



Statement of

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Before the

**Permanent Subcommittee on Investigations
Committee on Homeland Security and
Governmental Affairs
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Chairman Portman, Ranking Member Carper, and members of the Subcommittee, it is my honor to appear on behalf of the Department of Health and Human Services (HHS). I am Steven Wagner, the Acting Assistant Secretary for Children and Families (ACF). In this capacity, I oversee the work of the Office of Refugee Resettlement (ORR), which is responsible for the care and placement of unaccompanied alien children (UAC). In my testimony today, I will describe the current state of the UAC program, and then discuss a number of developments in the program's policies and administration since February 2016.

Current State of the Program

In fiscal year (FY) 2017, 40,810 children were referred to ORR from the Department of Homeland Security (DHS). In FY 2018 (through March), we have had 21,574 referrals. Although March and April of FY 2017 had the lowest referrals since FY 2012, referrals started to slowly increase in May of 2017, and today are significantly higher than just a couple of months ago. To illustrate, in March 2017, ORR had 755 referrals; while in March 2018, ORR had 4,204 referrals.

At this time, we have no temporary facilities open at Department of Defense locations. The last one closed in February 2017. As of March 2018, we are operating one temporary influx facility at a Department of Labor site. ORR now has its largest permanent shelter capacity at over 9,800 beds, and we continue to maintain the majority of our shelter capacity along the southern border.

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

In FY 2017, children typically stayed in ORR custody for 51 days and so far in FY 2018 (through March) average length of stay has been 56 days. ORR releases the majority of UAC to sponsors. In FY 2017, ORR released 93 percent of children to a sponsor. Of those, ORR released 49 percent to parents, 41 percent to close relatives, and 10 percent to other-than-close relatives or non-relatives. In FY 2018, we have released 90 percent of children to individual sponsors and of those sponsors, 41 percent were parents, 47 percent were close relatives, and 11 percent were other-than-close relatives or non-relatives.

In FY 2017, ORR performed 3,173 home studies and provided post-release services to 13,381 children, increasing the latter by 27 percent from the previous year.

Program Enhancements Since February 2016

Since February 2016, ORR has made a number of policy enhancements in the areas of sponsor assessments and home studies. Sponsor assessment is the ORR process for evaluating potential sponsors' ability to provide for the child's physical and mental well-being. As part of the determination of whether an individual is a suitable sponsor, ORR requires its case managers to verify a potential sponsor's identity and relationship to the child. Case managers must also:

- interview prospective sponsors;

- require prospective sponsors to complete an “Authorization for Release of Information”;
- conduct background checks on all prospective sponsors;
- coordinate fingerprint checks of the Federal Bureau of Investigation (FBI) database for non-parental sponsors, or for parental sponsors where there is a documented risk to the safety of the child, the child is especially vulnerable, or the case is being referred for a mandatory home study;
- coordinate a check of the immigration Central Index System in some cases.
- require sponsors to sign a Sponsor Care Agreement.

In the area of sponsor assessments, ORR has decreased the ability of potential sponsors to use fraudulent documents during the sponsor assessment process. ORR added guidance in January 2016, and further refined it in October and November 2016, on the types of documents ORR accepts as evidence of identity for the potential sponsor, the household members, and any adults listed in a sponsor care plan.¹ The guidance also clarified what constitutes acceptable documents to prove the prospective sponsor’s address, the child’s identity, and the sponsor-child relationship.² ORR also added an alternative method to verify a potential sponsor’s address.³ These changes help to protect children from traffickers, smugglers, and others who may wish to do them harm. If ORR discovers that a sponsor is using fraudulent documents, ORR denies release.⁴ ORR reports the cases to the HHS/Office of the Inspector General and to U.S. Immigration and Customs Enforcement’s Homeland Security Investigations.

¹ *ORR Guide: Children Entering the United States Unaccompanied*, § 2.2.4 “Required Documents for Submission with the Application for Release.” (November 2016), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.2.4>.

² *Id.*

³ *Id.*

⁴ *Id.*

The background check part of the sponsorship assessment varies depending in part on the relationship between the child and the potential sponsor. ORR conducts criminal public records checks and Sex Offender Registry Checks on all potential sponsors. ORR conducts National (FBI) Criminal History Checks, based on digital fingerprints or digitized paper prints, for all potential sponsors, except parents. ORR conducts these checks on parents where there is a documented risk to the safety of the UAC, the child is especially vulnerable, and/or the case is being referred for a home study. In the case of parental sponsors, a documented risk to the safety of the child may be, for example, a drug or alcohol addiction. In those cases, ORR runs an FBI criminal background check and an immigration check. ORR would want to determine if the drug or alcohol addiction led to criminal acts, and obtain a comprehensive assessment of any potential risks to the child. ORR would then assess those results under its policies to determine if release to the particular sponsor is barred. ORR would also assess the severity of the initial, identified safety risk, the length of time that has passed since any events related to the risk, any evidence of rehabilitation, and the parent/child relationship. Each case is unique, and ORR addresses the facts accordingly. ORR also conducts Immigration Status Checks through the Central Index System on all potential sponsors, except parents. Again, ORR conducts these checks on parents where there is a documented risk to the safety of the UAC, the child is especially vulnerable, and/or the case is being referred for a home study. In addition, ORR conducts Child Abuse and Neglect Checks on all unrelated sponsors. ORR conducts these checks on parents or other relatives if the case requires a home study or a special concern has been identified.

