

Statement of
Jonathan White
Commander
United States Public Health Service Commissioned Corps
U.S. Department of Health and Human Services
Before the
Committee on the Judiciary
United States Senate
July 31, 2018

Chairman Grassley, Ranking Member Feinstein, and members of the committee, it is my honor to appear on behalf of the Department of Health and Human Services (HHS). I am Jonathan White, a career officer in the U.S. Public Health Service Commissioned Corps and have served in the Department of Health & Human Services 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. In my testimony today, I will describe the current state of the UAC program, actions to implement Executive Order (EO) 13841 and the orders in *Ms. L., v. ICE* No.18-cv-428 (S.D.Cal.), and a number of developments in the program's policies and administration since February 2016. In my time at HHS, I have had the privilege of helping to oversee and support the grantees that provide the actual care for children, as well as the process of placing children with sponsors. I am proud of the standards we set for these grantees and of the work the U.S. government does to care for the children in our custody.

About the Program

ORR is responsible for the care and placement of UAC. Generally, when a child with no lawful immigration status is apprehended, and no parent or legal guardian is available in the United States to provide care and custody of the child, he or she is considered a UAC, and by law must be transferred to ORR for care and custody. Where children have been separated from parents due to criminality or jeopardy, when the parent is detained and awaiting trial or convicted of a criminal offense and must serve time in Federal custody, or when the child is traveling across the border alone and is apprehended, the child is considered to be a UAC.

UAC shelters by law provide housing, nutrition, routine medical care, mental health services in both individual and group settings, educational services, and recreational activities such as arts and sports. They provide an environment on par with facilities in the child welfare system that house U.S. citizen children. The facilities are operated by nonprofit grantees that are certified by state licensing authorities responsible for regulating such facilities housing children.

The UAC program has expanded and contracted over the years, driven by a variety of factors. It is designed to work in this way, and HHS has developed processes for bringing both permanent and temporary UAC housing capacity online as needed. HHS has a bed capacity framework with grant and contract mechanisms that allow for a sufficient base number of standard beds, with the ability to quickly add temporary beds. This provides the capability to accommodate changing flows.

HHS continues to update its bed capacity planning to account for the most recently available data, including information from interagency partners, to leverage available funds to be prepared for changing needs.

Given the numbers of UAC referred to its care since Oct. 1, 2017, HHS has increased the number of shelter beds from about 6,500 to about 13,000 beds.

HHS is required to provide care for all children until they are released to a suitable sponsor, almost always a parent or close relative, while they await immigration proceedings. These children also leave HHS care if they return to their home countries, turn 18 years of age, or gain legal immigration status.

Current State of the Program

In fiscal year (FY) 2017, 40,810 children were referred to ORR from the Department of Homeland Security (DHS). In FY 2018 (through May), we have had approximately 37,900 referrals.

In FY 2017, 94 percent of ORR's referred children came from Honduras, Guatemala, and El Salvador. So far in FY 2018, 93 percent of the children that have come into HHS custody have been from those countries. Teenagers made up 83 percent of referrals in FY 2017 and 87 percent in FY 2018. Children from Guatemala, El Salvador, Honduras, and Mexico who migrate to the U.S. are particularly vulnerable to being exploited by human traffickers en route and at their destination.

In FY 2017, children typically stayed in ORR custody for 41 days and so far, in FY 2018, the average length of stay has been 57 days. ORR releases the majority of UAC to sponsors. In FY 2017, ORR released 93 percent of children to a sponsor. Of those, ORR released 49 percent to parents, 41 percent to close relatives such as an aunt, uncle, grandparent, or adult sibling, and 10 percent to more distant relatives such as a cousin or non-relatives such as a family friend. In FY 2018, we have released 90 percent of children to individual sponsors and of those sponsors, 41 percent were parents, 47 percent were close relatives, and 11 percent were more distant relatives or non-relatives.

