Testimony of
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Chairman Johnson, Ranking Member Peters, and members of the Committee, it is my honor to appear on behalf of the Department of Health and Human Services (HHS).

My name is Jonathan White. I am a career officer in the U.S. Public Health Service Commissioned Corps, a clinical social worker and emergency manager, and I have served in the Department of Health and Human Services in three administrations. I am presently assigned to the Office of the Assistant Secretary for Preparedness and Response (ASPR), and previously served as the Deputy Director of the Office of Refugee Resettlement (ORR) for the Unaccompanied Alien Children's (UAC) Program.

In my testimony today, I will discuss aspects of the ORR program's policies and administration that I have been involved in since February 2016.

In my time at HHS, I have had the privilege of helping to oversee and support the grantees that provide the actual care for children, as well as the process of placing children with sponsors.

More recently, I served as the Federal Health Coordinating Official (that is, the HHS operational lead) for the interagency mission to reunify children in ORR care as of June 26, 2018 who were separated from their parents at the border by the U.S. Department of Homeland Security (DHS).

I am proud of the work of our team on the reunification mission, and of the care provided every day in the UAC Program to unaccompanied alien children, who are some of the most vulnerable children in our hemisphere.

About the Program

ORR is responsible for the care and temporary custody of UAC who are referred to ORR by other federal agencies. ORR does not apprehend migrants at the border or enforce the immigration laws. Those functions are performed by DHS and the U.S. Department of Justice (DOJ).

The Homeland Security Act of 2002 (HSA) and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), as amended, govern the ORR program. So do certain provisions of the *Flores* Settlement Agreement (FSA).

As defined by the Homeland Security Act, if a child under the age of 18 with no lawful immigration status is apprehended by another federal agency, and no parent or legal guardian is available in the United States to provide care and custody of the child, he or she is considered a UAC and is transferred to ORR for care and custody.

UAC shelters provide housing, nutrition, routine medical care, mental health services, educational services, and recreational activities such as arts and sports. They provide parity with the domestic child welfare system. The facilities are operated by nonprofit grantees, which are licensed to provide care to children by state licensing authorities responsible for regulating such facilities housing children.

The exception is ORR's temporary hard sided influx care facility in Homestead, Florida, which is not required to obtain state licensure because it is located on federally owned property.

However, children who reside at this location generally receive the same level of care and services to UAC as a state-licensed facility.

The UAC program bed capacity has expanded and contracted over the years, driven by fluctuations in the number of children referred and the average time children remain in ORR care. To respond to these fluctuations, HHS has developed processes for bringing both permanent and temporary UAC housing capacity online as needed. HHS has a bed capacity framework with grant and contract mechanisms that provide standard permanent bed capacity, with the ability to quickly add temporary beds, which provides the capability to accommodate changing flows.

The fluctuations in the numbers of children in care are significant. Currently, HHS maintains approximately 14,300 beds. This is up from 6,500 beds on October 1, 2017, but down from more than 15,800 beds on November 15, 2018. HHS continues to update its bed capacity planning to account for the most recently available data, including information from interagency partners, and to leverage available funds to be prepared for changing needs.

HHS cares for all UAC until they are released to a suitable sponsor, which is almost always a parent or close relative, while they await immigration proceedings. UAC may also leave HHS care if they return to their home countries following an immigration judge's order, turn 18 years of age, or gain legal immigration status.

Current State of the Program

In fiscal year (FY) 2018, 49,100 children were referred to ORR by DHS. In FY 2019, ORR has already received referrals of 32,284 UAC (as of March 30), which is an increase over FY 2018 of almost 50%. If this rate of referrals continues, ORR will care for the largest number of UAC in the program's history in FY 2019. Based on the anticipated growth pattern in referrals of UAC from DHS to HHS, HHS is preparing for the need for high bed capacity to continue.

In FY 2018, 92 percent of ORR's referred children came from Honduras, Guatemala, and El Salvador. Children who migrate to the United States from these three countries and Mexico are particularly vulnerable to exploitation, such as forced labor or sex trafficking by human traffickers en route to the United States. Teenagers made up 85 percent of UAC referrals in FY 2018, the remainder being "tender age" children 12 and younger.

In FY 2018, children typically stayed in ORR custody for 60 days. To date, in FY 2019, the average length of care has been 82 days, although we expect this average to decline pursuant to several ORR-issued operational directives. In FY 2018, ORR released 86 percent of children to a sponsor: 42 percent were parents; 47 percent were close relatives such as an aunt, uncle, grandparent, or adult sibling; and 11 percent were more distant relatives or non-relatives such as a family friend.

In FY 2019, as of February, of those children discharged from ORR custody, 92 percent of children were released to individual sponsors and of those sponsors: 46 percent were parents, 45 percent were close relatives, and 9 percent were more distant relatives or non-relatives.

