

OVERSIGHT OF FAMILY SEPARATION AND U.S.
CUSTOMS AND BORDER PROTECTION SHORT-
TERM CUSTODY UNDER THE TRUMP ADMINIS-
TRATION

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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OVERSIGHT OF FAMILY SEPARATION AND U.S. CUSTOMS AND BORDER PROTECTION SHORT-TERM CUSTODY UNDER THE TRUMP ADMINISTRATION

THURSDAY, JULY 25, 2019

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The committee met, pursuant to call, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Deutch, Bass, Richmond, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell, Escobar, Collins, Chabot, Gohmert, Jordan, Buck, Gaetz, Johnson of Louisiana, Biggs, Lesko, Reschenthaler, Cline, Armstrong, and Steube.

Staff Present: Joshua Breisblatt, Counsel; Rachel Calanni, Professional Staff Member; Susan Jensen, Parliamentarian/Senior Counsel; Madeline Strasser, Chief Clerk; Brendan Belair, Minority Staff Director; Bobby Parmiter, Minority Deputy Staff Director/Chief Counsel; Jon Ferro, Minority Parliamentarian/General Counsel; Andrea Loving, Minority Chief Counsel, Subcommittee on Immigration and Citizenship; Erica Barker, Minority Chief Legislative Clerk; and James Rust, Minority ICE Detailee.

Ms. LOFGREN. The House Committee on the Judiciary will come to order.

And without objection, the chair is authorized to declare recesses of the committee at any time.

Chairman Nadler is running a little bit late. So in order to get to our witnesses, the staff has asked that I begin, and he will give his opening statement upon his arrival.

I want to welcome everyone to this morning's hearing on Oversight of Family Separation and CBP Short-Term Custody under the Trump Administration, and I will now recognize myself for an opening statement.

We are here today to hold the administration accountable for its failure to effectively manage the humanitarian crisis at the border and for continuing to mistreat children and families. Nearly 6 months have passed since our first hearing on the Trump administration's family separation policy, and yet parents and children are

still being separated and detained in deplorable conditions every day.

Less than 2 weeks ago, Vice President Pence stated that U.S. Customs and Border Protection is providing compassionate care to immigrants in a way that “every American would be proud of.” But just 2 weeks earlier, DHS’s own Inspector General released the second of two management alerts detailing the overcrowded and dangerous conditions at CBP facilities in Texas.

Unlike the Vice President, I do not believe that Americans are proud of how we are treating these children, and I know of no parent who would want their child housed in conditions that deprive them of nutritious food, safe water, clean clothing, and a place to sleep, not to mention the soap, toothpaste, and toothbrushes that this administration in open court argued were not necessary for the health and sanitation of detainees.

Acting Secretary McAleenan has stated that families are only separated when CBP is unable to confirm the relationship between the child and the person claiming to be the parent or legal guardian or when the child’s safety is at risk. But the Government’s own data disproves this. Out of 400 children separated from their parents between June 2018 and March 2019, only 3 percent were separated for these reasons. And of those cases, it is now clear that CBP made egregious errors in some of those separations.

Take, for example, Maria—a pseudonym—a client of the National Immigration Justice Center, who was separated from her child upon arrival. One month later, Maria learned that her child had been taken from her because she had been identified as having a criminal history in her home country. Maria denied this, but it was not until lawyers obtained official documents from El Salvador proving that she had no criminal background that she was allowed to reunite with her son, a full 3 months later. When they finally got together, Maria’s son was withdrawn and disconnected from his mother.

While the Trump administration claims that its policies are the only way to manage the current influx of immigrants at the border, that is not true. Every administration has grappled with migration challenges, but none have exposed children and families to such appalling conditions. No administration has resorted to the cruelty of systematically separating kids from their parents as a method of deterrence.

We are dealing with an administration that has dehumanized immigrant children and families and refuses to implement smart immigration policies. As a result, Border Patrol agents report low morale, high stress, and an inability to focus on their primary responsibility of protecting our borders. Asylum officers report that the migrant protection protocols, otherwise known as the “remain in Mexico policy,” have made problems at the border even worse.

A competent and capable administration would have planned for the expected arrival of families and children seeking protection and developed the necessary infrastructure to ensure that those who must be detained are held in humane conditions. A capable administration would identify and detain those individuals who may pose a risk to our country and release under supervision until an immigration hearing those who pose no risk, so that overcrowding is not

an issue. But we are not dealing with a competent and capable administration.

The administration's family separation policy has stained our Nation and will have lasting effects on those who are subjected to it. As a mother and a grandmother, my heart aches for all of them. But as a member of this committee, I know that real solutions are required, and we will keep bringing the administration before us until we find them.

I would now recognize the ranking member of the Judiciary Committee, the gentleman from Georgia, Mr. Collins, for his opening statement.

Mr. COLLINS. Thank you, Madam Chair.

And here we are again. We have had this same hearing in February. We know that the crisis on the Southern border is being fueled by loopholes in our immigration laws. Border Patrol Chief Provost testified legislative changes were needed to get the situation under control. In fact, we have heard that over and over and over and over again.

But the crisis has gotten worse. In February, the Border Patrol apprehended 66,000 individuals. That number would have been above—has been above 92,000 every month since, peaking at over 132,000 apprehensions in May alone.

You know, just last week I was horrified and deeply affected when Secretary McAleenan told me that there are three ongoing cases where a small group of children, 5 to 8 in each case, had been used by dozens of different adults to cross our border, seeking release in the U.S. And my colleagues' claim is we care—look, I am going to stop. I am not going to read this.

This all—you know what is dehumanizing? It is continuing to bring the same witnesses or the same people from the same agencies to talk about this over and over and over again. What is dehumanizing is doing that and not doing anything about it. That is what is dehumanizing.

It is talking about a problem, talking about a problem, talking about a problem, and never putting a solution up. I have talked about this almost at every one of these so far, especially in the last few weeks. And look, my Democratic colleagues have ideas. I may disagree with those ideas, but put a bill up.

I have a bill. Put mine up. Make amendments to it. Do whatever you want to do. That is what Congress is supposed to do. Dehumanizing is this. This is dehumanizing.

And also what a competent and capable majority would do is actually put a bill forward. Instead, we are not a competent and capable majority, undoubtedly, using the words of the ranking member of the subcommittee. We are not capable and competent because we are not putting bills forward.

We are having bash the President time, bash the administration time. This is all it was and all this is.

I appreciate you being here to testify. Some of you have been here before. Some of you are replacing the ones who had already testified before. Mr. White, you are back again. Good to see you.

This is what bothers me. I can read another opening statement, and we can ask questions, and we will all go through this. And we can talk about how the Trump administration is not competent and

not capable. I think that this falls back on us. It falls back on this committee.

Why has the majority not put a bill forward? We have heard that it doesn't work. We have heard from both administrations, the Obama administration and the Trump administration, that laws need to be fixed and worked on, but yet we don't do it.

We put together this week, we passed on the floor, we passed out of this committee a bill that was a band-aid to fix a little bit of problem, which everybody ought to be treated humanely and as best they can at the border, and we need to have that. That needs to happen. But we just did it in such a way yesterday that it just applied to everybody and, again, applied to nobody in a sense.

So as we look at this, as we go forward, you know, Madam Chair, I agree with you. You and I have worked on big things before, but what is dehumanizing is this hearing. What is dehumanizing is this hearing where we are going to talk about it again.

And people come, and the folks in this audience, I am glad you are here. We are trying to work on a problem, but don't accept another hearing. Accept some answers. Accept some bills being put forward. Don't be fooled again.

If you want to take part in a political positioning paper, then that is what we are doing today. Because we have already heard—there is not—no offense to our witnesses. We have heard your statements already before. So I don't know what is going to move us this time that didn't move us last time.

This is becoming, unfortunately, a committee of press releases. That is it. Dehumanizing is taking people you say you care about, but doing nothing for them. That is dehumanizing.

Competent and capable, the last time I understood Congress to pass legislation. I will be very slow. Pass bills that matter. Don't have hearings that are simply stunts.

I think about these kids being used. I think about the issue of the Flores Agreement or the trafficking victims or the asylum issue, things that have been talked about by multiple administrations. And even under us, even under the previous Congress, I will go ahead and say it before anybody else does. Republicans didn't do anything.

You know what was really funny? When they had a chance this year to work on the Dreamer bill, the majority leader went to the floor and said we could have worked on this last year. We were one signature away from passing the Dreamer bill, getting it off the table and passing it. Then why didn't you bring that bill back to the floor?

There was one vote, or you had one signature away. Now you are in the majority. You should have been able to pass it and probably would have passed it with 40 or 50 votes. No, but I will tell everybody watching, you know the reason you didn't? Because we didn't have it political enough.

The Dreamer bill, we had to add in everything else. Not that it could get passed, not that we could help the Dreamers, not that we could help the DACA recipients. We wanted a political stunt.

If it wasn't, then I challenge you. Go ask the majority leader why he didn't bring back the bill from last year. I will tell you why. It

is because it was something that would pass but didn't have everything else political on there.

So, Madam Chair, I appreciate it. I couldn't read the rest of this. I mean, this is dehumanizing. This is showing a noncompetent and noncapable majority, and so a Congress that is willing to listen to problems and not act on problems.

So here we go. Popcorn machine is ready. Anybody wants some, send the office over here. The show begins.

I yield back.

Ms. LOFGREN. The gentleman yields back.

I would note that the chairman of the committee will be recognized for his opening statement when he arrives. So at this point, I will recognize the ranking member for the Immigration Subcommittee, Mr. Buck, for his opening statement.

Mr. BUCK. Thank you.

As I have been saying for months now, there is a crisis on the Southern border. What has the Democrat response been to the crisis? The majority spent the first 6 months of this year denying there was a problem. Some Democrats claim the crisis was manufactured. The House Democratic Whip even laughed at the crisis.

What else have Democrats done? In February, Democrats cut funding for ICE detention beds in the omnibus spending bill. One article suggested the Democrats' bill would encourage ICE to detain fewer immigrants and asked will it work? We now know the answer. No.

The committee heard testimony from Carla Provost, Chief of Customs and Border Protection, that her agents were facing a "border security and humanitarian crisis." On the very same day, the Democrat majority passed a resolution rejecting the President's emergency declaration targeted at addressing the crisis.

House progressives objected to passing a supplemental funding bill a few weeks ago to provide needed resources to address the crisis. This crisis is not only being felt at the border, it is being felt in many small towns across the country. Recently, several mayors went to the border and saw the crisis firsthand. They commented on how it impacts their community.

"Cities were among the first to feel the impact of this crisis, and local communities have made extraordinary efforts to alleviate the human suffering," Rochester Hills, Michigan, Mayor Bryan Barnett has said. "We are pleased the Congress recently provided some emergency funding, but it is clear that more must be done to meet the needs at the border."

Mesa, Arizona, Mayor John Giles said, "We had a frank and candid discussion with Acting Secretary McAleenan about the realities that border cities face each day and the need for the Federal Government to find solutions that prioritize the health and well-being of asylum seekers without draining community resources."

"We have had in the previous 3 months 5,000 people come through our shelter in Yuma," Mayor Douglas Nicholls said. "The City of Yuma is 100,000 people. So it is a big impact on our community. In the past 4 months, Yuma has spent \$1.5 million for migrant care."

Perhaps nowhere is the impact of Washington's failures and the Democrats' negligence more acutely felt by America's mayors than

in the area of education. According to one estimate, educating the children of illegal immigrants poses a cost to America's public schools of \$59.8 billion per year, with 98.9 percent borne by State and local taxpayers.

As illegal immigration increases, costs have skyrocketed, including for limited English proficiency programs that are a major drain on school budgets. Commenting on the impact of local government, Randy Capps of the Migration Policy Institute has said, "Public education is where the real big cost comes in. The amount of taxes that the parents pay, it is not going to be as much as is spent on public education for their kids and food stamps for their kids."

Last week, the Immigration and Citizenship Subcommittee heard testimony that policies passed by Congress contribute greatly to USCIS processing backlogs. We have also heard congressional policy can have a devastating impact, encouraging and incentivizing illegal immigration. For example, the situation involving unaccompanied minors was made worse, much worse by legislation pushed by Senator Feinstein and passed by Congress in 2008. The number of unaccompanied children grew from 8,041 in 2008 to 50,036 last year, a 622 percent increase.

The Federal agencies have sounded the alarm. Local governments have sounded the alarm. Think tanks have sounded the alarm. Republicans have sounded the alarm. The President has sounded the alarm. Despite this, Democrats refuse to address the root causes of the problem and, in turn, refuse to solve the crisis. They would rather ignore the problem or even make it worse than acknowledge the President is right.

What do we need to do? First, we need a stronger commitment from Congress to secure the border, and this includes building the wall. Second, we need to pass H.R. 586. This bill will help keep families together while fixing some of the rules that currently tie the hands of DHS. It will close loopholes related to human trafficking, and finally, it will prevent frivolous asylum claims, allowing the agencies to focus on and prioritize genuine claims.

I hear repeatedly from those on the other side of the dais that someone is not an illegal alien if they file an asylum claim. That is not true if the applicant has filed a fraudulent claim. In that case, the applicant is not in the country legally because they have committed immigration fraud.

We need to enact reforms overriding the judicial settlement that ties the hands of the agencies responsible for securing our border. America will always be a place that welcomes legal immigrants. This great nation will always have a generous immigration policy, but we need an immigration system that works for America, and we cannot, cannot continue to ignore or, given Democrat policy priorities, make worse the crisis at the border.

I look forward to hearing from our witnesses today and hope they will share with us what Congress can do to address the crisis and, even more, hope Democrats in Congress will not only listen, but take the right action.

I yield back.

Ms. LOFGREN. The gentleman yields back.

This is the Judiciary Committee's hearing on Oversight of Family Separation and CBP Short-Term Custody. We have two functions

in Congress. One is passing bills, and second is oversight to see that the laws are being faithfully executed.

Today, we have a number of witnesses who will help us understand whether the administration is falling short in its obligation to see that the laws are being faithfully executed. I will introduce them now.

Ryan Hastings is the Chief of the Law Enforcement Operations Directorate at the Border Patrol headquarters in Washington, D.C., where he is responsible for oversight of the day-to-day law enforcement operations at Border Patrol sectors. Chief Hastings has served with U.S. Border Patrol since 1995, and over the course of his tenure there, he has worked in various sectors and Border Patrol divisions in a variety of leadership positions. Prior to his current position, he served as chief patrol agent of the Buffalo sector from 2012 until November of 2017.

Jonathan Hayes serves as the Director of the Office of Refugee Resettlement in the Administration for Children and Families at the Department of Health and Human Services. Prior to being named Acting Director in November and being formally installed as Director in February of this year, Mr. Hayes was chief of staff for the Office of Refugee Resettlement in the Office of Director.

Mr. Hayes has also served as chief of staff to two Members of Congress and has experience in the private sector, specializing in broadcast sales and marketing, international trade and customs, and commercial airline operations.

Jonathan White is Commander of the U.S. Public Health Service Commissioned Corps at the Department of Health and Human Services. He is currently a senior adviser in the Office of Emergency Management and Medical Operations, and he was the Federal health coordinating official for the Unaccompanied Alien Child Reunification Mission from June to December of 2018.

Commander White is a career public health officer who has worked with HHS for nearly a decade. He is a licensed clinical social worker, emergency manager, and certified public health professional.

Joseph Edlow currently serves as the Deputy Assistant Attorney General with the Office of Legal Policy at the Department of Justice, where he focuses on immigration policy. Before joining the Department in 2018, Mr. Edlow worked in Congress for one of our own former Members, Mr. Raul Labrador of Idaho, and also served as his counsel for the Immigration Subcommittee.

Prior to that, he worked with the Baltimore, Maryland, Immigration and Custom Enforcement field office, where, as assistant chief counsel, he represented DHS in removal proceedings and specialized in worksite enforcement, national security, and gang members.

And finally, Diana Shaw was appointed the Assistant Inspector General for Special Reviews and Evaluations for the Department of Homeland Security of Inspector General in March of this year. Ms. Shaw has also served in several other leadership positions with the Inspector General's office, including Assistant Inspector General for Legal Affairs, acting counsel to the Inspector General, Director of the Special Review Groups, and Acting Assistant Inspector General for External Affairs.

Prior to joining the Office of the Inspector General, Ms. Shaw practiced law with a firm's white collar crime group, specializing in internal investigations and compliance counseling.

We welcome all of our distinguished witnesses and thank them for participating in today's hearing, and now if you will please rise, I will begin by swearing you in.

If you would please raise your right hand, do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct, to the best of your knowledge, information, and belief, so help you God.

[Response.]

Ms. LOFGREN. And the record will note that each of the witnesses replied in the affirmative.

And we will now receive your testimony. Please note that each of your written statements will be entered into the record in its entirety, and accordingly, I ask that you summarize your testimony in about 5 minutes.

To help you stay within that timeframe, we have a lighting system. When the light switches from green to yellow, it means you have 1 minute to conclude your testimony. And when the light turns red, it means your 5 minutes is up. So we would ask you to try and finish up when that occurs.

Chief, let us begin with you.

TESTIMONY OF BRIAN S. HASTINGS, CHIEF, LAW ENFORCEMENT OPERATIONS, U.S. BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION; JONATHAN H. HAYES, DIRECTOR, OFFICE OF REFUGEE RESETTLEMENT, ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; JONATHAN WHITE, COMMANDER, UNITED STATES PUBLIC HEALTH SERVICE COMMISSIONED CORPS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; JOSEPH B. EDLOW, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, U.S. DEPARTMENT OF JUSTICE; AND DIANA R. SHAW, ASSISTANT INSPECTOR GENERAL FOR SPECIAL REVIEWS AND EVALUATIONS, U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL

TESTIMONY OF BRIAN S. HASTINGS

Mr. HASTINGS. Good morning, Chairman Nadler, Ranking Member Collins, and members of the committee.

You have asked me here today to testify regarding the allegations that CBP has begun the widespread separation of children. Let me be clear. This is not occurring.

Border Patrol has separated less than 1,000 children of the approximately 413,000 family members apprehended, or 0.45 of all families we have apprehended this fiscal year. Separation is an incredibly rare occurrence and only takes place in compliance with the President's June 20, 2018, executive order and preliminary injunction in the *Ms. L. v. ICE* case. The vast majority of separation involve adults who, due to their criminal or gang history, would not be eligible for release had they been apprehended alone.

Bringing a child illegally into the U.S. should not entitle anyone to be released into U.S. communities. Many of the cases discussed recently involve family members other than parents or legal guardians. The laws passed by Congress define an unaccompanied alien child, or a UAC, as a child without a parent or a legal guardian. By law, Border Patrol is required to turn over all UACs to HHS.

Since late June, Members of Congress have been vocal about the condition of Border Patrol facilities. Frankly, this attention came far too late to address the overwhelming situation that we have raised concerns about for the past 8 months.

You have heard the DHS Acting Secretary state that 4,000 aliens in custody across the entire Southwest border is an acceptable level. We first surpassed 10,000 people in custody in April 13th of 2019. By May, apprehensions had spiked to more than 132,000, with as many as 19,500 people in Border Patrol custody.

ICE and HHS were unable to keep pace with these record apprehensions. By June 6th, the number of UACs in our custody peaked at 2,700.

After Congress passed a supplemental 3 weeks later providing HHS funding for additional bed space, the number of UACs in Border Patrol custody quickly dropped to 300. By contrast, ICE was denied supplemental funding for single adult bed space, and single adults continue to remain in Border Patrol custody much longer than they should.

I am very concerned that if ICE is unable to take custody of these adults, we will have to start direct releases at the border. I can tell you that this will create a draw that we have never experienced and result in a complete loss of border security.

As Chief Provost testified yesterday, the crisis is not over, and supplemental funding is only a band-aid. Apprehension numbers have decreased from May to June, but 94,000 aliens that we apprehended in the month of June was higher to any June dating back to 2000.

The \$1.1 billion provided to CBP in the supplemental will help us continue surging agents and officers to assist with the crisis, as well as continuing investing in soft-sided facilities, air and ground transportation, medical support, and consumables. We did not wait for additional funding to start making those investments. We had already contracted for six soft-sided facilities to provide additional capacity before the supplemental was passed.

Additionally, we have purchased or leased 515 showers, 240 portable toilets, 24 washers and dryers for the areas that we have the highest apprehensions. To be clear, there has never been a shortage of personal care items for detainees, such as food, snacks, diapers, formula, and hygiene products. We have purchased those items out of operational funding for months and will continue to do so with the additional supplemental funding.

While the men and women of Border Patrol have been doing their best in an overwhelming situation for months, so much energy has been forced on vilifying them. In the same way inappropriate conduct by an agent is unacceptable, it is also unacceptable to broadly paint all agents as heartless and inhumane. On a daily basis, agents are feeding and caring for migrants, consoling chil-

dren, and rescuing over 4,000 aliens that smugglers have placed into peril.

They continue to perform their humanitarian mission, knowing that they are sacrificing the border security mission they were hired to do day after day with no one in sight. The funding that was provided to CBP and HHS will only last a few months and will do nothing to address the unsustainably high flow of illegal immigration.

Without changes to our immigration system, we will be back here in a few months. The money will run out. The summer heat will subside, and smugglers will adapt, as they always do, to Mexico's efforts. Each of these endeavors are short-term fixes to a long-term problem. We need a functioning system that can quickly adjudicate immigration cases and asylum claims and quickly return those who are unsuccessful back to their home country.

We need legal changes to allow the system to detain families together, quickly repatriate UACs, and set a higher bar for credible fear. Border Patrol has apprehended more than 740,000 individuals so far this year, and without holistic changes to the immigration system, loopholes will continue to be exploited, smugglers will continue to profit, and border security will continue to be sacrificed.

Thank you.

[The statement of Mr. Hastings follows:]



TESTIMONY OF

Brian S. Hastings
Chief
Law Enforcement Operations
U.S. Border Patrol
U.S. Customs and Border Protection

BEFORE

U.S. House of Representatives
Committee on the Judiciary

ON

"Oversight of Family Separation and CBP Short-Term Custody Under the Trump
Administration"

July 25, 2019
Washington, DC

Chairman Nadler, Ranking Member Collins, and Members of the Committee, it is my honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) role in the Zero Tolerance initiative, and discuss the actions CBP has taken to address the current situation on the southwest border.

Timeline of Zero Tolerance Initiative

On April 6, 2018, the U.S. Department of Justice (DOJ) instituted Zero Tolerance, a policy to prosecute all referred violations of 8 U.S.C. § 1325(a), which prohibits both improper entry and *attempted* improper entry by an alien, to the extent practicable.

Subsequently, on May 4, 2018, former Secretary of Homeland Security Nielsen directed officers and agents to refer all illegal border crossers to the DOJ for criminal prosecution pursuant to 8 U.S.C. § 1325(a) to the extent practicable. On May 5, 2018, acting at the Secretary's direction, U.S. Border Patrol (USBP) began referring greater numbers of violators of 8 U.S.C. § 1325(a) for prosecution. The Zero Tolerance initiative applied to all amenable adults (including parents or legal guardians traveling with his or her minor children).

Consequently, when a parent or legal guardian traveling with his or her child was accepted for prosecution by DOJ under Zero Tolerance, and was transferred to U.S. Marshals Service custody for the duration of their criminal proceedings, the child could not remain with the parent or legal guardian during criminal proceedings or subsequent incarceration. This is standard for criminal prosecutions when the defendant is incarcerated. Because the detained parent was not able to provide care and physical custody to the child, the child became an Unaccompanied Alien Child, or "UAC," as defined by 6 U.S.C. § 279(g). Section 235(b)(3) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 generally requires a UAC in the custody of DHS be referred to the custody and care of the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR).

On June 20, 2018, President Trump issued Executive Order 13841, *Affording Congress the Opportunity to Address Family Separation*, which directed DHS to detain families together for the pendency of any criminal improper entry or immigration proceedings, to the extent permitted by law and subject to the availability of resources. Within hours of issuance of the Executive Order, CBP leadership issued guidance to the field directing that parents or legal guardians who entered with their child(ren) no longer be referred for prosecution under 8 U.S.C. § 1325(a). Following issuance of the Executive Order, CBP reunified more than 500 children in our custody with their parents or legal guardians who were previously in criminal proceedings but returned to our custody. This is separate from any reunifications subsequently conducted by DHS and HHS pursuant to *Ms. L v. ICE*.

CBP's prosecution priorities under the Zero Tolerance initiative have continued to focus on achieving 100 percent prosecution of single adult aliens who illegally enter along the southwest border. Delivery of consequences is an essential tool needed to enforce the law and stem the flow of illegal immigration.

Conditions Under Which Families May Be Separated

In compliance with the Executive Order and the preliminary injunction in *Ms. L v. ICE* and all other appropriate legal authorities, CBP may separate an alien child from his or her parent or legal guardian when they enter the United States if there is a determination that the parent or legal guardian poses a danger to the child, is otherwise unfit to care for the child, has a criminal history, has a communicable disease, or is transferred to a criminal detention setting for prosecution for a crime other than improper entry (8 U.S.C. § 1325). CBP may also separate an alien child from an individual purporting to be a parent or legal guardian in certain circumstances, such as where CBP is unable to confirm that the adult is actually the parent or legal guardian, or if the child's safety is at risk. However, outside of these circumstances, CBP generally keeps family units together in its short-term holding facilities. By definition, a family unit must include at least one parent or legal guardian; it does not include relatives that are not parents or legal guardians, such as cousins or grandparents if those individuals are not legal guardians.

Current Crisis on the Southwest Border

As this Committee is aware, CBP is currently experiencing an unprecedented and unsustainable situation at the southwest border that is spreading CBP resources too thin. In fact, the current situation at the southwest border is nothing short of a border security and humanitarian crisis. From October 1, 2018 to June 30, 2019, the number of individuals apprehended or found inadmissible by CBP on the southwest border reached 780,633, an increase of 103 percent over the same time the previous fiscal year. That averages two enforcement actions every minute of every day for 272 days. Border Patrol's southwest border apprehensions, a subset of these enforcement actions, reached more than 688,375 at the end of June 2019. That number represents more apprehensions than fiscal year totals for the previous ten years. Although we saw a decrease in the levels of apprehensions in June of this year compared to previous months, migration remains high, continues to tax our finite law enforcement resources, and detracts from our national security mission.

Each day, we see the cascading effects of mass immigration both at and between our ports of entry (POEs). The vast majority of migrants are Central American families and unaccompanied alien children (UAC). In FY 2019 to date, UAC and family units represent 66 percent of all individuals apprehended by the Border Patrol at the southwest border.

The majority of individuals encountered now originate from the three countries of Central America known as the Northern Triangle: Guatemala, Honduras, and El Salvador. The number of Northern Triangle migrants exceeded the number of Mexican migrants in four of the past five fiscal years, and in June 2019, 70 percent of all southwest border apprehensions came from the Northern Triangle. Unlike single adult migrants from Mexico, UAC and families from Central America cannot be swiftly repatriated.

Exacerbating these challenges, the U.S. Border Patrol is now apprehending large groups of migrants between POEs; 198 groups of migrants, each comprising over 100 members (primarily Guatemalan and Honduran families), have been apprehended between POEs so far this fiscal

year. Last month, Border Patrol reached an unfortunate record when more than 1,000 migrants illegally entered the United States in the largest single group ever encountered. The group included more than 900 family units and more than 60 UAC.

