Questions for the Record for Mr. Jonathan Hayes
Senate Committee on the Judiciary
Hearing on "At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border"
May 7, 2019

QUESTIONS FROM SENATOR BLUMENTHAL

1. As you know, the Trump administration separated thousands of families throughout 2017 and 2018. In your testimony, you state that it will take 6 months just to *identify* the children separated from their parents between the summer of 2017 and the summer of 2018. When I asked at the hearing how long it would take to *reunify* separated families, you responded "I would be happy to get back to you." Similarly, when I asked if you requested additional funding to reunify separated families, you responded "I would be happy to get back to you as soon as possible."

    a. **How long will it take to reunify all the families separated between the summer of 2017 and the summer of 2018?**

    Response: On April 25, 2019, Judge Dana Sabraw of the Southern District of California issued an order in *Ms. L v. ICE*, et al., instructing the Federal government to identify possible children of potential class members in the expansion class, which would include children who were separated by the Department of Homeland Security from their parents at the Southwest Border on or after July 1, 2017, and discharged from the care of the Office of Refugee Resettlement (ORR) prior to June 26, 2018. The *Ms. L* court approved the proposed plan offered by the government to identify those children, and gave the Departments of Health and Human Services and Homeland Security a deadline of October 25, 2019, to provide, on a rolling basis, lists of potential class members and their children to the Plaintiffs, represented by the American Civil Liberties Union.

    Separated children referred to ORR care between summer 2017 and June 26, 2018 (the *Ms. L.* class certification date) were either discharged from care by June 26, 2018, or, if they were in ORR care on June 26, 2018, classified by ORR as children of potential class members. As of the most recent Joint Status Report in *Ms. L.*, all but one child of a potential class member of the original class has been discharged—and this one child remains in ORR care because the parent's preference regarding reunification has been delayed, according to the Steering Committee. There are several other children who were subsequently identified as not being children of class members.

    b. **Have you asked your superiors, the White House, or other agencies for additional funding to accomplish the task of reunifying separated families?**
        i. **If so, what was your specific ask? What was their response?**

Response: There has not been a specific request for funding for the purposes of responding to the class expansion in *Ms. L*.

2. After the Trump Administration enacted its family separation policy, the number of complaints of sexual abuse and sexual harassment received by the Office of Refugee Resettlement rose dramatically. From March 2018 to July 2018, the agency received 859 complaints, the largest number of reports during any five-month span in the previous four years.

   a. What safeguards does the Office of Refugee Resettlement have in place to prevent sexual abuse and sexual harassment of migrants in your custody?

   Response: ORR has implemented a number of safeguards designed to prevent sexual abuse in care provider facilities. Care providers must individually assess children for risk of being a victim or a perpetrator of sexual abuse while in ORR custody and use the results of the assessment to inform the minor's housing, education, recreation, and other service assignments.

   Care providers must maintain adequate levels of supervision of unaccompanied alien children by following state licensing requirements and ORR's minimum requirements for staff-children ratios. ORR requires the following ratios: one on-duty youth care worker for every eight children during waking hours and one on-duty youth care worker for every 16 children during sleeping hours. On-duty youth care workers must provide line of sight and sound supervision of children in order to be counted towards ratio requirements. In addition, the primary responsibility of on-duty youth care workers must be the supervision of children in order to be counted towards ratio requirements.

   As part of staffing plans, care providers must conduct frequent unannounced rounds during both day and night shifts to identify and deter sexual abuse and sexual harassment. Care providers must prohibit staff from alerting others that rounds are occurring, unless the announcement is related to the legitimate operational function of the facility. Additionally, ORR requires that, where available under state and local licensing standards, care providers must have video monitoring technology to assist in supervising and protecting children.

   ORR is committed to ensuring that children and youth in ORR custody have multiple ways to report any sexual misconduct that may occur. Children must receive an orientation regarding issues related to sexual misconduct within 48 hours of admission to a facility. Children in ORR care also must have access and instructions on how to report sexual abuse, sexual harassment, and inappropriate sexual behavior verbally and in writing to care provider staff, child protective services, the UAC Sexual Abuse Hotline, consular officials, and a local community service provider or national rape crisis hotline if a local provider is unavailable. ORR has a UAC Sexual Abuse Hotline that children and third parties (including sponsors, parents, and other stakeholders) can use to report any information about sexual misconduct in an ORR facility.

Care providers must provide children access to telephones with preprogrammed numbers for the UAC Sexual Abuse Hotline, CPS, and the local community service provider or national rape crisis hotline. Care providers include other preprogrammed telephone numbers, such as telephone numbers for consulates or a legal service provider, in order to avoid any stigma in using the preprogrammed telephones. Preprogrammed telephones must be placed in areas of the facility where children may easily access them without assistance from staff but where they are also afforded some level of privacy so that other children and staff cannot easily listen to telephone conversations.

ORR requires all care providers to complete pre-employment background checks on all potential staff, contractors and volunteers to ensure they are suitable to work with minors in a residential setting. ORR recently revised Section 4.3 in the ORR Policy Guide (https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.3) to incorporate sexual abuse prevention into the applicant screening process. Among other things, the revision added guidance designed to help screen out applicants at risk for engaging in sexual abuse or sexual harassment; a staff code of conduct, and additional types of misconduct that bar an applicant from employment at a care provider facility.