Operational Implementation of Executive Order (EO) 13841 and the *Ms. L.* Court Orders

The President issued EO 13841 on June 20, 2018, and the U.S. District Court for the Southern District of California in *Ms. L. v. ICE*, No. 18-cv-428 (S.D.Cal.) issued its preliminary injunction and class certification orders on June 26, 2018. Among other things, the Court preliminarily enjoined Defendants "from detaining Class Members in DHS custody without and apart from their minor children, absent a determination that the parent is unfit or presents a danger to the child, unless the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child in DHS custody."

On June 22, 2018, Secretary Azar directed the Office of the Assistant Secretary for Preparedness and Response (ASPR), to help ORR comply with EO 13841. To execute this direction from the Secretary, we formed an Incident Management Team (IMT), which at its largest included more than 60 staff working at HHS headquarters in Washington D.C., and more than 250 field response personnel from ACF, ASPR (including its National Disaster Medical System Disaster Medical Assistance Teams), the U.S. Public Health Service Commissioned Corps, and contractors.

Shortly after the *Ms. L.* Court issued its orders, the Secretary directed HHS—and the IMT in particular— to take all reasonable actions to comply. The orders require the reunification of children in ORR care as of June 26, 2018, with parents who are *Ms. L.* class members. In general, *Ms. L.* class members are parents who were separated from their children at the border by DHS, and who do not meet the criteria for exclusion from the class. For example, parents who have a communicable disease or a criminal history, or who are unfit or present a danger to the child, are excluded from the class.

The IMT faced a formidable challenge at the start of this mission. On the one hand, ORR knew the identity and location of every one of the more than 11,800 children in ORR care as of June 26, 2018, and could access individualized biographical and clinical information regarding any one of those children at any time by logging onto the ORR UAC portal and pulling up the child's case management record. ORR sometimes received information from DHS regarding any separation of the individual child through the ORR UAC portal, on an *ad hoc* basis, for use in ordinary program operations.

On the other hand, ORR had never conducted a forensic data analysis to satisfy the new requirements set forth in the Court's orders, much less aggregated such rigorous, individualized data analyses into a unified list. As a result, our first task was to identify and develop a list of the children in ORR care who were possible children of potential *Ms. L.* class members.

Identification of possible children of potential Ms. L. class members

HHS worked closely with DHS, including U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), to try to identify all parents of children in ORR care who potentially met the Court's criteria for class membership. The determination of class membership involves inter-agency collection and analysis of facts and data to verify parentage, assess the health of the parent, determine the location of DHS apprehension and separation, determine parental fitness, and evaluate whether reunification would present a danger to the child. Moreover, class membership is dynamic and can change with the facts on the ground (for

example, a parent who is excluded from the class based on a communicable disease could be cured after receiving medical treatment).

The interagency data team analyzed more than 60 sets of aggregated data from CBP and ICE, as well as the individualized case management records for children on the ORR UAC Portal. Collectively, hundreds of HHS personnel reviewed the case management records for every child in ORR care as of June 26, 2018, looking for any indication of possible separation. ORR also required every one of its approximately 110 residential shelter programs to provide a certified list, under penalty of perjury, of the children in that program's care that shelter staff had identified as potentially separated. The reconciliation of those three data sources by the interagency data team resulted in the identification and compilation of a list of 2,654 children in ORR care who were potentially separated from a parent at the border by DHS.

The data analysis that yielded the initial list of 2,654 possible children of potential class members was dependent on the information that was available at the time of the analysis.

Going forward, ORR continued to amass new information about the children in ORR care through the case management process. The new information that ORR amassed between July and December 2018 led us to conclude that 79 of the possible children of potential class members were not, in fact, separated from a parent at the border by DHS.

Similarly, the new case management information that ORR amassed between July and December 2018 led us to conclude that a total of 162 other children who were in ORR care as of June 26, 2018—but who we did not initially identify as potentially separated—should be re-categorized and added to the list of possible children of potential class members reported to the *Ms. L.* Court. As a result of the addition of 162 total children through re-categorization, the current reporting of 2,814 possible children of potential *Ms. L.* class members to the *Ms. L.* Court is accurate. That is, we have fully accounted for such children who were in ORR care as of June 26, 2018. To be clear, the count of 2,814 children does not include children who were discharged by ORR before June 26, 2018. Nor does it include separated children referred to ORR care after that date.

It is important to understand that ORR knew the identity, location, and clinical condition of all 162 recategorized children at all times during their stays with ORR. The re-categorizations are for the *Ms. L.* litigation, not clinical reasons. They do not affect the care the children receive from ORR.

Indeed, HHS did not "lose" *any* children at all. The HHS Inspector General found no evidence to the contrary. ORR can determine the location of every child in care at any moment by accessing the UAC Portal case management system. We always know where every child in the care of ORR is.

Reunification of Ms. L. class members with their children

Generally, ORR has a process for releasing UAC to parents or other sponsors that is designed to comply with the HSA, the TVPRA, and the FSA. This process ensures the care and safety of UAC referred to ORR by DHS. Notably, HHS modified and expedited its ordinary process for *Ms. L.* class members and their children as required by the *Ms. L.* Court.