The increased shift to these more vulnerable migrant populations, combined with the overwhelming numbers, profoundly affects our ability to patrol the border and diminishes our ability to prevent deadly narcotics and dangerous people from entering our country. It also detracts from our ability to facilitate lawful trade and travel.

Similar to what we see *between* POEs, CBP is experiencing increased numbers of migrants at POEs, including family units and other aliens who arrive without documents sufficient for lawful entry. Large groups of inadmissible aliens, sometimes in the hundreds, arriving at POEs also strain our processes and divert our officers from their priority missions, as our officers necessarily and rightly shift their focus to processing these migrants in a humane and efficient manner.

The consequences of this mass migration are far-reaching. In high-flow sectors, Border Patrol has been forced to divert between 40 and 60 percent of its manpower away from the border security mission to provide humanitarian care to families and children. This means fewer agents are available to stop drugs and dangerous criminals from entering the United States. Further, this crisis has depleted detention capacity of U.S. Immigration and Customs Enforcement (ICE) and greatly overwhelmed its resources, thereby affecting ICE's ability to transport migrants away from overcrowded Border Patrol facilities.

To help the Border Patrol with processing the unprecedented number of migrants, CBP temporarily shifted more than 700 CBP Officers from POEs to Border Patrol stations away from the ports. Fewer officers at POEs means that pedestrians, passenger vehicles, and commercial trucks trying to cross the border may experience delays. Some POEs have been forced to close some travel lanes and curtail some weekend cargo processing hours, all affecting the flow of commerce and travel in the United States.

In addition, the influx of family units has led to CBP facilities operating at unprecedented and unsustainable occupancy levels. Short-term holding facilities at POEs and Border Patrol stations were designed neither for the large volume of inadmissible and apprehended persons nor for the long-term custody after processing is complete. CBP's ability to transfer people out of its custody is dependent upon the capacity of our partners. Other agencies have the time to arrange placement before individuals enter their custody, and immigration courts can spread their dockets out over years. However, CBP must process individuals as they are encountered or apprehended, and must maintain custody until our partners can accept them. By way of reference, we generally consider 4,000 detainees to be a high number of migrants in custody, and consider 6,000 detainees to be a crisis level. On any given day for the past several months, CBP has held between 8,000 and 12,000 detainees in custody. In May, the number was as high as 19,500 detainees.

While the men and women of CBP pride themselves on providing appropriate care for those in its custody, the volume of family units and UAC poses significant challenges. CBP has

deployed soft-sided facilities in Donna and El Paso, Texas, and Yuma, Arizona, designed to meet the needs of family units. The temporary structures are weatherproof, climate-controlled, and provide areas for eating, sleeping, recreation and personal hygiene. These facilities include shower trailers, chemical toilets and sinks, laundry trailers, sleeping mats, personal property storage boxes, lockers, power, kitchen equipment, food/snacks/water, clothing, and hygiene kits. Border Patrol has invested over \$230 million in humanitarian support such as consumables, including meals, snacks, baby formula, shampoo, diapers, and other hygiene items; enhanced medical support; and increased transportation services.

A Broken Immigration System

While many factors drive illegal migration, the rise in migration is, in part, a consequence of the gaps created by layers of laws, judicial rulings, and policies related to the treatment of minors. Unfortunately, this well-intentioned mosaic of legal requirements helped create the conditions underlying the humanitarian crisis at our southwest border today by providing clear incentives to attempt to cross our southwest border illegally, with a child.

Flores Settlement Agreement

The 1997 *Flores* Settlement Agreement, including its interpretation by the courts, provides certain standards governing the treatment, detention, and release of all alien minors in U.S. Government custody. The Agreement requires the government to release alien minors from detention without unnecessary delay, or, if detention is required, to transfer them to non-secure, licensed programs “as expeditiously as possible.” *Flores* also sets certain standards for the holding and detention of minors, and requires that minors be treated with dignity, respect, and special concern for their particular vulnerability. CBP complies with the *Flores* Settlement Agreement and treats all minors in its custody in accordance with its terms.

In 2014, in response to the surge of alien families crossing the border, DHS increased the number of family detention facilities. Soon after, the U.S. District Court for the Central District of California interpreted *Flores* as applying not only to minors who arrive in the United States unaccompanied, but also to those children who arrive with their parents or legal guardians.¹ The court also stated that ICE’s family detention facilities are not licensed and are secure facilities. These rulings limited DHS’s ability to detain family units for the duration of their immigration proceedings. Pursuant to this and other court decisions interpreting the *Flores* Settlement Agreement, DHS rarely detains accompanied children and their parents or legal guardians for longer than approximately twenty days.

In part as a consequence of the limitations on time-in-custody mandated by *Flores* and court decisions interpreting it, custody arrangements for adults who arrive in this country alone are treated differently from adults who are parents or legal guardians who arrive with a child.

¹ *Flores v. Johnson*, 212 F. Supp. 3d 864 (C.D. Cal. 2015).

UAC Provision of Trafficking Victims Protection Reauthorization Act of 2008

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, also requires that the U.S. government extend certain protections to UAC. Specifically, the TVPRA requires that, once a child is determined to be a UAC, the child must be transferred to HHS within 72 hours, absent exceptional circumstances, unless the UAC is a national or habitual resident of a contiguous country and is determined to be eligible to withdraw his or her application for admission voluntarily (i.e., not a trafficking victim, does not have a fear of return, and is able to make an independent decision to withdraw). UAC from countries other than Canada and Mexico are exempt from the TVPRA provision allowing for the voluntary return of Canadian and Mexican UAC. Currently, more than 80 percent of UAC encountered by Border Patrol are from the non-contiguous countries of Guatemala, Honduras, and El Salvador; therefore, they fall outside the TVPRA expeditious voluntary return framework, cannot avail themselves of a voluntary return provision like UAC from Canada or Mexico, and further encumber the already-overburdened immigration courts.

Asylum Claims

In recent years, CBP has seen a significant increase in the number and percentage of aliens who seek admission or unlawfully enter the United States and then assert an intent to apply for asylum or fear of persecution. This dramatic increase strains border security resources, immigration enforcement and courts, and other federal resources.

CBP carries out its mission of border security while adhering to legal obligations for the protection of vulnerable and persecuted persons. The laws of the United States, which are consistent with international treaties to which we are a party, allow people to seek asylum on the grounds that they have a well-founded fear of persecution in their country of nationality (or of last habitual residence, if stateless) on account of their race, religion, nationality, membership in a particular social group, or political opinion. Our laws also prohibit the removal of individuals to countries where they face a likelihood of torture. CBP understands the importance of complying with the law and takes its legal obligations seriously.

CBP has designed policies and procedures based on these legal standards to protect vulnerable and persecuted persons in accordance with these legal obligations.

If a CBP officer or agent encounters an alien who is subject to expedited removal at or between ports of entry, and the person expresses an intention to apply for asylum, a fear of persecution or torture, or a fear of being returned to his or her home country, CBP processes that individual for a credible fear screening interview with an asylum officer to determine whether the individual possesses a “credible fear” of persecution or torture. CBP officers and agents processing aliens for expedited removal do not make credible fear determinations for expedited removal.

We Need Congress to Act

These legal and statutory requirements have significant ramifications. Central American families are coming to our border now because they know that DHS must release them quickly—generally within 20 days—and that they will be allowed to stay in the United States indefinitely

while awaiting inevitably protracted immigration court proceedings. To be clear, these families, and those posing as families, are generally not concerned with being caught by the Border Patrol—they are actually turning themselves in, knowing that they will be processed and released with a court date years in the future, often times with permission to work while their case is pending. Smugglers are exploiting this dynamic to encourage more migration and are benefiting from it financially every day under the current outdated laws that are encouraging this to occur.

The perception that our system will allow families to stay in the United States indefinitely is clearly a major pull factor used by smugglers to convince migrants to journey to our border. Economic migration is not, and has never been, a basis for asylum and those who exploit the low credible fear threshold deprive those who actually qualify for asylum the humanitarian protection they deserve.

Along with important push factors, which include high levels of insecurity, limited economic opportunity, and weak governance in many parts of Central America, this perception about our immigration system incentivizes migrants to put their lives in the hands of smugglers and make the dangerous trek north to the southwest border. We see the cost of these pull and push factors every day in profits derived by transnational criminal organizations, in the lives lost along the journey, and in the flight of generations of youth from the countries of the Northern Triangle.

Additionally, regardless of whether an individual who has entered illegally has made a fear claim, they are increasingly unlikely to be repatriated in an expeditious manner. Assurance of release due to court rulings, compounded by a multi-year immigration court backlog, means that there is virtually no border enforcement for families. Only 1.5% of family units from Central America apprehended in FY 2017 have been removed to their countries of origin. In fact, many will end up not having valid claims to remain in the United States when their court proceeding concludes.

Conclusion

We have dedicated every available resource to address the mass migration to our borders, including personnel, technology, and innovative outreach and engagement with international and non-governmental industry partners. However, despite our efforts, the system is overwhelmed. The nation is facing a full-blown security and humanitarian crisis along our southwest border. We ask Congress to acknowledge the crisis and help us by taking legislative action in support of CBP, our partners and the rule of law.

Thank you for the opportunity to testify. I look forward to your questions.

Ms. LOFGREN. Thank you.

Be pleased to hear from you, Director Hayes.

TESTIMONY OF JONATHAN H. HAYES

Mr. HAYES. Thank you, ma'am.

Chair Lofgren, Ranking Member Collins, and members of the committee, it is my honor to appear today on behalf of the Department of Health and Human Services.

My name is Jonathan Hayes. As the Director of the Office of Refugee Resettlement, I manage the Unaccompanied Alien, or UAC, Program. I became the permanent Director earlier this year, and it is a privilege to serve in this role.

I am continually impressed with the level of commitment and professionalism that I see in the ORR career staff and our grantees, who carry out round-the-clock operations in service of some of the world's most vulnerable children. I have visited nearly 50 UAC care provider shelters across the United States over the last year so that I could see firsthand the quality of care provided to these children.

Prior to my time at ORR, I worked for two congressional Members for approximately 8 years. That experience provided me with firsthand knowledge of the important oversight role that you and your staff have to ensure that Federal programs operate successfully.

I would like to first express the Department's appreciation and gratitude to Congress for passing the emergency humanitarian aid package. Immediately upon enactment of the supplemental appropriation, we restored the full range of services for UAC that we were unable to provide during the anticipated deficiency.

The number of UAC entering the United States during this fiscal year has risen to levels we have never before seen. As of July 15th, DHS has referred more than 61,000 UAC to us, the highest number in the program's history. By comparison, HHS received 59,170 referrals in fiscal year 2016, the previous highest number of annual referrals on record.

HHS currently has about 10,000 children in our care, though this number fluctuates on a daily basis. As of June, the average length of time that a child stays in HHS's custody is approximately 42 days, which is a dramatic decrease of 53 percent from late November 2018, when the average length of care was about 90 days.

During my tenure at ORR, we have issued four operational directives and revised our policies and procedures with the specific aim of a more efficient and safe release of UAC from our care and custody. HHS does not enforce immigration laws. The Department of Homeland Security and the Department of Justice perform those functions.

In general, DHS separates parents from their children for reasons recognized by the Ms. L. court and agreed upon between DHS, HHS, and the American Civil Liberties Union. Those reasons include unverified familial relationship or fraud, criminal history, communicable diseases, danger to the child, or lack of parental fitness. DHS has also separated adults from children based on lack of parentage.

Once HHS receives information from DHS that a child has been separated from a potential parent, we first try to establish communication with the separated adult, whether they are in the custody of DHS's Immigration and Customs Enforcement, DOJ's Federal Bureau of Prisons, or DOJ's U.S. Marshal Service. HHS works to confirm parentage and to confirm the separation.

As of July 8, 2019, HHS has discharged 562 of these minors through removal with their parents through ORR's sponsorship process or through voluntary departure. When a child enters ORR care, care provider staff assess each child's needs, including special concerns such as family separation, known medical or mental health issues, and other risk factors. HHS is deeply committed to the physical and emotional well-being of all children in its temporary care.

Staff at our care provider facilities are trained in techniques for child-friendly and trauma-informed interviewing, ongoing assessment, observation, and treatment of the medical and behavioral health needs of these children, including those who have been separated from their parents.

Care providers must deliver services that are sensitive to the age, culture, and native language of each child. All children participate in weekly individual counseling sessions with trained social work staff, where the provider reviews the child's psychosocial well-being progress, establishes short-term objectives for addressing trauma and other health needs, and addresses developmental and crisis-related needs, including those that may be related to family separation.

If children have acute or chronic mental health illnesses, ORR refers them for mental health services within the community. It is the expressed desire and goal of both the political and senior career leadership of ORR to expand our capacity in such a manner as possible so that as many children as possible are placed into a permanent State-licensed facilities or transitional foster care while their sponsorship suitability determinations are made or their immigration cases are adjudicated in the event there is no sponsor available.

HHS operates nearly 170 licensed care provider facilities and programs across the United States. These care providers include group homes, long-term therapeutic or transitional foster care, residential treatment centers, staff secure and secure facilities, and shelters. Our facilities provide housing, nutrition, routine medical care, mental health services, educational services, and recreational services, such as arts and sports, services that are similar to the domestic child welfare system.

In closing, please know that my top priority and that of my team is to ensure the safety and well-being of the children who are placed temporarily in HHS care and custody as we work to quickly and safely release them to suitable sponsors.

Thank you for the support of the UAC program and the opportunity to discuss our important work. I will be happy to answer any questions that you may have.

[The statement of Mr. Hayes follows:]



Testimony of

Jonathan H. Hayes

Director

Office of Refugee Resettlement

Administration for Children and Families

U.S. Department of Health and Human Services

Before the

Committee on the Judiciary

United States House of Representatives

July 25, 2019

Chair Nadler, Ranking Member Collins, and members of the Committee, it is my honor to appear today, on behalf of the Department of Health and Human Services (HHS). My name is Jonathan Hayes. I am the Director of the Office of Refugee Resettlement (ORR) and I manage the Unaccompanied Alien Children (UAC) Program.

I became the permanent director earlier this year, and it is a privilege to serve in this role alongside the ORR career staff. I am continually impressed with the level of commitment and professionalism I see in the ORR career staff and our grantees on a daily basis. The caring culture of ORR directly impacts our day-to-day operations and goals, as well as the staff who carry out our round-the-clock operations in service of some of the world's most vulnerable children. I have visited nearly 50 UAC care provider shelters across the United States over the last year so that I could see firsthand the quality of care that ORR staff and grantees provide to UAC. I also heard the perspectives and input from our teams in the field, which allowed me to better understand ways to improve our services and overall mission.

My strong desire is to ensure the safety and well-being of the children in our care in a manner that is consistent with the law and empowers the career professionals and senior staff at ORR. As the Director of ORR, I am committed to making decisions that are in the best interest of each child in ORR's care and custody.

Prior to my time at ORR, I worked for two Members of the House of Representatives for approximately eight years. That experience provides me with firsthand knowledge of the

important role that you and your staff members have in ensuring federal programs operate successfully.

UAC Program Overview

I would like to first express the Department's appreciation and gratitude to Congress for passing the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act. Immediately upon enactment of the supplemental appropriations, we restored the full range of services for UAC, including those that we were unable to provide during the anticipated deficiency due to appropriations law limitations.

The Homeland Security Act of 2002 (HSA) and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), as amended, govern the UAC program. So do certain provisions of the Flores Settlement Agreement (FSA). As defined by the HSA, 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 present in the United States, or no parent or legal guardian in the United States is available to provide care and custody of the child, then the apprehending agency determines that the child is a UAC and transfers them to ORR for care and custody.

HHS does not apprehend migrants at the border or enforce immigration laws. The Department of Homeland Security (DHS) and the Department of Justice (DOJ) perform those functions. HHS' UAC Program is a humanitarian child welfare program, designed for the temporary care of UAC, until a time in which they can be safely released or reunified with family or other sponsors.

Current State of the Program

The number of UAC entering the United States during this fiscal year (FY) has risen to levels we have never before seen. As of July 15, DHS has referred more than 61,000 UAC to us – the highest number in the program’s history. By comparison, HHS received 59,170 referrals in FY 2016 – the second highest number on record.

HHS currently has fewer than 11,000 children in our care, though this number fluctuates on a daily basis. The number of children in our care is down from a recent high of over 13,700 just last month; this decline is due to decrease in daily referrals over the last few weeks, and ORR’s ability to maintain a steady high discharge rate of UAC placement with sponsors. As of June, the average length of time that a child stays in HHS’ custody is approximately 42 days, which is a dramatic decrease of 53 percent from late November 2018, where the average length of care was 90 days. During my tenure at ORR, we have issued four operational directives and revised our policies and procedures with the specific aim of a more efficient yet safe release of UAC from our care and custody. Accompanying each directive is a detailed analysis explaining how the change would not compromise the safety of UAC.

Identification and Reunification of Separated Children

HHS is currently complying with the preliminary injunction order set by the Ms. L. Court on June 26, 2018.

In general, DHS separated the parents from their children for reasons recognized by the Ms. L. Court, and agreed upon between DHS, HHS, and ACLU. Those reasons include unverified

familial relationship/fraud, criminal history, a communicable diseases, danger to the child, or lack of parental fitness. DHS has also separated adults from children based on lack of parentage.

Once HHS receives information from DHS that a child has been separated from a potential parent, we first establish communication with the separated adult, whether they are in the custody of DHS's Immigration and Customs Enforcement, DOJ's Federal Bureau of Prisons, or DOJ's U.S. Marshals Service. HHS works to confirm parentage and to confirm the separation.

As of July 08, 2019, HHS discharged 562 of these minors through removal with their parents, ORR's sponsorship process, or voluntary departure.

Services While in Custody

HHS is deeply committed to the physical and emotional wellbeing of all children in its temporary care. Staff at care provider facilities are trained in techniques for child-friendly and trauma-informed interviewing, ongoing assessment, observation, and treatment of the medical and behavioral health needs of the children, including those who have been separated from their parents. Care provider staff are trained to identify children who have been smuggled (i.e. transported illegally over a national border) and/or trafficked into the United States. Care providers must deliver services that are sensitive to the age, culture, and native language of each child.

Each care provider program maintains ORR-approved policies and procedures for interdisciplinary clinical services, including standards on licensing and education for staff,

according to staff role or discipline. Staff who are required to have professional certifications must maintain licensure through continuing education requirements, and all care provider staff must complete a minimum 40 hours of training annually.

When a child enters ORR's care, care provider staff assess each child's needs, including special concerns such as family separation, known medical or mental health issues, and other risk factors.

All children participate in weekly individual counseling sessions with trained social work staff, where the provider reviews the child's psychosocial wellbeing progress, establishes short term objectives for addressing trauma and other health needs, and addresses developmental and crisis-related needs, including those that may be related to family separation. Clinical staff may increase these once-a-week sessions if a more intensive approach is needed. If children have acute or chronic mental health illnesses, ORR refers them for mental health services in the community.

Children also participate in informal group counseling sessions at least twice a week. The sessions give newly arrived children the opportunity to become acquainted with staff, other children in care, and the rules of the program and provides an open forum where everyone has an opportunity to speak. Together, children and care providers make decisions on recreational activities and resolve issues affecting the children in care. For example, children at one temporary influx facility requested that they be allowed to conduct religious services themselves

in lieu of an outside faith leader, and they then started to lead their peers in weekly faith-based services, appropriate to the child's faith, for those who wanted to participate.

State-Licensed and Temporary Shelter Capacity

HHS operates nearly 170 state-licensed care provider facilities and programs across the United States. These care providers include group homes; long-term, therapeutic, or transitional foster care; residential treatment centers; staff-secure and secure facilities, and shelters. Our facilities provide housing, nutrition, routine medical care, mental health services, educational services, and recreational activities such as arts and sports – services that are similar to the domestic child welfare system. Grantees operate the facilities, which are licensed by the state licensing authorities responsible for regulating such residential child care facilities.

It is the expressed desire and goal of both the political and senior career leadership of ORR to expand our capacity in such a manner that as many children as possible are placed into permanent state-licensed facilities or transitional foster care while their sponsorship suitability determinations are made or their immigration cases are adjudicated (in the event there no sponsor available).

By December 31, 2020, we anticipate that we will have increased permanent, state-licensed shelters (including foster care) to up to a total of 20,000 – almost doubling current capacity. These beds will be funded by a combination of the supplemental funding as well as discretionary funds requested in the President's 2020 Budget.

It takes approximately six to nine months to open new licensed facilities. The start-up process includes the grant making process; retro-fitting the facility to meet specific physical plant

requirements for licensed facilities; licensing of the facility by the state; and recruiting, vetting, hiring, and training of staff, among other activities. I am happy to report that our most recent funding opportunity announcement – which closed in May – is leading to new grant awards that will support approximately 3000 more permanent state-licensed beds.

Some care provider facilities work solely with populations of children who need specialized care, which includes pregnant girls, infants and small children, those with mental health conditions. This limits the availability of permanent state-licensed bed space for other children during influxes.

HHS aims to have up to 3,000 additional temporary beds available this fiscal year at temporary influx care facilities in anticipation of continued high arrivals at the southern border and to facilitate the expeditious transfer of UAC out of U.S. Border Patrol facilities, which are not designed or equipped to care for children.

HHS has detailed policies for when children can be sheltered at a temporary influx care facility. The minor must be between 13 and 17 years of age; have no known special medical or behavioral health conditions; have no accompanying siblings age 12 years or younger; and be able to be discharged to a sponsor quickly – among other considerations.

HHS strives to provide a quality of care at temporary influx care facilities that is parallel to our state-licensed programs. Children in these facilities can participate in recreational activities and faith-based services, and receive case management, on-site education, medical care, legal services, and counseling.

As required under the emergency supplemental appropriations package, HHS will ensure influx shelters are only used as a last resort, meet child welfare standards, and include frequent monitoring; provide a 15 day notification prior to opening an influx facility; and ensure, when feasible, certain children are not placed at influx facilities, including children who would be expected to be in care for an extended period.

HHS is the primary regulator of the temporary influx care facilities and is responsible for their oversight, operations, physical plant conditions, and service provision. While states do not license or monitor influx care facilities, they operate in accordance with the Flores Settlement Agreement, the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008, the Interim Final Rule on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Alien Children, and ORR policy and procedures.

HHS monitors temporary influx care facilities through assigned Project Officers, Federal Field Specialists, Program Monitors, and an Abuse Review Team, and all have the authority to issue corrective actions if needed to ensure the safety and wellbeing of all children in HHS's care.

Post-Release Services

After HHS releases children from its custody to a sponsor, we offer case management services to those would benefit from ongoing assistance by a social service agency. Post-release case management services are offered by a network of ORR-funded non-profit service providers. ORR encourages the use of evidence-based child welfare practices that are culturally- and linguistically-appropriate to the unique needs of each individual and are rooted in a trauma-informed approach.

Providers focus on helping released children find and access education, medical and behavioral health care, legal services, community programming, and other services. Providers may also offer intensive case management to children and their families if they need support for specific challenges.

These services are not mandatory and released children and their sponsors may choose to participate or not in these services. Once children are released to sponsors, the sponsors assume legal responsibility for them. ORR has no statutory authority over UACs after they are discharged from its care.

Conclusion

The UAC Program provides care and services to the children every day and our work is driven by child welfare principles. HHS is quickly expanding its state-licensed network of shelters to ensure that it can keep pace with the humanitarian crisis at the U.S.-Mexico border. Based on the anticipated growth, HHS expects its need for additional bed capacity to continue, despite placing children with sponsors at historically high rates. And while referral rates have declined over recent weeks, given the unpredictable nature of the program, HHS must ensure it has sufficient capacity to address needs as they emerge.

My top priority and that of my team is to ensure the safety and well-being of the children who are placed temporarily in HHS custody as we work to quickly and safely release them to suitable sponsors. HHS is also working with our colleagues at DHS and DOJ to ensure that we have the information necessary to safely and quickly release children from HHS custody.

Thank you for your support of the UAC Program and the opportunity to discuss our important work. I will be happy to answer any questions you may have.

Chairman NADLER [presiding]. Thank you, Director Hayes.

Let me apologize for being late. I had unavoidable commitment, which I won't go into. But with the indulgence of the committee, I will give my opening statement now, and then we will resume the testimony.

In February, the Judiciary Committee held a hearing to examine the Trump administration's indefensible and repugnant family separation policy. Since then, we have seen how this policy, along with many others, have collectively led to a humanitarian crisis at the border, evidenced by a devastating image of children and families squeezed into overcrowded and unsanitary facilities.

Instead of addressing the root causes of migration and competently managing the challenges at our border, the Trump administration has chosen to dehumanize immigrants and exploit this crisis for political gain. In doing so, it has violated American laws and values and caused permanent damage to children and families.

The inhumanity of family separation can be illustrated by a story that surfaced last week. According to National Public Radio, a Customs and Border Patrol, CBP, agent forced a 3-year-old child with a serious heart condition to make a serious choice, an impossible choice, to decide which one of her parents she would stay with—her mother, who was allowed into the United States, or her father, who was forced to remain in Mexico. And she had to choose which one to go to in the presence of the CBP agent.

But family separation is just one component of this crisis as it clear the conditions at border facilities have deteriorated to an unconscionable level. Twice in the last few months, the DHS Office of Inspector General released reports detailing the severe overcrowding and lack of sanitation at border facilities in Texas.

These reports and others are appalling. Facilities lacking safe drinking water and age-appropriate food. A lack of showers and essential personal hygiene products like soap and toothpaste, with some detainees going days or weeks without a shower or the ability to brush their teeth.

Children required to share combs during a lice outbreak. Allegations of sexual assault in retaliation against children at the Yuma processing center in Arizona. And tragically, the death of 10 people, including 3 children, in CBP custody over the last 10 months.

Administration officials would have you believe that these incidents are the exception, not the rule. Yet we have also learned about racist and misogynous posts in a closed Facebook group of nearly 10,000 current and former CBP officers, almost half the force.

Posted a joke about migrant—that joked about migrant deaths and disparaged female Members of Congress. The sheer size of this Facebook group and the fact that the Chief of the Border Patrol, Carla Provost, was allegedly a member at one time is deeply concerning.

To be clear, this hearing is not an attack on individual Border Patrol agents but is an examination of the Trump administration's policies and the culture of disdain and cruelty toward immigrants that stems from the White House and apparently has deeply affected the agency.

The inhumane treatment of children and families at the border must be examined in the context of these incidents. There must be accountability for the policy choices that got us here. The Trump administration has repeatedly claimed that border conditions are a result of increased numbers of asylum seekers. But let us be clear. We have the capability to have safely processed the influx of migrants and deal with the situation with compassion rather than cruelty.

And indeed, if the problem were simply an increase in the number of asylum seekers, the solution would be an increase in bed capacity, an increase in the number of asylum judges, and a policy of letting—of quick trials and quick adjudications so that we don't face the question of long-term detention or long-term release of asylum claimants without adjudication into the country.

Instead, the administration has opted for policy choices that compromise safety and exacerbate the crisis, such as locking up all asylum seekers, which is unprecedented in American history, regardless of whether they pose any danger. Although I hope that one day hearings like this will no longer be necessary, today we must continue our efforts to bring these issues to light and to hold the Trump administration accountable for its shameful border policies.

