

**Senate Committee on Judiciary
Questions for the Record**

**“The Unaccompanied Children Crisis: Does the Administration Have a Plan to
Stop the Border Surge and Adequately Monitor the Children?”**

**HHS Witness: Mark Greenberg
February 23, 2016**

The Honorable Charles Grassley

1. CA/N Checks

At the hearing, I asked you some questions about Child Abuse and Neglect (CA/N) checks. Most of these questions you were unable to answer at the hearing, and there were a couple I was unable to ask. I am grateful for your e-mail response sent February 29, 2016, but several questions from the hearing remain unanswered. As you know, CA/N checks are an important tool to vet potential sponsors to ensure children are not placed with a sponsor who may abuse or harm the child.

- a. How often are CA/N waivers used?**
- b. Which sponsor category are CA/N waivers used for?**
- c. Do you conduct CA/N checks on all members of a sponsor’s household?**

Before unaccompanied children are released, all potential sponsors must undergo a criminal public records check and a sex offender registry check. A fingerprint background check is required whenever the potential sponsor is not a parent or legal guardian. When the potential sponsor is a parent or legal guardian, a fingerprint background check is required when there is a documented risk to the safety of the minor, the minor is especially vulnerable, and/or the case is referred for a home study.¹ In addition, ORR conducts a child abuse and neglect (CA/N) registry check of a potential sponsor in any case where the potential sponsor is a distant relative or unrelated to the child, a home study is conducted, or if a special concern is identified.²

¹ By statute, ORR is required to perform a home study to determine that a prospective sponsor’s home is safe when:

- The child is a victim of a severe form of trafficking in persons;
- The child is a special needs child with a disability (as defined in 42 U.S.C. § 12102);
- The child has been a victim of physical or sexual abuse under circumstances that indicate that the child’s health or welfare has been significantly harmed or threatened; or
- The proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.¹

Additionally, under ORR policy, home studies are required for all children who are being released to a non-relative sponsor who has previously sponsored or proposes to sponsor more than one child to whom the sponsor is not related, and all children ages 12 and under being released to non-relative or distantly related sponsors. In addition, ORR recently established a policy under which ORR care providers can recommend home studies for ORR approval in instances not required by TVPRA or existing ORR policy.

² Examples of “special concerns” can include a criminal background, history of substance abuse, mental health issues, or domestic violence and child welfare concerns.

In addition, as of January 2016, CA/N registry checks are also required for non-sponsor adult household members and adult care givers identified in a sponsor care plan in any case where a special concern is identified.

These policies are described in the Office of Refugee Resettlement's *Policy Guide: Children Entering the United States Unaccompanied*.³

The CA/N check provides information from state child abuse and neglect registries. Most states maintain a centralized database of child abuse and neglect investigation records. In states where there is not a centralized database, the individual State agencies that received the reports of suspected abuse or neglect are required to maintain these records. Reports included in CA/N registries are typically used to aid social services agencies in the investigation, treatment, and prevention of child abuse and to maintain statistical information for staffing and funding purposes. CA/N checks are requested on a state by state basis for all localities in which the potential sponsor or adult household members have resided in the past five years.

There is no requirement under Federal law for how long a state may take when responding to a CA/N check request. The amount of time it takes for states to respond to ORR's requests varies by state and averages between 30 and 45 business days; however, it can sometimes take months to receive state registry information.

ORR is committed to releasing unaccompanied children to appropriate sponsors who will provide for the best interest of the child. Due to the amount of time the CA/N check process can add onto a child's stay in ORR custody and our mandate to place children in the least restrictive setting, ORR has implemented a process relating to CA/N checks to ensure safe releases to sponsors are not held up unnecessarily. In appropriate cases, where the other background checks (and a home study, if required) present no safety risks and the sponsor and child assessments support release to a potential sponsor, a written justification requesting a waiver of the requirement to receive CA/N check results prior to release can be submitted to the Director of the Division of Children's Services and approved by the ORR Deputy Director for Children's Services.

In cases where a request to waive the requirement of a CA/N check prior to release is approved, the CA/N check is still completed, but ORR does not require the report to be received before release to a sponsor. If, after receiving the CA/N check results, ORR staff believe that a child's placement is unsafe, they would comply with mandatory reporting laws, State licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement. The new process was implemented in September 2015, and since that time, in 740 instances, ORR has approved waiving the requirement that the CA/N check be completed prior to the release of the child, in accordance with the procedures above. This is the only component of the background check process that may be waived.

³ <http://www.acf.hhs.gov/programs/orr/resource/children-entering-the-united-states-unaccompanied> .

2. Background Checks

Every person seeking to sponsor an unaccompanied minor must undergo certain background and criminal background checks and a sponsor assessment process.

- a. What is considered in a background check and assessment process? What databases does ORR and its grantees use?**
- b. When conducting a criminal background check, does ORR look at foreign criminal databases as part of a sponsors criminal background check?**
- c. If ORR learns that a sponsors has an alias, will ORR run the alias name through all the criminal background checks as well? If not, why not?**

The purpose of the sponsor assessment process, which includes criminal background checks, is to determine whether a potential sponsor can provide for the safety and well-being of a child, taking into account that particular child's needs. The sponsor assessment reviews a sponsor's strengths, resources, risk factors and special concerns within the context of the unaccompanied child's needs, strengths, risk factors, and relationship to the sponsor. All information gathered during this process is considered as part of the release decision. For all potential sponsors, ORR grantees contract with vendors to conduct criminal public records checks, which include searches through hundreds of public databases, including county criminal records; state criminal records; state sex offender registries; international and Federal national security sources; and Federal programs exclusions, enforcement, and sanctions lists (e.g. HHS' Office of the Inspector General Exclusions list). ORR also conducts state sex offender registry checks for every potential sponsor.

