



June 21, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your May 23, 2017 letter expressing concerns related to border security and involvement of some unaccompanied alien children with MS-13 and other gangs. Responses to your questions are below.

1. *Please provide an accounting of all UACs who self-identified as gang members or affiliates when they were apprehended at the southwest border since FY 2010. For each UAC, please include their age at the time of apprehension, the date of apprehension, gang affiliation, placement location, state of the sponsor, and date of transfer. Please omit the UACs' name.*

ORR's electronic records do not maintain this information in a manner that is readily available for production. However, on June 9, ORR staff individually reviewed case files for the 138 UAC in staff secure and secure facilities to determine the number of youth with gang involvement. We found that 35 were voluntarily involved with gangs. Four of the UAC were forced into gang involvement. ORR has begun to compile the information you requested for the cases identified on June 9, and we will send it as soon as possible.

- a. *For each UAC identified above, please indicate whether the UAC was released from the placement center. If so, please identify the date of release, state of the sponsor, and whether the UAC remains in the United States. Please omit the sponsor's name.*

As noted above, ORR would be happy to provide more detailed information about the cases from the June 9 review. We would also be happy to work with your staff to choose another subset of the ORR population and provide the details you requested.

2. *Please explain whether HHS received any information from CBP or otherwise about a UAC's past criminal history or gang affiliation prior to referral, during custody, and after the release of the UAC to a sponsor. If any of the above information is received by HHS, please explain how that information was provided to HHS and by whom.*

ORR may receive new information about a UAC's past criminal history or gang affiliation at a number of stages and from different sources.

When referring a UAC for placement in ORR custody, the Department of Homeland Security (DHS) sends information to ORR's Intakes Team about the child, which may include information about the UAC's past criminal or gang activity. Intakes will follow up with DHS if the referral information is incomplete. Intakes may, for example, inquire about the UAC's history of violence, juvenile or criminal background, known or suspected gang activity, risk of danger to self or others, State court proceedings, and probation. See generally, *ORR Policy Guide 1.3.1 Request for Information from the Referring Federal Agency*.<sup>1</sup> For an example of the *Initial Placement Referral Form*, please see the attachment.

When a UAC arrives at an ORR care provider facility, the care provider also asks DHS for any of the UAC's criminal or juvenile court records. See generally, *ORR Operations Guide 1.1.5* (attached).

The care provider may also learn information regarding the UAC's past criminal or gang history through self-disclosures by the UAC during the assessment process. For instance, the care provider asks the UAC about his or her involvement with gangs and criminal activity during the admissions process and during subsequent ongoing assessments while the UAC is in ORR custody. For more information about assessments, see *ORR Policy Guide, 3.2.1 Admissions for Unaccompanied Children*,<sup>2</sup> *3.3.1 UAC Assessment and Case Review*.<sup>3</sup> Additionally, each UAC receives weekly counseling sessions where the UAC may self-disclose previous gang or criminal activity to the assigned clinician. Please see attached assessments: *Initial Intakes Assessment*, *UAC Assessment* and *UAC Case Review*, for more information.

The clinician or the child's case manager will document this information in case notes and relevant assessments and notify ORR staff. If the information was previously undisclosed or unknown, ORR will follow up with DHS in an attempt to verify this information.

If DHS obtains information relevant to a UAC's case (e.g., court documents or arrest records) after a minor has been placed into ORR custody, DHS will report this information to the assigned ORR staff for inclusion in the UAC's case file.

ORR may become aware of UAC criminal or gang activity in a number of ways after a UAC is released from custody.

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<sup>1</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.3.1>

<sup>2</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.2.1>

<sup>3</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.3.1>

ORR may learn of such activity through the safety and well-being follow-up call, during which the care provider case manager contacts the sponsor and former UAC 30 days after release. See *ORR Policy Guide 2.8.4 Safety and Well Being Follow Up Call*.<sup>4</sup> The purpose of the call is to determine whether the child still resides with the sponsor, is enrolled in school, is aware of upcoming court dates, and is safe. A sponsor may report that a UAC has been involved with crime or gangs during these calls. In these cases the case manager must refer the sponsor to the National Call Center and follow up with state and local law enforcement and/or child protective services (CPS), as applicable.