And before I finish my statement, I must note—take note of the statement of the ranking member. It is not true that we have had sufficient hearings on this. We will not have sufficient hearings on this until the problem is eliminated.

Nor is it true that we have done nothing about this but hold hearings. Just last week, or earlier this week—time flies—we passed the Ruiz bill dealing with proper medical conditions at detention facilities. We passed the Dreamers Act. We have taken legislative action, and we will take more.

The fact that the administration is hostile to all legislative action which doesn't evince a terrible hostility to immigrants and to people, to refugees who need asylum status is our problem, but it is not our fault.

Before I call on the next witness, I want to thank Ms. Lofgren, the distinguished chair of our Immigration Subcommittee, for beginning the hearing in my absence.

Commander White, you may proceed.

TESTIMONY OF JONATHAN WHITE

Mr. WHITE. Good morning, Chairman Nadler, Ranking Member Collins, members of this committee. It is my honor to appear before you today on behalf of the Department of Health and Human Services.

I am Jonathan White. I am a career officer in the United States Public Health Service Commissioned Corps, a clinical social worker and emergency manager. I did serve as the HHS operational lead for the interagency mission to reunify children in ORR care as of June 26, 2018, who had been separated from their parents at the border by DHS.

And currently, I am HHS's operational lead for the effort to identify children who had been separated from their parents at the border, referred to ORR, and discharged from ORR care prior to June 26, 2018.

After Secretary Azar directed ASPR to help ORR comply with the executive order, we formed an incident management team. And our incident management team was tasked by the Secretary to take all reasonable actions to comply with the Ms. L. court orders.

We work closely with DHS, including CBP and ICE, to identify all the parents of children in ORR care who met the court's criteria. And as a result, the current reporting of possible children of potential Ms. L. class members is 2,814 children. And I want to be very clear. That count of 2,814 children does not include children who were discharged by ORR before June 26, 2018, and it does not include separated children who were referred to ORR care after the 26th.

Working in close partnership with colleagues in ICE, DOJ, and Department of State, we first worked to reunify children who had parents in ICE custody. This was an unprecedented effort, requiring a novel process, which we developed and the 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. Those were all the children of eligible and available Ms. L. class members in ICE custody.

For children whose parents had been in ICE custody but had been released to the interior, we implemented an expedited reunification process. For parents who had left the United States, the ACLU, who serve as plaintiffs' counsel for the Ms. L. class, obtained from the parents their desire either for reunification in the home country or waiving reunification for children to go through standard ORR sponsorship process.

And once we received the parents' desire, HHS, DHS, and DOJ coordinated with the ACLU, with the government of the home country, and with the child's family to ensure safe reunification into the care of the parents. So of the 2,814 children, as of the 9th of July, we have reunified 2,167 with the parent from whom they were separated. Another 611 children have left ORR care through other appropriate discharges, and in most cases, that means released to a family sponsor such as the other parent, an adult sibling, an aunt, an uncle, a grandparent, a more distant relative, or family friend.

There are 13 children still in ORR care who were separated but can't be reunified with their parent because the parent has a criminal history that poses a specific threat to child safety, or the child has made credible allegations of abuse by the parent. There are 14 children still in ORR care whose parents are outside the U.S. and have waived reunification. There are 6 children in care who further review determined that they were not separated. There is one child in care whose parents are in the U.S. and have waived reunification.

So as of today, of the 2,814 children reported to the court, there is only one child left for whom the ACLU has advised a resolution. The parents' wishes will be delayed. We can't yet reunify that child.

But those 2,814 children do not include all children who have ever been separated by the border and referred to ORR. It is only the number that were in care as of June 26th of last year, based

on how the court defined the case. On April 25th, the court approved our plan to identify those children. So pursuant to those plans, teams of U.S. Public Health Service commissioned officers reporting to me have completed manual review of every child who was referred to ORR after July 1, 2017, and discharged by June 26th.

We send those lists from HHS to CBP and ICE, who conduct their own file review. That completed information is provided to the ACLU as part of a rolling delivery of lists ordered by the judge. And to date, the Federal interagency has provided the ACLU with three lists comprising 981 possible children of potential class members. The judge has given us until October 25th to identify all the children, and I anticipate with great confidence that we will meet his deadline.

Our mission is a child welfare mission. We seek to serve the best interests of each child. In almost all cases, the best interests of the child is to be with their parents or their family. That guides us in our work every day in the UAC program and in the reunification of separated children. We have done our best at the Department to achieve that goal.

Thank you. I am glad to answer any questions you have for me.
[The statement of Mr. White follows:]



Testimony of
Jonathan White
Commander
United States Public Health Service Commissioned Corps
U.S. Department of Health and Human Services

Before the

Judiciary Committee
Subcommittee on Immigration and Citizenship
United States House of Representatives
July 25, 2019

Chairman Nadler, Ranking Member Collins, and members of the Committee, it is my honor to appear today 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 HHS 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.

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). Currently I am the HHS Operational Lead for the effort to identify children who were separated from their parents at the border, referred to ORR, and discharged from ORR care prior to June 26, 2018, but on or after July 1, 2017.

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.

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.

On June 22, 2018, Secretary Azar directed 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. 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 whose parents potentially met the Court's criteria for class membership and eligibility for reunification. The determination of class membership and eligibility for reunification 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 the parent presents 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. (Note, the government continues to include these 79 children in its total count of possible children of potential class members in its regular reporting to the court).

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. Also, in March 2019, ORR discovered that two separated children it previously reported as possible children of potential class members were in fact referred to its care in July 2018. These children were re-categorized to remove them from the count of possible children of potential class members.

As a result of these updates, the current reporting of possible children of potential *Ms. L.* class members to the *Ms. L.* Court is 2,814. Based on the best data available today, we have 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 re-categorized children at all times during their stays with ORR. The re-categorizations are for purposes of identifying possible children of potential class members in the *Ms. L.* litigation, not clinical reasons. The re-categorizations 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 Homeland Security Act (HSA), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and the FSA. *Flores* Settlement Agreement (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.

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 obtained from the parents either their request 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 request 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. For children whose removed parents elected not to reunify, ORR made efforts to identify sponsors and discharge them under its standard, TVPRA release process.

Of the 2,814 children reported to the *Ms. L.* Court, as of July 9, we have reunified 2,167 with the parents from whom they were separated. Another 611 children have left ORR care through other appropriate discharges—in most cases, released 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 13 children still in ORR care who were separated but cannot be reunified with their parents, because the government has made a final determination that the parents meet the criteria for exclusion from the class or are not eligible for reunification. That is, the parents have 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 14 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 six children in care where further review determined that the child was not a separation. There is one child 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 is only one child left for whom the ACLU has advised that the resolution of the parent’s wishes will be delayed. There is one child whom the ACLU has not been able to make contact with the child’s parent in home country. We cannot reunify that child until their parent’s legal counsel notifies us of the parent’s wish.

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.

Ms. L. Expansion Class Identification

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 at that time. Early this year, the *Ms. L.* Court expanded the class to include parents of children who were separated by DHS starting July 1, 2017, referred to ORR, and discharged pursuant to the TVPRA process before June 26, 2018.

Identifying these children requires a different approach than that which we were able to take with children still in ORR care, principally because the children are not in government custody, and we do not have the same ability to talk with them. However, using the tools we do have—including the case file records of the three lead agencies ACF/ORR, CBP, and ICE—we developed and have been implementing an effective plan to identify these separated and discharged children.

On April 25, 2019, the Court approved our plan to identify the possible children of potential class members—children no longer in ORR care, children who had exited ORR care before June 26, 2018, but who had been separated from their parents on or after July 1, 2017. Working in close partnership with CBP and ICE, we have been working to identify those children. As of July 9, teams of US Public Health Service Commissioned Corps Officers reporting to me have completed manual case file reviews of every one of those children’s case files in the UAC Portal, the IT system with care and case management information on children in ORR care. We reviewed every child for any preliminary indication of separation. We resolved to err on the side of inclusiveness. If there was any plausible indication of separation, however ambiguous, we included that child in the lists of children with preliminary indication of separation which we transmitted to CBP and ICE for follow-up. For every child with a negative result, a different team member conducted an independent re-review, to ensure that we identified every child with any preliminary indication of separation whatsoever. We know that many of these will prove to be false positives, because of our efforts to be maximally inclusive.

Pursuant to the Court-approved plan, HHS sends its information to CBP, which conducts manual review of the information in its systems of records to determine if the child was in fact separated from a parent or legal guardian. CBP then provides that data set to ICE, which conducts their own file review and provide additional information. CBP and ICE provide information including relevant criminal history or other information that enables us to determine if the separation was covered by a class exclusion, such as criminality or communicable disease, under the *Ms. L.* class definition. ICE then provides that information back to us in HHS, and we add information on the family member sponsor to whom the child was released. That completed information is provided to the ACLU, which represents the plaintiffs, as part of the rolling delivery of lists ordered by the *Ms. L.* court. To date, the Federal interagency has provided the ACLU with two lists, comprising 791 possible children of potential class members. We anticipate providing additional lists going forward.

Judge Sabraw has given the government until October 25 to provide the ACLU information on substantially all the possible children of potential class members, and any other separated children covered by an applicable exclusion. At this time, I anticipate we will meet that deadline set by the Court, so there can be an accounting for the expanded class period.

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. In almost all cases, the best interest of the child is to be with their parents or their families. 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, or in other limited circumstances where required by the best interest of the child. 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.

Ms. LOFGREN [presiding]. Thank you, Commander.
We would be happy to hear from you, Mr. Edlow, at this point.

TESTIMONY OF JOSEPH B. EDLOW

Mr. EDLOW. Thank you.

Madam Chair, Chairman Nadler, Ranking Member Collins, and other distinguished members of the committee, thank you for this additional opportunity to speak with you today regarding the Department of Justice's role in the zero-tolerance prosecution policy.

Congress has directed that certain violations of our Nation's immigration laws should be subject to criminal sanction. The Department of Justice's law enforcement role applies no less to these immigration crimes than it does to other categories of offenses.

The current immigration system faces numerous challenges. Nationwide immigration enforcement is being dictated by court orders rather than by sound policy choices via rulemaking or congressional action. Exploitation of our asylum laws and the unaccompanied alien children provisions of the TVPRA have compounded the challenges and left the Federal Government with even fewer viable options to address our ever-growing crisis along the border.

This administration has emphasized border security and immigration enforcement. Section 13 of President Trump's Executive Order 13767 directed the Attorney General to establish guidelines and allocate resources to ensure that Federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the Southern border.

In fulfillment of that order, on April 11, 2017, then-Attorney General Sessions issued a memorandum to all Federal prosecutors outlining certain immigration-related offenses, including improper entry, as high priorities for prosecution. On April 6, 2018, then-Attorney General Sessions issued the memorandum entitled "Zero Tolerance for Offenses under 8 U.S.C. Section 1325(a)." That memorandum directed Federal prosecutors along the Southern border to adopt, to the extent practicable and in consultation with the Department of Homeland Security, a zero-tolerance policy for all offenses referred for prosecution under Section 1325(a) by the Department of Homeland Security.

That memorandum remains in force today, and illegal or improper entry, among other immigration crimes, remains a prosecution priority for the Department of Justice. Neither the executive order, nor Department of Justice directive called for, nor created a policy of family separation.

The Department of Justice does not dictate which cases are referred by the Department of Homeland Security for prosecution, nor does it maintain a general exemption from criminal liability for parents. The Department of Justice also has no operational or logistical role in either the care or processing of aliens for removal, regardless of whether they are adults or minors.

And I will note that the President issued an executive order on June 20, 2018, that directed the Department of Homeland Security, to the extent permitted by law and subject to the availability of appropriations, to maintain custody of alien families together during the pendency of any criminal, improper entry, or immigration proceedings involving their members.

Criminal proceedings are separate from administrative immigration proceedings, and prosecution for illegal entry does not foreclose an alien's ability to make a claim to remain in the United States. As the issue of family separation and reunification has reached the Federal courts, I may be limited in my ability to speak to certain issues today, either because they are currently in litigation or because they are more properly directed to another agency that the Department represents in litigation.

The Department of Justice stands ready to work with Congress to improve existing laws to avoid a reoccurrence of the present situation and to respond to the challenges that our immigration system faces.

Thank you for this opportunity to speak before you today. I look forward to your questions.

[The statement of Mr. Edlow follows:]



Department of Justice

STATEMENT OF

**JOSEPH B. EDLOW
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL POLICY
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

FOR A HEARING ENTITLED

**"OVERSIGHT OF FAMILY SEPARATION AND CBP SHORT-TERM
CUSTODY UNDER THE TRUMP ADMINISTRATION"**

PRESENTED ON

JULY 25, 2019

Statement of

**Joseph B. Edlow
Deputy Assistant Attorney General
Office of Legal Policy
Department of Justice**

**Before the
House of Representatives Committee on the Judiciary**

**Entitled
Oversight of Family Separation and CBP Short-Term Custody under the Trump
Administration**

July 25, 2019

Mr. Chairman, Ranking Member Collins, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today regarding the Zero Tolerance Prosecution Initiative and the federal government's activities along the southern border during the Spring and Summer of 2018. I welcome the additional opportunity to address this matter from the Department of Justice's perspective.

This is the second time that the Department of Justice ("Department") has addressed this matter formally with this distinguished Committee. The Department's mission is: "[t]o enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those who commit crimes; and to ensure fair and impartial administration of justice for all Americans." In following this mission, and in carrying out specific authorities defined by Congress, the Department plays a key role in enforcing the nation's immigration laws.

Congress has mandated that certain violations of the nation's immigration laws be subject to criminal sanction. The Department's law enforcement role applies no less to these immigration crimes than it does to other categories of offenses. It is clear that Congress created criminal immigration offenses with the expectation that they would be enforced. Congress made it a crime to cross the border illegally – seeking to deter that dangerous journey. When individuals with children are in federal criminal custody for any offense, whether for an immigration-related offense or for any other violation of criminal law, there is by necessity, a separation from their children during that custody – and indeed the court in the *Ms. L* litigation specifically acknowledged that such separation is entirely appropriate.

Section 13 of the President's Executive Order 13767 directs the Attorney General to establish guidelines and allocate resources to ensure that federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the southern border. The Order did not create a so-called family separation policy. In fulfillment of that Order, on April 11, 2017, then Attorney General Sessions issued a memorandum to all federal prosecutors outlining certain immigration-related offenses, including improper entry under 8 U.S.C. § 1325, as high priorities for prosecution. This memorandum did not create a so-called policy of family separation.

On April 6, 2018, Attorney General Sessions issued a memorandum entitled "Zero-Tolerance for Offenses under 8 U.S.C. § 1325(a)." That memorandum directed federal prosecutors along the southern border, "to the extent practicable, and in consultation with DHS" to adopt a "zero-tolerance policy for all offenses referred for prosecution under section 1325(a)" by the Department of Homeland Security ("DHS"). Illegal or improper entry, among other criminal immigration offenses, is a prosecution priority for the Department of Justice. The President restated the prioritization of prosecuting illegal entry crimes in Executive Order 13841, which reiterated the current policy of enforcing the immigration laws passed by Congress.

The Zero-Tolerance Prosecution Initiative is simple—it makes clear that those who violate our criminal immigration laws and are referred for prosecution by DHS should in fact be prosecuted. The Department does not dictate which cases are referred by DHS for prosecution, nor does it maintain a general exemption from prosecution for parents accompanied by their minor children. The Department of Justice also plays no operational or logistical role in the apprehension, care, or processing of aliens, regardless of whether they are adults or minors.

While the vast majority of aliens prosecuted under 8 U.S.C. § 1325 are adults who entered alone, many adults have illegally entered the United States with minors and were prosecuted for the crime of illegal entry. Prior to President Trump's Executive Order 13841 of June 20, 2018—and because the U.S. Marshals Service does not and cannot house minors with adults charged with criminal offenses—alien minors no longer had a parent or legal guardian and thus were determined to be unaccompanied alien children. These unaccompanied alien children were transferred by the DHS to the Department of Health and Human Services ("HHS") in accordance with the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA").

At the conclusion of the criminal proceeding and any sentence of imprisonment, DHS generally assumes custody of the adult alien for whatever action it deems appropriate, consistent with applicable law. Criminal proceedings are separate from administrative immigration proceedings, and prosecution for illegal entry under the auspices of the Zero Tolerance Prosecution Initiative does not foreclose an alien's ability to seek asylum or other protection in the United States.

If the alien seeks protection in the United States, his or her claim may eventually be reviewed by an immigration judge in the Executive Office for Immigration Review ("EOIR"), which is a component of the Department of Justice. As the facts of a case warrant, an immigration judge will determine an alien's removability and adjudicate any claim to remain in the United States.

As the issue of family separation and reunification has reached the federal courts, however, the Department continues to provide representation to those agencies that do maintain custody of removable aliens. Consequently, I may be limited in my ability to speak to certain issues today, either because they are currently in litigation or because they are more properly directed to another agency. Nevertheless, the Department recognizes the seriousness of the situation and is appropriately advising both the DHS and HHS as they continue to abide by any orders issued by federal courts on these matters.

The current immigration system faces numerous legal and logistical challenges. Nationwide immigration enforcement is being dictated by court orders, rather than by sound policy choices via rulemaking allowing public comment or congressional action. The outdated *Flores* Settlement Agreement and subsequent reinterpretations constitute a roadblock to solutions for keeping families together once encountered at the border. Exploitation of our asylum laws, the difficulties in retaining custody over family units, and the UAC provisions of TVPRA have compounded these challenges and left the federal government with even fewer viable options to address our ever-growing crisis along the border.

Nevertheless, as the formal title of Executive Order 13841, "Affording Congress an Opportunity to Address Family Separation," indicates, the Department stands ready to work with Congress to respond to these challenges and to improve existing laws to avoid a reoccurrence of the present situation.

Thank you for this opportunity to speak before you today. I look forward to further discussions on these issues.

Ms. LOFGREN. Finally, but not least, Ms. Shaw, we will be pleased to hear from you.

TESTIMONY OF DIANA R. SHAW

Ms. SHAW. Thank you, Chair Lofgren, Ranking Member Collins, and members of the committee. Thank you for inviting me to discuss DHS OIG's recent work on conditions at Customs and Border Protection facilities at the Southern border.

My testimony today will focus on our two recent management alerts regarding dangerous overcrowding and prolonged detention observed by DHS OIG inspectors at the El Paso del Norte processing center in May of this year and at facilities in the Rio Grande Valley in June. We issued these alerts because the conditions we observed posed serious and imminent threat to the health and safety of DHS personnel and detainees.

DHS OIG conducts unannounced inspections of CBP facilities to evaluate compliance with CBP's transportation, escort, detention, and search standards, otherwise known as TEDS standards. TEDS standards govern CBP's interactions with detainees, providing guidance on things like duration of detention, access to medical care, access to food and water, and hygiene.

Our unannounced inspections enable us to identify instances of noncompliance with TEDS standards and to propose appropriate corrective action to the Department. Although CBP has struggled at times to achieve full compliance with detention standards, our recent unannounced inspections reveal the situation far more grievous than any our inspectors previously have encountered.

For instance, when our team arrived at the El Paso del Norte processing center, they found the facility, which has a maximum capacity of 125 detainees, had more than 750 detainees onsite. The following day, that number had increased to 900.

At all Border Patrol facilities we visited in the Rio Grande Valley, we also observed serious overcrowding among unaccompanied alien children, or UACs. Additionally, we found that individuals, including children, were being detained well beyond the 72 hours generally allowed under the TEDS standards and the Flores Agreement.

For instance, at the centralized processing center in McAllen, Texas, many children had been in custody longer than a week. Some UACs under the age of 7 had been in custody for more than 2 weeks.

Under these circumstances, CBP has struggled to comply with TEDS standards. For instance, although all facilities we visited in the Rio Grande Valley had infant formula, diapers, baby wipes, and juice and snacks for children, two facilities had not provided children access to hot meals, as is required, until the week we arrived.

Additionally, children at three of the five facilities we visited had no access to showers, limited access to a change of clothes, and no access to laundry facilities.

Space limitations also affect single adults. The lack of space has restricted CBP's ability to separate detainees with infectious diseases, including chicken pox, scabies, and influenza, from each other and from the general population. According to CBP manage-

ment, these conditions also affect the health of Border Patrol agents, who are experiencing high incidence of illness.

Further, there is a concern that the overcrowding and prolonged detention may be contributing to rising tensions among detainees. A senior manager at one facility in the Rio Grande Valley called the situation “a ticking time bomb.”

Despite these immense challenges, we observed CBP staff interacting with detainees in a professional and respectful manner and in general attempting to comply with the standards to the extent possible. Notwithstanding these efforts, Border Patrol requires immediate assistance to manage the overcrowding in its facilities.

CBP is not responsible for providing long-term detention, and CBP facilities like those we visited are not designed to hold individuals for lengthy periods. However, with limited bed space available at ICE and HHS long-term detention facilities nationwide, detainees are left in CBP custody until a placement can be found.

In its response to our recent management alerts, DHS described the situation at the Southern border as “an acute and worsening crisis.” Our observations comport with that characterization, which is why we have called on the Department to take immediate action to begin to remedy the situation.

DHS OIG will continue to monitor and report on the situation at the border. In the meantime, however, the Department’s leadership must develop a strategic coordinated approach that will allow it to make good on its commitment to ensure the safety, security, and care of those in its custody.

I thank you. This concludes my testimony, and I look forward to your questions.

[The statement of Ms. Shaw follows:]

OFFICE OF INSPECTOR GENERAL

**Testimony of Assistant Inspector
General for Special Reviews and
Evaluations Diana R. Shaw**

**Before the Committee on the
Judiciary**

U.S. House of Representatives

**"Oversight of Family Separation
and CBP Short-Term Custody under
the Trump Administration"**



**Homeland
Security**

**July 25, 2019
10:00 AM**



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Department of Homeland Security

Chairman Nadler, Ranking Member Collins, and members of the Committee, thank you for inviting me today to discuss family separation and short-term custody in U.S. Customs and Border Protection (CBP) holding facilities and ports of entry. My testimony today will focus on our two recent Management Alerts regarding conditions at CBP facilities: *DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center* (OIG-19-46) and *DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley* (OIG-19-51). These alerts describe conditions that we observed on May 7 and 8, 2019, and June 10 through 12, 2019, respectively.

We issued two recent Management Alerts because in the course of our review we identified issues that posed a serious, imminent threat to the health and safety of CBP personnel and detainees requiring immediate action by the Department. Management Alerts are a unique product issued by DHS OIG in relatively rare circumstances in which we identify an issue so serious that we deem it necessary to report on the issue before completing our standard inspection or review process. In such instances, we prepare a "Management Alert" to notify the Department of the issue so it can take immediate action to mitigate and/or correct the situation. Often, because we have not completed our standard inspection or review process at the time we issue a Management Alert on a particular issue, we are not yet in a position to offer recommendations for corrective action.

While DHS OIG generally strives to improve the efficiency and effectiveness of DHS programs and operations through concrete, implementable recommendations, Management Alerts present a unique situation in which we may not be able to do so given the nature and urgency of the issue(s) uncovered. The dangerous overcrowding and prolonged detention we observed on our recent unannounced visits to CBP facilities on the southern border presented just such a situation.

Background on Unannounced Inspections and Past Work

DHS Office of Inspector General (OIG) initiated our unannounced inspection program in response to concerns raised by Congress about conditions for aliens in CBP custody. Our unannounced inspections of CBP holding facilities evaluate compliance with CBP's National Standards on Transport, Escort, Detention and Search (TEDS)¹, which govern CBP's interaction with detained individuals. Our inspections also determine whether CBP provides reasonable care from apprehension to holding. During our visits to ports of entry and Border Patrol facilities, we focus on elements of the TEDS standards that can

¹ U.S. Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search, October 2015.



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be observed and evaluated by OIG inspectors without specialized law enforcement or medical training. We inspect CBP's compliance with standards such as whether adequate drinking water, food, blankets, and hygiene supplies are being provided to detainees. We also review how long detainees have been in custody and whether unaccompanied alien children (UACs) are given access to telephones to call relatives or their consulates.

CBP Office of Field Operations ports of entry, Border Patrol stations, and processing centers are intended solely for short-term detention. In fact, TEDS standards provide that "[d]etainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible." Additional legal protections are in place for children DHS deems to be UACs, who by law should be transferred to Health and Human Services (HHS) Office of Refugee Resettlement (ORR) within 72 hours.² The TEDS standards also outline protocols for CBP on how to treat vulnerable populations, defined as "at risk" by CBP, such as UACs, families and pregnant, elderly, or disabled detainees, and specify requirements for general care and conditions for such vulnerable populations in temporary custody. While ICE is responsible for providing long-term detention, TEDS standards require that CBP provide safe and sanitary short-term holding facilities for all detainees.

In the past, when we had reviewed CBP holding facilities, conditions were generally compliant with existing hold-room policies. However, starting in 2014 with the influx of UACs in CBP custody, DHS has struggled with compliance with certain *Flores* Agreement provisions, such as holding children no longer than 72 hours. This generally continued to be the case in 2018, during which implementation of the Administration's Zero Tolerance Policy was followed by an increase in the number of individuals held in CBP custody for longer than 72 hours.³

² The *Flores* Agreement generally permits detention of minors no longer than 72 hours, with a provision that in an influx of minors, placement should be as expeditious as possible. In addition, the *Trafficking Victims Protection Reauthorization Act of 2008* requires DHS to meet this timeline unless there are "exceptional circumstances." 8 U.S.C. § 1232(b)(3). The *Flores* Agreement also includes a requirement that immigration officials hold minors immediately following arrest in facilities that provide: (1) access to food and drinking water; (2) medical assistance in the event of emergencies; (3) toilets and sinks; (4) adequate temperature control and ventilation; (5) adequate supervision to protect minors from others; (6) separation from unrelated adults whenever possible; and (7) contact with family members who were arrested with the minor.

³ *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*, OIG-18-84, September 27, 2018; *Results of Unannounced Inspections of Conditions for Unaccompanied Alien Children in CBP Custody*, OIG-18-87, September 28, 2018. The CBP facilities we inspected between June 26 and June 28, 2018 appeared to be operating



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Our more recent unannounced inspections reveal a worsening situation, which the Department has characterized as “an acute and worsening crisis.” Specifically, in May and June of this year, we observed dangerous overcrowding and prolonged detention in CBP facilities in both El Paso and the Rio Grande Valley. We also documented instances of non-compliance with TEDS standards, including lack of access to hot meals and showers for minors. The conditions we observed, which put the health and safety of both DHS personnel and detainees at risk, prompted us to publish two Management Alerts raising the issues to the attention of DHS leadership and requesting immediate action.

Overcrowding and Prolonged Detention Have Resulted in Non-Compliance with TEDS Standards

Early in May 2019, our inspectors conducted spot inspections of five Border Patrol stations and two ports of entry in the El Paso area. One month later in June 2019, our inspectors conducted spot inspections of five Border Patrol facilities and two ports of entry in the Rio Grande Valley. In both instances, we observed dangerous overcrowding and prolonged detention at Border Patrol facilities resulting in non-compliance with TEDS standards.