Implementation of the Executive and Court Order

The Secretary of Health and Human Services has directed HHS to take all reasonable actions to comply with court orders, including in the *Ms. L.* case, which require reunification of children with eligible class members (parents) from whom they were separated at or near the border by the U.S. Department of Homeland Security (DHS), and to prioritize child safety and well-being when doing so. On June 22, 2018, the Secretary of Health and Human Services directed the Office of the Assistant Secretary for Preparedness and Response to help ORR reunify children in its care with class members. The key steps in the coordinated plan for reunifying a parent and child in government custody include: background checks, confirmation of parentage, and assessment of child safety, parental interview, and finally reunification.

HHS has 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 individuals who meet the Court's criteria for class membership. The determination of class membership involves real-time, inter-agency collection and analysis of facts and data to verify parentage, determine location of DHS apprehension and separation, determine parental fitness, and evaluate whether reunification would present a danger to the child. Class membership is not static; it can change due to transfers of putative parents from ICE to the Bureau of Prisons (BOP) or vice-versa, and newly acquired information.

The activation of ASPR has been critical to the operationalization of the dynamic and fast-moving process for determining class membership. It has included the utilization of the Secretary's Operation

Center (SOC), which is a command center that can operate 24 hours per day, 365 days per year. The mission of the SOC is to synthesize critical public health and medical information for the U.S. Government. While typically used to respond to a public health emergency or natural disaster, the SOC can also serve as a communications hub for large, data-intensive, inter-departmental operations.

To coordinate the reunification mission, ASPR has stood up a 50-member Incident Management Team (IMT) in Washington DC, and has also dispatched approximately 115 personnel to the field to engage directly with putative class members in DHS custody. Those personnel, who are organized into field teams, are from ACF, ASPR, the U.S. Public Health Service Commissioned Corps, and the National Medical System's Disaster Medical Assistance Team (DMAT). Additionally, we have deployed 140 contractors to support reunification efforts.

We want to be clear that HHS maintained its standards related to quality of care and ensuring the safety of children at all times during the implementation of the Zero Tolerance Policy. Within 24 hours of a UAC entering the care of ORR, there is a comprehensive assessment that serves to identify any trafficking issues or other issues related to the safety of the child. During this assessment process the child is asked numerous questions that are part of a robust and comprehensive assessment about the child, his or her family, and their journey to the U.S.

The assessment is only the first step in developing insight and understanding into safety issues that children may face. Many children do not express all the applicable information at the initial assessment, but as they develop a therapeutic alliance with the social work professional or paraprofessionals working with them, the child will have more opportunities to provide information that would indicate the child's case may involve questions about parentage or concerns about child safety. Because every child has a case manager and every child has a clinician, there are additional opportunities to gather information, if there is any indication that the child has been trafficked, exploited by an individual in their home country or en route, or abused physically or otherwise, it triggers a Significant Incident Report (SIR). An SIR must be entered into the system by the person who heard the child make that statement or who observed any evidence or indication that the child experienced those kinds of histories and must be completed within four hours.

With regard to reunification of separated children, generally, ORR has a process for placing UAC with parents or other sponsors that is designed to comply with the 1997 Flores Settlement Agreement, the Homeland Security Act of 2002 (HSA), and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and ensures the care and safety of UAC referred to ORR. However, as required by the court, HHS has modified and expedited its pre-existing ordinary process for *Mrs. L* so that HHS can determine class membership using the court's criteria and, to the extent possible, safely reunify class members and their children within the court's deadlines.

HHS knows the names and locations of all children who are in ORR care and custody at all times, because ORR maintains that data in its online case management portal. The ORR portal includes data about each child that DHS provided when DHS transferred the child to ORR custody. It also includes health and social data collected or entered by ORR personnel, grantees, or contractors. While the ORR portal may contain some data about the child's parents, the ORR portal was not designed to identify class membership or facilitate reunification under the criteria and deadlines established by the court's order.