Care provider staff are required to complete a number of trainings pre-employment. These trainings ensure that staff understand their obligations under ORR regulations and policies. Trainings include communicating with unaccompanied alien children, avoiding inappropriate relationships, reporting procedures, and sensitivity regarding trauma. Care providers must tailor trainings to the unique needs, attributes, and gender of the children in care at the individual care provider facility. Staff must complete refresher trainings every year or with any policy change. Additionally, ORR provides periodic trainings on topics related to preventing sexual abuse. ORR also conducts monthly calls to update care providers on sexual abuse prevention issues.

b. Do you believe that the Office of Refugee Resettlement is doing enough to prevent sexual abuse and sexual harassment of migrants in your custody?

Response: ORR is committed to eliminating sexual abuse, sexual harassment, and inappropriate sexual behavior from all ORR care provider facilities. Sexual abuse and sexual harassment are an assault on human dignity and can have devastating lifelong psychological and physical effects on an individual. ORR has numerous safeguards in place and continuously evaluates the effectiveness of these safeguards to determine how to make improvements.

c. What more can the Office of Refugee Resettlement do to prevent sexual abuse and sexual harassment of migrant in your custody?

Response: ORR has increased its capacity to respond to each allegation of sexual abuse, sexual harassment, and inappropriate sexual behavior. ORR recently hired

staff members, including a Prevention of Sexual Abuse Coordinator, who are dedicated to sexual abuse prevention issues. This team reviews allegations of sexual misconduct as they are reported to ORR. ORR has also created an Abuse Review Team that quickly reviews allegations of abuse that are particularly serious or egregious in nature. The team is composed of ORR staff with the appropriate expertise to assess these allegations, including members of ORR's Monitoring Team, the Division of Health for Unaccompanied Children, and ORR's Prevention of Sexual Abuse Coordinator. The multi-disciplinary nature of the teams allows ORR to assess the safety and well-being of children involved in allegations from a number of perspectives.

ORR is also taking steps to prevent sexual abuse and sexual harassment from occurring. ORR is increasing training to care provider facilities related to sexual abuse to ensure that care providers are taking steps to prevent sexual misconduct, particularly involving staff. The training reinforces the reporting procedures, to ensure that care providers understand their reporting duties. ORR is also exploring ways to improve its data collection on sexual abuse and sexual harassment. Enhancing the data currently collected will allow ORR to analyze a richer data set to identify trends that can be used in prevention efforts.

3. As you are aware, a 16-year-old boy from Guatemala reportedly died in late April of this year after being placed in the Southwest Key Casa Padre shelter in Texas. This shelter is reportedly run by the Office of Refugee Resettlement.

   a. **When did you first become aware of this boy's death?**

      Response: ORR was notified of the child's death on April 30, 2019

   b. When did you inform your superiors of this boy's death?

      Response: ORR notified HHS and ACF Leadership of the child's death on April 30, 2019.

   c. When will you be releasing a full and detailed report on the death of this 16-year-old boy?

      Response: A review and report is anticipated to be complete this fall.

   d. In the past 24 months, how many other children have died while either living in shelters run by the Office of Refugee Resettlement, or soon after leaving those shelters? Please provide a breakdown by month and year. For any deaths, please indicate when you will be providing a full and detailed report on these deaths. If one is already available, please provide it.

      Response: Within the past 24 months, one other child died while in ORR custody. A full and detailed report is anticipated to be complete in fall 2019. ORR does not track

deaths post-reunification. However, during our 30-day post-release wellness checks, ORR has not been made aware of any death of any released child.

QUESTIONS FROM SENATOR BOOKER

1. The Office of Refugee Resettlement (ORR) in the Administration for Children and Families of the Department of the Department of Health and Human Services (HHS) has a Memorandum of Agreement (MOA) with Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) of the Department of Homeland Security whereby ORR shares information with ICE and CBP regarding information it collects when identifying a suitable sponsor for unaccompanied children, including background check information.[1] This information has been used to arrest and deport potential sponsors who are in the United States without proper documentation.

    a. How has the MOA impacted ORR's resources?

    Response: When the MOA initially became effective, the volume of background checks required ORR to add additional capacity to our digital fingerprint sites as well as fund additional security specialists at HHS Program Support Center to process and receive fingerprint background check results. Additionally, the requirements also impacted ORR's sponsorship process by extending the average length of care children spend in ORR custody which has resource impacts to bed capacity and care provider staffing. The negative effect on bed capacity and care provider staffing resources was alleviated by the issuance for four Operational Directives (in December 2018, March 2019, June 10, 2019, and June 18, 2019).

    The Operational Directives enable completion of individualized suitability assessments of sponsors without requiring expanded background checks in appropriate cases. This applies to all categories of sponsors and their adult household members. The Operational Directives also allow for the release of a UAC to their sponsors in eligible cases where there are no red flags. Additionally, ORR no longer obtains immigration status from DHS ICE and sponsors are informed of the current restrictions on DHS' ability to target a subject (using information from the ORR background check process) for immigration enforcement purposes under restrictions in DHS' appropriation.

    b. Has the MOA increased the length of stay for unaccompanied children? What is the average length of stay?

    Response: ORR uses the term "Length of Stay (LOS)" to refer to the length of time a minor remains at an individual facility. ORR uses the term "Length of Care (LOC)" to refer to the length of time a minor remains in ORR care from time of referral to discharge. Below please find information on the average Length of Care, as this is the measure analyzed when ORR acts to reduce the amount of time a child remains in ORR care before discharge.

    Prior to ORR implementing four Operational Directives, the length of care was on the rise, which ORR correlated with implementation of the MOA in 2018. However, the resulting Operational Directives have drastically reduced the length of care, and most recent data indicate it is 45 days. For the most up to date data on ORR's length of care

please refer to the following HHS maintained website: https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/latest-uac-data-fy2019/index.html

c. Is ORR considering rescinding the MOA in light of capacity issues?