We chose these locations based on a review of CBP statistics on apprehensions, complaints received by the OIG hotline, unannounced inspections from previous years, and consultation with our investigators who work in OIG field offices on the southern border and are familiar with conditions in the facilities. According to CBP data, the El Paso sector experienced the sharpest increase in apprehensions – 619 percent⁴ comparing the first seven months of FY 2019 to the same period in FY 2018. The Rio Grande Valley Sector had the highest overall volume of apprehensions⁵ on the southwest border, with nearly a quarter million apprehensions in the first eight months of FY 2019.

Overcrowding and Prolonged Detention of Single Adults at El Paso Del Norte Processing Center

During the week of May 6, 2019, we observed dangerous holding conditions at the El Paso Del Norte Processing Center (PDT) Border Patrol processing facility, located at the Paso Del Norte Bridge. Despite having a maximum capacity of 125 detainees, CBP custody logs indicated that approximately 750 detainees were on-site on May 7 and 900 detainees were on-site on May 8. Although the

in compliance with the 2015 TEDS standards we evaluated; however, we determined that CBP exceeded the 72-hour period in many instances during our fieldwork.

⁴ This represents an increase in apprehensions of 82% of single adults, 347% of UACs, and 1,816% of family units.

⁵ This represents an increase in apprehensions of 32% of single adults, 62% of UACs, and 269% of family units.



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majority of these detainees were held in outdoor space for processing and transfer, many of those inside the facility were held in severely overcrowded cells. TEDS standards provide that “under no circumstances should the maximum [cell] occupancy rate, as set by the fire marshal, be exceeded.” Yet, at the facility, single adults were being held in cells designed for one-fifth as many detainees. Specifically, we observed:

- a cell with a maximum capacity of 12 held 76 detainees;
- a cell with a maximum capacity of 8 held 41 detainees; and
- a cell with a maximum capacity of 35 held 155 detainees.

Border Patrol agents also told our inspectors that some of the detainees had been held in standing-room-only conditions for days or even weeks. The Border Patrol’s custody logs confirmed this prolonged detention. When we visited PDT on May 7, of the total 756 detainees on-site during our visit, 66 percent of detainees had been held for longer than the 72 hours generally permitted under TEDS standards, with 4 percent held for more than two weeks. When we returned to PDT for another unannounced inspection the next day, we observed that, while some family units and adult females had been transferred the day before, additional detainees had arrived for processing, increasing the total number of detainees on-site to approximately 900.

“At-Risk” Populations are Subject to Overcrowding and Prolonged Detention in Border Patrol Facilities in the Rio Grande Valley Sector, Resulting in Non-Compliance with Applicable Standards

During the week of June 10, 2019, we traveled to the Rio Grande Valley in Texas and we observed serious overcrowding at four of the five Border Patrol facilities and prolonged detention at all five facilities. At the time of our visit, Border Patrol was holding about 8,000 detainees in custody in the Rio Grande Valley sector, with 3,400 held longer than the permitted 72 hours. Of those 3,400 detainees, Border Patrol held 1,500 for more than 10 days. With respect to UACs and families – populations defined as “at-risk” in TEDS standards – Border Patrol’s custody data indicated that 826 (31 percent) of the 2,669 children at these facilities had been held longer than the 72 hours generally permitted under the TEDS standards and the *Flores* Agreement. For example, at the Centralized Processing Center in McAllen, TX, of the 806 UACs who had already been processed and were awaiting transfer to HHS custody, 165 had been in CBP custody longer than a week. Additionally, there were more than 50 UACs younger than 7 years old, and some of them had been in custody more than two weeks while awaiting transfer.

In addition to holding roughly 30 percent of minor detainees for longer than 72 hours, several Rio Grande Valley facilities struggled to meet other TEDS standards for UACs and families. For example, children at three of the five



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Border Patrol facilities we visited had no access to showers, despite the TEDS standards requiring that “reasonable efforts” be made to provide showers to children approaching 48 hours in detention. Children had limited access to a change of clothes as Border Patrol had few spare clothes and no laundry facilities. While all facilities had infant formula, diapers, baby wipes, and juice and snacks for children, we observed that two facilities had not provided children access to hot meals – as is required by the TEDS standards – until the week we arrived.

Overcrowding and Prolonged Detention for Adults in the Rio Grande Valley Sector Resulted in Non-Compliance with TEDS Standards

The conditions in the Rio Grande Valley for single adults were similar to those faced by detainees in the El Paso facility. Detainees were also held in cells that exceeded maximum occupancy rates, resulting in non-compliance with TEDS standards. Overcrowding at one facility led to some single adults being held in standing room only conditions for a week and, at another facility, some single adults were held more than a month in overcrowded cells.

CBP was also unable to meet TEDS standards that require CBP to make a reasonable effort to provide a shower for adults after 72 hours; most single adults had not had a shower in CBP custody despite several being held for as long as a month. At some facilities, Border Patrol was giving detainees wet-wipes to maintain personal hygiene. Most single adult detainees were wearing the clothes they arrived in days, weeks, and even up to a month prior.

Overcrowding and Prolonged Detention Puts DHS Personnel and Detainees at Health and Safety at Risk

We are concerned that the overcrowding and prolonged detention we observed in the El Paso and Rio Grande Valley sectors represent an immediate risk to the health and safety of DHS agents and officers, and to those detained.

Overcrowding and Prolonged Detention Exacerbate Health and Safety Risks in El Paso Sector

During our May visits at PDT, we observed approximately 75 people being treated for lice and some detainees were in isolation with flu, chicken pox, and scabies. When the detainees in line waiting to be processed had to surrender their valuables, such as money and phones, to DHS staff, we observed DHS staff discarding all other detainee property, such as backpacks, suitcases, and handbags, in the nearby dumpster. Border Patrol personnel told us that these items might be wet, have bugs, and be muddy, and therefore, presented a “biohazard.” Border Patrol management at PDT and other facilities also raised concerns about the high incidence of illness among their staff, concerns about



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employee morale, and conditions that were elevating anxiety and affecting employees' personal lives.

CBP was also struggling to maintain hygienic conditions in the holding cells. With limited access to showers and clean clothing, detainees were wearing soiled clothing for days or weeks. While TEDS standards do not require a change of clothing for adults, Border Patrol agents said they were nevertheless trying to obtain clean clothing for adult females because the lack of clean clothes was "wearing down on them." Access to toilets was limited, because overcrowding caused detainees to stand on toilets in cells to make room and gain breathing space. Border Patrol agents said detainees who were not ill were raising medical complaints simply to obtain temporary release from the cells, adding to the medical staff's burden.

Border Patrol management at PDT also described an ongoing concern that rising tensions among detainees could turn violent. At the time of our visit, 140 adult male detainees were crowding the hallways and common areas of the facility while their cell was being cleaned. We observed staff having difficulty maneuvering around this crowd to perform their duties, and were told that staff feel they have limited options if detainees decide not to cooperate.

Overcrowding and Prolonged Detention of Single Adults Have Resulted in Security Incidents in Rio Grande Valley Sector

The security incidents in the Rio Grande Valley facilities reflect an escalation of the security concerns we raised in our El Paso report. We were informed of multiple security incidents among adult males at multiple facilities. Incidents arise when detainees are moved from their cells for servicing and maintenance. At one facility, when detainees who had been moved from their cells during cleaning refused to return, Border Patrol brought in its special operations team to demonstrate it was prepared to use force if necessary. Additionally, detainees have attempted to escape while removed from their cells during maintenance. Detainees at one overcrowded facility had clogged the toilets with Mylar blankets and socks in order to be released from their cells while the toilets were repaired.

Senior managers at several facilities raised security concerns for their agents and the detainees. One senior manager described the situation as "a ticking time bomb." We had to end our site visit at one Border Patrol facility early because we noticed that our presence was agitating an already difficult situation. Specifically, when detainees observed us, they banged on the cell windows, shouted, pressed notes to the window with their time in custody, and pointed to the evidence of their time in custody, such as their beards.



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Department of Homeland Security Needs a Plan to Eliminate Overcrowding

We recognize the extraordinary challenge CBP is currently facing to eliminate overcrowding. However, we remain concerned that DHS is not taking sufficient measures to address the issues outlined in our recent Management Alerts, particularly with respect to single adult detainees.

In our May 2019 Management Alert on conditions in the PDT facility, we recommended that CBP take immediate steps to alleviate the overcrowding there. CBP concurred with our recommendation and reported that they have constructed a 500-person soft-sided structure at El Paso Station and plan to construct an additional tent by July 31, 2019. CBP also plans to open a new Centralized Processing Center with an estimated completion date of November 30, 2020. While additional tents may reduce some of the overcrowding, we were concerned that CBP's plan would not eliminate the immediate risk to the health and safety of detainees and DHS employees, particularly the prolonged severe overcrowding of single adults, which can lead to outbreaks of communicable diseases and violence. Thus, the recommendation will remain unresolved and open until DHS offers an immediate corrective action plan to address the dangerous overcrowding.

In response to our July 2019 report on the conditions in the Rio Grande Valley sector, DHS cited measures it has taken to expand CBP's capacity on the southern border. DHS continues to add tents capable of holding 500 people and plans to add more tents to house single adults by July 29, 2019. Again, while additional tents may reduce overcrowding, we remain concerned that DHS is not taking sufficient measures to address prolonged detention in CBP custody, particularly among single adults.

We continue to encourage the Department to take immediate steps to alleviate dangerous overcrowding and prolonged detention of children and adults at CBP facilities. We hope that leadership across the Department will work together to develop a strategic, coordinated plan to address these conditions and alleviate the pressure currently affecting CBP operations.

Ongoing OIG Oversight

Our office will continue to help the Department meet its critical mission through independent and objective audits, inspections, and investigations. We plan to publish several DHS-wide reports this year and next year that will include reviews of CBP and ICE, including:

- DHS Tracking of Detainees to Support Migrant Family Reunification: We initiated a full-scale audit looking at the effectiveness of DHS' IT systems



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for tracking and supporting efforts to reunify UACs with separated families. Our audit will determine whether the IT systems and processes DHS relied upon were adequate to carry out specific border security operations, including tracking separated families, prior to and following the implementation of the Zero Tolerance Policy.

- **CBP's Processing of Asylum Seekers:** We are reviewing CBP's handling of asylum seekers at ports of entry. The objective of this work is to determine whether CBP Office of Field Operations is turning away those who present themselves for asylum at ports of entry. As part of its ongoing fieldwork, the team travelled to ports of entry in Texas, Arizona, and California, where it observed operations, gathered documents, and interviewed CBP officers, representatives of non-governmental organizations, and asylum seekers.
- **Update on Family Separations:** Our review will determine whether CBP was separating families seeking asylum at ports of entry during and after the Zero Tolerance Policy and documenting those separations appropriately.
- **Review of Removal of Separated Alien Families:** Our work will determine whether ICE removed any parents without first offering them the opportunity to bring their separated children with them. The review will identify why this may have happened and how many separated parents may have been removed without having that option.
- **72-hour CBP Custody Snapshot:** Working in partnership with our Data Analytics group, we will try to determine the populations of detainees held in CBP facilities for longer than 72 hours, the total time in custody from apprehension to transfer or release, and where such holds occur most frequently.
- **CBP's Holding of Detainees Beyond 72 Hours:** This larger-scale evaluation's objective is to determine the factors impacting CBP's ability to comply with the general requirement to only hold detainees in its custody for up to 72 hours. CBP, ICE, and HHS all have responsibility for assuming custody of specific groups of detainees in various stages of the immigration proceedings. We will try to identify the primary DHS factors driving the delays in placement, and make recommendations to mitigate those issues.
- **CBP's Use of FY 2019 Appropriated Funds for Humanitarian Assistance:** Our objective is to determine whether CBP has adequately planned for



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deployment, and is deploying, FY 2019 appropriated funds quickly and effectively to address the humanitarian needs on the southern border.

- Unannounced Inspections of CBP Holding Facilities & ICE Adult Detention Facilities: Our objective is to continue conducting ongoing unannounced inspections of DHS and contract facilities to monitor DHS compliance with health, safety, and civil rights standards outlined in CBP's National Standards on Transport, Escort, Detention, and Search; and ICE's Performance-Based National Detention Standards.

Conclusion

We understand that the Department is facing a difficult challenge; however, the Department has not developed a long-term plan to address the issues within detention centers along the southern border. The steps the Department has taken to implement our recommendation to alleviate dangerous overcrowding continue to fall short. For instance, the Department's proposal to address overcrowding at PDT by November 2020 was inconsistent with the immediate need for corrective action; accordingly, we consider the recommendation open and unresolved.

DHS OIG will continue to exercise diligent oversight over immigration enforcement, paying particular attention to the Department's progress in reducing overcrowding and prolonged detention at CBP facilities. Consistent with our obligations under the *Inspector General Act of 1978*, we will keep Congress fully and currently informed of our findings and recommendations.

Mr. Chairman, this concludes my testimony. I am happy to answer any questions you or other members of the Committee may have.

Chairman NADLER [presiding]. Thank you, and before I begin the questioning, I want to thank Ms. Lofgren for assuming the chair in my absence.

We will now proceed under the 5-minute rule with questions. I will begin by recognizing myself for 5 minutes.

I want to start with the zero tolerance policy and its implementation. Chief Hastings, as part of our investigation and document request into zero tolerance, the Department of Homeland Security has given the Committee documents which detail allegations of how family—Border Patrol did family separations. Among these documents, the Department produced a chart of 850 complaints made to the DHS Office of Civil Rights and Civil Liberties reporting family separation between October 2017 and June 2018. These documents are startling.

The records we received detail separations of 12 children age 1 year old or younger and 124 children under the age of 5. Even more surprising, of the 12 children under the age of 1, nine of those separations occurred before the Trump administration enacted its zero tolerance policy. In many cases, family separations happened without warning and without giving the children a chance to say goodbye to their families. Many were not told where their families were being taken.

For example, in May of 2018, a 14-year-old boy being held at the Rio Grande Valley Processing Center was “separated from his father after a meal break while in custody and was told that his father would be deported.”

An 11-year-old was “called aside by an officer and then he did not see his father again.”

Another child at only 7 years of age describes being separated from her father “in the place where it was cold” and that she did not understand why she could not see or talk to her father.

Chief Hastings, are these tactics how Border Patrol agents were told to implement the zero tolerance policy?

Mr. HASTINGS. Chairman, we sent over some documentation that you had asked the Secretary for prior, as far as the interim guidance that we follow currently for separations, and those are similar to what we followed before the zero tolerance policy.

Chairman NADLER. I asked a question. Are these tactics that I just outlined, actual cases, how Border Patrol agents were told to implement the zero tolerance policy? Yes or no.

Mr. HASTINGS. I do not know what tactics you are referring to.

Chairman NADLER. I just read them. Were you listening?

Mr. HASTINGS. I was listening, sir.

Chairman NADLER. So then answer the question.

Mr. HASTINGS. Sir, I have given you what we follow as far as guidance for separation; 88 percent—

Chairman NADLER. Well, I will take it that—

Mr. HASTINGS [continuing]. Are criminal.

Chairman NADLER. I will take it that when we find the names of the people who did this, they will be disciplined for not following policy.

Mr. HASTINGS. They were following policy to the best of my knowledge. I am not hearing—

Chairman NADLER. If they did what I said, they were not following the policy that you just outlined.

Mr. HASTINGS. I do not know the individual specifics in each of—

Chairman NADLER. Were Border Patrol agents instructed by your agency to trick children so they could rip—so they could take their mother or father away from them while they did not know that that was happening?

Mr. HASTINGS. No.

Chairman NADLER. Did Border Patrol receive any training in how to do this?

Mr. HASTINGS. Yes, we have training about how family separation, and we put out the guidance as you have seen.

Chairman NADLER. If these reports are not an accurate description of how separations happened, can you please share how they did occur?

Mr. HASTINGS. Again, I am not specific to the—I do not know the specific issues that you are talking to about the eight—

Chairman NADLER. Well, how were they supposed to occur?

Mr. HASTINGS. Pardon me?

Chairman NADLER. How were they supposed to occur? How were children supposed to be separated from their families?

Mr. HASTINGS. So the mother and father are informed prior to the separation.

Chairman NADLER. You did not answer the question. How is it supposed to happen? The mother and father are informed, and the kid—I mean, how is it supposed to happen? The mother and father is informed that at some point today your kid is going to be taken away, in the middle of the night someone comes and snatches the kid? I take it that is not what is supposed to happen. What is supposed to happen?

Mr. HASTINGS. So we would inform the mother or father of the charges and the reason and provide them the time to say goodbye to the child.

Chairman NADLER. The charges and the reason and the time in advance?

Mr. HASTINGS. Yes.

Chairman NADLER. How far in advance?

Mr. HASTINGS. It is going to vary depending upon the situation.

Chairman NADLER. Vary from what? Hours? Minutes? Seconds?

Mr. HASTINGS. I do not what specific one you are talking to, but—

Chairman NADLER. What is the minimum time?

Mr. HASTINGS. I do not have a minimum time.

Chairman NADLER. So it could be 10 minutes?

Mr. HASTINGS. It could be.

Chairman NADLER. If you were choosing to deport parents without their children, how can the Trump administration claim there was a plan to reunify?

Mr. HASTINGS. I am sorry, sir. I did not hear you.

Chairman NADLER. If you were choosing to deport a parent without the children, how can the Trump administration claim there was a plan to reunify the family?

Mr. HASTINGS. Because when we started this, we would place the A number and all of the information of the adult or the child on all of the paperwork so there could be reunification after the adult went through the appropriate legal action——

Chairman NADLER. After the adult was deported, was the child supposed to be report—I am sorry. After it was determined that the adult was being deported, was the child supposed to be returned to the parent before the deportation or the parent is suddenly in some foreign country and the child is here?

Mr. HASTINGS. That is probably a better question for HHS.

Chairman NADLER. Who did the deportation?

Mr. HASTINGS. We would do the deportation.

Chairman NADLER. You would do the deportation while the child was in a different city in the United States?

Mr. HASTINGS. We do not do the reunification, is my point, sir.

Chairman NADLER. But you would do the deportation before the reunification without any knowledge of whether the parents were being reunified?

Mr. HASTINGS. Yes.

Chairman NADLER. So, in other words, you are kidnapping the child?

Mr. HASTINGS. We are not kidnapping the child. We follow the guidelines that are out.

Chairman NADLER. Deporting a parent without their child is literal kidnapping.

The documents produced to the Committee also reveal that vulnerable children, such as those of a tender age or those with disabilities, were not given special accommodations or consideration in these facilities. For example, CBP separated a deaf-mute child from his father. The DHS database was not updated to reflect the child's special needs and did not record that the child had been separated from his father.

Another report described a 10-year-old with developmental delays who was separated from his mother. No special effort was made to help him communicate with his parents.

Chief Hastings, from these reports it appears that Border Patrol placed little to no consideration into the physical and psychological needs of children when separating them from their family. In what ways—this is my last question because my time is over—did CBP consider the risks of these vulnerable children—of taking these vulnerable children from their parents and keeping them in CBP facilities? What special arrangements were made for children with these kinds of—who were deaf or mute or whatever?

Mr. HASTINGS. So I am not familiar with the two cases, but normally when we have incidents like that, we would alert HHS to the special needs.

Chairman NADLER. You would alert HHS to the special needs before you gave the child to——

Mr. HASTINGS. Sir, we are a short-term hold facility. We are trying to get the children into the proper care as quickly as possible.

Chairman NADLER. Let me just read one thing. Contrary to what you said, we have case reports here. Just one line: "On May 16, 2018, after a meal break while in custody, she was told by officers that her father would be deported, and she did not see him again."

That is the way these things were done. It is inhuman and un-American.

I yield back. The gentleman from Georgia.

Mr. COLLINS. Thank you, Mr. Chairman. And I would help the witnesses to understand you are going to be here a little bit longer today because it is now my understanding that each member is going to have 7 minutes to question.

Chairman NADLER. That is an incorrect understanding.

Mr. COLLINS. Well, is the Chairman just going to continue to violate the 5-minute rule? Parliamentary inquiry.

Chairman NADLER. The gentleman will proceed.

Mr. COLLINS. Well, I am glad you are back because, as you related to me in answering my questions, you really did not answer my questions from my opening statement. Holding hearings until a problem is solved is about like saying I am going to scream at that wall until it changes color. It is not going to happen.

So you can come back here, and you can, you know, be very direct with our CBP agent who is here and give out-of-context situations in which people were detained without going through the actual determination of how they are actually determined right now. If separation occurs under these conditions, which were actually under the Obama administration and the Trump administration, if a determination is made that the parent or legal guardian poses a danger to a child, is otherwise unfit to care for a child, has a criminal history, has a communicable disease, or is transferred to a criminal detention setting for prosecution for improper entry, or the CBP is unable to confirm that the adult is actually the parent or legal guardian or the child's safety is at risk, if you are advocating to keep that child in those conditions, then maybe we have a whole different issue.

And then to go back to we have not done anything, I will stand by exactly, and you can explain to this—Mr. Chairman, you can explain to the members here and the audience why the Ruiz bill is simply—again, we have talked about it—is not solving the underlying problem. Treating them well and having good conditions is something we would all agree upon, but the bill was so out of context and applied to everywhere in the Custom and Border Patrol, not just the southern border, which is where we are having this issue, which made it impractical in many ways. This is the issue we are dealing with.

So you can come back and try to correct me, but all you did this morning and even your line of questioning confirmed what we know, that this is simply another way, as we mentioned every time the Trump administration—we mention it every time. We do not talk about what actually is happening or why they are being separated. And if you want to keep kids with unfit parents, you want to keep kids who have actually been bought and paid for and brought across the border, then if that is what you are advocating, then maybe we need to talk about something different.

But here is the issue, and I know—it seems to me you are frustrated. This has been a long week. But this is not helping. And to say you are going to hold hearings until the problem is solved, that probably caps this week. That just probably, you know, just comes to the point of capping this week. We are going to hold hearings.

We are going to talk about it. It reminds me of when my kids were little and they were going to hold their breath until I gave them their way. We are just going to sit here and hold and hope and hope and hope.

Look, put bills in this Committee that actually affect the underlying aspect, which the Obama administration talked about the Flores decision, we have talked about the Trafficking Victims Protection Act, we have talked about asylum standards. What we want to do, though, is talk about what is going on at the border, which we have already done many times. And I am not saying this oversight should not be done. We are, and we are holding accountable our Border Patrol, our ICE agents. We are holding that because we have had multiple hearings about it. But at a certain point in time, hearings do not solve problems. Bills do.

So, Mr. Chairman, I am glad that you came back and answered me, but you did not answer. In fact—well, let me rephrase that. You did. You showed that we are not interested in solving the problem, because if you believe truly that hearings will solve problems, then I have maybe a basic misunderstanding of how a bill becomes a law. Because what would happen is you have several of these hearings, which we have had—you have had a lot of people here who are interested, and I am sympathetic with the audience being here to be interested in this. But what are we giving them? Nothing, except a hearing. Tweetable moments. Press releases. This is what we are doing.

This Committee is better than this. There are great members on both sides who have legitimate arguments for bills. I have listened passionately to my members on the other side, sitting in front of me and on down the dais, who have ideas about this. But we are not bringing the bills to a markup.

Now, it could take 3 or 4 or 5 days or even 2 weeks to have these markups, but so what? Are these kids and these families not important enough on the border? Or is just better to have another hearing that does not solve anything?

Now, you can justify it any way you want to. You can say you passed a bill last week that actually, you know, does—you know, has standards. That is great. Again, any logical look at it would say it is overbroad and could have been supported bipartisanly until we add in things that were unworkable. By the way, we did not talk to the Border Patrol before we actually did the bill to see how we could actually put this in implementation. I guess that is a small oversight.

But, again, I am not sure why both sides are even continuing to show up at these hearings, except to be used as props. The five of you are here, you have gone—you are really technically going to testify to nothing. Some of you are back again, as we said, Mr. White and others back again. Some of you are back again replacing somebody who was here earlier. You are not going to—you know, Mr. Hayes, you are just testifying, somebody who was here earlier. You are not going to say a lot that we do not know. We all know there is a crisis. We at least all now at least come to the conclusion there is a crisis. But it is—as I said before, using the words of the Ranking Member of the Subcommittee, it is dehumanizing to sit here and do this and not solve a problem. And as was said about

the administration, a competent and capable administration would have solved this. A competent and capable committee would have put bills forward instead of doing this.

So, again, spin it however you want to. This is what you want to do, go for it, but do not tell these people in this audience the disingenuousness that you are fixing something. Do not try it. They may buy it for a few minutes. Some of them have been buying it for 7 months. But they are not going to buy it forever. Pretty soon they are going to ask: When can you have honest debate? You have got more numbers than I have got. You can put bills up here, and you can pass them because you are the majority. But we are not even doing that.

So, Mr. Chairman, I appreciate you answering the question or attempting to, but instead you made my point. Crank the press release, get the Twitter going, talk about it before, but this is where we are at. This is the problem. For those of you who are here hoping for an answer, you are not getting it. If you were hoping for a show, you are getting it. But if you want an answer, I am sorry. Both Republicans and Democrats right now are not able to give you that answer, whether you like the answer or not. Maybe it is time we start going back to doing legislation that actually addresses the problem that the Obama administration and the Trump administration have both pointed out.

With that, I yield back.

Chairman NADLER. The gentleman yields back.

The gentlelady from California, the Chairperson of the Immigration Subcommittee, is recognized.

Ms. LOFGREN. Thank you, Mr. Chairman.

I do think it is important to take a look at what is going on in the facilities run by the Department of Homeland Security and to determine whether they meet the standards that Americans expect of them.

The Ranking Member's rather extravagant comments that somehow this does not matter, that it is abusive to us, I think are unwarranted.

We did receive, as the Chairman has indicated, documentation from the Department itself outlining complaints that were made by the Office of Civil Rights in DHS to—about what was going on in these facilities. For example, one of the allegations is an 8-year-old boy who was separated from his mother, and then his report was that CBP officers kicked him and hit him with a shoe when he was sleeping in order to wake him up, that he was physically hurt by this.

I assume, Chief Hastings, that that is not considered acceptable behavior on the part of your officers, kicking and hitting children?

Mr. HASTINGS. No, ma'am. Kicking and hitting children are not. But what I would imagine that was was a check to make sure the individual was okay. We do do those checks and go through periodically and make sure that the individuals in our custody are okay.

Ms. LOFGREN. So you would kick a child to see if he is okay?

Mr. HASTINGS. No. May tap his shoe or may shake the child lightly to see if they are awake and check to see how they are doing, frankly.

Ms. LOFGREN. There are, as I say, hundreds of reports from the Department itself of misconduct—there is no other way to describe it—in the treatment of children by Border Patrol agents. I do not mean to say that every Border Patrol agent is engaging in misconduct. Obviously not. I have met many Border Patrol agents who are going the extra mile to try and help people out, and I honor them for their efforts. But when there are reports or allegations of misconduct, what steps do the Border Patrol take to investigate these allegations? And how frequently are investigations opened to these reports?

Mr. HASTINGS. So all allegations are taken seriously. We have posters and signs in many of our stations—all stations that provide numbers that the detainees can call and provide these complaints that they may have.

Ms. LOFGREN. Well, that is not really the question. The question is: What is your Department doing once those complaints are made to track them down and hold officers accountable if they are true?

Mr. HASTINGS. So either OIG, the Office of the Inspector General, or our internal CBP OPR, Office of Professional Responsibility, will do the investigation upon each of those and provide the investigation to us or to members to follow through with—

Ms. LOFGREN. All right. The OIG is actually taking a new look at that for us, so we will look forward to her report on that.

