who are in ORR custody before release to a suitable sponsor, usually a parent or close relative. ORR does not enforce the immigration laws or apprehend families or children who cross the border illegally. Rather, ORR assumes care and custody of alien children who are referred to ORR care by other federal agencies. Most referrals of alien children to ORR are made by the U.S. Department of Homeland Security (DHS). To be clear, HHS typically does not separate alien children from their adult parents. HHS makes no recommendations and is not consulted by DHS as it makes decisions to separate children. ORR did not under my direction separate a child from his or her adult parent for any purpose, law enforcement or otherwise.

ORR can receive referrals of alien children from DHS and other federal agencies under a variety of different circumstances, but a majority of alien children referred to ORR were encountered by

DHS when entering the country at or between a port-of-entry without a parent. Children entering the United States illegally with a parent who is too ill to care for that child have been separated from that parent by DHS and referred to ORR. DHS may also separate a parent and child who have entered illegally if the parent has criminal history, or there is evidence that the parent is unfit or dangerous. A child who enters the United States illegally with an adult who claims to be the parent may be referred to ORR if DHS doubts that the adult is in fact the parent. In addition, a child may be referred to ORR care if the U.S. Department of Justice (DOJ) prosecutes the parent for violating the immigration laws. Referrals can happen under other circumstances, and these examples are merely representative of what ORR has seen in the UAC program.

In cases where an alien child is separated from his or her parent after apprehension by DHS officials – for example due to parents needing to be hospitalized indefinitely or when the parent clearly presents a risk of abuse, maltreatment, or neglect – knowing the identity of that parent may be part of proper case management. The facts behind the separation may be important to know for case planning purposes, especially since they may mean the parent is unavailable or unable to take custody. Moreover, the facts of the separation may be important factors in determining the child's individual needs, which are then incorporated into service planning that ORR develops for and provides to the child. With regard to ORR's responsibility to determine the suitability of potential sponsors, the TVPRA specifically requires that a sponsor is capable of providing for the child's physical and mental well-being. In fact, the child's best interest in some cases is placement with another relative who is not the parent based on child welfare concerns.

The best way for HHS to determine whether a child was separated at the time of referral is if DHS provides this information. Historically, DHS has sometimes included indicators of the separation in the referral notes that are put into the ORR online case management portal along with the child's biographic and apprehension information. However, because DHS had not consistently adhered to this practice, we have worked with DHS to simplify the process.

DHS's U.S. Border Patrol (USBP) and U.S. Immigration Customs Enforcement (ICE) are responsible for the majority of UAC referrals to ORR. Electronic changes have recently been made so that USBP's database can transfer UAC biographic, apprehension, and other referral information into the ORR portal's referral page. ICE has access to this referral page, and directly enters information related to a UAC into ORR's system. In the summer of 2018, ORR added a checkbox to the referral page to indicate whether a child has been separated from his or her parent. This checkbox is a significant addition, as it offers a consistent format for DHS to provide information on the status (separated or non-separated) of each referral case. The referral page also has a "notes" section where USBP and ICE can type in the name and other information of the separated family member, including their alien number. Additionally, USBP and ICE can enter this information into the "parent/relative information" section of the referral.

HHS can learn of a child's separation after a child's admission into an ORR care provider facility. Shortly after admission, a case manager interviews the child. The interview includes questions about whether a child travelled alone or was apprehended with a parent. In both circumstances, ORR records any information uncovered regarding a separation into the child's case management record on the ORR portal.

Prior to the summer of 2018, there was no automated means for aggregating the individualized indicators of potential separation in the case management records for the children through the ORR portal. To be clear: this is not the same as saying there is no information about separations in UAC case files. This is just to say that, before the summer of 2018, in order to create a comprehensive record of cases where a separation occurred, it was necessary to go into each of the thousands of case files and manually retrieve that information case file by case file.

ORR treats all alien children referred to its care, including children separated from their parents, in accordance with its policies and procedures. This includes placing a child in the least restrictive setting and finding a suitable sponsor to whom ORR could safely release the child.¹ In a limited number of cases, ORR worked directly with DHS to release a child to a parent detained at an ICE family residential center if the parent became available to provide care (for instance, parents with a medical issue that is subsequently resolved or alleviated).

Zero Tolerance Policy

On April 6, 2018, DOJ announced a zero tolerance policy (ZTP) for the crime of improper entry, which applied to all adults crossing the border illegally, including parents who crossed illegally with their children.² At the subsequent direction of the Secretary of Homeland Security, the U.S. Border Patrol referred both individual adults and parents who entered the country illegally to DOJ for prosecution for improper entry into the United States. The parents were transferred to custody of the U.S. Marshals Service, and incarcerated during their criminal proceedings. Per the

¹ See, 6 U.S.C. §279; 8 U.S.C. §1232.

² Department of Justice, Office of Public Affairs, April 6, 2018.

TVPRA's requirement that unaccompanied children be transferred to HHS custody within 72 hours absent exceptional circumstances, DHS transferred these children to HHS.

On June 20, 2018, President Trump issued an Executive Order directing the Secretary of Homeland Security to maintain custody of alien families during the pendency of any criminal illegal entry or immigration proceedings involving their family members, to the extent permitted by law and subject to the availability of appropriations, unless there was a concern that detention of the alien child with the child's alien parent would pose a risk to the child's welfare.³ This Order meant that parents and children would no longer be separated during prosecution for unauthorized entry.

In *Ms. L. v U.S. Immigration and Customs Enforcement*⁴, U.S. District Judge Dana Sabraw certified a class of adult parents who enter the U.S. at or between designated ports of entry who have been, are, or will be detained in immigration custody by DHS and whose minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody absent a determination that the parent is unfit or presents a danger to the child. Judge Sabraw ordered the federal government to reunify those class member parents with their children who had been separated from them by DHS. HHS took a leading role in creating an interagency plan for such reunification. To accomplish this rapid reunification, HHS Secretary Azar created an Incident Management Team and tasked personnel from the office of the Assistant Secretary for Preparedness and Response and ORR to focus on the children of *Ms. L* class members. I supported the Incident Management Team while managing the rest of ORR's programs,

⁴ *Ms. L. v U.S. Immigration and Customs Enforcement*, Case 3:18-cv-00428 (S.D. Cal. 2018).

including the operations of the UAC Program, which continued to care for more than 10,000 other alien children who were not separated from parents by DHS, and who were then residing in ORR shelters.

I am grateful for the efforts of the HHS staff to identify the children in ORR care who were separated from their parents by DHS, and to reunify those children with their parents. Their efforts were nothing short of herculean. My understanding is that ORR has now reunified nearly all of the children of potential *Ms. L.* class members.

I am aware that ORR has taken additional steps to enhance its processes for complying with Judge Sabraw's orders and going forward. Those steps are described by Lynn Johnson, the Assistant Secretary for Children and Families at HHS, in response to the report on separated children issued by the HHS-OIG. I am no longer involved in ORR operations, and so I am not able to discuss current ORR processes in further detail. However, I do have great confidence in the ability of Assistant Secretary Johnson, Acting ORR Director Jonathan Hayes, and the ORR career staff to serve the UAC population compassionately.

Closing

Thank you for this opportunity to discuss the UAC program, and for your commitment to the safety and well-being of alien children. I will be happy to answer any questions.