

**Senate Committee on Homeland Security and Governmental
Affairs
Permanent Subcommittee on Investigations
Questions for the Record**

**“Adequacy of the Department of Health and Human Services’ Efforts to
Protect Unaccompanied Alien Children from Human Trafficking”**

**HHS Witnesses: Mark Greenberg and Bob Carey
January 28, 2016**

Effective Date of Responses: April 29, 2016

The Honorable Claire McCaskill

1. During the hearing, Sen. McCaskill asked Mr. Greenberg and Mr. Carey to provide, by February 4, 2016, a formal legal analysis supporting HHS’s “long-standing policy” that ORR has no responsibility for unaccompanied alien children (UAC) after their placement with sponsors. On February 22, 2016, HHS provided a response to Sen. McCaskill’s request, which argued that the Trafficking Victims Protection Act prevented HHS from asserting “continuing legal custody post-release” of a child. Please answer the following questions:
 - a. HHS’s February 22, 2016, letter stated that ORR operates the Unaccompanied Children Program “consistent with the *Flores* Settlement.” Under paragraph 16 of the *Flores* Settlement, however, ORR has the authority to “terminate the custody arrangements [that ORR enters into with UAC sponsors] and assume legal custody of any minor whose custodian fails to comply” with such a custody agreement. Please explain why paragraph 16 would not allow ORR to assume post-release custody of a UAC in the event a sponsor fails to fulfill his or her obligations.
 - b. HHS has explained to the Subcommittee that it has never invoked the authority provided in paragraph 16 and is unsure whether it or the Department of Homeland Security would be the proper agency to do so. Please state which agency, in the view of HHS, may properly invoke the authority in paragraph 16.
 - c. If HHS has no view on which federal agency has this authority, please explain why HHS has failed to comply with the 2008 HHS Inspector General recommendation that DHS and HHS enter into a memorandum of understanding delineating the responsibilities of both agencies for ensuring the safety of UACs after placement.

- d. HHS’s February 22, 2016, letter argued that because “Congress specifically required follow-up services in those limited cases where a home study was conducted, and...authorized follow-up services for certain other children with mental health or other needs,” Congress did not intend to grant ORR the general ability to retain or assume post-release custody of UACs. Please explain how 8 U.S.C. § 1232(c)(3)(B), which grants ORR the ability to conduct follow-up services in the above-mentioned cases, prohibits ORR from assuming post-release custody of UACs in other cases.**
- e. Please explain why, if 8 U.S.C. § 1232(c)(3)(B) requires follow-up services in certain cases, HHS has allowed sponsors to hold a veto over these services or bar care providers from communicating with UACs.**
- f. Please describe any specific legal impediment to ORR conducting a home study when a UAC sponsored by a Category 3 sponsor fails to appear at an immigration hearing.**

The Department of Health and Human Services (HHS) 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 it operates consistent with the *Flores* Settlement. Consistent with these statutes, unaccompanied children are referred to the Office of Refugee Resettlement (ORR) by other federal agencies, usually the Department of Homeland Security (DHS). ORR will accept any unaccompanied child referred to its care by another federal agency, including children who have previously been in ORR’s care.

A memorandum of agreement (MOA) between DHS and HHS regarding unaccompanied children was signed on February 22, 2016. The MOA outlines the following shared goals: ensure the safe and expedited transfer and placement of unaccompanied children from DHS to HHS custody; maximize efficiency in the allocation and expenditure of the agencies’ respective program costs; ensure information is transmitted between the Parties to facilitate appropriate placement decisions family reunification where possible and for HHS to promptly place the child in the least restrictive setting that is in the child’s best interest until the child is released to an appropriate sponsor; continue the statutorily-required consultation between departments with respect to unaccompanied children placement determinations; protect unaccompanied children in the custody of the United States or released to sponsors from mistreatment, exploitation, and trafficking; and promote the effective immigration processing and safe repatriation and reintegration of unaccompanied children. The MOA is intended to provide a framework for interagency coordination on the responsibilities of the Parties in coordinating and establishing procedures, shared goals, and interagency cooperation with respect to unaccompanied children. ORR continues to collaborate with all of its interagency partners to improve the efficiency and effectiveness of its operations. In operating the Unaccompanied Children Program, ORR works closely with DHS on a daily basis to ensure effective coordination.

Before placing a child with a sponsor, HHS goes through a multi-step assessment process with the goal of ensuring that a sponsorship will be safe and appropriate. Consistent with the TVPRA, ORR conducts home studies “before placing a child with an individual” in certain

circumstances.¹ 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 is conducted prior to a child being released to a sponsor and includes fingerprint background checks of the sponsor and adult household members, home visit(s), and an in-person sponsor interview and possibly interviews with other household members. Though home studies are solely conducted prior to the release of a child to a sponsor, ORR does have authority to provide follow-up services, which may include in-person post release services and case management, as outlined below.