Additionally, a fingerprint background check is required whenever the potential sponsor is not the child's parent or legal guardian. When the potential sponsor is a parent or legal guardian, a fingerprint background check is required when there is a documented risk to the safety of the minor, the minor is especially vulnerable, and/or the case is referred for a home study. The fingerprints are cross-checked with the Federal Bureau of Investigation's (FBI) national criminal history and state repository records, which includes DHS arrest records. For an unresolved criminal arrest or issue still in process, ORR-funded care providers may conduct an additional state or local check to assist in locating arrest records or other criminal offense details.

As described above, ORR seeks information from state child abuse and neglect (CA/N) registries in any case where a home study is conducted, the sponsor is unrelated or distantly related to the child, or where a special concern is identified.

If ORR learns that a sponsor has an alias, any known alias would also be checked.

3. Number of Parent Sponsors; Relationships Not Adequately Verified

The Department of Health and Human Services (HHS) estimates that about 60 percent of unaccompanied minors are placed with parent sponsors. But often documents used to prove a relationship, like birth certificates, are not verified. Also, copies of these important documents, often times from different countries and different languages, are accepted as proof of relationship.

- a. **Can you say with absolute certainty, that documents accepted to prove a relationship are never counterfeited?**
- b. **Can you say with absolute certainty that children are never placed with sponsors posing as parents**

ORR takes very seriously its responsibility to place children in a safe and healthy environment following their release from its custody. A background check is conducted on all potential sponsors, and steps are taken to verify a potential sponsor's identity and relationship to the child. Since early 2015, ORR has implemented additional measures to enhance the pre-release screening of potential sponsors and others who are likely to come into contact with children post-release.

ORR is continually evaluating our policies and procedures to determine whether additional steps can be taken to further protect the safety and well-being of these children.

Currently, all sponsors must submit proof of identity, including a copy of a government-issued identification and a copy of his or her birth certificate. Sponsors must also submit proof of the unaccompanied child's identity, such as a copy of unaccompanied child's birth certificate as well as proof of relationship. If the UC's family and/or sponsor indicate(s) that they do not have copies of the birth certificates available and will be unable to obtain them, then the Case Manager at the care provider facility, in collaboration with the parent and/or sponsor, is able to request the certificates from the consulate.

If a birth certificate or other verifiable evidence of identity is unavailable, the Case Manager, in consultation with the third party Case Coordinator, may recommend that the ORR staff approve a DNA test in some instances (e.g., infants and young children, UC with cognitive delays).

Care providers and ORR verify the UC's and/or potential sponsor's birth certificate with the Consulate when the authenticity of the birth certificate is questionable or the birth certificate provided may belong to someone other than UC or sponsor for who they are presented.

ORR is working with Federal partner subject matter experts to identify and incorporate enhanced interview and document verification techniques into the sponsor assessment process.

4. Sponsor Care Agreements

When asked whether HHS had ever terminated a sponsorship agreement due to failure to properly care for a child, and resume custody of the child, you responded "not that I'm aware of." You went on to explain that HHS does not have continuing custody after it releases the child.

- a. **How are you able to ensure a minor is being treated properly, or a sponsor is taking seriously his or her duties to care for a child if you claim you have no custody to remove that child from a sponsor who fails to abide by the agreement?**
- b. **Has the Department ever enforced a sponsor care agreement?**
- c. **What have they done to enforce a sponsor care agreement?**

ORR goes through the extensive process of assessing a sponsor and making a decision to release a child with the goal that the sponsorship be successful for the child. A key component of that success requires the sponsor to fully understand, prior to the child being released, his or her obligations toward the child. Throughout the release process, care providers work with the child and sponsor so that they can plan for the child's needs after he or she is released to a sponsor. The Sponsor Care Agreement is intended to set forth the sponsor's responsibilities and clearly communicate ORR's expectations. Specifically, the Sponsor Care Agreement describes provisions of the custodial arrangement that the sponsor agrees to comply with while the minor is in their care; for example, providing for the physical and mental well-being of the minor, including, but not limited to, food, shelter, clothing, education, medical care, and other services as needed. Additionally, a child's case manager provides the sponsor with a Sponsor Handbook that outlines the responsibilities for caring for the unaccompanied child's needs. The case manager will review this information with the sponsor prior to release, as well as discuss any additional needs that may be particular to the child.

Over the last year, ORR has made a number of enhancements to its process for safely releasing children to qualified sponsors, strengthening its pre-screening protocols and augmenting the resources and protections available post-release.

After a child has been released, the ORR Help Line serves as a critical resource to unaccompanied children and their sponsors. Children can report safety-related concerns and sponsors can receive assistance with family problems and child behavior issues, referrals to community providers, and help finding legal support and enrolling unaccompanied children in school. Every child released to a sponsor is given a card with the Help Line's phone number. In addition to the Help Line, ORR has established a new Safety and Wellbeing Call process, through which care providers call each household 30 days after the child is released from ORR care to check on the child's wellbeing and safety.