Response: ORR is not considering rescinding the MOA at this time. The MOA memorializes other important information sharing practices in addition to biometric background checks. For example, the MOA includes information sharing responsibilities at the time of initial referral of the UAC. Information and documents shared by DHS at the time of referral are vital to ORR's ability to place children in the least restrictive setting that best meets their individual needs. Additionally, those matters which contributed most severely to capacity issues have been resolved by the four Operational Directives.

[1] Memorandum of Agreement Among the Office of Refugee Resettlement of the U.S. Dep't of Health & Human Servs. and U.S. Immigration & Customs Enf't and U.S. Customs & Border Prot. of the U.S. Dep't of Homeland Sec. Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters (Apr. 2018) (on file with the U.S. Dep't of Health & Human Servs. and U.S. Dep't of Homeland Sec.).

QUESTIONS FROM SENATOR COONS

1. *USA Today* recently reported that the Trump administration continues to separate migrant families. Specifically, the article identified at least 389 confirmed child separations since Judge Sabraw's June 2018 order to halt the practice.

   a. Has the Office of Refugee Resettlement (ORR) received any migrant children who have been separated from their parents at the border since June 2018?

      Response: Yes, ORR continues to receive migrant children who have been separated from their parents since June 2018 and currently, there are 617 confirmed separations since June 2018.

   b. Does ORR receive an explanation for why a child transferred to ORR has been separated from his or her family?

      Response: Yes, ORR receives an explanation or reasons why a child is separated from his/her parent and if the explanation is unclear, efforts are made to get further clarification for reason for separation. You can find further information about separated children, including the general reasons for separation in the Report to Congress on Separated Children located at https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/report-to-congress-on-separated-children/index.html.

c. Does ORR have any migrant children in its care who were separated from their families for reasons other than fraud or the safety of the child after June 2018?

Response: Yes. As stated in the June 26, 2018 preliminary injunction in the *Ms. L.* litigation, there are several allowable bases for DHS to separate children from their parents. These bases include a parent having a criminal history, other fitness concerns, or a communicable disease. Children are also separated from their parents if the parent has an outstanding warrant or is placed in U.S. Marshal's custody, as is often the case if the parent is a material witness to a crime; or if the parent is hospitalized. Additionally, as required by law, children who arrive in the U.S. without their parent or legal guardian, even if they arrive with other family members, are considered unaccompanied and referred to ORR care.

2. We recently learned that yet another migrant child passed away in federal custody, this time after having been transferred to ORR. This tragedy marks the third time that a migrant child has died in U.S. custody in just five months.

a. What actions is ORR taking to protect these children and ensure that this does not happen again?

Response: Each care provider program that accepts placement of children in ORR custody has an established network of healthcare providers, including specialists, emergency care services, mental health practitioners, and dental providers. Each child must receive an initial medical examination (IME) within 2 business days of admission. The purposes of the IME are to assess general health, administer vaccinations in keeping with U.S. standards, identify health conditions that require further attention, and detect contagious diseases, such as influenza or tuberculosis. The IME is based on a well-child examination, adapted for the UAC population with consideration of screening recommendations from the American Academy of Pediatrics, the Centers for Disease Control and Prevention (CDC), and the U.S. Preventive Services Task Force (USPSTF). The IME is administered by an MD, DO, NP, or PA. If the health care provider feels a health condition warrants additional follow-up, a referral is made. Once approval from ORR is obtained, the care provider program schedules the soonest available appointment. Data from the IME is entered into a web-based data repository accessible by ORR staff who routinely monitor reports to ensure care provider programs are adhering to ORR guidelines and timelines.

ORR is currently reviewing medical and case documentation for a complete analysis and expects a report to be completed by Fall 2019. ORR is also reviewing its protocols and procedures to ensure the health and safety of all children in ORR custody and care, and will update them as needed to further support the welfare of children in its care.

b. What resources can Congress provide to ORR to ensure that all children in ORR custody receive proper medical assessments and care?

Response: Health care provider personnel, medical care funding, and public health and medical surveillance resources are critical to the health and safety of all children in ORR custody. Congress recently provided emergency supplemental funding for HHS and DHS that was signed by the President into law on July 1, 2019. This funding is essential so that ORR can continue to reimburse medical providers on a timely basis for the health needs of UAC in the agency's care and custody.

QUESTIONS FROM SENATOR FEINSTEIN

1. To protect unaccompanied children from being held in jails, appearing in court scared and alone, or being sent back to violent conditions, I authored legislation to place these children in the care of state-licensed child care shelters managed by Health and Human Services (HHS). It has been my belief that HHS is better able meet the needs of these vulnerable children.

   I am concerned, however, that HHS is not maintaining adequate permanent capacity to meet the changing needs along the border. Instead, HHS is responding to the increase in unaccompanied children by rapidly increasing the number of children in unlicensed emergency influx shelters, like the tent camp in Texas that closed last winter.

   a. While it has been stated new state-licensed childcare centers can take 6-10 months to open, what is the reasoning for relying on influx shelters after opening the tent camp in Texas?

   The number of UAC entering the United States this fiscal year has risen to unprecedented levels. As of July 8, 2019, the Department of Homeland Security (DHS) has referred more than 58,000 UAC to HHS – an increase of more than 60 percent from FY 2018. (By comparison, HHS received 59,170 UAC referrals in fiscal year 2016 – the highest number on record.) UAC referrals in May 2019 totaled 9,099 – one of the highest monthly totals in the history of the program. It is possible that FY19 referrals will exceed those from FY16.

