



U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

**Testimony Before the
United States House Committee on Oversight and Reform**

HHS-OIG Oversight of the Unaccompanied Alien Children Program

Testimony of:

Ann Maxwell
Assistant Inspector General
Office of Evaluation and Inspections
Office of Inspector General
U.S. Department of Health and Human Services

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Good morning, Chairman Cummings, Ranking Member Jordan, and Members of the Committee. I am Ann Maxwell, Assistant Inspector General for Evaluation and Inspections for the Office of Inspector General (OIG), Department of Health and Human Services (HHS or Department). Thank you for the opportunity to testify this morning. I am here today to discuss HHS-OIG's published work examining the Unaccompanied Alien Children (UAC) Program, which is administered by the Office of Refugee Resettlement (ORR) within HHS's Administration for Children and Families (ACF), specifically our January 2019 data brief, *Separated Children Placed in Office of Refugee Resettlement Care*.

HHS-OIG takes very seriously its responsibility to protect the health and welfare of children in HHS's custody. It is a core part of our mission to protect vulnerable children. As such, we have been conducting oversight of UAC program since responsibility for caring for unaccompanied children was transferred to HHS by the Homeland Security Act of 2002.

Our most recent series of work was launched in the summer of 2018 in response to the serious concerns about separating children and the numerous allegations that were raised regarding the treatment of children in HHS care. This extensive body of work addresses a wide variety of health and safety issues in HHS-funded care provider facilities (facilities). We are also examining HHS efforts to identify and reunify immigrant children who were separated by immigration officials.

Given that this work is not public yet, I cannot speak to the findings of these reports or address conditions within HHS-funded facilities beyond what is contained in already published reports. HHS-OIG findings regarding HHS-funded facilities are anticipated to be released in a series of reports over the next 6 months. HHS-OIG would be happy to return to testify about these reviews once they are completed.

Further, I cannot speak to conditions in border facilities funded or operated by the Department of Homeland Security (DHS) given that HHS-OIG's oversight jurisdiction is limited to HHS-funded facilities. The Office of Inspector General for DHS (DHS-OIG) is the inspector general's office with oversight jurisdiction for those facilities. HHS-OIG coordinates with DHS-OIG, as well as with other oversight and law enforcement agencies on matters of common interest, as appropriate.

HHS-OIG Oversight of UAC Program

HHS-OIG is charged with overseeing all HHS programs and operations. HHS-OIG works to combat fraud, waste, and abuse in those programs; promote their efficiency and effectiveness; and protect the beneficiaries they serve. To accomplish this, HHS-OIG employs an array of tools, including audits, evaluations, and investigations.

The UAC program serves children who arrive in the United States unaccompanied, as well as children who are separated from their parents or legal guardians by immigration authorities within DHS after entering the country (separated children). Separated children are considered to be unaccompanied because their parents or guardians are in Federal custody and therefore not available to provide care and physical custody for their children. By law, DHS must transfer unaccompanied children to ORR within 72 hours unless there are exceptional circumstances. A child remains in ORR custody until an appropriate sponsor (usually a parent or close relative) is located who can assume custody, the child turns 18 years old and ages out of the UAC program, or the child's immigration status is resolved.

HHS-OIG's oversight of the UAC program has been broad and multi-faceted. For example, we have audited grantee expenditures and assessed their internal controls for administering UAC program funds; we have also examined whether ORR grantees met health and safety standards for the care and release of children in their custody. Through these efforts, HHS-OIG has sought to ensure financial accountability in the UAC program and to promote the protection and well-being of children in the Department's care.

As previously mentioned, OIG launched a series of reviews in 2018 after numerous stakeholders raised serious concerns about the health and safety of immigrant children at HHS-funded facilities. These reviews examine a variety of safety issues, including: (1) the background screening of facility staff who work with children, (2) the challenges that care facilities face in ensuring that children are safe, and the (3) physical security of the facilities. We are also examining the challenges that facilities face in meeting children's mental healthcare needs. Finally, we are conducting a review to identify challenges that affected the Department's and facilities' efforts to carry out the Court-ordered reunification of separated children with their parents. These reviews will be issued over the next 6 months.