Commander White, I want to turn to you to discuss the intent behind the zero tolerance policy. The last time you testified here—and we do appreciate that—you noted that there were multiple meetings in the first half of 2017 with officers from DHS where the possible family separations were discussed. According to the documents provided to the Committee, in July 2017 you sent out a memo dated on the 4th of July which discussed how ORR would need an additional resources if the “DHS deterrence model” was employed. The deterrence model included DHS instituting family separations and a memorandum of agreement between ICE and HHS where fingerprints of all people in the household would be shared with ICE. And, without objection, Mr. Chairman, I would ask that this memo be made part of the record.

Chairman NADLER. Without objection.

[The information follows:]

REP. LOFGREN FOR THE RECORD



ADMINISTRATION FOR CHILDREN & FAMILIES

TO: OS UAC/Refugee Big Group

FROM: Jonathan White, Deputy Director for Children's Programs, ORR

SUBJECT: Unaccompanied Alien Children Program Update

DATE: July 4, 2017

U//SENSITIVE BUT UNCLASSIFIED

Current referrals and discharges: During the past seven-day period (as of data reported on the 3 July dashboard), average referrals rose to 71 UAC/ day (+16 from previous week) and average discharges fell to 42 UAC/day (-1 from previous week). The 30-day discharge rate has fluctuated between 1.9 and 2.0 this week.

Current Capacity: ORR continues to monitor shelter occupancy on a daily basis, currently at 43% (+8% from previous week) and to adjust in anticipation of expected need. On June 11, the second phase of 20% capacity reductions for residential Shelter and Transitional Foster Care (TFC) beds was implemented. On July 1, ORR reduced Shelter and TFC beds by an additional 824 beds. ORR does not anticipate any additional bed capacity reductions in FY17. ORR has an increased focus on monitoring specialty bed capacity (Secure, Staff Secure, Residential Therapeutic Center, and Long-Term Foster Care) in addition to standard Shelter and TFC.

Congress: The ORR Director participated in a hearing on June 22, 2017, before the Senate Judiciary Committee. The ORR Director, Deputy Director for Children's Programs, and health division director met with Rep. Michael C. Burgess (R-TX) on June 23. ORR is working with Office of Legislative Affairs and Budget (OLAB) and the Office of the Assistant Secretary for Legislation (ASL) to respond to an oversight letter from Chairman Ron Johnson of the Senate Homeland Security and Governmental Affairs Committee.

Communications: An online fact sheet on the Community Safety Initiative is in development. ORR and ACF Coms are collaborating with DHS public affairs on messaging for DHS' UAC Sponsor Initiative.

Mission Risks and Challenges: ORR is working to develop and implement strategies to mitigate each of the risks and challenges identified for this mission.

1. **ORR may experience shortfall in Secure Shelter capacity as a result of increasing domestic apprehensions of gang members.** ORR has 58 Secure Shelter beds nationwide in two facilities. Recent rapid increases in the number of referrals requiring Secure-level care, as a result of domestic apprehensions following law enforcement actions including large-scale anti-gang operations, suggest that this level may be inadequate for emerging requirements. On June 30's Specialty Bed Capacity Report, male Secure beds were at 94% capacity (-4%).

The next Specialty Bed Capacity Report will be released on Friday, 7 July (due to the July 4 holiday, there will be no Specialty Bed Capacity Report on Tuesday of this week). ORR is working on plans to procure additional Secure beds by a contract mechanism.

2. ***Future UAC referral levels are volatile and unpredictable.*** In partnership with Department of Homeland Security and other partners in the UAC Unified Coordination Group (UCG), ORR works to obtain best available intelligence on potential future migration patterns affecting referral numbers. DHS projections anticipate average daily UAC migration from 17-67 through the end of Quarter 3. DHS Intelligence and Analysis advises that the Quarter 4 projections will be available in mid-July.
3. ***DHS immigration enforcement actions may adversely affect discharge rate.*** DHS has launched a national "UAC Sponsor Initiative," which involves contacting sponsors of UAC who are without legal status, interviewing them, and in some cases taking them into custody, issuing criminal charges against them, or issuing Notices to Appear. Effects of this initiative upon readiness of individuals to step forward as sponsors are expected to result in significant increases in length of stay and decline in discharge rate. This step would represent one-half of the DHS policy changes necessary to fulfill the "DHS Deterrence" scenario model (since family unit separations are not yet being implemented). ORR is currently reviewing that model to determine if it should be refined to current policy realities.
4. ***Risks of too many vs. too few open beds must be balanced.*** ORR is implementing total cuts of approximately 35% of Shelter and TFC beds in June, to mitigate against budgetary risks of too many open beds. ORR is currently modeling four scenarios using the Bed Capacity Model tool: Current Referrals and Discharges, DHS Deterrence, and DHS Projections. The DHS Deterrence and Steady Growth scenarios require additional beds in FY 2017. DHS Projections and Current Referrals/Discharges scenarios, however, do not require additional beds in FY17 or early FY18. As a result, at this time, ORR does not anticipate either adding or reducing standard shelter and TFC beds in FY17. ORR's Division of Planning and Logistics (DPL) continues contingency planning for further increases in daily referrals. ORR briefed the UCG Deputies' Group on June 22 regarding its readiness for influx events, as required under the UCG Plan.
5. ***Criminal gang activity by some former UACs creates operational and optical risk for the program.*** ORR is engaged in a Community Safety Initiative designed to assure that program operations do not create risks for American communities. ORR published a new Secure and Staff Secure Policy on June 12. ORR is working with grantees to pilot a Department of Justice-recommended gang prevention program in shelter programs. ORR has been engaging with DHS to make improvements to information sharing related to criminal intelligence and potential community risk issues, both in the process of referrals, and in sponsor vetting and pre-release consultation between ORR and DHS.
6. ***Natural disasters and all-hazard events, especially hurricanes, pose threats to ORR UAC program operations.*** The ORR program shelter network includes a number of programs in locations at risk for natural disasters, and the concentration of many programs in a hurricane threat area creates concurrent-impact risks. The scenario of a hurricane impact to the Rio Grande Valley region in Texas, in particular, poses significant threats of program-wide disruption. ORR requires all shelter programs to have emergency contingency and evacuation

plans at the facility level, but a regional-level event creates significant risk of program-wide disruption. ORR DPL is analyzing this threat and developing contingency plans for natural disaster scenarios.

Weekly Operational Bed Cascades 7/3/2017

Activation Plan to maintain 85 percent capacity				
SITE NAME	SCENARIO 1 <i>Current Referrals & Discharges</i>	SCENARIO 2 <i>DHS Deterrence</i>	SCENARIO 3 <i>DHS Projections</i>	SCENARIO 4 <i>Steady Growth (+4/week)</i>
TBD +250	Not brought online	7/18/2017	Not brought online	9/28/2017
TBD +250	Not brought online	7/20/2017	Not brought online	10/5/2017
TBD +250	Not brought online	7/21/2017	Not brought online	10/13/2017
TBD +250	Not brought online	7/23/2017	Not brought online	10/21/2017
TBD +250	Not brought online	7/25/2017	Not brought online	10/28/2017
TBD +250	Not brought online	7/26/2017	Not brought online	11/5/2017
TBD +250	Not brought online	7/28/2017	Not brought online	11/12/2017
TBD +250	Not brought online	7/30/2017	Not brought online	11/19/2017
TBD +250	Not brought online	8/1/2017	Not brought online	11/27/2017
TBD +250	Not brought online	8/3/2017	Not brought online	12/4/2017
TBD +250	Not brought online	8/5/2017	Not brought online	12/11/2017
TBD +250	Not brought online	8/7/2017	Not brought online	12/18/2017
TBD +250	Not brought online	8/9/2017	Not brought online	12/25/2017
TBD +250	Not brought online	8/11/2017	Not brought online	1/1/2018
TBD +250	Not brought online	8/13/2017	Not brought online	1/8/2018
TBD +250	Not brought online	8/15/2017	Not brought online	1/16/2018
TBD +250	Not brought online	8/17/2017	Not brought online	1/23/2018
TBD +250	Not brought online	8/19/2017	Not brought online	1/30/2018
TBD +250	Not brought online	8/21/2017	Not brought online	2/6/2018
TBD +250	Not brought online	8/24/2017	Not brought online	2/13/2018
TBD +250	Not brought online	8/26/2017	Not brought online	2/20/2018
TBD +250	Not brought online	8/28/2017	Not brought online	2/27/2018
TBD +250	Not brought online	8/31/2017	Not brought online	3/6/2018
TBD +250	Not brought online	9/2/2017	Not brought online	3/13/2018
TBD +250	Not brought online	9/6/2017	Not brought online	3/20/2018
TBD +250	Not brought online	9/10/2017 *	Not brought online	9/28/2017
<i>Projected UAC end of FY17</i>	39,664	48,322	39,504	42,160

Weekly Operational Bed Cascades 7/3/2017

NOTES	
Assumptions	
Scenario 1	7-day average reported on the June 12 dashboard (71 UC/day) with a 1.9 discharge rate (30 day average).
Scenario 2	Referrals increase by 2.5 times from current 7 day average for 60 days, drop to 2 times for the following 30 days, and then remain 1.5 times current average with a 1.0 discharge rate (95 day LOC)
Scenario 3	Average of 67 referrals per day, with a 2.0 discharge rate
Scenario 4	Steady growth increase of +4 UAC per week from our current 7-day average (71 UAC) and a 2.0 discharge rate
Background	
<i>The cascades use values as shown on the dashboard distributed on:</i>	
Date:	7/3/2017
In Care Census	2621
Funded Capacity	5571 (proposed capacity after reductions)
Notes	
Planning scenarios are neither predictive nor prescriptive; rather they demonstrate a range of possible outcomes informing decision-making, planning processes, and resource requirements. *Scenario 2 will require additional sites in order to maintain 85% occupancy.	

Ms. LOFGREN. Can you describe why it was called a “DHS deterrence model”?

Mr. WHITE. Yes, ma’am. We used a number of different models of possible future scenarios to anticipate how many beds we would need.

Ms. LOFGREN. Okay.

Mr. WHITE. We constructed a deterrence model in part as part of my effort to convince HHS leadership that separating children would not be possible for us to support operationally, that we would never have the funding or the beds to do it, because I believe that was an important part of the argument against separation.

Ms. LOFGREN. Right. Can you tell us who those ideas were—who in the Department discussed those ideas with you?

Mr. WHITE. I discussed these issues primarily with the leadership to whom I reported. That was then-Director of ORR Scott Lloyd, then-Acting Assistant Secretary for the Administration of Children and Families Steven Wagner, and then-Counselor to the Secretary for Human Services Maggie Wynn.

Ms. LOFGREN. Thank you very much. I would just note, you know, Mr. Collins was dismissive of these efforts, but we did get a report from the OIG, the Inspector General, in September of 2018 that noted that so-called pre-verbal children, children who could not speak, were separated from their parents without a picture taken of them, without a fingerprint taken of them, without any kind of identification or bracelet put on them, simply removed. So to say that this is an unnecessary exercise, that everything is dandy, that we just need to pass a bill, I do not think you need to pass a bill to say do not destroy families at the border with callous disregard.

And I yield back, Mr. Chairman.

Chairman NADLER. The gentlelady yields back.

The gentleman from Texas.

Mr. GOHMERT. Thank you.

Chief Hastings, I appreciate your Department’s efforts in the face of such massive vilification. I know a great many border patrolmen, and those men and women are not appreciated. The huge, huge majority are doing a thankless job.

Director Hayes, I want to say thank you and your Department for the efforts in bringing down the outrageous 92-day or 90-plus-day average of detention during the Obama—during the previous years down to 42 days. I appreciate the attempted—or the response, the class response that each of you have had during vilification of yours and your employees’ efforts to be humane and yet enforce and follow the law, even being castigated for having cages and things like that that were constructed by the Obama administration. It is deeply saddening that there was none of this vilification for inappropriate and outrageous conduct that occurred during the Obama administration. It seems to be all new-found now that there is a different administration that happens to be part of the Republican Party.

I just cannot help but reflect historically, having served in the United States Army at a time that was very unpleasant to be in the military, when we were often ordered not to wear our uniforms off post because of violence against military members. I did not

know if we would see a day when people would be proud of servicemembers and proud of first responders again. But one of the results of the horrible evil that occurred on 9/11 was how Americans came together afterwards and people began to appreciate first responders and our military. It was incredible, the transformation.

But during the last administration, we saw law enforcement being vilified over and over and over again, and the President himself was immediate to jump on a side before he knew the facts, and he was usually wrong on which side he attempted to defend. And as a result, we are now—we have been seeing attacks on law enforcement, attacks on people who are trying simply to do their job, protect the country, protect people, “serve and protect” as a motto. And it has become outrageous again, what is happening.

Chief Hastings, let me ask you, in the emergency bill that has been touted that the majority passed, how much of that money came to your Department to help you provide additional and better services?

Mr. HASTINGS. Thank you, sir. So \$1.1 billion came to our Department. The majority of that is for soft-sided facilities and for facilities due to the influx that we are seeing.

Mr. GOHMERT. Did that allow you to hire any more people to handle the dramatic increase we have had crossing our border?

Mr. HASTINGS. No, sir.

Mr. GOHMERT. So you are still that limited in your personnel in carrying out your job?

Mr. HASTINGS. We are seeking assistance in 2020 to begin with a prosecution assistant, basically, that would help us provide some of the support for the detainees that we are seeing who we currently right now have DHS volunteers and other volunteers from other agencies assisting with now during the surge. What I am talking about is feeding, caring, transportation, hospital watch, those types of duties.

Mr. GOHMERT. Well, I know the Immigration Chair referenced that we need to allow the Border Patrol to get back to their primary duty of protecting the border. I have spent so many nights on the border. I do not see your Border Patrol agents protecting the border. They are required not to protect it but just in-process everybody that comes through. I would think protecting would mean you protect the border from people coming in illegally. There is none of that, is there?

Mr. HASTINGS. Our agents are frustrated right now. We have, you have heard before, 40 to 60 percent of our agents in RGV, El Paso, and even in Yuma who are doing the humanitarian mission and the care and feeding primarily. And we know that the border security mission is being affected. We know that.

Mr. GOHMERT. Thank you.

Chairman NADLER. The time of the gentleman has expired.

The gentleman—

Mr. GOHMERT. And just to note the Chair has been gravely unfair. You said yesterday no one is above the law, but to be clear, the Chairman is above the rules.

Chairman NADLER. Mr. Gohmert, I took 6 minutes and 38 seconds. Mr. Collins took 6 minutes and 40 seconds. You just took 5 minutes and 45 seconds. We are trying to get back, at the request

of the minority, towards 5 minutes, which is why I did not stop you at 5 minutes. And it is all at the discretion of the Chair, in any event.

The gentleman from Tennessee is recognized.

Mr. COHEN. Thank you, Mr. Chair.

Mr. Hayes, Director Hayes, you are the permanent Director now, are you not?

Mr. HAYES. Yes, sir, Congressman, I am.

Mr. COHEN. When did you become the permanent Director?

Mr. HAYES. March 3rd.

Mr. COHEN. And you became the temporary Director after the previous Director was—he resigned?

Mr. HAYES. He transferred to a different department or division within the Department of Health and Human Services. That was late November of last year, sir.

Mr. COHEN. And when did you come to the Department?

Mr. HAYES. I came to the Department in mid-June of 2018.

Mr. COHEN. And before that, what was the largest number of people you had ever administered as an administrator?

Mr. HAYES. As supervision, it would be here on the Hill, sir, congressional staff.

Mr. COHEN. What was that job that you had before you went over there?

Mr. HAYES. I was the chief of staff.

Mr. COHEN. Chief of staff for a Congressperson. Was that Mrs. Lesko?

Mr. HAYES. No, sir.

Mr. COHEN. Who was it? Who were you the chief of staff for?

Mr. HAYES. Prior, I was chief of staff to Congressman Trent Franks and Congressman Steve Southerland.

Mr. COHEN. Steve Southerland, remind me who he is.

Mr. HAYES. He is from the Florida Panhandle, sir.

Mr. COHEN. Florida Panhandle. Okay. Isn't that the—okay. Thank you, sir.

Mr. HAYES. You are welcome, sir.

Mr. COHEN. This Department needs somebody who has experience in running major agencies, who has experience and not political background. And I am afraid that is part of the problem we have. But Congresswoman Escobar knows so much more about this subject. She is on the front lines. I want to yield my time to her, and I appreciate—I yield.

Ms. ESCOBAR. Thank you so much, Congressman.

Just for the record, El Paso, Texas, in 2017 was the testing ground for family separation, and so, unfortunately, I think that there are far more children who had been ripped from the arms of their parents than Americans even begin to realize. I think the numbers are much higher. I think we as a country have damaged an entire generation of Central American children, and this abhorrent policy, unfortunately, continues to this day.

Chief Hastings, you mentioned that family separation is a rare occurrence. You were referring to separation between a biological parent and a biological child. Is that correct?

Mr. HASTINGS. That is correct, ma'am.

Ms. ESCOBAR. So to many of us, a family actually is a much broader definition than a biological parent and a biological child. To many of us, family is a grandparent, a grandchild, an aunt or uncle, and a niece or nephew, siblings, et cetera. Chief—and, actually, before I begin my questioning, I feel like I have to say I do not believe that Border Patrol agents are bad. Chief, you and I were in a meeting where I expressed my gratitude to the many really great agents who are working hard and are overwhelmed. But there is no doubt that there are some really bad agents as well, and it is important that we root out those who dehumanize migrants so that those who do not feel that way do not feel despondent.

But isn't it true, Chief, that we are still separating families today, children who are taken from—the grandmother who is separated from a grandchild, for example, isn't that still occurring?

Mr. HASTINGS. So we are following the definition by TVPRA, and the definition is a parent or legal guardian.

Ms. ESCOBAR. So a grandmother who enters with a grandchild, they are being separated. Is that correct?

Mr. HASTINGS. That is correct.

Ms. ESCOBAR. And that child then becomes an unaccompanied minor. Is that correct?

Mr. HASTINGS. Yes, ma'am.

Ms. ESCOBAR. Okay. Also, you said in your testimony that, "Our laws also prohibit the removal of individuals to countries where they face the likelihood of torture." But we know that people are being forced into Mexico even when they have a credible fear of being there, and they have expressed it to Border Patrol, but Border Patrol is forcing them anyway at that point in what is a violation of both Section 241(b)(3) of the Immigration and Nationality Act as well as the principle of non-refoulement under international law.

In my district in El Paso, we know that over 11,000 people, many of them families, are waiting in Mexico for their asylum hearings. We know of a specific case, for example, where two young families were returned to Ciudad Juarez and, while running errands, their fathers were kidnapped, beaten, and then released. These families had to fight hard not to be returned.

Chief Hastings, why is Border Patrol violating U.S. and international law by forcing people to wait in Mexico when they have expressed a credible fear of residing there or they have, in fact, experienced kidnapping, rape, or other violence?

Mr. HASTINGS. So, ma'am, are you referring MPP or are you—

Ms. ESCOBAR. Yes.

Mr. HASTINGS. Okay. So with MPP—

Chairman NADLER. The time of the gentlelady has expired. Yeah, the witness can answer the question. I am sorry.

Mr. HASTINGS. With MPP, if the subjects do claim fear, we take them to CIS. CIS will determine if there is fear. If there is fear determined, then they will go through the asylum case. If they do not claim fear, they will be returned to Mexico under the Mexican Protection Program, MPP.

Ms. ESCOBAR. And just for the record, we have innumerable examples in El Paso, Texas, where they have claimed fear, and they have been returned anyway.

Chairman NADLER. The time of the gentlelady has expired.

The gentleman from Colorado.

Mr. BUCK. Thank you, Mr. Chairman.

Chief Hastings, do you receive combat pay when you come to the Hill?

Mr. HASTINGS. No, sir.

Mr. BUCK. Well, you should. How long have you been with Border Patrol?

Mr. HASTINGS. A little over 24 years, sir.

Mr. BUCK. Are you what is considered a career official?

Mr. HASTINGS. I am a career law enforcement official, yes, sir.

Mr. BUCK. Well, thank you for your service, first of all. And, second of all, you have served under approximately how many different administrations?

Mr. HASTINGS. Three or four, sir.

Mr. BUCK. And have you seen any of those administrations target children for hostile activity?

Mr. HASTINGS. No, sir.

Mr. BUCK. Have you ever heard of an administration ordering the Border Patrol to kidnap a child?

Mr. HASTINGS. No, sir.

Mr. BUCK. Did you hear the Chairman's opening statement?

Mr. HASTINGS. I did, yes, sir.

Mr. BUCK. Did you hear the story about a 3-year-old being forced to choose between two parents?

Mr. HASTINGS. I did.

Mr. BUCK. Have you heard—let me ask it this way: Are you aware of that incident?

Mr. HASTINGS. I am. So if I understand that incident, I think we actually looked into that at the request of—I am not sure if it was a committee or the Chairman. But in this specific incident, the child was not asked to choose if he was going to return with the father and mother. That was while they were in custody, he was—we did not have a dual head of household holding cell, so he was asked would he rather stay with his father or mother while he was in Border Patrol custody. He was ultimately reunited with his entire family and sent back to Mexico under the MPP program. So there was no child separation.

Mr. BUCK. Okay. So one parent was not deported, as the Chairman indicated, one parent was not deported and another parent kept in the country and the child had to choose between whether to leave with the deported parent or stay in the country.

Mr. HASTINGS. That was which cell he went to while he was in our custody. He returned to Mexico with both parents.

Mr. BUCK. Okay. Thank you for clarifying that because I think it is important. If we are not going to deal with facts, if we are going to start tearing at heart strings, let us make sure that the underlying facts or at least the stories are accurate before we start talking about those particular incidents.

Chief, are you aware that the human smuggling business in Mexico, Guatemala, the Northern Triangle is a multi-billion-dollar business?

Mr. HASTINGS. Yes, and it is thriving right now.

Mr. BUCK. And what does it mean to be a multi-billion-dollar business? In other words, who is making that money? Are they legal agencies making that money, or are these cartels and illegal organizations?

Mr. HASTINGS. So it is illegal organizations, transnational criminal organizations that are profiting on the backs of the people who are coming today.

Mr. BUCK. And when you say “on the backs of,” have you heard of—have you read intelligence reports where there are instances of children being purchased so that individuals can enter this country illegally?

Mr. HASTINGS. Yes. Children are treated and all aliens are treated as a commodity, frankly, with no care to their personal safety. And we see time and time again. I have testified before. We see kids put on pool toys by smugglers and cross across the Rio Grande Valley—the Rio Grande River, and then when our agents try to make an interdiction or assist, we see smugglers kick the kid off of these toys so they can make a safe getaway back to the south or to the Mexico border, essentially little care to no care for those that they are smuggling.

Mr. BUCK. Okay. And is this a result of a policy that—a recent policy from the Trump administration? And when I say “is this,” is the crisis at our border, is the treatment of young people a result of a policy from the Trump administration? Or is it just a fact that the surge in immigration has left the facilities overwhelmed?

Mr. HASTINGS. The facilities are overwhelmed by far. We have—our facilities were not built for this type of demographic that we are seeing today. They were built for the demographic of primarily returning quickly to Mexico. They were not built for what we are seeing today. They are short-term facilities. They are not meant to hold long term.

Mr. BUCK. And I have to tell you something. I have heard the testimony from the Inspector General’s office. I agree that there are serious problems, and we have got to address those serious problems, by increasing the facilities, increasing personnel, and also changing our laws so we do not incentivize this kind of surge. But to blame Border Patrol or this administration for what is happening is shameful. And I thank you and I yield back.

Chairman NADLER. The gentleman yields back.

The gentleman from Georgia.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman.

Chief Hastings, it is your testimony that human smuggling on the border is a billion-dollar-per-year business?

Mr. HASTINGS. Yes, it is.

Mr. JOHNSON of Georgia. Where did you get that information from?

Mr. HASTINGS. Because we hear intelligence reports and speak with those who come across the border—

Mr. JOHNSON of Georgia. That is what somebody has—that is what you have heard. Okay. I got you. But, listen, do you have a Facebook account?

Mr. HASTINGS. I do not.

Mr. JOHNSON of Georgia. And do you have a Twitter account?

Mr. HASTINGS. I do not.

Mr. JOHNSON of Georgia. So it was recently revealed that there is a secret Facebook group made up of 9,500 current and former Border Patrol members. Are you aware of that secret group?

Mr. HASTINGS. I have read the ProPublica report. Yes, sir, I am aware.

Mr. JOHNSON of Georgia. And many of this group's Facebook posts have been racist, misogynistic, xenophobic, and dehumanizing. They have targeted Members of Congress, members of this Committee, and also dead migrant children. In particular, the posts that callously made light of the death of a Guatemalan teenager at a border station in Texas, those posts are truly despicable. Are you aware of those posts?

Mr. HASTINGS. I am, sir, and those are inappropriate and they are being investigated, and if found to be true, the appropriate disciplinary action will be taken. We have already provided cease-and-desist letters to all of those individuals that were on the posts. Some have been relieved of their law enforcement duties as well.

Mr. JOHNSON of Georgia. How many of those individuals were on that post?

Mr. HASTINGS. I know of approximately 50 cease-and-desist letters that have gone out, and I am not sure, a handful more or less of administrative actions or administrative duties where agents are basically not doing law enforcement duties while they await the outcome of the disciplinary.

Mr. JOHNSON of Georgia. I see. I am particularly troubled by reports that CBP leadership knew about this secret Facebook group for years. Are you aware of that?

Mr. HASTINGS. I have seen the reports, but I did hear Chief Provost testify yesterday, and I know that the Chief I think mentioned she had been on Facebook nine times in a year, and that was primarily, frankly, to search herself to try and find out what the agents thought about how she was doing as a Chief.

Mr. JOHNSON of Georgia. And you are familiar with the fact that she has actually posted on that secret Facebook group?

Mr. HASTINGS. I have seen the article. I believe she posted one time in reference to a Jeopardy question that asked how quickly she had been a supervisor within Border Patrol or something to that effect.

Mr. JOHNSON of Georgia. And that is what you have heard, but you have not talked with her.

Mr. HASTINGS. I know she—yes, I have talked with her. She is in my chain of command, and I talk to her daily. But that is all I am aware she has ever posted.

Mr. JOHNSON of Georgia. I see. Did she tell you that herself or that is something that somebody else told you?

Mr. HASTINGS. That is what I heard her say during her testimony yesterday, and that is what I have heard her say to me before.

Mr. JOHNSON of Georgia. Do these racist and xenophobic posts in that Facebook group concern you as a member of Border Patrol leadership?

Mr. HASTINGS. They do. It is inappropriate, and we are taking the appropriate actions.

Mr. JOHNSON of Georgia. Now, let me ask you—and thank you, sir—Inspector General—or, excuse me, Ms. Shaw. You testified before the Immigration and Citizenship Subcommittee earlier this month that the Inspector General’s office is looking into this secret Facebook group. Correct?

Ms. SHAW. That is correct. We are not looking at individual posts by individual members, but we are conducting a review to determine who within CBP and DHS leadership was aware of the group and the postings, when, and what, if any, action they took.