   When there is a sharp increase, or "influx," in the number of unaccompanied alien children (UAC) entering the United States, and federal agencies are unable to transfer them into state-licensed care provider facilities funded by HHS in a timely manner, HHS places certain UAC at influx care facilities[1] (e.g., Homestead Temporary Influx Shelter). Because they can quickly be activated and de-activated, influx facilities are essential to HHS' ability to plan and provide beds for all UACs referred to its care, given the unpredictable fluctuations in the

[1] HHS has operated influx care facilities in 2012, 2014, 2016, and 2018 through the present.

number of referrals it receives. As a result, HHS maintains the ability to rapidly set-up, expand, or contract influx infrastructure and services as needed.

HHS has detailed policies that set forth criteria for when UAC may be placed at an influx care facility. Some of the criteria include a minor's age (the minor must be between 13 and 17 years of age), medical and behavioral health conditions (no known special needs or issues), sibling status (no accompanying siblings age 12 years or younger), and pending reunification status (ability to be discharged to a sponsor expeditiously), among other considerations. (For a complete list of the requirements, please see the *Office of Refugee Resettlement Policy Guide, Section 1.7.3 Placement into Influx Care Facilities* at: https://www.acf.hhs.gov/HHS/resource/children-entering-the-united-states-unaccompanied-section-1#1.7.3)

HHS operates more than 100 state-licensed care provider facilities across the United States, but some care provider facilities work solely with populations of UAC who need specialized care (e.g., pregnant girls, teenage mothers with children, infants and small children, UAC with mental health illnesses, etc.), limiting the availability of permanent state-licensed bed space for other UAC during influxes.

While influx capacity remains critical to ensuring operational flexibility, given the ongoing humanitarian crisis at the southern border and the record numbers of children being referred to its care, HHS is working diligently to expand its state-licensed network of shelters. Just a few months ago the number of referrals had strained ORR's existing permanent bed capacity, even though ORR had concurrently (and continues to) discharged UACs to sponsors at historically high rates. Based on anticipated growth in the number of referrals, HHS expects its need for additional bed capacity to continue at least for the next two years.

b. What is the rationale for HHS' supplemental appropriations request for 9,000 unlicensed, temporary beds, but only 900 permanent beds?

At the time of the formulation of the supplemental appropriations request, referral projections indicated HHS would need to add 9,900 beds, but HHS estimated only 900 of those would be available through licensed shelters. HHS continues to monitor both the demand for beds and supply of licensed beds and update budget plans accordingly.

Currently, HHS is working to add beds to its total network, including approximately 3,000 over the next few months that will be *permanent* beds in state-licensed facilities. HHS is seeking long-term leases of properties for these care provider shelters in strategic cities across the country, which will be operated by non-profit grantees or contractors.

Initially, HHS planned to have up to 3,000 *additional temporary* beds available at influx care facilities in anticipation of high arrivals at the southern border, so that UAC do not remain in DHS border patrol stations for longer than envisioned by statute. With the decrease in the rate of daily referrals, HHS was able to put all temporary beds at influx care facilities on warm status, which allows the beds to be available in case of high arrivals at the border should such arrivals exceed capacity at permanent licensed shelters.

c. Where does HHS plan to build these 9,000 temporary beds? If they are on military bases, which bases? What measures will HHS take to ensure that these facilities are safe for children?

At this time, the Department is working to expand its total network by approximately 3,000 beds that will be permanent beds in state-licensed facilities. Beyond this, HHS is reviewing plans for future capacity needs. HHS does not plan to expand its temporary bed capacity at this time.

HHS is the primary regulator of the influx care facilities and is responsible for their oversight, operations, physical plant conditions, and service provision. While states do not license or monitor influx care facilities because they are located on federal enclaves, influx care facilities operate in accordance with applicable provisions of the *Flores* Settlement Agreement, the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008, the Interim Final Rule on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Alien Children, and HHS policy. (HHS's Policy Guide on the UAC Program is available here: https://www.acf.hhs.gov/HHS/resource/children-entering-the-united-states-unaccompanied.)

HHS monitors influx care facilities through an assigned Project Officers, Federal Field Specialists, Program Monitors, and an Abuse Review Team, and all have the authority to issue corrective actions if needed to ensure the safety and wellbeing of all children in HHS's care.

d. What is HHS' plan to effectively manage permanent, state-licensed childcare capacity to keep pace with the fluctuations in children encountered at the border?

As stated above HHS is quickly working to expand its national network of state-licensed beds, to meet the humanitarian needs of these vulnerable children and youth at the southern border. Also, maintaining influx capacity remains a critical element affording HHS the operational flexibility to meet fluctuating demands on its bed capacity, while providing all UACs in ORR care with services and care consistent with child welfare best practices.

QUESTIONS FROM SENATOR HIRONO

1. **On April 23, 2019, news reports indicate a 16-year-old boy from Guatemala died in the custody of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS) with a severe infection in his brain. This is the third child to die in government custody. When he arrived at the border, he was sent to a government contracted-facility that can house more than 1,000 children in building that was formerly a Walmart.**

   a. **What steps have you taken to investigate how this teenager died in ORR custody?**

      ORR is reviewing all available medical records, ORR care provider program documentation, and any available documentation from DHS/Customs and Border Protection received by ORR to date.

   b. **What steps have you taken to investigate the conditions of care provided at the shelter he was sent to?**

      At this time there is no indication that conditions at the facility were related to the minor's death.

   c. **Please provide any preliminary findings of any investigations related to this death.**

      It is too early in the investigation to relay preliminary findings, however we will provide Congress with our findings when our investigation is complete.

   d. **Will you commit to sharing the future results of any investigation related to this death with this Committee?**

      ORR is committed to sharing results of completed investigations related to the death of this minor. The review and report is anticipated to be complete in Fall 2019.