ORR also provides post-release services to many children and sponsors, which are intended to help link the child and/or the sponsor with community services or other on-going assistance. ORR provides post-release services in all cases in which there was a home study. Additionally, in July 2015, ORR also began to provide post-release services to all children released to a non-relative or distant relative sponsor, as well as children whose placement has been disrupted or is at risk of disruption within 180 days of release, and in cases where the child or sponsor has contacted the ORR Help Line. In the event that a post-release service case worker finds the home unsafe, he or she is required under state and local laws to report those conditions to state child protective services or local law enforcement.

ORR continues to collaborate with our interagency partners to provide the most effective post release referrals and case management and to identify new ways to assure child safety. If any of our provider grantees or staff have reason to believe that a child is unsafe, they comply with mandatory reporting laws, State licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement.

5. Legal Custody of Unaccompanied Minors

At our hearing, Senator Blumenthal asked you who had custody of the unaccompanied minor after being released by the Office of Refugee and Resettlement (ORR). In that discussion, you said that a parent would have legal custody, and that you encourage sponsors who are not legal guardians to obtain legal custody of the child.

- a. How do you define legal custody?**
- b. If a sponsor is not a parent or legal guardian, and does not obtain legal custody of a child, who retains legal custody?**
- c. How does your department justify its position that it does not retain legal custody of a unaccompanied minor even though the Trafficking Victims Protection Reauthorization Act (TVPRA) § 235(b)(1) (8 U.S.C. § 1232(b)(1)) specifically states “the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services,” and other provisions of the TVPRA make clear that HHS has responsibility for the child until the child is removed?**

HHS’s longstanding view across administrations is that, under the authorities governing the Unaccompanied Children Program, once a child is released to a sponsor, ORR’s legal and physical custody terminates. At that point, state law would generally govern with regard to definitions and determinations of legal custody, unless preempted by or conflicting with Federal law. However, the fact that custody ends upon release does not mean that the commitment to providing resources, connecting children to services, and protecting vulnerable children from abuse or exploitation ends. ORR has authorities that permit it to provide a range of services and resources post-release, and it makes use of that authorization to establish policies and procedures that, among other things, are intended to protect those children that may be vulnerable to abuse or exploitation after they are released from our care. Through these services and resources, if any of ORR’s provider grantees or staff have reason to believe that a child is unsafe, they comply with mandatory reporting laws, state licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement.

The Unaccompanied Children Program provides care to children referred to its custody and is responsible for the process of releasing children to their parents, relatives or other appropriate sponsors with whom they can live during their immigration proceedings. ORR relies on the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), to provide the contours of the Unaccompanied Children Program, which operates consistent with the *Flores* Settlement. The authorities and the resources given to the Unaccompanied Children Program in ORR set forth a system that is intended to be temporary in nature, with a focus on caring for children while in ORR’s physical custody, and releasing children to appropriate sponsors. Additionally, if Congress had intended ORR’s legal custody to continue after a child is released to a sponsor, the TVPRA would not have needed certain of its post-release provisions. If HHS had continuing legal custody post-release, for example, HHS would necessarily have the authority and responsibility to provide services to the child after release. Instead, Congress specifically required follow-up services in those limited cases where a home study was conducted, and it authorized follow-up services for certain other children with mental health or other needs. In addition, section 235(c)(5) of the TVPRA (8 U.S.C. §

1232(c)(5)) discusses legal services for children who “are” in the custody of HHS as well as those who “have been in the custody of the Secretary.”⁴ Taken together, these examples support the conclusion that the Unaccompanied Children Program’s approach to legal custody is consistent with the statute and Congressional intent.

If the intent of the Congress had been for the Unaccompanied Children Program to retain legal custody over the children after their release to sponsors, the program would have needed to be structured and resourced in a very different way. The program is not structured in a manner similar to state procedures for child foster care, in which custody of the child is transferred to the state after a judicial proceeding and the child is placed with a foster parent selected and licensed by the state. State child foster care systems include, for example, foster care maintenance payments and payments for health care expenditures, which the Unaccompanied Children Program does not have the authorization or funding to provide.

6. HHS Discovery of Fraud

In your opening statement you said, “whenever we learn of fraud or exploitation, we immediately begin to work with law enforcement agencies and state child welfare agencies so that criminals can be brought to justice and children and families protected, and we did that here.” However, you told the Homeland Security and Government Affairs Committee that you did not learn of the Marion, Ohio fraud until after the indictment.

- a. How many times has HHS discovered Fraud? Please list each instance wherein fraud was found, and HHS’ response.**

ORR has policies and procedures in place designed to prevent fraudulent activities from occurring during the process of identifying potential sponsors and placing an unaccompanied child with a sponsor.

In some instances, individuals may provide false information in support of their application to sponsor a child. ORR has policies and procedures in place to prevent children from being released to sponsors who provide fraudulent information or in cases in which there are indicators that sponsorship is being sought for nefarious reasons. In addition to the steps taken to verify identity, relationship to the child, and any criminal history, Case Managers check the Unaccompanied Children database to see whether they have a record of a potential sponsor having previously sponsored or attempted to sponsor another unaccompanied child. Case Managers may also check a sponsor’s address to see whether records reflect that other unaccompanied children have been released to the same address.