Former UAC and sponsors may call the ORR/National Call Center (or “Help Line”) and report concerns related to the UAC’s (or sponsor’s) involvement in gang or criminal activity. If the activity is current, the Help Line must refer the case to local police or state CPS. ORR requires ORR grantees and contractors who come in contact with former UAC and have concerns about the children’s safety and well-being to submit notifications of concern to ORR. See *ORR Policy Guide 6.1 Summary of Resources and Services Available After Release from ORR Care*.<sup>5</sup>

ORR may also learn of criminal or gang activity through its provision of post-release services (PRS). ORR provides PRS for children who would benefit from ongoing assistance from social service agencies after release. These services include assistance in connecting children and their sponsors to community based resources. All children who have a home study receive PRS following their release. Children released without a home study may also receive PRS if they are specially identified as needing additional assistance in connecting to appropriate resources in the community. See *ORR Policy Guide 2.7.2 Approve Release with Post-Release Services; 6.1 Summary of Resources and Services Available After Release from ORR Care*.<sup>6</sup> When a PRS provider learns of potential criminal or gang activity, it must refer the case to state CPS or local law enforcement, as appropriate, and submit a notification of concern to ORR.

3. *Please explain ORR's procedures for processing and placing UACs who self-identify as having a gang membership or affiliation when apprehended at the border.*

If DHS notifies ORR at the time of referral that a UAC has self-disclosed gang membership or affiliation, ORR’s Intakes Team uses a *Placement Tool* to help inform the type of ORR care provider facility that is appropriate for the UAC. A copy of the *Placement Tool* is attached to this letter. The ORR Intakes Team uses the *Tool* for any UAC referred to ORR who has real or suspected juvenile or adult criminal history, prior acts of violence or threats in government custody, gang involvement, prior escapes or escape attempts from government custody, involvement in human trafficking or

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<sup>4</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.8.4>

<sup>5</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-6#6.1>

<sup>6</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.7.2> and 6#6.1

smuggling, or involvement in drug smuggling. See *ORR Policy Guide 1.3.2 ORR Placement Designation*.<sup>7</sup> The *Tool* contains a series of questions regarding: the risk that the UAC may attempt to escape from government custody, dangerousness to self, and dangerousness to others. When all questions concerning a UAC have been answered, ORR Intakes staff evaluate the responses and recommend a specific placement level. An ORR/federal field specialist (ORR/FFS)<sup>8</sup> considers the recommendation and makes the ultimate placement decision.

ORR places UAC into secure care facilities if they pose a danger to others or have been charged with having committed a crime. In making the determination, ORR considers if the UAC has reported gang involvement, displays gang affiliation, or has self-disclosed gang involvement. ORR changed its secure care policy on June 12 to ensure we specifically consider as part of our placement determination UAC self-disclosures of gang involvement.

If ORR places a UAC in secure or staff secure care, care provider staff, together with the case coordinator and ORR/FFS, must review the UAC's placement every 30 days to determine whether a new level of care is more appropriate. Care provider staff document the basis for continued placement in secure or staff secure care in the UAC's case file, and provide the information to the UAC's attorney of record, legal service provider, or Child Advocate if requested.

4. *Please explain ORR's policy for releasing a UAC to a sponsor if HHS knows the UAC has a potential or actual gang affiliation.*

ORR assesses all releases using the standards required under the Trafficking Victims Protection Reauthorization Act of 2008<sup>9</sup> and the *Flores* Settlement Agreement.<sup>10</sup> ORR does not release UACs to the community if they pose a danger to themselves or others.

ORR also must assess whether the UAC's proposed sponsor (typically a parent or other adult relative) is capable of providing for the UAC's physical and mental well-being. See *ORR Policy Guide 2.4 Sponsor Assessment Criteria and Home Studies*.<sup>11</sup> See also the attached procedures, *ORR Operations Guide Section 2.3.4*.

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<sup>7</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.3.2>

<sup>8</sup> ORR/FFS are federal staff with the authority to approve all UAC transfer and release decisions; oversee care providers to ensure all services, policies, and procedures are properly provided and implemented; and liaise with local stakeholders, including other Federal agencies, local legal service providers, local communities, Child Advocates, etc. ORR/FFS also provide guidance, direction, and technical assistance to care providers. Each ORR/FFS is assigned to multiple care providers within a determined geographic region.

<sup>9</sup> 8 U.S.C. § 1232(c) (2013).

<sup>10</sup> *Flores v. Reno* Stipulated Settlement Agreement, No. 85-4544-RJK (Px) (C.D. Cal., Jan. 17, 1997).