2. **ProPublica recently reported that an ORR-contracted shelter in New Jersey has shown alarming lapses in medical care. For example, the shelter repeatedly ignored the medical concerns of a teenager at the shelter until she had to be taken to a local hospital and connected to an IV for her severe anemia. One of the pediatricians providing contract services has complained about the children's inadequate medical care, including "a troubling new request" by the shelter to have the doctors sign off on "physically restrain[ing] kids in its care."**

   a. **ORR has stated it is investigating the pediatrician's complaint. Can you please tell us the status of the investigation and what steps you have taken to address the issues identified?**

      The health and safety of UAC in ORR custody is of highest priority for the office. Generally, for any complaint, ORR's primary response is to ensure that each child is safe; additional resources might be called upon to evaluate the complaint, including involving federal, state or local enforcement agencies.

Upon receipt of the New Jersey (NJ) community health care organization medical provider's complaint, ORR's Division of Health for Unaccompanied Children (DHUC) immediately completed a review of the program, which included an audit of the medical records of randomly selected UAC under the care of the grantee care provider program. Based on this internal review (conducted in March 2019), ORR issued corrective actions to the care provider program and a stopped placement of new cases to the program. The placement hold remained in effect until all issues identified were addressed. As a consequence, the care provider program provides weekly updates to ORR DHUC on their progress towards remediation of the concerns outlined in the corrective actions. The steps of remediation include:

- Participating in refresher training regarding ORR policy and procedures for UAC medical care
- Hiring a nurse to provide support to the medical operations within the program
- Holding weekly multi-disciplinary discussions to review pending medical needs, follow-up appoints for UAC, and/or case management challenges with UAC in their program
- Completing retroactive electronic health record data entry to ensure the completeness of all documentation

Through the investigation of the complaint, it was determined that the NJ community health care organization had errant internal processes related to the timely reporting of lab results to the care provider program. As a result of the investigation, the lab result notification process was streamlined to improve communication between the care provider program and the community NJ health care organization.

Following the internal review (March 2019), multiple ORR-DHUC audits (February-April 2019) of the ORR care provider's health records, and the ORR care provider's efforts to address the identified issues, the stop placements hold was lifted at the end of April 2019. ORR-DHUC continues to closely review the ORR care provider program's weekly report.

b. Do you believe the children in your care should be physically restrained?

Generally, ORR requires its care providers to use physical restraint only as a last resort to protect the safety of children or others, and never as a form of discipline. According to the ORR Policy Guide, section 3.3.15 (https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.3.15) the use of a restraint is permissible in specific limited situations and settings in which a child is deemed to present an immediate danger to themselves or others, and if de-escalation techniques have failed, and a staff member has received appropriate training in physical restraint techniques. Generally speaking, any use of restraints requires reporting to ORR, see ORR Policy Guide, section 5.5.5. In no event are ORR care providers permitted to use chemical restraints.

c. What oversight is your office conducting to ensure that children in ORR shelters receive proper medical care?

ORR's Division of Health for Unaccompanied Children (DHUC) completes care provider-level monitoring of program compliance with ORR health policy and procedures as part of ORR's program monitoring. ORR-DHUC also completes daily, monitoring of individual UAC health records through ORR's electronic portal (UAC Portal). These routine monitoring activities may trigger more in-depth reviews and investigations of compliance issues. Investigations may also be initiated when specific issues are reported to ORR-DHUC.

Routine monitoring includes review of the following areas:

(1) Timeline from arrival to the program (intake) to the completion and documentation of the Initial Medical Exam

(2) Program compliance with the Initial Medical Exam requirements, key areas – medical history, social history, symptom check, physical check, psychosocial risk assessment, tuberculosis screening, STD screening (if applicable), HIV testing (if applicable), lead screening (if applicable) and/or pregnancy screening (if applicable)

(3) Immunizations. Review of program compliance with 2nd, 3rd and booster immunizations for minors in care longer than 30 days

(4) Upload of required documentation as outlined in the ORR policy

(5) Sick visit documentation following the Initial Medical Exam

(6) Overall compliance with ORR medical policy and guidance

3. NBC news recently reported that government emails revealed that the Department of Homeland Security (DHS) did not keep track of the thousands of families it had separated. That indicates that the government had no intention of reuniting these families. It has taken nearly a year to reunite about 2,800 children with their parents under court order, and there are potentially thousands more separated children they still need to identify. Despite all of this, the President has recently stated that *ending* the family separation policy was "a disaster" that resulted in more families coming into the country.

a. In your view, do you believe policies, like the family separation policy, that are intended to deter migration by punishing immigrants for entering this country, are effective?

ORR is not an immigration enforcement agency, we defer to DHS for a response.

b. If so, please explain how these policies address the humanitarian concerns at the border.

ORR is not an immigration enforcement agency, we defer to DHS for a response.

c. Please explain what steps you taken to ensure that the children and parents who were previously separated by DHS but have not yet been reunited are identified and reunited as quickly as possible.

As co-defendants in *Ms. L. v. ICE et al.*, HHS and DHS coordinate their efforts to identify and reunify class members and their children consistent with the Court's orders. These efforts include jointly identifying any new separations, establishing communication between parents and children, and coordinating reunification where appropriate—either into DHS custody or into the community. .