Mr. JOHNSON of Georgia. And will you be looking to identify the current Border Patrol members involved in this group, and including additional members of Customs and Border Patrol leadership?

Ms. SHAW. That is not currently within the scope. To the extent that we are looking at who within leadership was aware of it, it could come into scope, but primarily membership within the group and individual postings I believe is being handled by CBP’s Office of Professional Responsibility.

Mr. JOHNSON of Georgia. And if you identify specific Border Patrol members where disciplinary action may be taken, will you refer that to the CBP’s Office of Responsibility?

Ms. SHAW. We would, yes.

Mr. JOHNSON of Georgia. And what is the timeline for this investigation?

Ms. SHAW. We are in very early stages. It is time-sensitive. We would hope to be able to complete field work in 2 to 3 months and have reporting ideally before the end of the calendar year. But we have to follow the leads where they take us.

Chairman NADLER. The time of the gentleman has expired.

Mr. JOHNSON of Georgia. Thank you.

Chairman NADLER. The gentleman from Louisiana.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chairman. Thank you all for being here.

I want to echo the sentiment that has been expressed by Ranking Member Collins, by Mr. Buck, and so many others. We just have extraordinary respect for the work that you all do in these agencies, and it is heroic and under extreme duress these days. And we are grateful that you come continually to answer these questions, even though, as has been expressed, we do not seem to be getting to many solutions. We want to do that.

In light of that, let me ask you a couple of questions about the credible fear issue, and I will ask Mr. Edlow these questions. But let me just say for those who are taking notes that the current threshold to establish credible fear is that the asylum applicant must be able to show “significant possibility”—that is the quote—of persecution if they return to their home country. One U.S. Supreme Court decision found that this threshold is satisfied if there is only a 10-percent chance of persecution.

In fiscal year 2018, there were 99,035 total asylum applications, and DHS agents determined that under the current standard

74,677 met the criteria. Of that number, only 16 percent of credible fear cases were actually approved later by immigration judges.

It is abundantly clear the current credible fear threshold is contributing to the severe backlog of asylum cases in our immigration courts and, unfortunately, contributing to the delay of families who are legitimately fleeing persecution.

So here is a question for Mr. Edlow. Do you believe that the unprecedented surge in family units crossing the southern border has exposed faults in the credible fear standard under our existing asylum laws?

Mr. EDLOW. Thank you, Congressman. The position of the Department and, frankly, the administration is that the credible fear standard, along with other loopholes, has provided some impetus for the increase in crossings.

Mr. JOHNSON of Louisiana. I think that bears of common sense. And let me ask you, do you believe it is possible that the current lax credible fear standard can act as a catalyst for southern border crossings that endangers these family units in the process?

Mr. EDLOW. Again, the administration has long said that illegal crossings do come with a great deal of danger, so anything that acts as a catalyst to do so would increase danger to families and to children.

Mr. JOHNSON of Louisiana. The last Congress, numerous officials, including then-Attorney General Sessions, Secretary Nielsen, Director of CISNA stated in response to previous questions that statutory changes are necessary to enhance the process of assessing what constitutes credible fear. Do you agree with them that the credible fear standard needs to be raised to ensure the protection for those that are truly fleeing persecution?

Mr. EDLOW. Congressman, I think any legislative changes the Department would like to see, we would be happy to work with the Congress in perfecting those changes and are willing to provide technical assistance as needed.

Mr. JOHNSON of Louisiana. I am grateful for that. I filed a bill to do that in the last Congress. It made it through this Committee in a bipartisan fashion, and Ranking Member Collins and I have filed it again.

Would you speak briefly to the failure to appear rate in immigration court for non-detained family units?

Mr. EDLOW. Yes. I believe what you are referring to is what has been actually wrongly called a pilot program. From September until—it is continuing. The Executive Office for Immigration Review has studied¹ specifically the family units within ten cities, the cases that are being filed within ten cities. Of those numbers, there has been about 64,000 cases that have been filed in those courts.

Of the completed cases, there has been about 17,000 completed. Over 13,000 have resulted in an in absentia order, which would translate to about 80 percent of the total completed cases were completed with an in absentia order.

Mr. JOHNSON of Louisiana. Thank you. I think we have got to work on that.

¹ Mr. Edlow requested this be changed to “tracked”.

Real quickly, I have about less than a minute left. Mr. Hayes, isn't true that DHS is separating children where there is a potential danger to the child? I know this has been discussed today, but we just want to reiterate this for the record.

Mr. HAYES. So, in regards to any specifics, I defer to my colleagues at DHS. But I do know in the intakes process at the Office of Refugee Resettlement, we are informed of certain separations due to concern for safety of the child, yes, sir.

Mr. JOHNSON of Louisiana. We hear a lot about sex trafficking and the rest, and if a child comes across and is not easily identified to be with a parent, isn't it appropriate for us to take appropriate measures to protect the child, to separate that child from that adult? Doesn't that make sense to everyone?

Mr. HAYES. I would defer that law enforcement-minded question to my colleague at DHS.

Mr. JOHNSON of Louisiana. Would you follow up on that?

Mr. HASTINGS. So 88 percent of those that we have separated so far this fiscal year have been for criminal or gang history for the endangerment to the child. The best example I can give is about 2 or 3 months ago we had a child cross with their father, immediately claim that her father had raped her the night before in Mexico, and we separated that group.

Mr. JOHNSON of Louisiana. It would be inhumane to do anything else.

I yield back. Thank you.

Chairman NADLER. The time of the gentleman has expired.

The gentleman from Florida.

Mr. DEUTCH. Thank you. Thanks, Mr. Chairman.

Mr. Chairman, during the Committee's February 26th oversight hearing on the administration's family separation policy, I entered several documents into the record that were turned over by HHS detailing a high number of alleged sexual assaults of unaccompanied children in the custody of ORR. And since the February 26th hearing, I have been attempting to work with ORR to identify changes that need to be made to ensure the safety for unaccompanied children being held at facilities across the country.

On April 22nd, ORR assisted in arranging a visit to the Homestead facility, my second visit to the facility. The staff was accommodating during my visit. The tour was extremely informative. And following up on the tour, Director Hayes, following up on the tour, I sent you a letter on June 7th with several questions and requests for documents. I just received a response yesterday evening that my letter had been received—I am grateful for that—and that the information was being compiled.

Mr. Chairman, I ask unanimous consent to submit my letter dated June 7th to Director Hayes for the record.

Chairman NADLER. Without objection.

[The information follows:]

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 AND THE ENVIRONMENT
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June 7, 2019

Johnathan H. Hayes
 Director, Office of Refugee Resettlement
 U.S. Department of Health and Human Services
 330 C Street, S.W.
 Washington, DC 20201

Dear Director Hayes,

On April 22nd, I toured the ORR facility that houses unaccompanied minors in Homestead, Florida. The staff was accommodating, and the tour was very informative. From the tour, I have several follow-up questions.

1. During my visit, staff confirmed that operating a temporary influx facility, such as Homestead, costs three times as much as operating a permanent facility. Unlike temporary influx facilities, permanent facilities are subject to federal, state, and local laws meant to protect the welfare of the children. Homestead is not. It also is being reported that the Homestead facility will significantly increase in population size. Please confirm whether ORR is in the process of finding less expensive alternatives to temporary influx facilities like Homestead for housing unaccompanied minors? And that these alternatives would be subject to all child welfare laws?
2. The Homestead facility staff informed me that the Department of Homeland Security, ORR, and Comprehensive Health Services (CHS) include the Prison Rape Elimination Act (PREA) and other housing and care standards in their contract provisions. Please provide me with copies of these contracts for the Homestead facility and copies of the subcontracts between CHS and other providers at the Homestead facility.
3. The staff informed me that when a serious incident involving an unaccompanied minor occurs at the Homestead facility, an incident report is filed, and the facility informs the Office of the Inspector General (OIG), the Department of Justice (DOJ), local police, and the Florida Department of Children and Families. Please provide me with information on the process for resolving these serious incidents involving unaccompanied minors. When the incident is referred to the OIG, DOJ, and law enforcement, what follow-up is conducted on the referral to ensure that the resolution of the case contributes to the child's welfare?
4. The Homestead facility staff provided me with a briefing and demonstration of a database that keeps track of every allegation and serious incident that occurs at the Homestead facility and every facility housing unaccompanied minors. The database also tracks when a staff

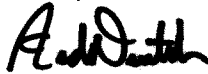
Director Hayes
June 7, 2019
Page 2

person is fired due to a serious incident involving an unaccompanied minor. Please provide me with a report detailing how many cases resolved with termination, how many cases were resolved with disciplinary action, what disciplinary action was taken against the staff person, and how many cases are ongoing.

5. The Homestead facility staff stated that General Dynamics has contracted with the facility to provide sexual abuse training. Please provide me with a copy of the contract with General Dynamics and details regarding the training program curriculum. Also, please confirm how many staff members have completed the training and whether any did anyone did not complete the training? How often is training offered? Is training mandatory?

Thank you again for your assistance in this matter. I look forward to continuing to work with you on this critical issue to ensure that ORR has the necessary resources and policies to protect the safety of unaccompanied children in its care and that private contractors do the same.

Sincerely,



Theodore E. Deutch
Member of Congress

Mr. DEUTCH. Thanks, Mr. Chairman.

Director Hayes, during my visit to Homestead, the staff there confirmed that operating a facility like that costs three times as much as operating a permanent facility, and unlike temporary influx facilities, permanent facilities are subject to Federal, State, and local laws meant to protect the welfare of children.

So what I would like to ask and I ask in my letter and what I would like you to tell us this morning is whether ORR is in the process of finding less expensive alternatives to facilities like Homestead for unaccompanied minors, and I guess fundamentally the question is: Are you in the process of closing the Homestead facility?

Mr. HAYES. Thank you for the question, Congressman. I want to first give you my commitment that we will respond to that letter just as quickly as we can.

Mr. DEUTCH. I appreciate that.

Mr. HAYES. You are welcome, sir.

I will say that, as I mentioned in my testimony, I want to thank you and the leadership of the House of Representatives for helping get the supplemental. One of the main priorities of myself, Assistant Secretary Lynn Johnson, and Secretary Azar is to absolutely increase the number of permanent State-licensed beds available for receiving of children from Customs and Border Protection at HHS. That is something that we are equally committed to at both the political and the career leadership of ORR.

Mr. DEUTCH. And do you have any information in the possibility of Homestead providing information on when the Homestead temporary facility will be shut down?

Mr. HAYES. So as of this morning, sir, our census at Homestead is down to 829. We have not designated any additional children to Homestead since July 3rd, and we are in the process of drawing that down given the higher discharge numbers that we are seeing as well as the lower referrals coming across the border.

Mr. DEUTCH. Great. Let me ask you some questions that I asked in my letter, but perhaps you can answer them. The Homestead facility staff stated that General Dynamics has contracted with the facility to provide sexual abuse training, and I had asked for copies of the contract with General Dynamics and details regarding that curriculum. Is that something that you can provide to us quickly?

Mr. HAYES. I do not know if I can provide it quickly, sir, but I will certainly go back to our team and look into it.

Mr. DEUTCH. In 6 weeks, so it is no longer quickly, but if you could help with that, I would appreciate it.

Mr. HAYES. I will check into that, sir.

Mr. DEUTCH. Also, the Homestead facility staff informed me that DHS, ORR, and Comprehensive Health Services include the Prison Rape Elimination Act, PRIA, and other standards in their contract provisions. We have been trying to get a copy of the contract between the Government and Comprehensive Health Services. We would also like to see copies of the subcontracts just to see the extent to which those requirements are incorporated. Can we get copies of those contracts?

Mr. HAYES. I will go back to the Department, and we will look into that, sir. If I may just add one thing, it is not just GDIT that

does some of the oversight. There was also Federal oversight. There was State and local official oversight. It is a very broad, multipronged approach.

Mr. DEUTCH. That is actually—there is State and local when they submit to them, which gets me to my last question.

Mr. HAYES. Yes, sir.

Mr. DEUTCH. The Homestead facility staff gave me a briefing about the database that keeps track—a national database that keeps track of every allegation and serious incident that occurs at that facility and throughout the country, every facility housing unaccompanied minors. It tracks when a staff person is fired. It tracks what happens when allegations are made.

Can you provide the Committee with information from the database on how many assault cases have resulted in the termination of an employee nationwide, how many were resolved in disciplinary actions, what disciplinary actions were taken against the staff person, and, most importantly, how many cases of sexual abuse are being investigated and are ongoing nationally?

Mr. HAYES. We will look at that letter, sir, and respond as quickly and as we are able. I will note for this Committee's information that there are three different types of sexual misconduct. There is inappropriate sexual behavior, sexual harassment, and sexual abuse. And I will note that the number of actual sexual abuse is very small and most often involved children amongst children. But we will work to get that information.

Mr. DEUTCH. As I said, Mr. Chairman, as I said at our last hearing, one case is too much, and please—

Mr. HAYES. I 100 percent agree.

Mr. DEUTCH. And please, please, do not try to make us feel better by suggesting that sexual harassment is somehow less objectionable than we should tolerate sexual harassment.

Mr. HAYES. That was not my intention, sir.

Mr. DEUTCH. I appreciate that.

Mr. HAYES. We are in agreement.

Chairman NADLER. The time of the gentleman has expired.

The gentleman from Virginia?

The gentleman from Arizona.

Mr. BIGGS. Thanks, Mr. Chairman. So, Chief, you testified about the human trafficking business right now is in excess of a billion dollars, maybe more than \$2 billion. Is that fair?

Mr. HASTINGS. It is fair. Yes, sir.

Mr. BIGGS. And the gentleman from Georgia might have implied that your testimony about this was based on some intelligence reports, briefings, and he said, quote, "or something you heard," close quote.

An intelligence briefing is not just gossip between folks coming across the border illegally and agents. It is an intelligence briefing, I assume.

Mr. HASTINGS. That is correct, sir.

Mr. BIGGS. Please describe what goes into an intelligence briefing.

Mr. HASTINGS. So we have a multitude of intelligence agents working in the field who work closely with sources of information, work closely with those that come through our process, in order to

determine the amounts that individuals from different countries are being charged, how much they are being charged to be smuggled into the U.S., and that is how primarily, in short, how we get the information of what they are being charged to be transited up illegally through the U.S., or into the U.S.

Mr. BIGGS. So you can make that testimony with some confidence in the intelligence briefings you received.

Mr. HASTINGS. Yes, sir.

Mr. BIGGS. So we have been talking about family separation, and on the monitors before you, onto the sides, is what we call permanent family separation. Brandon Mendoza, a Mason City police officer, son of Marianne Mendoza, who is one of my constituents, was killed by an illegal alien who had been deported multiple times. They are permanently separated.

Grant Ronnebeck—yeah, that is Grant on the right—Grant was working as a clerk when he was shot in the face and murdered by another individual who had been here and deported multiple times, including have multiple felony convictions. This is permanent separation.

If you want to solve separation we would do more than have hearings, because there isn't anybody in this room that doesn't want to deal with this situation that are horrific along the border.

We should fix Flores. We should allow for detention of family units for more than 22 days and extend it back to 45 days, allowing us hopefully to resolve their issue before the courts more quickly.

Down in Yuma, not too many months ago, is a facility designed for 250 people. When we were there, there were 750-plus, and last time I checked they were over 1,200. It is a 12-hour facility. It is not a detention facility. It is a holding facility, to process individuals and move them along in this system that is the most thorough, due process-giving system of immigration in the world. It is not because CBP is infiltrated with people who hate people. It is because the surge is so overwhelming to the system, the facilities.

CBP found, in an investigation, that Charleston, South Carolina, and several other cities, had the same sponsor for multiple individuals. Fifty people going to the same address. In their investigation they found that they had a cartel affiliate running a human trafficking ring, and when they went there to bust it, much to their surprise they had the local LEOs, they had the CBP, they had ICE, they had FBI involved.

They found three small children there. They didn't even know about the children. They knew that the adults were being trafficked and basically treated like slaves. Well, these three children had been ceded over, either rented or sold, through the drug cartels, the human trafficking cartels. They were able to get those children out of that situation. That person was charged.

They report to me that there are literally hundreds of these rings in this country. Thousands of children are separated on a monthly basis by these human traffickers and parents giving them that—moving them over to these traffickers. Conditions are terrible. We have to enact the laws and see enforcement and provide the resources necessary to resolve those issues.

Thank you, Mr. Chairman.

Chairman NADLER. The gentleman yields back.

The gentleman from Rhode Island.

Mr. CICILLINE. Thank you, Mr. Chairman. I just want to say at the outset, Mr. Chairman, there was a lot of discussion from our colleagues on the other side of the aisle about inaction by Congress. I would remind them that we have appropriated an additional \$4.5 billion to address this crisis on the border. We passed legislation just yesterday to set standards for care for individuals who are in detention. We passed the DREAM Act and temporary protective status legislation, and today we will pass temporary protective status for Venezuela.

Oversight is also part of our responsibility, so I invite my Republican colleagues to join us in some of the work of actually responding to this crisis.

And I want to start with you, Ms. Shaw. You issued what are called management alerts. Is that correct?

Ms. SHAW. Yes.

Mr. CICILLINE. And a management alert is issued in this case because you found, and I quote, that you “identified issues that posed a serious, imminent threat to the health and safety of CBP personnel and detainees requiring immediate action by the department.” Is that correct?

Ms. SHAW. Yes.

Mr. CICILLINE. And you detail those in your written testimony in considerable detail. Is that communicated to the Customs and Border Patrol?

Ms. SHAW. The recommendation for immediate action?

Mr. CICILLINE. Yes.

Ms. SHAW. Yes. As part of the first management alert that was an official recommendation.

Mr. CICILLINE. Okay. So, Chief Hastings, have you read the management alerts that have been provided by the Office of Inspector General?

Mr. HASTINGS. I have, sir, both.

Mr. CICILLINE. Have you begun to develop a response to it?

Mr. HASTINGS. Sir, we have been working, prior to the reports coming out, and like I said, we have been saying for eight months we are over capacity.

Mr. CICILLINE. In particular, there is an acknowledgement that there is not a strategic, coordinated approach to service, safety, security, and care for those in custody. Are you now developing a strategic, coordinated approach to address these issues?

Mr. HASTINGS. We are constantly working on the capacity issues. As I testified in my opening, we had six off-sited facilities that we had actually paid for to begin construction prior to even getting the funding for the supplemental.

Mr. CICILLINE. So, Chief Hastings, you made reference, in your testimony, to the implementation of a zero tolerance policy, which occurred on April 6, 2018. Is that correct?

Mr. HASTINGS. Yes, sir.

Mr. CICILLINE. And that was a new policy being put into place. Correct?

Mr. HASTINGS. That was a policy to increase our total overall prosecutions.

Mr. CICILLINE. Okay. And that was a new policy.

Mr. HASTINGS. It was.

Mr. CICILLINE. So there wasn't a zero tolerance policy before April 6th of 2018, was there?

Mr. HASTINGS. We had ran similar pilots in the field in other locations, but to that magnitude, no.

Mr. CICILLINE. And it was not a policy in place throughout the entire department. Correct?

Mr. HASTINGS. No, not before that, to my knowledge.

Mr. CICILLINE. Okay. And that policy required you to prosecute parents so that every child that was with a parent then became an unaccompanied child. Correct?

Mr. HASTINGS. Well, there was a list, and you have seen the list, but it started out with single adult criminals, went to single adults who were smuggling, and then went to non-contiguous family units.

Mr. CICILLINE. Okay, Chief, I want to talk specifically—I know a number of my colleagues have mentioned family separations at the southern border are ongoing. I want to discuss one very specific case with you, Chief. Due to the Trump administration's Migrant Protection Protocols, MPP, or Remain in Mexico policy, where migrants are required to wait in Mexico until they can have their asylum hearing, one Honduran family was told that they would be separated. One parent would stay in the U.S. with their children and one would be sent to Mexico.

According to the parents, a Border Patrol agent then asked the couple's three-year-old daughter, Sophie, to choose which parent she wanted to stay with, ultimately deciding who would stay in the U.S. and who would go to Mexico. Asking a three-year-old child to choose between their parents, not knowing if they will ever see one again, is unconscionable and traumatic to a child.

The separation occurred despite a medical recommendation from a doctor who advised that they be removed from MPP and stay together due to Sophie's severe heart condition.

So, Chief Hastings, my first question is did this Border Patrol agent correctly implement MPP, according to our policies?

Mr. HASTINGS. So I believe that is the same case we were discussing earlier, where they were separated only in our facility and they were retired as an entire family back to Mexico.

Mr. CICILLINE. My question, Chief, is even though that ultimately was the result, because of some court intervention, is it an appropriate policy to ask a three-year-old child to decide which parent will stay in the U.S. and which will not?

Mr. HASTINGS. Sir, that was based upon capacity and availability within our own short-term holding detention cell.

Mr. CICILLINE. Chief, my question is not about your capacity. My question is the propriety and the damage you are doing to a three-year-old child, to ask them to make that decision, to pick a parent. Is that consistent with the MPP protocols?

Mr. HASTINGS. Sir, the family was not separated. They were returned together.

Mr. CICILLINE. You deny that the child was asked to pick a parent to stay with, and which one would be deported?

Mr. HASTINGS. While in our custody, there was no—to my knowledge, no deportation.

Mr. CICILLINE. And the medical and psychological conditions of minors considered before placing a family's case into the MPP program?

Mr. HASTINGS. They are.

Mr. CICILLINE. I yield back, Mr. Chairman.

Chairman NADLER. The gentleman yields back.

The gentleman from Florida.

Mr. GAETZ. Thank you, Mr. Chairman.

We have smugglers and traffickers that take young children out of the Northern Triangle, subject them to a treacherous journey where they are abused—physically, mentally, emotionally, sexually—and then they come to our country, and what I have seen in Yuma Sector, is that we have Border Patrol agents who are doing everything they can to respond to a crisis that they did not create and that our laws continue to exacerbate.

We have a crisis at our border because our laws themselves seem to be a humanitarian crisis. Instead of requiring migrants to show up with legal paperwork, we simply require them to show up with a trafficked child and present that child in lieu of legal basis to be in our country. And it is devastating to me that while we continue to have thousands of people that today will show up at our border under these conditions, that we are not taking action to reform our asylum laws, and they are sick laws.

The crisis on our border was articulated by Secretary McAleenan at the beginning of the year. He begged for the resources to be able to help save lives. He begged for changes in our asylum laws so that we would not be encouraging people to cross our border illegally.

Commander White, had the Congress responded timely to Secretary McAleenan's request for supplemental funding rather than only passing it quite recently how many migrants would that have impacted and what would have been the effect of more prompt response to DHS' request?

Mr. WHITE. I don't know any way I could answer that question. Is your question about what would be the effect had there not been a period of near deficiency in the UAC program?

Mr. GAETZ. Yeah. The question is like, so McAleenan asks for the money in February. We don't provide the money until very recently, and so that delta between the request and the provision of resources created some consternation for the health, safety, and welfare of people who are in our country illegally, and I am trying to understand that dynamic.

Mr. WHITE. I am not aware of any impact that would have on the Ms. L. class, but to the extent that it might have an impact on the UAC program I will defer to that program's director, Mr. Hayes.

Mr. HAYES. So, Congressman, yes, the lack of funding and the deficiency status that we entered into for short season at HHS did create a level of uncertainty in the program, and in accordance with the Anti-Deficiency Act there were some services that were affected as we carried out the mission to care for the children as they worked through the process. Now how that would have any impact actually at the border—

Mr. GAETZ. No, no, I don't mean that. I mean for the conditions of people that the majority is focused on.

Mr. HAYES. And I would defer part of that to——

Mr. GAETZ. I have got an answer to the question. Chief HASTINGS, my colleagues from Georgia I don't think gave you a full opportunity to answer the question about your basis for the belief that this smuggling industry was a billion-dollar industry. You referenced intelligence reports and intelligence collected off of those that were being trafficked, and he said, "Okay, well, you have just heard some things," and went on.

Would you like to illuminate more thoroughly on how we know of the gravity and of the stakes of this trafficking crisis?

Mr. HASTINGS. Yes. So, again, the smugglers are the ones who are profiting from all this, the TCOs. But, I mean, I give five specific examples. This year we have had 200 large groups of over 100 hit our borders. We have never seen anything like that. Last year it was 13. The year before, 2. Specifically, in an example, in at least five of those large groups we had technology that provided us with information that large drug loads, usually cocaine or marijuana, were being trafficked at the same time. In other words, these large groups are often used as a diversion for drug trafficking organizations to know that when you are sending a group that large down through the border you are effectively shutting down our operation so we can deal with that amount of people, and in the meantime you are running a large narcotic load through right next door, two to three miles away.

Mr. GAETZ. And that is—your agents refer to that as gap time—is that correct?—where there are gaps in where they can cover the border because they are having to process large volumes of migrants?

Mr. HASTINGS. That is correct, where we either have to transport, detain, or, in this case, it effectively shuts down, just due to sheer transportation and volume of getting those individuals medically assessed and back to our station in a timely manner to process.

Mr. GAETZ. Thank you. Well, I certainly hope we can get some of that bipartisan work before the committee.

Mr. Chairman, may I be recognized for a unanimous consent request?

Chairman NADLER. Without objection.

Mr. GAETZ. Mr. Chairman, I seek unanimous consent to enter into the record a McClatchy article, January 15, 2016, entitled "Obama Administration Fights to Keep Family Detention."

Chairman NADLER. Without objection.

[The information follows:]

REP. GAETZ FOR THE RECORD



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NATIONAL

Obama administration fights to keep family detention

By Franco Ordoñez

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JANUARY 15, 2016 10:29 PM



WASHINGTON

Federal officials asked three judges Friday to overturn a lower court's ruling that curtails the Obama administration ability to detain migrant mothers and children.

The 75-page brief, filed with the 9th Circuit U.S. Court of Appeals, argues that a federal judge wrongfully expanded a nearly two-decade-old agreement on the detention of children by ruling that it also protected migrant children who were traveling with their parents.

Deputy Assistant Attorney General Leon Fresco argued in the government's filing that the original agreement was intended to "settle a lawsuit involving only unaccompanied minors." "Nothing in the Agreement indicates that the Government intended to unilaterally surrender its statutory detention authority over accompanied alien minors and their adult alien parents," he wrote.

U.S. District Judge Dolly Gee in Los Angeles ruled last summer that the Obama administration can't detain children, even with their mothers, in secure facilities built to house adult

prisoners. She also said it was inappropriate to hold a child and accompanying parent unless there was a flight or safety risk.

The judge found it “astonishing” that immigration authorities had adopted a policy requiring such an expensive infrastructure without more evidence that it would be compliant with the decades-old agreement.

The government responded that it needs every tool available to uphold the government’s constitutional authority to detain apprehended migrant families at the border, including through the use of family residential centers.

The Obama administration revived the practice of family detention after nearly 70,000 families rushed the southern border fleeing poverty and violence in Central America. At the beginning of the summer, Fresco points out, more than 10,000 families were being apprehended each month.

The administration responded by opening four family detention centers. It currently operates three centers in Karnes City and Dilley, Texas and Berks County, Pennsylvania. After the facilities were opened, detentions dropped 42 percent, Fresco said in his filing.

Since Gee’s decision was implemented in October, the numbers have gone up again. Family apprehensions were 187 percent higher in the last three months of 2015 compared to 2014.