One specific action that was taken to combat these activities was, in March 2013, ORR issued an alert to Unaccompanied Children’s Program grantees and staff in ORR’s Division of Children’s

⁴ This interpretation of the TVPRA is consistent with the Government’s longstanding interpretation of the *Flores* settlement agreement. Like the TVPRA, the *Flores* agreement contains references to the “release” from government custody, and it specifically distinguishes between custody and releases from custody. Paragraph 14 of the agreement states that the release of a minor is a release from “custody.” Paragraph 19 states that in cases in which the former-Immigration and Naturalization Service (INS) did not release a minor, the minor “shall remain in INS legal custody.” Use of the word “remain,” shows that legal custody continued while the minor was held by INS in a detention facility or some other type of facility, such as a licensed program. However, once a release occurred, the minor no longer “remained” in legal custody.

Services, warning of three individuals who were seeking to sponsor unrelated unaccompanied children. The alert provided the names, dates of birth, and addresses used by these individuals. The alert also instructs grantees to contact their assigned Federal Field Specialist immediately if they encounter these individuals or become aware of other individuals coming forward to sponsor multiple unrelated unaccompanied children. If ORR identifies that a potential sponsor has provided fraudulent information, they are flagged in the UC Program database and the matter is reported to the appropriate law enforcement officials.

Fraudulent activities can also involve attempts to exploit and prey on relatives of unaccompanied children, demanding payments that they claim will cover processing and travel expenses needed to allow the children to be reunited with their families in the United States. ORR makes efforts to identify and prevent these types of fraudulent activities. Care providers notify all potential sponsors that ORR, its care providers, volunteer agencies, and grantees/contractors do not collect or require fees for any services related to the release of unaccompanied children from ORR custody, and asks sponsors to report any suspicious calls or contact, or any attempts to defraud them of money to the care provider facility or ORR directly. ORR also asks all approved sponsors at the time of a child's release if they have been approached by anyone asking for money at any point in the release process.

If a care provider determines that a sponsor or prospective sponsor has been the target of a fraud attempt, the care provider must report the incident to ORR through a Significant Incident Report (SIR) and to local law enforcement. ORR reviews the information in the SIR and reports all fraud schemes, whether attempted or successfully perpetrated, to HHS/Office of the Inspector General (OIG).

As an example of a specific action that was taken to combat these activities, in July 2014, the Federal Bureau of Investigation – San Antonio Division, HHS-OIG, DHS, and DHS's U.S. Customs and Border Protection – South Texas Campaign, sent out a press release seeking to warn the public about telephone fraud schemes which attempt to solicit payments from relatives of unaccompanied children to process and reunite those children with their families. A copy of the press release is available at: <https://www.fbi.gov/sanantonio/press-releases/2014/new-fraud-schemes-targeting-families-of-unaccompanied-children>.

ORR is committed to continually improving our policies and procedures to protect the safety and well-being of children released from our custody and to prevent this vulnerable population and their family members from being the victims of fraud.

b. In the Marion, Ohio case, what have you done to help law enforcement and child protective agencies bring the perpetrators to justice?

ORR has cooperated fully with Federal law enforcement with regard to the criminal investigation. ORR is committed to doing all that it can to ensure that those who took advantage of these children are brought to justice to the full extent of the law and that these children and their families are protected.

- c. After an unaccompanied alien child (UAC) is placed with a sponsor, HHS claims that the responsibility of removing the UAC from a trafficking home, or a place where the child is abused and unsafe is through state child protective agencies and local law enforcement. However, the *Flores* Agreement clearly gives HHS authority to remove sponsorship if the sponsor does not provide for the safety and physical, mental and emotional well-being of the UAC. Why isn't HHS taking action when it learns that a UAC was inappropriately placed with a sponsor?**

ORR has authorities that permit it to provide a range of services and resources post-release, and ORR makes use of that authorization to establish policies and procedures that, among other things, are intended to protect those children that may be vulnerable to abuse or exploitation after they are released from our care.

Under the TVPRA of 2008, ORR offers post-release services in all cases where there has been a home study. Additionally, the TVPRA permits that ORR may provide follow-up services in cases involving children with mental health or other needs that could benefit from ongoing assistance from a social welfare agency. In July 2015, ORR began a pilot project to assess implementation of an expansion of post-release services to all unaccompanied children released to a non-relative or distant relative sponsor and children whose placement has been disrupted or is at risk of disruption within 180 days of release and the child or sponsor has contacted the ORR Help Line. Participation in post-release services is a voluntary choice by the sponsor and unaccompanied child; however, a sponsor declining post-release services prior to a final placement decision may be a factor considered in determining whether the child's basic needs would be met by that sponsor. If a sponsor declines post-release services after the child has been placed with them and the ORR grantees or staff have reason to believe that a child is unsafe, they comply with mandatory reporting laws, State licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement.

Post-release services are intended to help link the child and/or the sponsor with community services or other on-going assistance. Post-release service providers coordinate referrals to supportive services in the community where the unaccompanied child resides and provide other child welfare services, as needed. Post-release services can occur until the minor attains 18 years of age. In the event that a post-release service case worker finds the home unsafe, he or she is required under state and local laws to report those conditions to local child protective services, and to local law enforcement if the child is in immediate danger.

Care providers must conduct a Safety and Well Being Follow Up Call with an unaccompanied child and his or her sponsor 30 days after the release date. The purpose of the follow up call is to determine whether the child is still residing with the sponsor, is enrolled in or attending school, is aware of upcoming court dates, and is safe. The care provider must document the outcome of the follow up call in the child's case file, including if the care provider is unable to contact the sponsor or child after reasonable efforts have been exhausted. If the follow up call indicates that the sponsor and/or child would benefit from additional support or services, the care provider refers the sponsor or child to the ORR Help Line.