As of July 7, 2019, HHS discharged (either by reunification with the separated parent or release from custody under other appropriate circumstances) all but one of the 2,814 children of class members as originally certified in *Ms. L. v. ICE et al*. The one remaining child has a parent who was removed from the United States, and the court-approved reunification Steering Committee indicated to HHS that there would be a delay in obtaining the parent's preference regarding reunification with the child. Under the Court's orders, HHS may not discharge this child from care until it knows whether the separated parent elects to reunify or else to have the child released to a suitable sponsors.

For any children of *Ms. L* class members referred to ORR care after the preliminary injunction was issued on June 26, 2018, HHS and DHS maintain a list identifying all verified parent-child separations, including the bases for separation. Note, the preliminary injunction in *Ms. L.* recognized certain situations in which separations are allowable. For these "new separations," HHS works to verify parentage; establish communication between the child and the separated parent; obtain parental preference as to whether they seek reunification with their child or discharge of the child to a suitable sponsor; and to discharge the children appropriately.

On April 25, 2019, the *Ms. L.* court approved the government's proposed plan to identify possible children of potential class members in the expansion class—that is, children who were separated from parents at the border by DHS, and referred to ORR care on or after July 1, 2017, and the child was no longer in ORR custody as of the June 26, 2018 preliminary injunction.

4. On February 20, 2019, the government reported in *Ms. L v. U.S. Immigration and Customs Enforcement* that 249 children were separated from their parents between June 28, 2018 and February 5, 2019 – after Judge Sabraw ordered an end to family separations with rare exceptions. The government stated that 225 of those 249 cases were separations based on a parent's alleged "criminality, prosecution, gang affiliation, or other law enforcement purpose."

On May 2, 2019, USA Today reported that there 389 children who have been separated from their parents between June 28, 2018 and April 2019, and one-fifth of these newly separated children are younger than 5 years old. This indicates a 56-percent increase in the number of family separations since February 2019. The article identifies one father who had his 2-year-old daughter taken from him for nearly a month despite having a birth certificate with both their names and no prior criminal record.

a. What details about reasons for separation does the HHS receive at the time a child is transferred to its custody by DHS? Are these details sufficient to distinguish one case from another, or are the details limited to general categories such as "criminal history"? If it is the latter, please provide a list of the categories.

HHS has been working with DHS in receiving sufficient details of separations besides general categories such as "criminal history." Sometimes, DHS provides notes on the reason for separation at the time of referral. If there are any discrepancies in the reason for separation or if the reasons provided need further clarification, ORR contacts DHS to provide adequate details of separation.

Also, as described above, HHS and DHS maintain a list of new separations, which includes DHS' bases for the separations described at a general level (e.g., "criminal history"). In addition, DHS may provide additional details regarding the general basis for separation provided. For example, where there is criminal history, DHS may provide the charges that separated parents were convicted of. However, HHS cannot predict how detailed any additional information from DHS will be, nor is it in a position to require more detailed information from DHS. As an example, DHS does not provide information it considers law enforcement sensitive, because HHS is not a law enforcement agency. We defer to DHS to interpret their own authorities with respect to the information they can share with HHS.

b. What training, if any, has HHS provided to ORR who interact with children who have been separated from their parents?

ORR staff have been provided with training on trauma informed care, cultural sensitivity for children who have been exposed to trauma and understanding the effects of separation to these vulnerable children.

c. What efforts does HHS make to connect separated children with their parents on a regular basis?

ORR is required to ensure that communication between a separated parent and children are established as soon as the children are placed in ORR care. ORR staff are trained to make best efforts to locate parents and once located, to arrange at least two weekly phone calls, lasting a minimum of 10 minutes per call.

d. Does HHS promptly and routinely provide information supporting the reasons for separation to:

i. The attorney for the parent, if and when one files a notice of representation?
ii. The attorney for the child, if and when one files a notice of representation?
iii. The independent child advocate, if one is appointed by HHS?

Yes. Once it is determined that an attorney for the parent, child and child advocate have been appointed, information about the child's case including the reasons for separations are provided to these attorneys and child advocate. As noted previously, HHS relies on DHS to provide the basis for separation for each separated child, along with any additional details.

5. **The Trump administration is reportedly considering a new version of its family separation policy that they are calling a "binary choice" program. Under this program, parents are given the "binary choice" of having their children detained with them indefinitely or being separated from their children.**

   a. **Please identify the names and offices of anyone within HHS who has researched, discussed or considered the possibility of a "binary choice" program or policy.**

      ORR has taken no steps to prepare or implement "binary choice" program or policy.

   b. **What steps, if any, have been taken to prepare for or implement such a "binary choice" program or policy?**

      ORR has taken no steps to prepare or implement "binary choice" program or policy.

   c. **What steps has ORR taken to help children who were separated from their parents deal with the trauma and harm of that separation?**

      Children who were separated from parents are provided with weekly individual and group therapy and children use these appointments to discuss any trauma related events and its impact on their emotional and behavioral well-being and also children positive coping skills. Clinicians are trained in trauma informed care and additional trainings are provided to enhance their clinical skills in dealing with trauma. The National Center for Traumatic Stress Network worked with ORR in developing webinar series focused on approaches in dealing with separated children.

   d. **Will you commit to not reinstating a family separation policy?**
      ORR is not an immigration enforcement agency and has no authority to propose or implement immigration enforcement policies. ORR's mission is to provide care and services to all children in its custody, and to discharge the children referred into its care to sponsors (the majority of which are family members) as quickly and safely as possible reflects the child welfare mission of ORR and ACF. For children separated from their parents, ORR works with its DHS counterparts to identify children of *Ms. L.* class members and to effect reunifications where possible.