Working in close partnership with colleagues in ICE, DOJ, and the Department of State, we first worked to reunify children with parents in ICE custody. This was an unprecedented effort, requiring a novel process which we developed and which the *Ms. L.* Court approved. Under the compressed schedule required by court order of 15 days for children under the age of 5, and 30 days for children between the ages of 5 and 17, we reunified 1,441 children with parents in ICE custody—all of the children of eligible and available *Ms. L.* class members in ICE custody. Absent red flags that would lead to specific doubts about parentage or about child safety, adults in ICE custody were transported to reunification locations run by ICE, where deployed field teams from HHS interviewed them. During the interviews, HHS sought verbal confirmation of parentage and the desire to reunify, and after that, HHS transported the child for physical reunification with the parent in ICE custody. Some reunified family units remained in ICE family detention, while others were released by ICE to the community, after connecting them with nonprofits serving immigrant families.

For children whose parents had been in ICE custody but had been released to the interior of the United States, we implemented an expedited reunification process, confirming parental relationship in any case where we had doubts about parentage, addressing any "red flags" for child safety, and then transporting the child for physical reunification with the parent.

For parents who had departed the United States, we developed a different operational plan, which was also approved by the *Ms. L.* Court. First, HHS identified and resolved any "red flags" or—doubts about parentage or child safety and well-being. ORR care provider case managers established contact with the parents in their home countries, and provided contact information for all the parents to the American Civil Liberties Union (ACLU), which serves as plaintiffs'counsel for the *Ms. L.* class. The ACLU counseled parents about their options and their rights, and then obtained from the parents their desire for either reunification in their home country, or waiving reunification for the child to undergo standard ORR sponsorship processes. Once we received a parent's desire for reunification, we worked with DOJ and ICE to expeditiously resolve the children's immigration cases, and worked with the consulates and embassies of the child's home country to prepare their return. HHS and ICE coordinated with the ACLU's steering committee for the *Ms. L.* litigation, the government of the home country, and the child's family to ensure safe physical reunification, and then transported the child to his/her country and into the care of his/her parents.

Of the 2,814 children reported to the *Ms. L.* Court, as of this morning we have reunified 2,160 with the parent from whom they were separated. Another 595 children have left ORR care through other appropriate discharges—in most cases, release to a family sponsor such as the other parent, an adult sibling, an aunt or uncle, a grandparent, a more distant relative, or a family friend.

Of the 2,814 children reported to the *Ms. L.* Court, there are 16 children still in ORR care who were separated but cannot be reunified with their parent, because ORR has made a final determination that the parent meets the criteria for exclusion from the class or is not eligible for reunification. That is, the parent has a criminal history, or the parent is otherwise unfit or poses an unacceptable risk to the safety and well-being of the child, such as when a case file review shows that the child has made credible allegations of abuse by the parent. There are 29 children

still in ORR care whose parents are outside the U.S. who have waived reunification, and chosen for their children to remain in the U.S. and go to a sponsor in this country under the ordinary TVPRA process. There are 9 children in care where further review determined that the child was not a separation. There are three children in care where parents are in the U.S. and have waived reunification.

As of this morning, of the 2,814 children reported to the *Ms. L.* Court, there are two children who HHS cannot reunify unless there is either a change in the parent's status, or the parent conveys to us their wishes through ACLU. In one of those cases, the ACLU has advised that the resolution of the parent's wishes will be delayed and the other case, the ACLU could not obtain the parental preference. We cannot reunify those children until their parent's legal counsel allows us to do so.

Like everyone on the team that worked for months to identify and then reunify the separated children, I look forward to the day when we can say that all of those children are back with their families.

As I indicated earlier in my testimony, the 2,814 children reported to the *Ms. L.* Court do not include all children who have ever been separated at the border by DHS and referred to ORR. It is only the number of possible children of potential class members who were in ORR care as of June 26, 2018. It is based on how the *Ms. L.* Court defined the class.

There were, without any doubt, other children who were separated from their parent(s) at the border by DHS and referred to ORR, and who were discharged to a sponsor pursuant to the TVPRA process before June 26, 2018. Based on ORR's statistics for the UAC program, the vast majority of the sponsors were probably parents or close relatives. To the extent it is even possible to count such children, HHS has not tried to do so because HHS has extremely limited resources and such a count would not help HHS fulfill any current UAC program requirements. Moreover, HHS has no jurisdiction over the children once they are released to sponsors, and, except in very limited circumstances, intervention by HHS after discharge would not serve a child welfare interest.

In Closing

ORR's UAC Program provides care and services to UAC every day. At HHS, we are proud of the work we do to provide that care to children consistent under the law, and with the values of the United States about how we care for vulnerable children. In the case of this distinct population of children separated from their parents following DHS apprehension, and prior to placement at ORR, we at HHS have been working hard on an unprecedented mission to expedite safe reunifications of children with their parents wherever possible.

The UAC program's mission is a child welfare mission-we seek to serve the best interest of each individual child. This has guided us also in our work to have each separated child back in his or her parent's arms, or discharged safely to another sponsor where that is the parent's wish. We have done our best as a department to achieve that goal.

Thank you, and I will be happy to answer any questions you may have.