After a child has been released, the ORR Help Line serves as a critical resource to unaccompanied children and their sponsors. Children can report safety-related concerns and sponsors can receive assistance with family problems and child behavior issues, referrals to community providers, and assistance finding legal support and enrolling unaccompanied children in school. Every child released to a sponsor is given a card with the Help Line's phone number.

Through these services and resources, if any of our provider grantees or staff have reason to believe that a child is unsafe, they comply with mandatory reporting laws, state licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement. State child protective services agencies treat unaccompanied children the same and apply the same protections used for any other children residing in the state.

ORR is continually working with its Federal partners to identify additional ways to strengthen the resources and protections available to children and their families post-release.

7. Some Parents Should be Treated as Category 3 Sponsors

You told Senator Klobuchar that some of these parents have not seen these kids for “15 years.” I am curious under what category of sponsors such parents fall. Are these parents treated the same as other parents, that is, are they fingerprinted?

- a. Shouldn't these parents be treated as Category 3 sponsor's instead of category 1 sponsors because of the distant relationship?**

Generally, children being reunited with their parent, consistent with the requirements of the Flores Settlement agreement, is in the child's best interest. ORR has consistently reviewed policies and procedures to ensure children are released to their parents quickly and safely, taking into account all information available. All parents receive criminal public records checks and sex offender registry checks, and undergo fingerprint checks when there are special concerns about the case or there is a required home study under the TVPRA.

Even if a parent and child have not seen each other in some time, they often have still maintained contact. As such, it is important to look at the specifics of each case. Post-release services may be appropriate in this situation. ORR provides post-release services to children who receive a home study; children released to an unrelated or distantly related sponsor; children whose placement has been disrupted or is at risk of disruption within 180 days of release and the child or sponsor has contacted the ORR Help Line; and on a case-by-case basis in other cases involving children with mental health or other needs that could benefit from ongoing assistance from a social welfare agency.

8. Bed Capacity Framework

The GAO report found that ORR had developed a bed capacity framework in 2015 to help with preparing for another surge of children. The report states:

The bed capacity framework it developed for fiscal year 2015 included plans and steps to manage its capacity and ORR officials said they continue to use it as a roadmap. However, they have not updated this framework for fiscal year 2016 and have not established a systematic approach to update their

framework on an annual basis to account for new information so that it remains current and relevant to changing conditions.

- a. Is there an updated bed capacity framework for this fiscal year?**
- b. Has ORR developed and established a systematic approach to update their bed capacity framework on an annual basis? If not, why not?**

The Department concurs with GAO's recommendation that its bed capacity framework should be updated on an annual basis. ORR created this framework in FY 2015 and will update it annually going forward. The Department also concurs with GAO's recommendation that it adjust its planning scenarios that guide its bed capacity as appropriate. The framework provides a useful mechanism for identifying the long term planning tasks that should be implemented over the course of the year. Given the difficulty of predicting annual flows, it is important for ORR to work closely with our Federal partners, including the Unified Coordination Group, and continuously monitor referrals and discharges in real time, to adjust capacity, consistent with the bed capacity framework, accordingly. Within the framework, ORR is able to regularly assess the adequacy of current capacity and estimate capacity needs under a range of assumptions about projected referrals and discharges. Accordingly, since the summer of 2014, ORR has improved its capacity to monitor and assess the implications of inflows, outflows, length of stay in HHS shelters, and other inputs relevant to estimating the demand for and maintaining appropriate bed capacity.

Given the range of external factors that may affect the number of children coming into HHS care, it is prudent to provide access to additional funding that would allow ORR to accommodate higher than expected caseloads. Fluctuations in the numbers of unaccompanied children being referred to ORR's care underscore the unpredictable nature of referral numbers, which creates serious operational challenges without a mechanism to provide additional resources, on a contingency basis, if additional funding is needed. The President's FY17 Budget Request creates a contingency fund that would trigger additional funds, not to exceed \$400,000,000, only if referrals were higher than could be supported with base program funds and any carry over funds for the program from the prior year. Without a contingency fund, ORR's ability to respond to significant increases in referrals is compromised.

9. Home Studies

State foster-care systems all require home studies before a child can be released to a foster parent. However, HHS does not require a home study, except when required by TVPRA, and a few other instances. Further, HHS has made policies that have cut back the usefulness and effectiveness of home studies. Where home studies were required to be conducted in 30 days, now a home study must be conducted in 10 days. Providers have said that this is not sufficient time to discover potential problems. In fact, providers have said the best home studies require three visits in a 40 day period. What factors did HHS consider in changing its policy to require home studies be conducted in 10 days?

ORR is committed to releasing unaccompanied children to appropriate sponsors who will provide for the best interest of the child. ORR continually works to strengthen the efficiency of ORR processes, with a focus on the safety of children.