In April 2016, ORR clarified that its criteria for background checks represent minimum standards in terms of checking potential sponsors' public records.⁵ Additionally, ORR may require enhanced checks for sponsors in any category where there are any unresolved issues or questions related to a child's well-being.⁶

In assessing a sponsor's suitability, ORR not only evaluates the sponsor's ability to provide for the child's physical and mental well-being, but also the sponsor's ability to ensure the child's presence at future immigration proceedings. Potential sponsors are expected to attend the Legal Orientation Program for Custodians (LOPC), which the Executive Office for Immigration Review (EOIR) in the Department of Justice presents to inform sponsors of their responsibilities for their child's appearance at all immigration proceedings. To emphasize the importance of a child's attendance at immigration proceedings, in December 2017, ORR made attendance at the LOPC a criteria in the sponsor assessment process.⁷

In the area of home studies, ORR made two significant policy changes in March 2016. 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 visits, in-person interviews of the proposed sponsor and possibly interviews with other household members, and post-release services. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008) mandates home studies in

⁵ *ORR Guide: Children Entering the United States Unaccompanied*, § 2.5.1 "Criteria for Background Checks." (April 2016), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.5.1>.

⁶ *Id.*

⁷ *ORR Guide: Children Entering the United States Unaccompanied*, § 2.4.1 "Assessment Criteria." (December 2017), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.4.1>.

certain situations, but the March 2016 policy changes led to an increase in discretionary home studies, which are home studies that are not required by law.⁸ One of these policy changes focused on tender age UAC. ORR began requiring home studies for all UAC 12 years of age and younger being released to non-relative sponsors.⁹ The other change underscored the need for case managers and case coordinators, who have direct contact with UAC, to recommend home studies, even if not required by the TVPRA of 2008, if they think a home study would provide additional information required to determine that the sponsor is able to care for the health, safety, and well-being of the child.¹⁰

Post-release

Another step in improving the safety of releases is to contact the child and the sponsor shortly after release, which is a critical adjustment period. To accomplish this, ORR initiated safety and well-being calls.¹¹ A case manager contacts the child and the sponsor 30 days after release. The case manager confirms that the child is still residing with the sponsor, is enrolled in school, is aware of upcoming court dates, and, most importantly, is safe. If the case manager, or any other ORR grantee or contractor that has contact with a released child, has a concern about the child's safety or well-being, they are required to take steps under ORR's new "post-release reporting system for notifications of concern."¹² Under the system, they must report all concerns to appropriate investigative agencies, and notify ORR of immediate dangers to a child's safety or

⁸ *ORR Guide: Children Entering the United States Unaccompanied*, § 2.4.2 "Home Study Requirement." (March 2016), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.4.2>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *ORR Guide: Children Entering the United States Unaccompanied*, § 6.1 "Summary of Resources and Services Available After Release from ORR Care." (June 2016), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-6#6.1>.

¹² *Id.*

well-being.¹³ To remove children from unsafe situations, ORR reports notifications of concern to local law enforcement.

In addition, ORR has expanded the services of its National Call Center, which was stood up in September 2014. The National Call Center is a resource for all children and sponsors post-release.¹⁴ It is available 24 hours a day, seven days a week,¹⁵ and provides referrals to community assistance and other guidance to sponsors and children seeking help, including those with safety concerns.¹⁶

From October to December 2017, ORR attempted to reach 7,635 UAC and their sponsors. Of this number, ORR reached and received agreement to participate in the safety and well-being call from approximately 86 percent of sponsors. From these calls, ORR learned that 6,075 UAC remained with their sponsors. Twenty-eight UAC had run away, five had been removed from the United States, and 52 had relocated to live with a non-sponsor. ORR was unable to determine with certainty the whereabouts of 1,475 UAC. Based on the calls, ORR referred 792 cases, which were in need of further assistance, to the National Call Center for additional information and services.

I understand that it has been HHS's long-standing interpretation of the law that ORR is not legally responsible for children after they are released from ORR care. However, considering the

¹³ *Id.*

¹⁴ *ORR Guide: Children Entering the United States Unaccompanied*, § 6.4 "ORR National Call Center." (July 2016) <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-6#6.4>.

¹⁵ *Id.*

¹⁶ *Id.* "The Call Center offers the following assistance to children released from ORR care: Locate resources in the sponsor's community, such as: Legal service providers, Educational support, Medical care, Emotional support, *Juvenile justice*, Substance abuse treatment, *Safety support*." (emphasis added)

importance of the post-release period, we are taking a fresh look at that question as a matter of both legal interpretation and appropriate policy. Specifically, we are exploring the question of ORR's responsibilities in relation to children who are released to sponsors, and whether the level of responsibility would differ depending on the child's relationship to his or her sponsor. Based on what we have learned so far, if ORR were to remain legally obligated for the welfare of UAC after their release to a sponsor, or took on additional protective measures even if not legally obligated, those procedures would require a significant expansion of the current program structure and an increase in resources, and possibly additional legal authorities to further clarify ORR's role.

Interagency Communication

ORR continues to develop its interagency communication efforts. In particular, I note that ORR shares information with its Federal partners as an additional means of reinforcing the safety of UAC as well as their participation in immigration proceedings. For example, ORR provides EOIR with monthly UAC data, which EOIR uses through its Legal Orientation Program for Custodians of UAC.

Second, ORR is working to enhance its day-to-day consultations with DHS. Under the current process, 24 hours before ORR releases a UAC from custody, it notifies DHS of the sponsor's identity, location, and relationship to the UAC, and ORR asks for DHS input regarding the safety of the release for the UAC and for the community. ORR notifies DHS again 24 hours after the minor's release.

Third, ORR and DHS are continuing to draft the Joint Concept of Operations (JCO). The agencies intend for the JCO to lead to increased communication and more efficient program implementation.

Closing

Thank you for this opportunity to update you on ORR's efforts in the UAC program, and for your commitment to the safety and well-being of unaccompanied alien children. I look forward to working with you on our continued enhancement of policies and procedures, and all facets of the UAC Program. I would be happy to answer any questions.