In addition to the data brief that is the focus of this testimony and is discussed at length below, we have released an early alert from this body of work, *The Tornillo Influx Care Facility: Concerns about Staff Background Checks and Number of Clinicians on Staff*, which highlighted two significant vulnerabilities we identified during our review of the Tornillo influx facility, operated by BCFS Health and Human Services: (1) required Federal Bureau of Investigation fingerprint background checks were not conducted for staff, and (2) insufficient number of staff clinicians to provide adequate mental healthcare for UAC.¹

Data Brief: *Separated Children Placed in Office of Refugee Resettlement Care*

As part of HHS-OIG's oversight, we are paying particular attention to the subset of children who were separated from a parent or guardian by DHS and referred to HHS for care. Consistent with that focus, in our January 2019 issue brief, *Separated Children Placed in Office of Refugee Resettlement Care*, we sought to determine the number and status of children in ORR care who had been separated from a parent or guardian by immigration authorities.

¹ The Tornillo influx facility is now closed.

In this review, HHS-OIG found that more children, over a longer period of time, were separated by immigration authorities and referred to ORR for care than had been commonly discussed. In fact, the true number is unknown.

Pursuant to a June 26, 2018, Federal District Court order, HHS had, at the time of our review, identified 2,737 children who had been separated from their parents and were in ORR care as of the date of the Court order.² However, prior to that Court order, HHS was not required to identify or track separated children. HHS officials estimated that thousands of additional children may have been separated from a parent or guardian during an influx that began in 2017 but were released from ORR care prior to the official accounting required by the Court.

After HHS-OIG issued our report, the Court cited our finding that ORR had observed a steep increase in separated children as early as the summer of 2017 in requiring the Government to identify children who had been separated as early as July 1, 2017, regardless of whether or when they had been discharged from ORR care. The Government's efforts to account for these children are ongoing.

Further, ORR has continued to receive children who have been separated since the June 2018 Court order, and DHS has provided limited information to ORR about those separations which may impede ORR's ability to appropriately place children.

Limited Data Complicated HHS's Efforts to Identify Separated Children To Be Reunited With Their Parents as Required by a June 2018 Court Order

On June 26, 2018, in ruling on a class action lawsuit, *Ms. L v. ICE*, a Federal District Court ordered HHS to identify and reunify children who were in ORR care as of that date and who had been separated from a parent by immigration authorities.³ Historically, such separations had been rare and were typically done for reasons related to the child's best interest, such as a parent's injury or illness or a DHS determination that the parent was a danger to the child. However, during a recent period of increased enforcement of immigration laws, large numbers of families were separated, with parents taken into Federal custody to await prosecution for immigration offenses and their children transferred to ORR care.

Prior to the Court order, HHS had never been required to identify, categorize, or track separated children as distinct from any other children entering ORR care. No integrated HHS-DHS data system existed to comprehensively identify and track separated children, nor did either agency independently maintain data about them.

The absence of data about separated children severely complicated HHS efforts to comply with the Court order, and led to the development of a three-step process for identifying every child who had been separated from a parent and was in ORR care as of June 26, 2018:

² See *Ms. L v. Immigration and Customs Enforcement (ICE)*, (S.D. Cal. June 26, 2018 (Order Granting Plaintiffs' Motion for Classwide Preliminary Injunction).

³ Subject to certain exceptions, such as when the class member parent is unfit, poses a danger to the child or if the parent voluntarily declines to be reunited.

- First, an HHS-led data team (with support from DHS sub-agencies) mined more than 60 HHS and DHS databases to identify indicators of possible separation, such as an adult and child with the same last name apprehended on the same day at the same location.
- Additionally, ORR and other HHS staff, including agency officials and senior leadership, manually reviewed case files for each of the approximately 12,000 children in ORR care.
- Finally, ORR asked all HHS-funded shelters to attest to any separated children they reasonably believed to be in their care.

This effort resulted in an initial list of 3,600 potentially separated children (i.e., children for whom HHS found any information in any data source indicating that the child may have been separated from a parent). On July 11, 2018, after conducting additional reviews, ORR certified a list of 2,654 children that it believed met the Court’s criteria. ORR determined that the remaining 946 children (from the original list of 3,600) did not meet all of the Court’s criteria. Of the 946 children, approximately 300 were not included on the certified list because they had been released through standard processes between the date of the Court order and the date the list was certified by ORR. The remaining children were excluded because: (1) they had been separated from a nonparent relative; (2) the adult with whom they traveled was determined to have made a fraudulent claim of parentage; or (3) the information in the child’s case file was unclear, and the ORR Director determined that the balance of evidence did not support including the child on the certified list.