Under the modified process, implemented to determine class membership in *Ms. L*, HHS receives information from ICE about putative class members, and associates them with children in ORR custody. HHS reviews information received from ICE and information in HHS files to confirm where they were apprehended and separated from their child. To ensure that every separated child in ORR custody who belongs to a class member is identified and reunified, HHS has had each grantee at one of ORR's approximately 110 shelters certify the separated children who the grantee reasonably believes to be in its care. HHS has also conducted a full manual review of the case management file for each one of the approximately 12,000 children in ORR custody—the substantial majority of whom were not separated from a putative parent at the border—to confirm or rule out any indicia of separation. The manual review was conducted by dozens of HHS personnel working nights and weekends.

HHS reviews all information it has related to a child to determine whether there is any doubt that the putative class member is a parent. HHS typically requires confirmed verification of parental relationships in all cases through the use of consular verified birth certificates— a process that can take a number of weeks – or as a last resort through DNA testing. However, under the modified process, the parental relationship is only confirmed in cases where HHS has an indication that would lead HHS to doubt that the putative parent is actually the parent.

Putative class members whose parental status is in doubt are not reunified with a child until that doubt is resolved, and if we conclude they are not parents, they are not included in the class by HHS.

HHS also reviews a summary of criminal history information from ICE on the putative parent, HHS's files from caring for the child, medical (e.g., communicable disease), and other information to determine the parental fitness of the putative class member and confirm that reunification would not present a danger to the child. HHS generally performs these checks concurrently.

Under the court's orders, not all criminal history establishes a danger to the child that prevents reunification. Certain kinds of criminal history raise those concerns, however, such as criminal history involving child abuse, the sexual exploitation of children, human trafficking, or crimes of violence. These are the clearest cases, while most cases require more investigation to determine whether criminal history that appears on the summary makes reunification unsafe. HHS has found over two dozen adults with red flags raised by review of criminal background. Such background check information has included convictions, charges, or warrants for murder, child cruelty, sexual assault, and human smuggling.

When placing a child with a putative parental sponsor who is no longer in ICE custody under HHS' pre-existing process, HHS would normally verify the potential sponsor's residential address and conduct background checks of adult cohabitants to try to ensure that the potential sponsor is capable of providing shelter and care – and that the potential sponsor's cohabitants do not endanger the child after placement. The court's orders in *Ms. L* require HHS to streamline the process by eliminating those types of checks. Purported parents need only submit proof of address, unless there are grounds to doubt parentage or safety for the child based on information already possessed by HHS or DHS. The court did, however, direct HHS to continue to require a home study when a child is a victim of a severe form of trafficking in persons, is a special needs child with a disability, has been the victim of physical or sexual

abuse, or where the proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking.

Parents apprehended in the interior, who have relevant criminal history, or have a communicable disease (until it is treated) are, by definition, not included in this class. Parents who are otherwise determined to be unfit or to present a danger to a child are not required to be reunified.

Absent red flags in the process above, adults in ICE custody are transported to reunification locations run by ICE, where HHS interviews them. HHS field teams conduct further interviews of the adults at reunification locations, supported by ICE staff. During the interviews, HHS seeks verbal confirmation of parentage and the desire to reunify, and considers any additional information raised in the interview that might relate to parentage or child safety.

If red flags are raised in the interview, reunification is halted and HHS conducts further inquiry, as appropriate. Absent red flags, HHS will transfer the child to ICE custody, completing the reunification.

ICE reunification locations operated for as long as necessary to efficiently reunify children with parents under the *Ms. L* Court orders. We have now finished reunifications for those in ICE custody.

For eligible parents in the United States who are not in ICE custody, HHS coordinates with those parents directly on the location and logistics of reunifications.

ORR's UAC Program provides care and services to migrant youth every day. At HHS, we are proud of the work we do to provide that care to children consistent with laws and court decisions, and consistent with the values of Americans about how we take care of children in crisis. In the case of this distinct population of children separated from their parents following DHS apprehension, we in HHS have been working hard, and will continue to work hard, on an unprecedented mission to expedite safe reunifications of children with their parents wherever possible.

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