Although ORR's custody ends upon release to a sponsor, its commitment to providing resources, connecting children to services, and protecting vulnerable children from abuse or exploitation does not end. 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.

ORR follows up with children and their sponsors 30 days after release and provides every child with a card with an ORR Help Line phone number to call with safety-related concerns. ORR also provides post-release services 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. ORR has expanded the categories of children who are automatically eligible to receive post-release services over the last year. Currently, ORR offers post-release services to children who receive a home study; children released to a non-relative or distantly related sponsor; children whose placement has been disrupted or is at risk of disruption within 180 days of release where the child or sponsor has called the Help Line; and, on a case-by-case basis where it is determined the child has mental health or other needs that could benefit from ongoing assistance from a social welfare agency. Post-release services can occur until the minor attains 18 years of age. ORR is mindful of the continued need to closely examine its policies and procedures, including in the area of post-release services. ORR has reviewed the Subcommittee's report in detail and will incorporate the report findings into its ongoing review as it works to identify and implement additional program enhancements.

Since receiving the Subcommittee's report, ORR has made a number of program enhancements. First, two Senior Advisors for Child Well-Being and Safety have been brought on board, augmenting existing child welfare expertise and supporting leadership's development of additional program improvements related to child safety post-release. ORR has made improvements to the home study policy, including the establishment of a new discretionary home study component, which will allow ORR care providers, with agreement from the Case Coordinator, to recommend home studies to ORR in instances where a home study will provide additional information required to determine that the sponsor is able to care for the health, safety and well-being of the child but is not required by the Trafficking Victims Protection Reauthorization Act or existing ORR policy. ORR has also formalized the requirement that home studies must be conducted for children who are 12 years and under before releasing a child to a non-relative sponsor, which had previously been a pilot project. ORR has also begun working

¹ 8 U.S.C. 1232(c)(3)(B).

with subject matter experts across the Administration to identify and incorporate enhanced interview and document verification techniques into the sponsor assessment process. ORR has required new steps to verify the sponsor's address and proof that the sponsor resides at the address. ORR has also disseminated clear guidance to care providers on how to search in the unaccompanied children database to determine if a potential sponsor has previously served as a sponsor for other unaccompanied children.

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 would be a factor ORR would consider in determining whether the child's basic needs would be met by that sponsor. Based on reporting from ORR's post-release service providers, the vast majority of sponsors accept post-release services when they are offered; very few decline.

Through the provision of these post-release services and resources, which would include information gathered at the time a sponsor declined post-release services, 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.

- 2. Please indicate whether HHS has produced ORR case files related to the Marion, Ohio, trafficking incident pursuant to a federal subpoena. If so, please identify the documents produced, the entity to which they have been produced, and the date of production.**

As with any law enforcement investigation, HHS has cooperated fully with federal law enforcement authorities in connection with the Marion, Ohio criminal matters; however, HHS understands that certain matters are ongoing, and HHS is not in a position to describe the timing or content of the information provided to law enforcement.

- 3. Please comment on the viability and expense of implementing the following reforms to the Unaccompanied Children Program:**
 - a. instituting mandatory home studies for:**
 - 1. all placements with Category 3 sponsors;**
 - 2. all placements with sponsors who have committed a violent offense or who have been investigated by Child Protective Services;**
 - 3. all placements with sponsors who have a history of substance abuse or mental health issues;**
 - 4. all placements of children with past or present suicidal ideation;**
 - 5. all placements of children who have experienced rape, sexual assault, or other significant trauma; and**
 - 6. all placements of children under the age of five;**
 - b. granting care providers the authority to require home studies in the event they identify other concerns not listed above;**
 - c. providing post-release services for all children upon reunification with a sponsor;**

- d. **requiring a FBI fingerprint check for any category of sponsor before placement, as well as FBI fingerprint checks for all household members when a child is not reunifying with a biological parent; and**
- e. **providing sponsors with:**
 - 1. **a sponsor handbook containing information necessary to ensure a child's safety and well-being; and**
 - 2. **an in-person orientation regarding their obligations.**

Answer for 3a and 3b:

ORR recognizes that home studies, as part of a multi-step sponsor assessment and screening process, can be a valuable tool, which is why over the last year ORR has expanded the categories of children who receive home studies beyond those statutorily required under the TVPRA. In addition to mandatory home study categories, ORR conducts home studies for 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 for all children ages 12 and under being released to non-relative or distantly related sponsors through a pilot program. As of March 15, 2016, ORR allows for discretionary home studies, when a home study is not already required but would provide additional information required to determine that the sponsor is able to care for the health, safety and well-being of the child. Discretionary home studies may be recommended by the case manager and case coordinator when they agree that the home study will provide additional information required to determine that the sponsor is able to care for the health, safety and well-being of the child. The discretionary home study must be approved by an ORR Federal Field Specialist Supervisor.