6. **Rep. Ted Deutch released documents from the Department of Health and Human Services (HHS) that showed that its Office of Refugee Resettlement received more than 4,500 complaints of sexual abuse against unaccompanied minors from October 2014 to July 2018. During that time, the Department of Justice received 1,303 complaints. These complaints included 178 allegations of sexual abuse by adult staff.**

a. What is ORR's protocol for investigating sexual abuse allegations? Please provide a copy of any written guidance on this matter.

ORR's top priority is the safety and well-being of children in our care. ORR care provider facilities diligently track all allegations of a wide range of sexually inappropriate conduct, ranging from name calling or use of vulgar language to more serious claims. The data given to Congress by our agency reflects allegations much broader than 'sexual abuse' (as defined in 34 U.S.C. § 20341 and in ORR regulations at 45 C.F.R. § 411.6), extending to 'sexual harassment' (as defined in ORR regulations at 45 C.F.R. § 411.6) and 'inappropriate sexual behavior' (a catch-all category for sexual behaviors that do not rise to the level of sexual abuse or sexual harassment).

The vast majority of the allegations reported to ORR are 'inappropriate sexual behaviors' involving solely UACs, and not staff or any other adults. Facilities can often resolve these allegations by, for example, counseling the minors about more appropriate behaviors. The vast majority of allegations of 'sexual abuse' involve 'UAC-on-UAC' allegations; the distinct minority involve adults.

Care providers must report sexual abuse, sexual harassment, or inappropriate sexual behavior that occur in ORR care immediately but no later than four hours after learning of the allegation. Care provider facilities must follow state licensing requirements to report allegations of sexual harassment and inappropriate sexual behavior.

Care providers report allegations of sexual abuse to Child Protective Services (CPS), the state licensing agency, HHS/OIG and the FBI. In the case of a sexual abuse allegation involving minors, CPS or state licensing may cross-report to local law enforcement. If an allegation involves an adult, the care provider must notify local law enforcement.

If a sexual abuse allegation involves a staff member, the care provider is required by regulation to suspend the staff member from all duties that would provide the staff member with access to UAC pending investigation.

After investigation by an oversight entity, a care provider must take disciplinary action up to and including termination for violating ORR's or the care provider's sexual abuse-related policies and procedures. Termination must be the presumptive disciplinary sanction for staff who engaged in sexual abuse or sexual harassment.

ORR has no formal investigative authority. CPS and state licensing investigate allegations of sexual abuse according to state law, and the FBI and the HHS/OIG investigate allegations according to federal laws and procedures.

b. What steps have been taken to prevent sexual abuse against unaccompanied minors by adults or other minors?

ORR has implemented a number of safeguards designed to prevent sexual abuse in care provider facilities. Care providers must individually assess children and youth for risk of being a victim or a perpetrator of sexual abuse while in ORR custody and use the results of the assessment to inform the minor's housing, education, recreation, and other service assignments.

ORR is committed to ensuring that children and youth in ORR custody have multiple ways to report any sexual misconduct that may occur. UAC must receive an orientation regarding issues related to sexual misconduct within 48 hours of admission to a facility. Children and youth in ORR care must have access and instructions on how to report sexual abuse, sexual harassment, and inappropriate sexual behavior verbally and in writing to care provider staff, child protective services, the UAC Sexual Abuse Hotline, consular officials, and a local community service provider or national rape crisis hotline if a local provider is unavailable. ORR has a UAC Sexual Abuse Hotline that UAC and third parties (including sponsors, parents, and other stakeholders) can use to report any information about sexual misconduct in an ORR facility.

Care providers must provide unaccompanied alien children access to telephones with preprogrammed numbers for the UAC Sexual Abuse Hotline, CPS, and the local community service provider or national rape crisis hotline. Care providers include other preprogrammed telephone numbers, such as telephone numbers for consulates or a legal service provider, in order to avoid any stigma in using the preprogrammed telephones. Preprogrammed telephones must be placed in areas of the facility where children may easily access them without assistance from staff but where they are also afforded some level of privacy so that other children and staff cannot easily listen to telephone conversations.

ORR requires all care providers to complete pre-employment background checks on all potential staff, contractors and volunteers to ensure they are suitable to work with minors in a residential setting. ORR recently revised Section 4.3 in the ORR Policy Guide (https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.3) to provide additional guidance on applicant screening.

Care provider staff are required to complete a number of trainings pre-employment. These trainings ensure that staff understand their obligations under ORR regulations and policies. Trainings include communicating with UAC, avoiding inappropriate relationships, reporting procedures, and sensitivity regarding trauma. Care providers must tailor trainings to the unique needs, attributes, and gender of the unaccompanied alien children in care at the individual care provider facility. Staff must complete refresher trainings every year or with any policy change. Additionally, ORR provides periodic trainings on topics related to preventing sexual abuse. ORR also conducts monthly calls to update care providers on sexual abuse prevention issues.

c. What oversight or accountability mechanism does ORR have in place to ensure that its efforts to prevent sexual abuse are effective?

ORR reviews every report of sexual abuse submitted by care provider facilities. When appropriate, ORR issues corrective actions or stops further placement of unaccompanied alien children until the care provider facility addresses identified issues.

Additionally, ORR monitoring is an ongoing, multi-layered process that provides consistent oversight of all components of a care provider facility's program, including program design, management, services, safety and security, child protection, case management, personnel management, stakeholder relations, and fiscal management. The monitoring policies create formal accountability standards and check points at regularly scheduled intervals.