Each sponsor is subject to a comprehensive assessment before a decision is made to release a child. Home studies are a part of that assessment for the most vulnerable children. The TVPRA of 2008 also sets forth requirements with respect to performing home studies prior to the release of a child to a sponsor. A home study is an in-depth investigation of the potential sponsor's ability to ensure the child's safety and well-being. The process includes background checks of the sponsor and adult household members, home visit(s), in-person sponsor interview and possibly interviews with other household members, and post-release services. By statute, ORR is required to perform a home study to determine that a prospective sponsor's home is safe when:

- The child is a victim of a severe form of trafficking in persons;
- The child is a special needs child with a disability (as defined in 42 U.S.C. § 12102);
- The child has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened; or
- The proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.⁵

As of July 27, 2015, home studies are also required for all children who are being released to a non-relative sponsor who has previously sponsored or proposes to sponsor more than one child to whom the sponsor is not related. Additionally, effective July 1, 2015, ORR requires mandatory home studies for all children ages 12 and under being released to non-relative or distantly related sponsors through a pilot program. In addition, ORR recently established a policy under which ORR care providers can recommend home studies for ORR approval in instances not required by TVPRA or existing ORR policy.

In December, ORR released a new standardized assessment tool, which was piloted by two grantees prior to its broader release to all grantees. The new assessment tool reduces redundancies between the home study and other assessments (which the home study provider already has access to) and focuses providers on gathering information most pertinent to making an informed release decision. Concurrent with the release of the template, the ORR operations manual shortened the home study timeframes from 30 to 10 days. ORR is constantly evaluating its processes to determine if, and when, it can shorten a process without risking the safety or well-being of a child. Based on the pilot, ORR believes that providers using the standardized assessment tool should be able to complete a home study within ten days in most cases. At the same time, ten days is a target, not a requirement. A provider may spend more than 10 days if the particular circumstances of the case require it.

⁵ 8 U.S.C. § 1232(c)(3)(B) (also requiring that ORR conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted).

10. Monitoring Grantees

The GAO report just recently released, makes clear that ORR provides all care, placement and post placement services through its grantees. ORR has delegated most of its responsibilities for the caring, placing, and any post placement responsibilities. Grantees are given a huge responsibility to uphold the TVPRA, screen sponsors, and place children. However, the GAO found that the ORR was inconsistent in monitoring its grantees. Prior to 2014, the ORR was required to conduct on-site visits, the most comprehensive monitoring of grantees that ORR conducts, at least once a year. However, GAO found that many grantees had not been visited in many years, for example, some 13 facilities had not been visited in 7 years. In 2014, the ORR instituted biennial on-site visits. Nonetheless, still, many grantees have not been visited.

- a. **What efforts is ORR taking to visit all grantees and monitor whether grantees are following ORR policies and procedures and obeying federal law?**
- b. **What is preventing ORR from fully monitoring grantees?**

ORR has established an Unaccompanied Children Monitoring Team responsible for conducting on-site monitoring of grantee facilities, reviewing grantee compliance and assessing the quality of services at provider facilities.

Through the Unaccompanied Children program's Monitoring Team, ORR implemented a comprehensive biennial on-site monitoring program in 2014. In addition to this comprehensive monitoring conducted by ORR Project Officers, ORR staff conduct routine and non-routine site visit monitoring, desk monitoring, and contract compliance monitoring.

All facilities that were not monitored in 2015 will be monitored in 2016. Over the last year, ORR hired additional staff and has put monitoring protocols in place to meet the bi-annual on-site monitoring schedule.

In addition, ORR has created a new monitoring initiative workgroup that is examining opportunities for further improvement in monitoring documentation and identifying best practices for its monitoring protocols for the Unaccompanied Children's Program.

Though there may be future factors beyond ORR's control, ORR is ready to meet the FY16 monitoring schedule with the additional staff hired during FY15 and monitoring protocols in place. The ORR Monitoring Team Lead and Supervisor will closely monitor the schedule and ensure that is completed as stipulated.

11. Corrective Action Against Grantees

In this report, the GAO also found that grantees are not adequately keeping and maintaining documentation of its work with many required documents in case files missing. GAO found that missing documents is a reason for corrective action, but that the case files reviewed by the GAO were closed and would not elicit such corrective action.

- a. **Does ORR review closed files? If so, why does it not take corrective action when documents are missing in a closed file? If not, why not?**

b. What corrective action is taken when ORR finds a grantee is not completing or maintaining required documentation?

ORR conducts comprehensive monitoring of grantees, in addition to routine and non-routine site visit monitoring, desk monitoring, and contract compliance monitoring. Missing documentation is often a reason for corrective action. If a care provider is found to be out of compliance with ORR policies or procedures based on monitoring activities, ORR will communicate the concerns in writing to the Program Director or appropriate person through a written monitoring or site visit report, with corrective actions and child welfare best practice recommendations. The need for a corrective action occurs when the care provider is in noncompliance with ORR policy and procedures. Corrective action can range from requiring re-training of staff on ORR policy or procedures to more serious actions such as a placement hold for the facility or a grant termination for severe health or safety issues.

12. Call Centers

I have learned from whistleblowers that the Call Center used to provide more case management services to UAC who called in with problems, however, ORR told the grantees to stop providing these extra services, and to only collect enough information to submit to local law enforcement or child protective services. Why did ORR stop the extra services being provided by the Call Center, especially when you are telling us it is being used as a new resource to better monitor and watch over children post-release?

The Help Line provides unaccompanied children a resource for safety-related concerns, as well as sponsors a resource for assistance with family problems and child behavior issues, referrals to community providers, and assistance finding legal support and enrolling unaccompanied children in school. If, based on information obtained during the Help Line call, a case manager staffing the Help Line believes that a child's placement is unsafe, he or she is required under state and local laws to report those conditions to local child protective services, and to law enforcement if the child is in immediate danger. Every child released to a sponsor is given a card with the Help Line's phone number.