HHS Has Revised the Number of Separated Children Who Meet the Court’s Criteria Several Times

Even as the initial list of 2,654 children was being certified, some HHS staff believed that 50 to 100 additional children should have been included. At the same time, ORR began to receive new information (for example, from parents’ legal representatives contacting ORR) suggesting that some children excluded from the list had, in fact, been separated. In the following months, HHS revised its initial number several times:

- In October 2018, HHS added 13 children (all of whom were still in ORR care at that time) to the list, for a new total of 2,667.
- In November 2018, HHS reported to the Court that 79 of the children previously reported as separated had not, in fact, been separated from a parent. This reduced the count of separated children to 2,588.
- In December 2018, HHS added 149 children to the list, bringing the number of separated children identified under the Court order to 2,737. These 149 children had been in ORR custody on the date of the Court order and were then discharged before being identified as separated.⁴

⁴ In most cases, the children were released to a parent, guardian, or relative. Nine children had been released to distant relatives or unrelated adults, five had been voluntarily repatriated to their country of origin, and one had

In a June 2019 Court filing, HHS reported that only one separated child eligible for reunification under the initial *Ms. L v. ICE* Court order remained in ORR care.

Many Separated Children Were Not Covered by the June 26, 2018 Court Order; Efforts to Account for These Children Are Ongoing

The June 2018 Court order in *Ms. L v. ICE* required HHS to identify only those separated children who were in ORR care as of June 26, 2018. However, HHS officials estimated that thousands of additional children were separated by DHS, referred to ORR care, and released through standard ORR processes prior to that date.

HHS officials based this estimate on ORR staff observations and informal monitoring. Specifically, in the summer of 2017, ORR noticed a steep increase in the number of separated children being referred by DHS. Overall, ORR staff noted that the proportion of separated children (relative to all children) entering ORR care rose from approximately 0.3 percent of all intakes in 2016 to 3.6 percent in August 2017, a more than tenfold increase.

The increase in separated children posed operational challenges for the UAC program. In a November 2017 email that HHS-OIG reviewed, an ORR official stated that separated children were often very young, that these younger children required placement at specially licensed facilities, and that “the numbers of these very young UAC resulting from separations has on some dates resulted in shortfalls of available beds.”

HHS was not able to provide a more precise estimate than thousands because, as previously noted, ORR did not have formal tracking systems in place that consistently identified separated children. HHS similarly could not provide information on placements of separated children—as distinct from other unaccompanied children—who were discharged from ORR care prior to the June 2018 Court order (e.g., released to relatives vs. nonrelatives or foster care).

On March 8, 2019, the *Ms. L* court cited HHS-OIG’s report in an order expanding the class definition, recognizing that family separation had begun much earlier than had been previously acknowledged. The *Ms. L* class now includes parents who entered the U.S. on or after July 1, 2017 and were separated from their children by DHS, regardless of whether or when their children were released from ORR care. On April 25, 2019, the Government submitted a plan to identify separated children of *Ms. L* class members under the expanded definition. The Court has ordered the Government to complete this effort by October 25, 2019.

According to media reports, on May 17, 2019, HHS stated to the Court that it had thus far identified 1,712 children who entered ORR care during the class expansion period and had indications that they were possibly separated. HHS is working with DHS to confirm if these children were, indeed, separated from a parent and the circumstances for that separation. Specifically, HHS reported that staff had reviewed a preliminary set of 4,108 children’s cases; these children were prioritized for review because of factors such as appearing on a Customs and Border Protection list of children separated after April 19, 2019; appearing on an informal

turned 18 years old in ORR’s care (which means the individual aged out of the UAC program and would typically transfer to DHS custody).

tracking list that ORR staff had maintained in 2017; or because they were younger than 13 years old and were referred to ORR during the class expansion period.

In a June 6, 2019, Court filing, HHS stated that it had completed its initial review of all 32,972 children's files necessary to identify potentially separated children in the class expansion period. However, to our knowledge, the total number of children who were potentially separated has not yet been determined.