ORR monitoring activities include the following:

- Desk Monitoring: Ongoing oversight based on the HHS grants management model, which includes monthly check-ins with the care provider's Project Officer (PO), regular record and report reviews, financial/budget statements analysis, and communications review.
- Routine Site Visit Monitoring: Day-long visits to every facility on a once or twice monthly basis, both unannounced and announced, to review policies, procedures, and practices and guidelines compliance. Generally, these visits are limited to review of case management services.
- Site Visits in Response to PO or Other Requests: Visits for a specific purpose or investigation, for example, in response to a corrective action plan.
- Monitoring Visits: Week long monitoring to the site not less than every two years to conduct a comprehensive review of the program.
- Audits by an external contractor to determine a care provider facility's compliance with ORR regulations and policies related to sexual abuse prevention.

QUESTIONS FROM SENATOR LEAHY

1. There was significant media attention paid in April of 2018 to the Memorandum of Agreement (MOA) between DHS and HHS that allows information about sponsors, potential sponsors, and household members obtained from an unaccompanied child in HHS custody to be shared between HHS and DHS. DHS then issued a "Notice of Modified System of Records Docket Number DHS-2018-0013, explicitly allowing this information to be placed in DHS's enforcement databases. Hundreds of immigrants – most of whom only had committed immigration-related violations – were arrested by ICE as a result of this information-sharing agreement, and there was a widespread chilling effect as potential sponsors were afraid to come forward to take care of UACs.

   In response, in the FY 2019 Appropriations Law (P.L. 116-6) enacted on February 15, 2019, Congress specifically included language prohibiting ICE from using funds "to place in detention, remove, refer for a decision whether to initiate removal proceedings, or initiate removal proceedings against a sponsor, potential sponsor, or member of a

household of a sponsor or potential sponsor of an unaccompanied alien child" based on information obtained from HHS.

a. Since the enactment of the FY 2019 Appropriations Law, what concrete steps has HHS taken to ensure that the information it shares with ICE about UAC sponsors, potential sponsors, and household members of potential sponsors is not being used for enforcement actions or proceedings by ICE? Are there any kind of limits or conditions that HHS has put on its information sharing agreement with DHS to ensure compliance with the FY 2019 appropriations law?

Response: Since the enactment of the FY 2019 Consolidated Appropriations, HHS has taken concrete steps to ensure UAC sponsors, potential sponsors, and sponsor household members are aware that information it shares with HHS will not be used for ICE enforcement proceeding. HHS has informed care provider facilities, and sponsors that DHS is restricted from using a background check subject's information for immigration enforcement actions such as placing a subject in detention, removal, referring the individual for a decision on removal, or starting removal proceedings. In addition, ORR has specifically revised the following sections of the ORR Policy Guide. See https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.5.

- Section 2.5 to include a brief description of the background check transmission process, including identification of Federal and state agencies involved in the process,
- Section 2.5.1 background check table to remove references to DHS checks,
- Section 2.5.2 to include a process for notifying officials when unanticipated derogatory information is received after a child's release; and
- Section 2.6 to remove references to immigration status verification checks through DHS systems as these are no longer required.

ORR also revised its *UAC Manual of Procedures* to include a script care provider facilities must use to ensure that this information is communicated clearly and consistently. The script reads,

> *Your fingerprints and other information, such as your name and date of birth, are shared DHS as part of the ORR background check process. DHS is restricted from using your information for immigration enforcement actions, including placing you in detention, removing you from the United States, referring you for a decision on removal, or starting removal proceedings. However, there are some exceptions. DHS may be able to use your information for immigration enforcement actions if you were convicted of, charge with, or are pending charges for a serious felony; if you have ever associated with a business that employs minors and does not pay a legal wage or prevents the minor from going to school; or if you have ever had an association with prostitution. Serious felonies include*

child abuse; sexual violence or abuse; child pornography; and aggravated felonies as defined in the U.S. Code of Laws.

Congress wrote this restriction into the Consolidate Appropriations Act of 2019, which is in effect until September 30, 2019. ORR does not know if the restrictions will continue beyond that date. Congress may impose these same restrictions, different restrictions, or not restrict DHS in the future.

ORR recommends that anyone who is concerned that DHS may be able to use their information for immigration enforcement actions speak with an attorney about whether their criminal history falls under these exceptions.

The UAC Manual of Procedures also required care provider facilities to offer to send the sponsor links to the U.S. Code section that contains the definition of an aggravated felony and the Consolidated Appropriations Act, 2019.

On June 27, 2019 ORR released a new *Authorization for Release of Information* form that is provided to potential sponsors and appraises them of the process for authorizing release of information to those investigating their sponsorship application. One of the provisions now reads,

I understand that my biometric and biographical information, including my fingerprint, is shared with Federal, state and local law enforcement agencies and may be used consistent with their authorities, including with U.S. Department of Homeland Security (DHS and with the U.S. Department of Justice (DOJ) to investigate my criminal history through The National Criminal Information Center. I also understand that DHS is restricted from using my information for immigration enforcement actions, including placement in detention, removal, referral for decision whether to initiate removal proceedings, or initiation of removal proceedings, unless I have been convicted of serious felony, am pending charges for serious felony, or I have been directly involved in or associated with any organization involved in human trafficking.

The provision also includes a footnote that states, *"DHS is restricted from using this information through September 30, 2019."*

b. To your knowledge, after the FY 2019 Appropriations law was enacted, have there been any instances where ICE has initiated enforcement actions or proceedings against an individual based on information obtained from HHS in contravention of the law?

Response: HHS has no role in immigration enforcement actions undertaken by Immigration and Customs Enforcement (ICE). For questions related to immigration enforcement actions, we defer to ICE.