The Help Line is an important resource to provide referrals to unaccompanied children and their sponsors to local community resources, or to other ORR-funded post release services as appropriate. While the responsibilities of the Help Line have been expanded over the past year, ORR is continuing to work with all our grantees and partners to continue to appropriately serve unaccompanied children through available grants, contracts and resources.

13. CBP/ORR Automatic Notification System

In July 2015, GAO released another report, entitled "Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody," regarding DHS and HHS policies and procedures with respect to UAC. The GAO reviewed the policies and procedures of the Office of Refugee Resettlement (ORR), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). This report found several problems and inefficiencies in the way these agencies were conducting their operations in regards with UAC. Among several problems, this report found several

gaps and inefficiencies with the referral and transfer of children from DHS to HHS. However, the GAO found a promising notification system between CBP and ORR. In a letter, Senator Johnson and I asked you about this automatic notification system. You reported that this system was being tested in the Del Rio Sector, and if successful, would be implemented nationwide.

- a. How successful has this automatic notification system been?**
- b. Are there plans to extend the program nationwide?**
- c. Will the automatic notification system be expanded only within CBP, or throughout DHS, including ICE, if it is implemented nationwide?**

As of February 23, 2016, all of the referrals from ICE to ORR and over 90 percent of the referrals from CBP to ORR are coming through the automatic notification system. The remaining CBP sectors are being trained to use the system as part of the nationwide implementation of this effort.

14. Minors Joining Criminal Gangs

Many of the unaccompanied minors released by HHS have gone on to join gangs and commit crimes. Last year, in Loudon County Virginia, a young man was brutally murdered by three unaccompanied minors. Another minor beat up a Deputy Sheriff who was doing nothing more than sitting in his patrol car, filling out a report to an unrelated traffic incident. These incidents either show a failure of the system to keep track of UAC and their activities post release, or a failure to recognize dangerous children, or sponsors before UAC are released.

- a. Does HHS make a determination whether an unaccompanied minor is a member of a gang?**
- b. Are children who are gang members or suspected of gang affiliation ever released to a sponsor? If so, does HHS take any action to mitigate any potential harm? If not, why not?**

ORR conducts both initial and ongoing assessments of children referred to its care. ORR is also provided with information collected by DHS, which can include a child's criminal history, and any behavioral issues that are flagged during the processing. This information is used to make decisions about appropriate placement while a child is in ORR's care, as well as suitability of potential sponsorship arrangements.

Soon after arriving at an ORR shelter, children are assessed by trained staff on a variety of factors, including to determine if there are any trafficking or other safety concerns, if they have special needs, disabilities or medical or mental health issues; if they have a criminal or juvenile background; and if the child is a danger to him or herself or a danger to the community. As part of this process, children are screened for gang membership or affiliation. This information is documented in each child's case file and periodically reviewed and updated as necessary throughout the child's stay in ORR custody. For instance, if care provider staff identify indicia of gang affiliation at any time while the child is in ORR's care, that information would be added to the case file and could have a bearing on his or her placement.

A child's release from any ORR facility is dependent on finding an appropriate sponsor who is willing and able to care for the child and takes into consideration the risk factors or special concerns, identified above, such as children or youth who are victims of human trafficking; have special needs; or have a history of criminal, juvenile justice, or gang involvement. ORR's policy is to deny release of a child to a sponsor if release would present a risk to the child, the sponsor, the household, or the community. ORR completes sponsor background checks described above and a sponsor assessment described in our January 22 letter.

ORR provides post-release assistance to many children and sponsors. Post-release services are intended to help link the child and/or the sponsor with community services or other on-going assistance. Post-release service providers coordinate referrals to supportive services in the community where the unaccompanied child resides and provide other child welfare services, as needed.

Under the TVPRA of 2008, as amended, ORR is required to offer follow-up services or "post-release services" in cases where there has been a home study. Additionally, the TVPRA specifies that ORR may provide follow-up services in cases involving children with mental health or other needs that could benefit from ongoing assistance from a social welfare agency. Pursuant to this authorization, in addition to offering post-release services on a case-by-case basis, ORR provides post-release services to all unaccompanied children released to a non-relative or distant relative sponsor, as well as children whose placement has been disrupted or is at risk of disruption within 180 days of release and the child or sponsor has contacted the ORR Help Line.

The Honorable Patrick Leahy

15. Given the extreme violence and danger that many of these children have experienced before arriving in the United States, have you provided specialized services to address the trauma they've experienced? Can you describe some of those services?

Care provider facilities are State licensed and must meet ORR requirements to ensure a high level of quality care. The facilities, which operate under cooperative agreements and contracts, provide children with classroom education, health care, socialization/recreation, vocational training, mental health services, access to legal services, and case management. They also undertake ongoing efforts to identify and assess relatives or other individuals in the United States as sponsors to whom children can be safely released. Care provider facilities' case management teams use standardized screening tools to assess children for mental health and victims of trafficking issues.

At least one individual counseling session per week is conducted by trained social work staff with the specific objective of reviewing the child's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each child.

Group counseling sessions are provided at least twice a week. Sessions are usually informal and take place with all unaccompanied children present. The sessions give new

unaccompanied children the opportunity to get acquainted with staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational and other activities. The sessions allow staff and unaccompanied children to discuss whatever is on their minds and to resolve problems.

The care provider also provides the sponsor with a Sponsor Handbook that outlines the responsibilities in caring for the unaccompanied child's needs for education, health, obtaining legal guardianship, finding support to address traumatic stress, keeping children safe from child abuse and neglect and from trafficking and exploitation.