The facilities have been the subject of intense public and media scrutiny by Congress and media outlets. McClatchy has reported on allegations of poor conditions and mistreatment. But U.S. Immigration and Customs Enforcement officials say the detainees are well cared for.

The administration’s decision to appeal has infuriated advocates fighting family detention.

“The government should quit trying to justify it’s jailing of refugee kids, it is the wrong thing to do and the wrong response to clear violence families are fleeing,” said Mohammad Abdollahi, advocacy director for the Texas-based Refugee and Immigrant Center for Education and Legal Services.

Email: fordonez@mcclatchydc.com; Twitter: [@francoordonez](https://twitter.com/francoordonez).

Chairman NADLER. The gentleman's time has expired.

The gentleman from Maryland.

Mr. RASKIN. Thank you, Mr. Chairman. When the zero tolerance policy ended after a court decision, I understand that hundreds of children continued to be separated from their parents at the border, and unless someone corrects me I believe they are still taking place to this day, on the criteria of either criminal history or best interest of the child. Is my understanding basically right, Chief Hastings?

Mr. HASTINGS. This is correct. Guidance was put out immediately that basically identified when child separation would occur, to the agents.

Mr. RASKIN. Can you tell us generally what the standard is there?

Mr. HASTINGS. I can. It is a referral for a parent/legal guardian for prosecution of a felony. Parent/legal guardian presents a danger to the child. Parent/legal guardian has a criminal conviction for violent misdemeanors or felonies. And then the parent or legal guardian has a communicable disease.

Mr. RASKIN. So I have gotten word of some disturbing stories of families being torn apart for reasons which appear not to fall within those categories, but I understand there is some generality and abstractness to the way that that memo is written. You are quoting from the June 27, 2018, interim guidance.

For example, if a child was separated from a parent because the parent had had a marijuana arrest or conviction, would you see that as outside of this memo or would you see that as an acceptable interpretation of this memo?

Mr. HASTINGS. It would be a case-by-case basis and I would want to see all of the facts of everything that was presented.

Mr. RASKIN. But assuming that there were no other salient facts offered, would it be enough that there was a marijuana conviction in someone's record?

Mr. HASTINGS. Again, it would be case-by-case. I would need to the totality of the circumstances to make that decision.

Mr. RASKIN. Well, I understand that it is case-by-case. That is how the justice system works. But we take case-by-case and then we apply rules. And what I am looking for is what is the rule that is to be applied on a case-by-case basis? Would a marijuana arrest or conviction fall within—and it doesn't look like it is prosecution for a felony, and it doesn't look like it is a criminal conviction for a violent misdemeanor or felony. Wouldn't that fall outside?

Mr. HASTINGS. Again, I would want to see the totality of the circumstances to see if there were other convictions, other things out there.

Mr. RASKIN. All right. So if you—you know, you are in charge and you have got enormous experience. If you cannot tell us, how is somebody, a line person in the Border Patrol, supposed to make that determination? I mean, can one make a decision one way about a marijuana arrest and then another officer make another decision about a marijuana arrest?

Mr. HASTINGS. If the agent has a question they will refer that through our legal counsel and work with our legal counsel to make

sure they are making the right decision in accordance with this guidance that has been put out.

Mr. RASKIN. The National Immigration Justice Center represented a woman, who I will call Maria, who was separated from her three-year-old for more than three months because Customs and Border Patrol thought that she had a criminal history in her home country. She was not reunited with her son until U.S. lawyers were able to obtain proof from El Salvador that she had no such record.

What steps are taken to prevent mistakes and errors, because the impact is obviously devastating on a family. None of us, I am sure, can contemplate having a missing or lost child for more than 15 minutes, much less for three months.

Mr. HASTINGS. Sir, I am not aware of this specific case but I would be glad to look at it and get back to you.

Mr. RASKIN. But what is being done to prevent mistakes from being the basis for decisions?

Mr. HASTINGS. So as we said earlier, as I said earlier, a separation is not taken lightly. We run every check, discuss—make sure, to the best of our ability that we can by running all criminal records checks, working with other entities, sometimes even foreign law enforcement officers, to make sure that everything that we are told is true and correct, and to the best of our due diligence make sure that we are doing things properly.

Mr. RASKIN. If a mother or father has HIV-positive status, is that alone enough to justify separation from their child?

Mr. HASTINGS. It is. It is a communicable disease, under the guidance.

Mr. RASKIN. Because we have reports of people being separated from their kids on that basis. Is that what we mean by communicable disease? It is not communicable through ordinary contact.

Mr. HASTINGS. This is the guidance that we follow.

Mr. RASKIN. And that came from our legal counsel or that came from the Chief of Border Patrol, or where did that come from?

Mr. HASTINGS. I am not sure if that came from legal counsel. We just see that—I believe that is defined as a communicable disease.

Mr. RASKIN. Do you have a list of the communicable diseases?

Mr. HASTINGS. Not with me. No, sir.

Mr. RASKIN. I mean, the flu is communicable. Would we separate parents from kids if a mom or dad had the flu?

Mr. HASTINGS. We are not, sir.²

Mr. RASKIN. Okay. I see my time is up. I yield back. Thanks.

Chairman NADLER. The time of the gentleman has expired.

² Statement Attributable to Brian Hastings, Chief, Law Enforcement Operations Directorate, U.S. Border Patrol: "As I noted multiple times when presented with hypothetical scenarios or specific allegations by members of the Committee, I would need to review the full facts and circumstances associated with a case before speaking definitively. To clarify my exchange with Rep. Raskin regarding potential reasons for separation due to communicable diseases, while HIV is not a communicable disease that would bar entry into the U.S., HIV does present additional considerations that may affect how migrants might move forward in processing. CBP would not separate families due to the communicable nature of HIV. Generally speaking, separations of this type are due to the potential requirement for hospitalization and whether it is in the best interest of the child to wait for the disposition of the their parent in HHS or CBP custody. Similarly, while a simple flu case would generally not be grounds for separation, complications requiring hospitalization may impact the best approach for maintaining custody of the child. For these reasons, Border Patrol makes all separation decisions on a case-by-case basis and these decisions are not taken lightly."

The gentleman from North Dakota.

Mr. ARMSTRONG. Thank you, Mr. Chairman. I wish that we—and I agree with my colleague on what due process is in convictions and those types of things, and I do, but I also know that I have seen reports that up to 92 percent of the crimes in El Salvador don't go punished. And I am not going to ask you because you all work with those countries and we are doing a lot.

But this is more than just checking a Clerk of Court record in some of these countries. We are going to vote today on TPS status for an entire country. We wouldn't be doing that if everything was wine and roses down there.

So I wish that their due process was where it was and that it was as absolute as that, and you could say, "Have you been charged?" "Have you been convicted of a crime?" and that was the final inquiry. But I suspect it is a little more complicated than that, and you are dealing with people—and oftentimes the level of the crime you pay in some of these countries is how big of a bribe you paid to get out of it.

So I think the real world is a little different than how we are interacting with that. So I think that is an important point.

But Mr. Edlow, we talk about family separation and we talk about all of these different things and asylum, but we have to start from the basis of that. We actually have a law, and the law is it is a Federal crime, under United States Code 1325, to illegally enter the United States. Correct?

Mr. EDLOW. That is correct.

Mr. ARMSTRONG. And this wasn't added to the Federal Code under President Trump.

Mr. EDLOW. No, sir. Congressman, the 1325(a) was added back in 1952.

Mr. ARMSTRONG. And this is unique for Federal crimes because it is actually a misdemeanor for a first offense, and we don't typically—the Federal Government isn't really in the business of like prosecuting Federal misdemeanors in other areas of the law, is it?

Mr. EDLOW. It would depend, I guess, on the crime that we are referring to. But I would note that with every administration the Department of Justice has an attorney general, and that attorney general sets priorities for prosecution.

Mr. ARMSTRONG. But—and you would agree one of the reasons—I mean, we are not locking a bunch of these people up if they get a misdemeanor conviction. I mean, we are better stewards of the taxpayers' dollars that that. We are deporting them and sending them back to where they go. And I am not talking in these asylum cases, I am just saying—whatever, they get convicted of a misdemeanor and then we work through ICE and get a deportation order.

Mr. EDLOW. That would be—after the prosecution phase they would be returned to the Department of Homeland Security for them to explore whatever relief they may have available, or protection, and ultimately to get that relief or protection or to be removed.

Mr. ARMSTRONG. I mean, one of the reasons for this is to deter illegal entry. Correct?

Mr. EDLOW. Well, Congressman, presumably when Congress enacted 8 USC 1325, one of the reasons was to encourage individuals to appear at the port of entry and to try to get admission at the port of entry as opposed to trekking through the desert, through the river, whatever else, to make a very dangerous journey into the United States.

Mr. ARMSTRONG. And there is another reason, too, because illegal re-entry is no longer a misdemeanor. Illegal re-entry of a previously deported alien is a felony, right?

Mr. EDLOW. Yes.

Mr. ARMSTRONG. So in order to have—I mean, if we have bad actors who continue to go back and forth, dealing with that, we need a deportation order. I mean, that is actually an element of the crime the second time.

Mr. EDLOW. For illegal re-entry? Yes, an element would be the deportation order.

Mr. ARMSTRONG. And so it is not only to defer the first track but is also to make sure that people understand that if you keep doing this, and continue to do it more than once, the consequences get more significant.

Mr. EDLOW. That is correct, Congressman, but I would also say that in terms of one of the most important parts of prosecuting 1325(a) is to really get at what Mr. Biggs was talking about earlier, with regard to the smugglers, the abuse of children that we are seeing across the border at this point. And I would note that in the last year there has been a marked increase in prosecutions for both violent crimes and crimes against children prosecuted by the Federal Government along the border.

Mr. ARMSTRONG. And at the same time, in the last year, parents traveling with children are not being referred for prosecution right now because of an Executive Order issued by President Trump?

Mr. EDLOW. Congressman, I would defer to the Department of Homeland Security as to who is being referred to the Department of Justice, but I believe that the injunction under Ms. L. and the Executive Order of June 20th is in effect and is being complied with.

That said, Congressman, I would also note briefly that, as it has been stated, the policy is no longer in effect. The zero tolerance prosecution policy is still an active memo.³

Mr. ARMSTRONG. I guess that is my question, is what is—it seems—and this goes to what Mr. Gaetz is seeing—it seems we have created now, through attempts at compassion, an absolute incentive to bring children across the border because it essentially a get-out-jail-free card.

Mr. EDLOW. Again, I would defer to the Department of Homeland Security as to how they are referring cases, who they are deciding to refer.

Chairman NADLER. The gentleman's time has expired.

The gentlelady from Washington.

Ms. JAYAPAL. Thank you, Mr. Chairman. I wanted to start by—since there have been so many calls from the other side that there

³Mr. Edlow requested this paragraph be changed to, "That said, Congressman, I would also note briefly that, as it has been stated, the zero tolerance prosecution policy is still an active memo."

hasn't been anything done, I wanted to quickly run through a timeline of what happened with the family separation policy.

On March 6, 2017, former DHS Secretary John Kelly announced that DHS was considering separating children from their parents to deter migration. A few weeks later, because of massive outcry across the country, on March 29th, Secretary Kelly announced that, no, DHS was not going to pursue family separation, and yet just a few months later we learned that DHS secretly piloted family separation in the El Paso Sector from July through November of 2017.

In February of 2018, responding to reports that family separation was occurring in the El Paso Sector, Ms. Lofgren and I sent a letter raising concerns with reports of family separation. That was circulated to my Republican colleagues. Not a single one signed on.

In April of 2018, the New York Times reported that DHS took more than 700 children from their parents between October 2017 through April of 2018. And then on May 4, 2018, then Attorney General Jeff Sessions announced Trump's Zero Humanity Family Separation Policy, and he named the principal purpose of family separation as deterrents and to criminally prosecute people.

I would remind my colleagues on the other side of the aisle, as they express their outrage that nothing has happened, that they actually controlled both chambers of Congress, the House and the Senate, and the White House, during this entire time that family separation was happening. The entire two-year period that they had control of the House, the Senate, and the White House, this was actually happening at the behest of the Trump administration.

They did not join us in oversight or having a single signing onto a single letter to address the humanitarian crisis, and ultimately, it was actually a court order that was—that ensured that children were reunited with their parents, on June 26th of 2018, that court order happened. But at that point nearly 3,000 children had been identified as separated, just during that time of the case.

Now today we know that family separations are still happening. As Mr. Edlow said, zero tolerance policy is still an active memo. I believe that is what you said.

So let me go to Chief Hastings. You mentioned earlier in your testimony, and I don't have the exact words so I wanted to make sure I get this right, you said something like "when we started we were tracking A numbers." What did you mean by "when we started"? What point of time were you referring to?

Mr. HASTINGS. So during zero tolerance we were basically—we had a tear sheet that went with the A number, to list the family member. So when reunification became—when reunification would take place that the child could be matched with the family easier.

Ms. JAYAPAL. Okay. And are you aware that on September 27th of 2018, the DHS Office of Inspector General found that DHS was, quote, "not fully prepared to implement zero tolerance or to deal with after effects?"

Mr. HASTINGS. So for Border Patrol, I mean, we are the arresters and set-up for prosecution, so we were prepared.

Ms. JAYAPAL. Okay. And so, you know, the report also said that DHS struggled to identify, track, and reunite families, and provided inconsistent information to migrants, thereby creating com-

munications issues with their children once they were separated. So somewhere between Border Patrol, ORR, ICE, the various agencies that were involved, we lost the data.

Children were separated from their families, and I would like to go to Commander White. The last time you were here—and thank you for your courage and your testimony—you testified that you warned three Trump appointees about the potential health risks of family separation more than a year before the policy became official. Is that correct?

Mr. WHITE. Yes, ma'am. I gave my first warning to my superiors on the 15 of February, 2017, after attending the first meeting that we had on that proposal.

Ms. JAYAPAL. February of 2017. Thank you. And you also testified that the best available evidence shows that separating children from their parents—and this is your quote—“entails very significant and potentially life-long risks of psychological and physical harm.” Is that correct?

Mr. WHITE. That is an established scientific fact.

Ms. JAYAPAL. Thank you. And Commander White, would you agree that if a child welfare official observed children being forced to wear clothing stained with vomit for weeks, deprived of basic essentials like adequate food, water, clothing, medical care, and dental hygiene, and leaving infants and toddlers in the care of other young children, wouldn't child welfare officials remove children from that household?

Mr. WHITE. Although I don't know if that occurred, there is no doubt that any competent child welfare professional would take such a step.

Ms. JAYAPAL. And yet here we are, the U.S. Government, detaining children in those conditions. It is absolutely abhorrent, and I am just—I continue to be stunned—

Ms. LOFGREN [presiding]. The gentlelady's time has expired.

Ms. JAYAPAL [continuing]. Madam Chair, and I yield back.

Ms. LOFGREN. The gentleman from Virginia is recognized.

Mr. CLINE. Thank you, Madam Chair, and I want to echo the concerns of everyone here who has told horrendous stories of children being separated from their parents, of children in conditions that are unacceptable, and I think that we all share—put politics aside—we all share these concerns and want to move to address them.

So I am glad to hear the timeline that the gentlelady presented, letters of concern as early as the last Congress that were going on. I can't help but also note that additional legislation as pushed during that same time that would have fixed Flores, offered by my predecessor, Congressman Chairman Goodlatte. Both of his bills would have included a fix to the Flores problem that we are encountering.

The Administration—it is my understanding while they have continued a zero tolerance policy, has put forward a memo opposing family separation. Is that my understanding?

Mr. EDLOW. Congressman, there was an Executive Order that opposed⁴ family separation.

Mr. CLINE. Executive Order.

Mr. EDLOW. And that Executive Order is being followed as is the injunction in the Ms. L. litigation.

Mr. CLINE. Thank you. I think we all want to see legislation pushed to address it, and we have seen some legislation move, one piece of legislation out of this committee, sponsored by Congressman Ruiz, that dealt with conditions at the border. There is another bill dealing with short-term detention standards.

You know, when I was in the State legislature for 16 years, we developed expertise in our specific areas. I was on the Courts of Justice Committee. I was on the Finance Committee, which dealt with tax policy, and when there was a tax question, when there was a bill to effect tax policy, that legislation went through the Finance Committee.

And so I am concerned that not only is there—I am pleased, first of all, to hear that there are legislative initiatives out there to address this issue, but I am concerned that these bills are not only being introduced—now I am glad to hear they are being introduced by members of our committee. The gentlelady from Texas, Ms. Escobar, introduced a bill dealing with immigration policy, but it was not sent here. The committee of jurisdiction has not gotten to review that bill. And we have people on both sides with significant expertise on those issues, who want to weigh in, who want to help. We have staff with decades of experience who should be able to assist as we seek to make the best policies possible, the best pieces of legislation possible, to come out of this committee, to come out of this Congress. The only way you are going to get solid, A-plus pieces of legislation is to put them through the committees of jurisdiction.

And so for Congresswoman Escobar's bill to be referred to a different committee I think is going to result in a piece of legislation that is not as good as it could have been, and that is just to put it mildly.

Let me ask Mr. Hayes, Director Hayes, we have heard a lot of discussion about the homestead influx shelter. Did that shelter open during the Trump administration or the Obama administration?

Mr. HAYES. Sir, the homestead site was first chosen and the initial contract and operator chosen in December of 2015, in the last administration.

Mr. CLINE. Was the contractor who operated the homestead influx shelter selected during the Trump administration or the Obama administration?

Mr. HAYES. It was chosen in December of 2015, in the last administration, sir.

Mr. CLINE. Are the services offered to the children under this administration different than the services offered in the last administration?

Mr. HAYES. No, sir.

⁴ Mr. Edlow requested this be changed to "restricted."

Mr. CLINE. And what has changed since it opened in 2016, until now?

Mr. HAYES. Just the census has gone up and down, but basically, you know, the shelter remains very similar to the way it was.

Mr. CLINE. Thank you. I yield back.

Ms. LOFGREN. The gentleman yields back.

Just a note. I appreciate his comments on jurisdiction. I remember many years ago when Henry Hyde was chairing the committee and we had an issue that related to an overlap between the Energy and Commerce Committee, and he said, "You know, Democrats are adversaries, but the Energy and Commerce Committee is our enemy." So there is that jurisdiction.

I will note that the Homeland Security Committee has jurisdiction over personnel in the Department of Homeland Security, but obviously all the policy issues are our jurisdiction, and I think the gentleman has identified a serious issue, and I wanted to acknowledge that.

Now I would recognize the gentlelady from Florida, Mrs. Demings, for five minutes.

Mrs. DEMINGS. Thank you so much, Madam Chair, and thank you to all of our witnesses for being here. As I listen to my colleague from Washington State describe the conditions of children and families, I initially thought that I was listening to a story about families in a distant land.

I know many of my colleagues on the other side of the aisle have tried to make this issue a partisan issue, but it is not. This issue is really about is American who we say we are? Do we treat people with dignity and respect, regardless of where they come from, and do we treat them fairly? That is what this issue is about. It is not a partisan issue. And I would say that we better get back on track, because the conditions and situations at the border is a loser. It is a loser for all of us. It is a loser for this nation, and we are better than what we are doing at the border.

Chief Hastings, I know you have a tough job, but let me just say this. As a law enforcement agency, CBP plays a critical role in our national security mission. But I also know what it is like to have been given an unjust, improper, and impossible mission or order. And as opposed to CBP being able to stay in their land and keep our nation safe, you are having to deal with overcrowding in facilities, deal with children, deal with families, long-term stays and detentions. That is not your mission.

And so I just want to know, but since you have been given that charge, do your officers or agents receive any specific training in dealing with children or the treatment of children in detention?

Mr. HASTINGS. Yes. We receive—yearly, we receive TDPRA training and Flores settlement training as well. But specifically as far as child care training, no.

Mrs. DEMINGS. No medical training to deal with—

Mr. HASTINGS. We do have—we have got over 1,200 EMTs that are trained. I think we are the largest only behind the Department of Defense. So we do receive that as well as basic EMT for all of our officers.

Mrs. DEMINGS. That is annual training, you said?

Mr. HASTINGS. It is. Yes, ma'am.

Mrs. DEMINGS. Have all of your officers or agents received the training to date?

Mr. HASTINGS. I would have to get back to you on that. I don't know what the status is on that.

Mrs. DEMINGS. Acting Secretary proclaimed that such training is a hard thing to comprehensively provide for law enforcement. Do you agree with that statement, and if so, why?

Mr. HASTINGS. In the current crisis any training is hard to provide right now, because, as I said earlier, we have got 40 to 60 percent of our agents just dealing with the crisis and border security mission is suffering. We have cancelled leave. We have cancelled a lot of task forces, pulled agents back from those, and those agents are specifically—it is all hands on deck. We have even cancelled some training.

Mrs. DEMINGS. Acting Secretary also mentioned, in his testimony, that the department is hoping to have contracted experts in CBP facilities that can identify mental health trauma in children. Have you completed that?

Mr. HASTINGS. Are you referring to the contract of medical assessment teams that we have in our facilities?

Mrs. DEMINGS. That is correct, but specifically dealing with mental health issues that children may suffer who are in your detention facilities.

Mr. HASTINGS. So what I can say is we started with about 20 medical health professionals through a contract company in all of our southwest border facilities. We have over 200 today. We are expanding those medical contract as quickly as possible, to provide that additional assessment. Again, it is short-term, not long-term, so if a problem is identified we will seek to get the proper help as quickly as possible, not in the facility.

Mrs. DEMINGS. Ms. Shaw, during your visits to the various facilities, do you agree with that assessment? Is that what you saw, contracted professionals in place dealing with some of the challenges in the facilities?

Ms. SHAW. So I can't share specifics as of yet. We are working on our capping report, which will address what we saw. We do observe volume of medical staff on site. I can tell you that we did see staff on our visits, some from Coast Guard, some from other agencies, to provide help under the circumstances.

Mrs. DEMINGS. And finally, Chief Hastings, if a medical emergency does occur, could you just kind of walk us through? I know there was some discussion in the past that there were not even medically trained personnel even close to a lot of the crises or medical crises that you interacted with in the field. Could you kind of walk us through how things have gotten better?

Mr. HASTINGS. Sure. As I said earlier, we now have over 200 medical nurse practitioners and physician assistants in our facilities through the contract. If they identify an issue, or if an individual in our detention says "I am sick" or "I need to see a doctor," they are taken to the hospital or the nearest medical facility to seek additional care. I mean, up to 80 per day right now, so far over 20,000 this fiscal year, have been referred for secondary medical care.

Ms. LOFGREN. The gentlelady's time—

Mrs. DEMINGS. Thank you.

Ms. LOFGREN [continuing]. Has expired.

Mrs. DEMINGS. Thank you, Madam Chair.

Ms. LOFGREN. The gentlelady from Pennsylvania is recognized for five minutes.

Ms. SCANLON. Thank you very much. Two to three weeks ago, multiple news outlets reported that DHS had received complaints that a 15-year-old Honduran girl, detained in Customs and Border Patrol's short-term custody in Yuma, had been sexually assaulted by an officer. During what was supposed to be a routine pat-down, the officer reportedly put his hands inside her bra, pulled down her underwear, and groped her. While assaulting her, the CBP officer said to have spoken with other CBP officers and laughed. And this has all happened in front of other detained migrants and officers.

I understand that the incident is still being investigated, but the reporting we have seen thus far is horrifying, and this is not the first time we have heard allegations from migrants hurt in other government facilities. In fact, in 2016, the Berks County Family Detention Facility in Pennsylvania had such allegations, and that is the facility that Representative Dean and I visited just last week.

All of these incident raise serious questions about institutional response to bad actors and what protections should be in place to protect an extremely vulnerable population—minors, people who may have language barriers, and people who are in custody.

Chief Hastings, has the agent accused in the Yuma case been identified?

Mr. HASTINGS. Ma'am, to my knowledge, I don't personally even know if it is a Border Patrol agent or if it was someone from ICE that was transporting the individual. I know that the investigation is currently under—I believe the Office of the Inspector General's investigating that case now. I first heard of the case, by the way, when it went out in the media. That is the first time I had heard of the case.

Ms. SCANLON. Okay. So Customs and Border Patrol is not doing any independent investigation. It has just been referred to the Office of Inspector General?

Mr. HASTINGS. To my knowledge, I believe the Office of Inspector General has that case.

Ms. SCANLON. So Customs and Border Patrol is not doing anything separately?

Mr. HASTINGS. Not to my knowledge, ma'am.

Ms. SCANLON. But officers—Customs and Border Patrol officers in Yuma are under the jurisdictions of CBP. Correct?

Mr. HASTINGS. CBP, OPR, that is our internal mechanism that investigates Border Patrol officers, but, I mean, I believe right of refusal, I believe OIG gets the first crack at the case.

Ms. SCANLON. Okay. Has CBP taken any efforts to ensure that such incidents won't happen in the future, in any sector?

Mr. HASTINGS. Absolutely. As I said, we just learned about this, but, I mean, we have posters and things that basically say open to any complaints, provide the numbers for any complaints that any detainees in our facilities have to call. We take all of these allegations seriously. We will seek to—you know, if the allegations are

found to be true, then we will take immediate action against those employees, if they are indeed true, if those allegations are true.

Ms. SCANLON. Is there any training with respect to who should be performing pat-downs?

Mr. HASTINGS. There is. There is training and policies. Generally it is preferred to be a member of the same sex that does those pat-downs. That is not always available, but generally that is the guidance that is put out to the field.

Ms. SCANLON. And that includes with respect to children?

Mr. HASTINGS. Children as well. It is same sex, generally. It is obviously not as—yes, it is same sex as often as we can. There are some remote locations in the field where we have to do quick cursory searches to make sure that the individuals don't have weapons, and if there isn't anyone available and then the officer, for officer's safety, needs to do that search, will perform that search and do so, as professionally as possible.

Ms. SCANLON. Okay. But all the reporting said that this incident happened at the holding facilities in Yuma, so that would not be out in the field.

Mr. HASTINGS. That is correct. There are times that an opposite-sex member or a same-sex member may not be available, and our policy does allow for cursory searches in those cases.

Ms. SCANLON. Ms. Shaw, it sounds like the ball was passed to you, so I understand your office has announced an investigation here. Are there ongoing efforts to plan a wider investigation into allegations of sexual assault in CBP facilities?

Ms. SHAW. We do have work underway looking at the law enforcement components within Department of Homeland Security and how they handle allegations of sexual harassment and sexual misconduct. That work is, I believe, out of field work and we are in the process of drafting, so we will have work product out on that in the near future.

Ms. LOFGREN. The gentlelady's time has expired, and we will turn now to the gentlelady from Texas, Ms. Garcia.

Ms. GARCIA. Thank you, Madam Chair. Before I begin my questions I wanted to thank Representative Cline for acknowledging that we, in fact, have been drafting bills to try to address a lot of these issues. I really did take exception with Ranking Member Collins making a suggestion that all we are doing is having hearings but that there is no action, that we believe to file bills. And I believe she said something like, you know, "Let's do our work. Let's file bills."

So, Madam Chair, I wanted to remind Representative Cline that Chairman Thompson also H.R. 3731. The bill he was referencing from Representative Escobar is 2203. And, of course, the DREAM Act, which we did get out of this committee and has passed the House, is H.R. 6, the DREAM Act.

