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Chairman Nadler, Ranking Member Collins, and members of the Committee, 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 the 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's (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, 2018, but on or after July 1, 2017.

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 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 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. 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 whose parents potentially met the Court's criteria for class membership and eligibility for reunification. The determination of class membership and eligibility for reunification 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 the parent presents 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 interagency 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. (Note, the government continues to include these 79 children in its total count of possible children of potential class members in its regular reporting to the court).

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 possible children of potential *Ms. L.* class members to the *Ms. L.* Court is 2,814. Based on the best data available today, we have 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 re-categorized children at all times during their stays with ORR. The re-categorizations are for purposes of identifying possible children of potential class members in the *Ms. L.* litigation, not clinical reasons. The re-categorizations 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 UAC Portal case management system. 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), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and the FSA.*Flores* Settlement Agreement (FSA). 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, 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.

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" or—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 obtained from the parents either their request 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 request 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. For children whose removed parents elected not to reunify, ORR made efforts to identify sponsors and discharge them under its standard, TVPRA release process.

Of the 2,814 children reported to the *Ms. L.* Court, as of July 9, we have reunified 2,167 with the parents from whom they were separated. Another 611 children have left ORR care through other appropriate discharges—in most cases, released 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 13 children still in ORR care who were separated but cannot be reunified with their parents, because the government has made a final determination that the parents meet the criteria for exclusion from the class or are not eligible for reunification. That is, the parents have a criminal history, 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 14 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 six children in care where further review determined that the child was not a separation. There is one child in care where 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. There is one child whom the ACLU has not been able to make contact with the child's parent in home country. We cannot reunify that child until their parent's legal counsel notifies us of the parent's wish.

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 which 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. As of July 9, teams of US 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 UAC Portal, the IT system with care and case management information on children in ORR care. We reviewed 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 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. We know that many of these will prove to be false positives, because of our efforts to be maximally inclusive.

Pursuant to the Court-approved plan, HHS sends its information to CBP, which conducts manual review of the information in its systems of records to determine if the child was in fact separated from a parent or legal guardian. CBP then provides that data set to ICE, which conducts their own file review and provide additional information. CBP and ICE provide information including relevant criminal history or other information that enables us to determine if the separation was covered by a class exclusion, such as criminality or communicable disease, under the *Ms. L.* class definition. 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. That completed information is provided to the ACLU, which represents the plaintiffs, as part of the rolling delivery of lists ordered by the *Ms. L.* court. To date, the Federal interagency has provided the ACLU with two lists, comprising 791 possible children of potential class members. We anticipate providing additional lists going forward.

Judge Sabraw has given the government until October 25 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 an accounting for the expanded class period.

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, or in other limited circumstances where required by the best interest of the child. 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.