Pursuant to the Trafficking Victims Protection Reauthorization Act of 2008, ORR offers post-release services in cases involving children with mental health or other needs that could benefit from ongoing assistance from a social welfare agency, as determined on a case-by-case basis. Children with a history of trauma may be eligible for post-release services under this provision.

The Honorable Jeff Flake

16. During your testimony, Sen. Blumenthal mentioned the “unconscionable placement of [UACs] with traffickers.” He noted that HHS told Sen. McCaskill in a letter that DHS does not have “legal or physical custody” of children after placed with sponsors. Sen. Blumenthal asked you to clarify “[w]ho does have legal custody of these children after they are placed with sponsors.” To which you responded, “When [HHS] release[s] a child to a sponsor, [HHS] no longer ha[s] legal custody over the child.”

- a. According to 8 U.S.C. § 1232(b)(1), “the care and custody of all unaccompanied alien children ... shall be the responsibility of the Secretary of Health and Human Services.”**
 - i. What statutory provision establishes that HHS relinquishes legal custody of some UACs upon placement given that the Code explicitly states that “custody of all [UACs] shall be the responsibility of the Secretary”?**

HHS's longstanding view across administrations is that, under the authorities governing the Unaccompanied Children Program, once a child is released to a sponsor, ORR's legal and physical custody terminates. But the fact that ORR's custody ends upon release does not mean that our commitment to providing resources, connecting children to services, and protecting vulnerable children from abuse or exploitation ends. ORR has authorities that permit it to provide a range of services and resources post-release, and it makes use of that authorization to establish policies and procedures that, among other things, are intended to protect those children that may be vulnerable to abuse or exploitation after they are released from our care. Through these services and resources, if any of ORR's provider grantees or

staff have reason to believe that a child is unsafe, they comply with mandatory reporting laws, state licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement.

The Unaccompanied Children Program provides care to children referred to its custody and is responsible for the process of releasing children to their parents, relatives or other appropriate sponsors with whom they can live during their immigration proceedings. ORR relies on the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), to provide the contours of the Unaccompanied Children Program, which operates consistent with the *Flores* Settlement. The authorities and the resources given to the Unaccompanied Children Program in ORR set forth a system that is intended to be temporary in nature, with a focus on caring for children while in our physical custody, and releasing children to appropriate sponsors. Additionally, if Congress had intended ORR's legal custody to continue after a child is released to a sponsor, the TVPRA would not have needed certain of its post-release provisions. If HHS had continuing legal custody post-release, for example, HHS would necessarily have the authority and responsibility to provide services to the child after release. Instead, Congress specifically required follow-up services in those limited cases where a home study was conducted, and it authorized follow-up services for certain other children with mental health or other needs. In addition, section 235(c)(5) of the TVPRA (8 U.S.C. § 1232(c)(5)) discusses legal services for children who "are" in the custody of HHS as well as those who "have been in the custody of the Secretary."⁶ Taken together, these examples support the conclusion that the Unaccompanied Children Program's approach to legal custody is consistent with the statute and Congressional intent.

If the intent of the Congress had been for the Unaccompanied Children Program to retain legal custody over the children after their release to sponsors, the program would have needed to be structured and resourced in a very different way. The program is not structured in a manner similar to state procedures for child foster care, in which custody of the child is transferred to the state after a judicial proceeding and the child is placed with a foster parent selected and licensed by the state. State child foster care systems include, for example, foster care maintenance payments and payments for health care expenditures, which the Unaccompanied Children Program does not have the authorization or funding to provide.

⁶ This interpretation of the TVPRA is consistent with the Government's longstanding interpretation of the *Flores* settlement agreement. Like the TVPRA, the *Flores* agreement contains references to the "release" from government custody, and it specifically distinguishes between custody and releases from custody. Paragraph 14 of the agreement states that the release of a minor is a release from "custody." Paragraph 19 states that in cases in which the former-Immigration and Naturalization Service (INS) did not release a minor, the minor "shall remain in INS legal custody." Use of the word "remain," shows that legal custody continued while the minor was held by INS in a detention facility or some other type of facility, such as a licensed program. However, once a release occurred, the minor no longer "remained" in legal custody.

The Honorable David Vitter

17. Ronald Vitello and Mark Greenberg (Acting Assistant Secretary, Administration for Children and Families, U.S. Department of Health and Human Services)

Mr. Vitello, one of the large issues appearing in a report published by the U.S. Senate Permanent Subcommittee on Investigations is the post-release responsibility of unaccompanied alien children (UACs). According to the report, the Department of Health and Human Services' (HHS) view is that once a child is placed with a sponsor, the agency's authority and "responsibility" for the "care and custody" of the child ends. However, the agency informed the Subcommittee that while such interpretation is longstanding, it is not reflected in any regulation promulgated by the Department. **In March 2008, the HHS Office of Inspector General recommended that HHS establish a Memorandum of Understanding (MOU) with DHS to delineate the roles and responsibilities each Department should play in caring for the child after they have been released to a sponsor. Since HHS is still purporting that it has zero responsibility for these children, it appears that no such MOU has been put in place.**

- 1. Is any such MOU in progress?**
- 2. If so, what is its status and expected date of completion?**

A Memorandum of Agreement (MOA) between the Department of Health and Human Services and the Department of Homeland Security was signed on February 22, 2016.