DHS Has Provided ORR With Limited Information About the Reasons for Recent Separations, Which May Impede ORR's Ability To Appropriately Place Children

In addition to requiring reunification of separated families who meet certain criteria, the June 2018 Court order preliminarily enjoined the Federal Government from continuing to separate families entering the U.S. unless the parent has a criminal history, poses a danger to the child, is otherwise unfit, or consents to the separation. According to ORR tracking documents, ORR received at least 118 children separated by DHS from July 1 through November 7, 2018.^{5,6} This number includes only children identified by DHS as separated at the time the child was transferred to ORR. The proportion of separated children relative to all referrals increased every month during this period, from 0.47 percent in July to 0.91 percent in the first week of November. Overall, separated children made up 0.69 percent of referrals to ORR during this period, a proportion that is more than twice the rate that ORR observed in 2016 but far lower than the rate ORR staff observed in the summer of 2017.

As described earlier, DHS sometimes separates children from parents for the child's safety and well-being. DHS reported to ORR that 65 of the 118 children were separated because the parent had a criminal history, although the nature of the criminal history was not always specified. Other reasons provided to explain a separation included the parent's gang affiliation, illness or hospitalization, or immigration history. In some cases, little detail was provided to ORR by DHS.

Incomplete or inaccurate information about the reason for separation, and a parent's criminal history in particular, may impede ORR's ability to determine the appropriate placement for a child. When a proposed sponsor (including a parent) has a criminal history, ORR policy is to evaluate the severity and type of crime and the length of time that has passed since the criminal act, along with any mitigating factors. ORR officials and staff noted that, from a child welfare perspective, not all criminal history rises to a level that would preclude a child from being placed with his or her parent. ORR officials stated that when DHS provided insufficiently detailed explanations for a child's separation, ORR staff would contact DHS for followup information. However, the tracking document we reviewed indicated that DHS did not always respond to such followup requests.

⁵ The newly separated children ranged in age from under 1 year old to 17 years old. Of the 118 children, 82 were under 13 years old when transferred to ORR care, including 27 who were under 5 years old.

⁶ In its comments to our report, HHS provided updated information about new separations, reporting that ORR had received a total of 218 separated children between June 26 and December 26, 2018.

ORR Has Taken Steps To Improve Its Ability To Track Separated Children

At the time of the Court order, ORR had no reliable means of determining whether specific children in its care were separated. To address this challenge moving forward, ORR has taken several steps to improve its ability to identify and track these children. First, in July 2018, ORR modified its online case management system to include a “checkbox” that can be used to indicate whether a child was separated before referral to ORR care. The checkbox is intended to be accessible to both DHS and ORR staff. Additionally, the online referral DHS completes to transfer a child to ORR care now includes a “notes” section where DHS staff can enter information about a separated adult associated with a child; this information can also be entered into a “parent/relative” section of the referral. Finally, in August 2018, ORR developed a tracking spreadsheet that draws information about separated children from its online case management system, enabling staff to produce a consolidated list of these children.

Improved Tracking and Communication Will Better Enable ORR to Provide Appropriate Care and Placements for Separated Children

Although HHS has taken several significant steps to better track separated children, it is unclear whether these recent changes will be sufficient to ensure that HHS can accurately identify these children in the future. Therefore, HHS-OIG encourages continued efforts to improve communication, transparency, and accountability for the identification, care, and placement of separated children. Maintaining accurate and comprehensive information about separated children would improve ORR’s ability to ensure that children receive the most appropriate care and placement. ACF agreed that improvements are always warranted and has committed to look for opportunities to improve interdepartmental data-sharing and operations with DHS.

Conclusion

In conclusion, the total number of children who were separated from a parent or guardian by U.S. immigration authorities and transferred to HHS for care is not known. According to HHS officials, it is certainly more—likely thousands more—than the 2,737 who meet the criteria of the initial *Ms. L v. ICE* court order. However, the Government’s ongoing efforts, under the most recent Court order, will provide increasing visibility into the number of children who were separated by DHS and referred to ORR care from July 1, 2017 onward, as well as the extent to which those children have been reunited with their families.

HHS-OIG is fully engaged in rigorous oversight work to ensure that children in HHS-funded facilities receive appropriate care and protection. HHS-OIG appreciates the support we have received for our work from Congress, including the \$5 million in additional funding included in the emergency supplemental appropriations bill signed into law on July 1, 2019, and will continue to conduct oversight of the UAC program.

Thank you for the opportunity to testify today on this important topic.