<sup>11</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.4>



Under *ORR Policy Guide 2.4.1 Assessment Criteria*<sup>12</sup> ORR considers the potential sponsor's ability to care for the UAC, taking into account the UAC's current functioning level; strengths; any risk factors or special concerns, such as any history of criminal, juvenile justice, or gang involvement; and/or a history of behavioral issues. *ORR Policy Guide 2.8.1 After Care Planning*<sup>13</sup> requires care providers to work with potential sponsors to prepare for a UAC's post-release needs, including contacting DHS agencies in certain circumstances such as a change of address. In all cases, ORR notifies DHS prior to the release of a UAC. See attached procedures, *ORR Operations Guide Section 2.3.4*. ORR takes into consideration any additional information or input DHS provides when making a final release decision. ORR also notifies DHS within 24 hours of a UAC's physical release from custody of the sponsor's name, address, contact information and other information related to the release. See *ORR Policy Guide 2.8.3 Closing the Case File*.<sup>14</sup> For an example of this notice, please see the attached *Discharge Notification Form*.

ORR changed its policy for release of UAC from secure and staff secure care on June 12. Under the new policy, senior ORR leadership review all releases from secure and staff secure facilities, and the ORR Director makes the final release decision if there is any potential threat to the community.

5. *Please provide copies of any Memorandum of Understanding between DHS and HHS regarding the placement and processing of UACs.*

I have attached:

- Final Memorandum of Agreement (MOA) between ORR and DHS, signed February 2016. See attachment "MOA DHS-HHS (final signed)."
- Statement of Principles between DHS and HHS regarding the UAC program, signed April 2004. See attachment "HHS-DHS Statement of Principles (2004)."

ORR is in the process of developing a Joint Concept of Operations with DHS. In addition, ORR is hoping to develop a more formal consultation process with DHS, both for initial placements and releases.

6. *Who at ORR is responsible for ensuring DHS is sharing the most current information to it prior to making a UAC referral or release?*

ORR staff at both operational and leadership levels are responsible for maintaining and improving communication and information-sharing with DHS. At an operational level,

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<sup>12</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.4.1>

<sup>13</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.8.1>

<sup>14</sup> Available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2#2.8.3>

ORR works daily with DHS, as described above, and requests information from DHS at various times. In addition, at a leadership level, ORR and DHS have agreed to share information and create structures to resolve problems and enhance interagency cooperation. Through the MOA listed in #5 above, ORR and DHS prioritized improved information-sharing and communication between the agencies both at the operational and management levels.

The responses above provide an accurate overview of ORR's current policies and procedures governing placement and release of UACs with criminal or gang histories.

The Department shares your concerns about vulnerabilities to gang-related crime and violence that might exist in the UAC program. Addressing any such vulnerability is one of ORR's top priorities. To that end, ORR recently instituted a Community Safety Initiative. This initiative has two goals: we want to equip UAC with the tools they need to avoid gangs and violence, and we want to ensure that the UAC we release from care do not pose a danger to our communities.

As part of the Community Safety Initiative, ORR has reached out to DHS to enhance information sharing between DHS and ORR regarding potential gang affiliations of UAC or their sponsors. ORR is also developing new efforts on gang recruitment prevention, based on consultations with the Department of Justice's Office of Juvenile Justice and Delinquency Prevention. Finally, as part of the Community Safety Initiative, ORR staff members are comprehensively reviewing our policies and procedures to identify where we can strengthen them, specifically as they relate to UAC with gang affiliations or other safety concerns. As mentioned above, policies were updated on secure and staff secure facilities on June 12, and we will follow-up with changes to our procedures.

I hope this information is helpful. Please let me know if you have additional questions.

Sincerely,



Barbara Pisaro Clark  
Acting Assistant Secretary for Legislation  
Department of Health and Human Services

cc: The Honorable Claire McCaskill  
Ranking Member

Enclosures:  
(Grouped by response)  
Q2 Initial Placement Referral Form  
Q2 Initial Intakes Assessment

Q2 ORR Operations Guide Section 1.1.5 (11.22.16)  
Q2 UAC Assessment  
Q2 UAC Case Review  
Q3 Placement Tool  
Q3 ORR Operations Guide Section 1.1.5 (11.22.16)  
Q4 ORR Operations Guide Section 2.3.4 (12.14.16)  
Q4 Discharge Notification Form (example-redacted)  
Q5 MOA DHS-HHS (final signed)  
Q5 HHS-DHS Statement of Principles (2004)