Because the numbers and demographics of children referred to ORR's care in any given year are unpredictable, it is difficult to estimate the costs that would be associated with expanding home studies to particular categories of children. In FY 2016 the average cost of a home study is approximately \$1,949. Additionally, the process of conducting a home study could add approximately two weeks onto a child's length of stay in an ORR facility before he or she can be released to a sponsor. Assuming a child is cared for in a standard shelter, which costs approximately \$223 a day in FY 2016, each home study would add an additional shelter cost of approximately \$3,122 per child.

Answer for 3c:

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. ORR collects information on children who receive post-release services on a monthly basis from post-release service providers. In FY15, 8,618 unaccompanied children received post-release services.

The numbers and demographics of children referred to ORR's care in any given year are unpredictable. Further, under ORR's current policy, the length of time a child would receive post-release services can vary between six months and many years. For instance, a child released with post-release services after a TVPRA mandatory home study would be eligible for services until they turn eighteen (e.g. a 12-year-old would receive post-release services for six

years), or until the final disposition of the child's immigration case. Therefore, it is difficult to estimate the costs that would be associated with expanding the provision of post-release services to all children released to a sponsor. In FY 2016, the average cost of post release services is \$2,806 per child over the course of a year. ORR is continually evaluating its policies and procedures to determine whether additional steps can be taken to further protect the safety and well-being of these children, including by re-examining its policies around post-release services.

Answer for 3d:

ORR is committed to continuous improvement and over the last year has strengthened the process for screening of potential sponsors and other adults who are likely to come into contact with a child after release.

Because the numbers and demographics of children referred to ORR's care in any given year are unpredictable, it is difficult to estimate the precise costs that would be associated with conducting fingerprint background checks of all sponsors, as well as all household members when a child is not released to a biological parent. The direct costs to ORR of FBI fingerprint background checks is \$21.50 per sponsor or household member. There are also indirect costs associated with fingerprint background checks, such as salaries, equipment, and supplies for locations in which background checks are conducted. For FY 2016, our interagency agreement for all background checks performed by the HHS Office of Security and Strategic Information (OSSSI) (including fingerprint background checks, child abuse and neglect C/AN checks, immigration checks, and others) was for \$5.3 million. In addition, conducting fingerprint background checks could lengthen a child's stay in ORR custody and, thus, increase associated shelter costs. ORR funds a network of digital fingerprint providers at locations that are not affiliated with law enforcement entities. Sponsors may also go to any local police department for paper fingerprinting services in the event a digital fingerprint provider is not conveniently located near a sponsor's location. ORR care providers ask potential sponsors and other individuals receiving fingerprint background checks to submit their fingerprints and associated paperwork within three business days; however, the length of time can vary. The average amount of time it takes to receive results from background checks is approximately five days. Thus, based on the average cost of \$223 per day for a standard shelter bed, fingerprint background checks could also add, at a minimum, an additional \$1,115 onto the cost of an individual unaccompanied child's stay.

Answer for 3e:

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. Each sponsor is provided a Sponsor Handbook, which outlines the responsibilities for obtaining legal guardianship, enrolling the child in school, and keeping the child safe from child abuse, neglect, trafficking and exploitation. The Handbook, which is available in both English and Spanish, also reiterates the importance of continuing with immigration proceedings and includes links to EOIR's website and forms. The case manager will review this information with the sponsor over the phone prior to release, as well as discuss any additional needs that may be particular to the child. Requiring in-person orientation for sponsors is not feasible logistically as sponsors live in many communities across all 50 states and may not be geographically close to the shelter in which the child is being cared for by ORR.

After a child is released to a sponsor, 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. 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.

The ORR Help Line provides unaccompanied children a resource for safety-related concerns, as well as provides 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. Under a pilot project that began in 2015, children or sponsors who contact the Help Line can also be referred to post release services, if their placement has been disrupted or is at risk of disruption within 180 days of release. Every child released to a sponsor is given a card with the call center's phone number.

The Honorable Rob Portman

- 4. Under federal law, “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.” 8 U.S.C. § 1232(b)(1). Notwithstanding the clarity of that provision, you testified that it is the Department’s long-standing interpretation of the law that HHS is not responsible for an unaccompanied alien child after he or she is placed with a sponsor. In the Department’s view, which Federal agency *is* responsible for unaccompanied alien children living with sponsors in the United States?**

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 its commitment to providing resources, connecting children to services, and protecting vulnerable children from abuse or exploitation ends. HHS 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.