Additionally, the Congressional Hispanic Caucus has filed numerous bills—in fact, it is two pages worth of bills addressing many of the issues that have been raised today, everything ranging from Representative Gallegos' bill about site visits to detention centers, to one of mine—I have filed several—about stopping shackling and detaining of pregnant women. I mean, the list goes on.

So any representation that all we are doing is having hearings and this is all for—I guess for fun—I am not quite sure what message she was trying to get across, but it is just simply not true. And I just want to make sure that the folks watching and listening know that these issues are serious.

And, Commander, I recall when you were here in February, that you said, as you mentioned to Representative Jayapal, that you took objection and shared your concerns to the Acting Director then, Mr. Lloyd, was it?

Mr. WHITE. Yes. Among those two I raised those concerns.

Ms. GARCIA. My note just says that you raised concerns. And then later during the hearing, because I do take some notes, you actually said that you just—you are against family separation, as a child welfare professional.

Mr. WHITE. Every career member of the ORR team was opposed to the idea of family separation.

Ms. GARCIA. So you were opposed to it then. You are still opposed to it?

Mr. WHITE. I am.

Ms. GARCIA. Right. So are you concerned about the reports that Ms. Shaw has detailed, about the conditions that her team saw firsthand, as many of us have seen as we have visited centers?

Mr. WHITE. My focus remains on ORR's and HHS's child welfare mission. Border stations are a matter that my colleagues from Border Patrol could speak to.

Ms. GARCIA. But as a child care professional, are you concerned about some of the conditions that some of the children are being placed in prior to coming to ORR?

Mr. WHITE. It is because Border Patrol facilities are for short-term holding that it is so important that all children move in the 72-hour time frame into ORR. ORR shelters are appropriate settings for children.

Ms. GARCIA. Well, I was trying to get you, as a child care professional, give me an opinion on the holding facilities, but I will move on.

You know, former First Lady Laura Bush actually said, in an op-ed piece, in the Washington Post back in June of 2018, when this first started, that they were eerily reminiscent of internment camps. On the other side we had Laura Ingraham say that they were essentially summer camps. And recently a group of evangelical ministers who visited one of the sites in Texas said they were summer camps.

Let me ask each of you just yes or no, quickly, if you have a child, or if you don't have children and you have a little niece or nephew, is this a summer camp that you would go and place your children in today?

Mr. Edlow, I will start with you. Just yes or no. I don't need an explanation.

Mr. EDLOW. I can't give you a yes or no. I can say if the choice is between being in the desert or being in a secure facility, a protected facility—

Ms. GARCIA. Well, that is not the question. The question is would you place your child, niece, or nephew in those facilities today? If it is a summer camp—

Mr. EDLOW. What I am saying is if the choice is between being out in the——

Ms. GARCIA. That is not the question, sir. You are a lawyer. I am a lawyer. Answer the question.

Mr. EDLOW. I can't give a yes or no.

Ms. GARCIA. All right. Ms. Shaw.

Ms. SHAW. These are detention facilities and I would not want my children in detention facilities.

Ms. GARCIA. Commander White.

Mr. WHITE. Short-term holding facilities are no appropriate places for children.

Ms. GARCIA. So the answer is no?

Mr. WHITE. Correct.

Ms. GARCIA. Director Hayes.

Mr. HAYES. I too would not want my children in a detention facility, ma'am.

Ms. LOFGREN. The gentlelady's time has expired. The chief will be allowed to answer.

Ms. GARCIA. I just have one more.

Mr. HASTINGS. Ma'am, I would just clarify, I think that was an FRC that the article was about. But regardless, we don't want children in our facilities longer than 72 hours.

Ms. GARCIA. But would you put your child there?

Mr. HASTINGS. To me it is not a yes-or-no question. I wouldn't put my child in that circumstance of crossing illegally.

Ms. GARCIA. You just refuse to answer.

Mr. HASTINGS. Ma'am, it is not a yes or no answer to me.

Ms. LOFGREN. The gentlelady's time has expired.

The gentleman from Colorado is recognized, Mr. Neguse, for five minutes.

Mr. NEGUSE. Thank you, Madam Chairwoman, for holding this important hearing and for your leadership in this regard and on so many issues, with respect to immigration policy here in our country.

I just—I want to—I was not planning on this, but I have to follow up on the exchange from my colleague, the distinguished lady from Texas, because, Mr. Edlow, I am dumbfounded of how you could not answer that question with a simple no. Of course you do not want your children to be kept in this type of detention. And the fact that all of your colleagues are willing to say that and that you are unwilling to do so is confusing to me. But in any event we will proceed with my questions.

Chief Hastings, my understanding is that you testified in front of the Senate a few months ago, I believe, and my understanding from your testimony is there was some exchange about supplies at these facilities, at the border facilities. You might recall that?

Mr. HASTINGS. Yes, sir, that is correct.

Mr. NEGUSE. And my sense from reviewing your testimony is that it was your position that the facilities have soap and toothbrushes and some of the other items that they are required to have, and you described that to the Senate. Do you recall that?

Mr. HASTINGS. That is correct.

Mr. NEGUSE. And I assume you would agree with me that those items—soap, toothbrushes, that those are central, that they are key

to making sure that the facilities have safe and sanitary conditions, to the extent that the children, or adults, for that matter, are being detained. Is that safe to say?

Mr. HASTINGS. It is.

Mr. NEGUSE. All right. Thank you.

Mr. Edlow, do you agree with Chief Hastings?

Mr. EDLOW. I am sorry. Can you repeat the question?

Mr. NEGUSE. The question is do you agree with Chief Hastings? Chief Hastings just testified that he believes soap and toothbrushes are central to providing safe and sanitary conditions for those who are detained.

Mr. EDLOW. Congressman, I believe you are referring to the—

Mr. NEGUSE. I am not referring to anything. I am asking you a question. I don't know if you—Chief Hastings just testified to a very simple question about whether soap is considered central to providing safe and sanitary conditions.

Mr. EDLOW. I understand that. Congressman, I believe we are getting very close to matters that are under active litigation.

Mr. NEGUSE. Being very close—

Mr. EDLOW. I would not be able to comment on those matters.

Mr. NEGUSE. I want to reclaim my time. Being very close to matters in litigation is not—I am not asking you about a pending litigation matter. I am asking you whether or not you agree with Chief Hastings that soap and toothbrushes are considered central to providing a safe and sanitary condition for those in the custody of CBP. It is a pretty simple yes or no, and the Chief is willing to say yes. I would hope you would be willing to say yes, as well.

Mr. EDLOW. Of course, toothbrushes and soap are important sanitary provisions⁵ to be issued to anyone in the custody of the government. That said, but—

Mr. NEGUSE. I appreciate you saying that.

Mr. EDLOW [continuing]. In terms of what you are getting at with the comments made, I would just ask the entire committee to review the entire record of the arguments made before the Ninth Circuit, and as I said, I can't comment on anything further about the substance of the arguments made at the Ninth Circuit.

Mr. NEGUSE. Well, look. I have reviewed those arguments. Obviously they are a matter of public record, so members of the public and citizens can review them for themselves. I believe that many in the country were shocked by the arguments that were made in front of the Ninth Circuit, in the case that you are describing, in the *Flores v. Sessions* case.

But suffice it to say, I think you have perhaps clarified the record today in saying that those are items that are central to providing safe and sanitary conditions for those who are detained in the custody of CBP. And given that, I would hope that the Department of Justice, which is the department that you work for, would reconsider its position, the position that it has taken in that litigation, because I don't know how you can reconcile the statement you just made with the position that the department has taken in that case, and I suspect in many other cases.

⁵ Mr. Edlow requested this be charged to "items".

I would just close—I was not here for the exchange but I want to make sure we have a chance to cover this, because one of my colleagues had mentioned it. You stated earlier, Mr. Edlow, that the zero tolerance policy is still, quote “an active memo.” Is that correct?

Mr. EDLOW. That is correct.

Mr. NEGUSE. Okay.

Mr. EDLOW. It has not been rescinded, I should say.

Mr. NEGUSE. Okay. Courts, my understanding, put a stop to that policy last year, through a preliminary injunction, which cites both the Flores settlement agreement and Trafficking Victims’ Protection Reauthorization Act. So why hasn’t that policy been withdrawn? Why hasn’t it been rescinded?

Mr. EDLOW. Congressman, I think we are conflating issues here. The zero tolerance policy that I am referring to under the April 6th memo, states that the U.S. Attorney’s Offices along the southern border will accept for prosecution, to the extent practicable, and in consultation with DHS, all cases that are referred for prosecution, for improper entry. The decision about who to refer is a decision that is made from our law enforcement partners, so in this case from Border Patrol, from Customs and Border Protection.

So the memo that we are referring to here is still in effect, that cases that are referred are being—and they are being accepted provided they are amenable to prosecution. That is completely, wholly, separate and apart from any—who is being referred.

Now certainly the Federal Government is complying with the injunction, Ms. L., as you reference, as well as with the President’s Executive Order of June 20th. My understanding, and I would defer to the Department of Homeland Security, but my understanding is that parents that are entering with children are not being referred under this memo, but the memo itself is still being—it is still being followed.

Ms. LOFGREN. The gentleman’s time has expired.

The gentlelady from Georgia is recognized for five minutes.

Mrs. MCBATH. Thank you, Madam Chair, and thank you to each of you for coming here to testify before us. As a mother, I have to say it just truly breaks my heart to hear the stories that my colleagues and I continue to hear, and the idea that separations appear to be going on is just unconscionable.

The American Academy of Pediatrics said, in a statement, that separating children from their parents contradicts that the Academy stands for as pediatricians. They noted that immigrant children seeking safe haven in the United States should never be placed in detention facilities. Studies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression, and post-traumatic stress disorder. Conditions in United States detention facilities, which include forcing children to sleep on cement floors, open toilets, constant light exposure, insufficient food and water, no bathing facilities, and extremely cold temperatures are traumatizing for children. No child should ever have to endure these conditions.

The American Medical Association sent you a letter urging the Trump administration to promptly end the practice of separating

children from their families at the southern border, citing emotional and physical distress associated with this policy. The zero tolerance policy has and continues to fracture families at our border as punishment for seeking refuge in the United States.

Chief Hastings, if you will answer my questions please, in just a yes or a no. Are you aware of the research on trauma caused by parental separation?

Mr. HASTINGS. I have not read those reports. No, ma'am.

Mrs. MCBATH. Are you aware of the effects of trauma on child development?

Mr. HASTINGS. Again, I have not read those reports.

Mrs. MCBATH. Are you aware of the comments by the American Academy of Pediatrics?

Mr. HASTINGS. I have not read the reports, ma'am.

Mrs. MCBATH. Did you read the letter from the American Medical Association calling for an end to family separation because of the emotional and physical stress it causes to parents and children?

Mr. HASTINGS. I have not read the letter. I haven't seen it.

Mrs. MCBATH. Did you make any changes in CBP policy at all? Apparently not, because you have not read the report. Correct?

Mr. HASTINGS. I haven't read the reports but we have outlined how the policy was changed after the Executive Order was put out. I have provided that, when we separate children now, from here on out, our guidance.

Mrs. MCBATH. Okay. Does this committee have that guidance?

Mr. HASTINGS. They do. Yes, ma'am.

Mrs. MCBATH. Okay. Thank you. So to your understanding, have any changes really been made to training of CBP agents and officers with this new guidance?

Mr. HASTINGS. We have provided the specific guidance, which you have, as I said, and basically it is what we were doing prior to the zero tolerance initiative.

Mrs. MCBATH. Did you implement a system that would like each child to the parent or family member that you tore them away from?

Mr. HASTINGS. We document the familial relationship with tear sheet that is provided, as well as in the A file, or the file for the individual, yes.

Mrs. MCBATH. And I am going to ask Inspector General Shaw—my time is short—is DHS providing trauma-informed mental health services to children and parents who have been separated or those who are detained in locked facilities?

Ms. SHAW. I am sorry. I don't have details on that at this point. It is an issue. Access to medical care is an issue that we are looking at as part of the broader review of our unannounced inspections. But we, within DHS OIG, don't have the subject matter expertise at this point to evaluate the quality of that care, but we are looking at access to care and will be able to put some reporting out, hopefully in the fall.

Mrs. MCBATH. So when you do conclude your reporting you will make that available to this committee. Correct?

Ms. SHAW. We will, and it will be published for the public, as well.

Mrs. MCBATH. Okay. Thank you.

I just have to say this in closing. We have absolutely got to end the physical and mental harm faced by our children at the border. These policies are harming innocent children and it simply has to stop. And I yield back the balance of my time.

Ms. LOFGREN. The gentlelady yields back.

We have been called for votes, but I think we can go to one more individual for questions, and that would be Mr. Stanton from Arizona, who is recognized for five minutes.

Mr. STANTON. Thank you. Securing the border and treating children humanely are not competing values, and this administration's family separation practice deeply concerns me. I am a father with two children, 9 and 12, and the stories that I have heard, situations that I have witnessed, they tug at the heart. And I am trying to best understand how this administration and the agencies who carry out this practice believe it is acceptable.

Just last week I visited an Office of Refugee Resettlement shelter in Phoenix that was specifically for children under the age of 5, a tender-aged children. And let me be explicitly clear—this was not a shelter for teenage moms and their babies. It was a shelter specifically designed for babies and young children who had been separated.

When I walked into the nursery I saw babies as young as 10 months old, held in government custody, cradled by adults unknown to them. ORR staff informed me that each child had been separated from their families and that several had been separated from their parents. I want to use my time today to follow up on what I saw and what I heard.

Director Hayes, how many ORR-funded shelters are in our country specifically for tender-aged children, 5 years old and under?

Mr. HAYES. I don't have that exact number, sir, but I would be happy to get back to you. I know we have almost 170 shelters and facilities across the whole nation.

Mr. STANTON. I appreciate that.

Mr. HAYES. Yes, sir.

Mr. STANTON. The facility I visited in Phoenix started to take in children from the border just five weeks ago, and ORR staff informed me that there are plans to contract with a second facility for tender-aged children in the near future.

Director Hayes, yesterday you testified before the Appropriations Subcommittee that HHS plans to double its permanent bed capacity to 20,000 by December 31, 2020. Who projected this increase and what is the basis for the projection?

Mr. HAYES. So, thank you for the question, Congressman. I would say that that is a number that we have used in reference to being up to 20,000. It is not quite doubled. We have about 12,000 permanent licensed beds in our shelter. As I said earlier in my testimony today, it is the commitment of myself and Assistant Secretary Lynn Johnson at the Administration for Children and Families, along with Secretary Azar, that we have plenty of permanent, state-licensed facilities in partnership with the states and the communities that you represent, in order to provide care for these children that are referred to us.

Mr. STANTON. Of the 20,000 that you mentioned, how many are tender-aged children? How many tender-aged children do you estimate, or will receive between now and December 31, 2020?

Mr. HAYES. I don't have an estimation on that, sir.

Mr. STANTON. Director Hayes, on July 3rd, an HHS spokesperson said that the Trump administration was evaluating vacant properties that would serve as a permanent housing facility for unaccompanied children, looking at Phoenix, Dallas, Atlanta, Houston, or San Antonio area. Since the announcement, my staff has learned that Atlanta is no longer under consideration. Is Phoenix still under consideration for such a facility?

Mr. HAYES. Yes, sir, and to be specific, Congressman, those facilities are what we would consider at the sub-prospectus level in partnership with GSA, trying to identify both smaller and medium-sized shelters that we can get licensed in the respective state.

Mr. STANTON. Okay. I will be following up. I am short on time but I will be follow up with a lot more specifics about the decision-making—

Mr. HAYES. Absolutely.

Mr. STANTON [continuing]. On where that facility will be located.

Mr. HAYES. Arizona is a fabulous partner with ORR in the care of these children.

Mr. STANTON. Several children arrived sick at the ORR facility I visited. Staff said they don't believe DHS is supposed to transfer sick children to their custody, but their experience is that DHS employees give children Tylenol to merely mask the symptoms and still transfer over the sick children to them. Those are their words, not mine.

Chief HASTINGS, why are so many children sick when they leave DHS custody and are placed into ORR facilities?

Mr. HASTINGS. So sir, we have received an incredible amount, as I mentioned earlier, 66,400 UACs so far this year. We have done the best we can. I gave the numbers of how we have increased our medical capabilities across the border, and we do the best we can to get individuals who are sick basically out of our care and into secondary health care facilities whenever possible.

So we are doing the best we can with the resources that we have, and we are not, to my knowledge, turning over sick kids.

Mr. STANTON. The youngest baby I saw was 10 months old—10 months of age. Chief Hastings, what specific training do Border Patrol agents receive for separating a baby who might still be breastfeeding?

Mr. HASTINGS. Sir, I don't know what the specific event is about. I would want some more details. But, I mean, again, the thing that we want to do—and you have heard the rest of the board give testimony as well—is get them out of Border Patrol custody, into the proper HHS facilities to deal with this incident. But I don't know any of the details.

Mr. STANTON. Breastfeeding wasn't specific to one child. It involves all children of that age. And so I will follow up and ask more in writing and hopefully get answers from you about what training you are giving to Border Patrol agents as it relates to separating children who maybe still breastfeeding with their mothers.

I yield back.

Ms. LOFGREN. The gentleman yields back.

I note that although we have five minutes remaining, only 50 people have voted so far, so we will ask the gentlelady from—who is next?—from Pennsylvania—all right.

Then we will go to the floor for votes and we will recess. We will reconvene promptly after votes. But since there is a 15-minute vote and two 5-minute votes, probably we won't get back until 1:40. So you can go downstairs, get a cup of coffee or a snack, and we will see you right after votes.

Thank you. We are in recess.

[Recessed.]

Ms. LOFGREN. We are checking to see if our friends on the other side of the aisle are back yet. But because we have a very tight schedule and the next person to ask a question is a member on our side of the aisle, I am going to turn to the gentlelady from Florida, Ms.—oh, she has yielded her time.

Ms. JACKSON LEE. Not her time, but her place.

Ms. LOFGREN. Not her time, but her place in line to the gentlelady from Texas, Ms. Jackson Lee, who will be recognized for 5 minutes.

Ms. JACKSON LEE. I am most grateful, first of all, to my colleague from Florida who yielded—because I know her passion—not her time, but her place in line. And I thank the chairwoman for her leadership, and I want the members of the witness panel to realize this is a bipartisan hearing of Judiciary. And I have eternal optimism, and I believe that we will find a resolution to getting it right.

And the only thing that I ask, I am a lifer on the Homeland Security Committee. That means that I have been on the committee since 9/11, and I have engaged with CBP, Border Patrol, for all of those years, and I have been to the border in any number of presidential leadership, which includes President Clinton, President George W. Bush, and of course, President Obama.

I have seen the surges. I have seen the increases in the numbers of children. I have seen unaccompanied children. My colleague from California and myself, I think, Congresswoman, if you remember, late at night we were at a bus, as we were seeing the numbers of unaccompanied children come down. I think it was about 2014 or so.

And it was even earlier than that, and I believe that we began with her leadership to write the structure for HHS that was not in place before. We were hoping to do a good thing. So let me—and it was. But let me go to you, Director Hayes, and ask you what is the census that you now have of unaccompanied children that are basically detained in these facilities by way of—having them sent to you by way of ICE?

Mr. HAYES. So I don't have the specific number sent to us from ICE, but I can tell you as of this morning, we have 9,984 children in our care at the shelters of HHS, ma'am.

Ms. JACKSON LEE. And do you know how many of those children have been there over 100 days?

Mr. HAYES. I don't have that exact number, ma'am, but I will be happy to get that back to you. I will note that we have approxi-

mately 3,200 Category 4 children in our care right now, which means there are no—

Ms. JACKSON LEE. I am sorry?

Mr. HAYES. Category—approximately 3,200 as of last Friday that are Category 4, which means there is no identifiable sponsor at this time in the United States. But we will get you the answer on the 100-plus days as well, ma'am.

Ms. JACKSON LEE. And do you know how many of those are in the recent—say, January 2019, are they recently, recently unaccompanied? Have you brought together all of the family members of unaccompanied children?

Mr. HAYES. Since—since—

Ms. JACKSON LEE. Since January 2019.

Mr. HAYES. I would say, no, that we have not. Again—

Ms. JACKSON LEE. All right. So I would want a report on that. Let me go to this because I don't have time. This past Saturday, I went to the Casa Sunzal Southwest Key's program that has suffered enormous protests in my district. And we went with just myself and one staff with permission after being told for 2 weeks that you had to have a process. I take issue with that process, and I want to have a written document on what the process is for Members to visit.

In the course of it, we saw a young man, and when we went in, we asked the young people how many wanted to speak to us. But we had a general conversation of, you know, we are supporting you, we wish you well, et cetera. We have a gentleman, Seli, 4 months in detention. We have another one 3 months in detention.

And at the same time, we had two staff persons—Dino Federico, Jose Gonzalez—who were blocking—of your HHS, who were blocking a Member of Congress from talking to young people, not talking about legal matters, but talking about what their issues were and to say how long they have been there. What is your policy for disrespectful staff that was blocking the regular staff, the staff of the detention center, from engaging in positive conversation to help us move this process along?

Mr. HAYES. Well, I will just say first off, Congresswoman, I would not want to hear of any of my staff being disrespectful. I am aware of your visit over the weekend, and I believe that my team would classify what happened at the shelter in a slightly different way than you would, ma'am, with all due respect.

In regards to Members of Congress interacting with the children, we have never stopped that. I have escorted several Members of Congress and allowed them to interact with the children. But sitting down and having personal, you know, conversations with these children, we do not allow that.

Ms. JACKSON LEE. Well, I want a full report. I hear you gaveling, Mr. Chairman, but this is very important. I want a full report. I want a meeting, and I want you to hear the truth because your employees were atrocious, and I am saying it on the record.

So whatever they might have characterized, I was interested in helping the children. You have 9,000 children there?

Mr. HAYES. No, ma'am.

Ms. JACKSON LEE. Excuse me. You have 9,000 children in the system.

Mr. HAYES. Yes, ma'am.

Ms. JACKSON LEE. You have little Roger that was taken away at 9 months old. You have children that you cannot identify any relative that was taken away under this administration. And as well, you have children that you cannot find one person to associate. You are backlogged, and you have children there that are longer there than 100 days. You are backlogged.

So you need to look into your own glass house, and I expect to have you in my office to hear what processes you have in place, and so you can hear, rather than a written document, of individuals who were inappropriate because the staff people there finally, my final words, were perfectly okay. There was nothing untoward going on, including taking pictures with me.

So your staff were out of order. And whatever they might have reported to you, you need to be in my office so we can understand each other.

I yield back, Mr. Chairman.

Chairman NADLER. The gentlelady yields back. The gentlelady from Florida is recognized.

Ms. MUCARSEL-POWELL. Thank you, Mr. Chairman.

Mr. Hayes, this is not the first time we meet.

Mr. HAYES. No, ma'am. Good to see you again.

Ms. MUCARSEL-POWELL. Good to see you. I want to talk to you about Homestead.

Mr. HAYES. Yes, ma'am.

Ms. MUCARSEL-POWELL. And the first quick point that I just want to ask you, it has been brought to my attention that the City of Homestead has sent multiple requests to your office particularly talking about the name of the facility, and they haven't received any responses.

You can imagine what it is doing to this thriving community that I represent, that I am very proud to represent. Are you willing to please make a quick response to the City of Homestead officials?

Mr. HAYES. Yes, ma'am. I will respond back to the mayor.

Ms. MUCARSEL-POWELL. Thank you.

So on May 29th, you gave me a tour of the Homestead detention facility, and you told me that you did not at that time have a hurricane plan. I have been continuously asking for a hurricane plan, and just 24 hours ago, right before the hearing, I was finally able to receive the hurricane plan. So I am grateful for that.

Mr. HAYES. Yes, ma'am. And if I may, I believe we are going to be briefing you in person with my emergency management team in a couple of weeks down in your district.

Ms. MUCARSEL-POWELL. I am going to be down on Saturday.

Mr. HAYES. Okay.

Ms. MUCARSEL-POWELL. So maybe someone can do that on Saturday.

A month ago, you also told me the last time that I visited that there were over 2,700 kids at the facility. But according to your office, now nearly 1,400 kids have been moved out of Homestead just in the past 2 weeks. So I have a lot of questions.

Mr. HAYES. Yes, ma'am.

Ms. MUCARSEL-POWELL. And I don't know if you were able to see my letter that I sent to you on July 5th with over 50 questions to

your office, which I have yet to receive a response from your office on that. And——

Mr. HAYES. We have seen it, ma'am, and we are working on those responses.

Ms. MUCARSEL-POWELL. Yes, it has been over 3 weeks. And Mr. Chairman, I would like to ask for unanimous consent to introduce this letter for the record.

Chairman NADLER. Without objection.

[The information follows:]

REP. MUCARSEL-POWELL FOR THE RECORD

DEBBIE MUCARSEL-POWELL
26TH DISTRICT, FLORIDA

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Congress of the United States
House of Representatives
Washington, DC 20515-0926

July 5, 2019

The Honorable Jonathan Hayes
Office of Refugee Resettlement
U.S. Department of Health & Human Services
Washington, D.C. 20201

Dear Director Hayes:

This letter serves as a follow up to numerous requests that I have made to your office, both in person and through official correspondence, seeking information relating to the operation of and living conditions at the Homestead Temporary Shelter. To date, my office has not received any official correspondence from you regarding my repeated requests to view the hurricane and natural disaster evacuation plan allegedly in effect for the Homestead Temporary Shelter.

In yet another effort to obtain information from your office about the Homestead Temporary Shelter, attached to this letter you will find a set of inquiries relating to the children being held in the facility, the living conditions at the facility, and the operation of and processes utilized by the facility. *See Exhibit A.* As with prior requests, I ask that you respond to these inquiries fully and promptly; a failure to do so will force my office to explore legal avenues to obtain this information.

Thank you for your consideration of this request. I look forward to your prompt response.

Sincerely,



Debbie Mucarsel-Powell
Member of Congress

EXHIBIT "A"

*Requests for Information
The Office of Rep. Debbie Mucarsel-Powell*

- 1) As of the date of your receipt of this letter, how many children are being held at the Homestead Temporary Shelter?
- 2) What is the maximum capacity of the Homestead Temporary Shelter?
- 3) When is the Homestead Temporary Shelter expected to reach maximum capacity?
- 4) As of the date of your receipt of this letter, what is the average length of care for children currently held at the Homestead Temporary Shelter?
- 5) Of the children currently held at the Homestead Temporary Shelter, what is the longest length of care?
- 6) Since January 1, 2017, what is the overall longest length of time that a child has been held at the Homestead Temporary Shelter?
- 7) How many children currently held at the Homestead Temporary Shelter have sponsors that have been identified as living in the United States?
- 8) Once a sponsor for a child has been identified, what is average length of care for a child at the Homestead Temporary Shelter prior to release to the sponsor?
- 9) Please list all children who have been held or are currently being held at the Homestead Temporary Shelter since January 1, 2017 who were separated from their parents and/or legal guardians as a result of the Administration's "zero tolerance" policy. For each child, please provide the name of the child, the name of the separated parent and/or guardian, the date at which separation occurred, the length of separation, and the location of the parent and/or guardian.
- 10) Of the children currently held at the Homestead Temporary Shelter, how many have siblings that are also being held at the Homestead Temporary Shelter?
- 11) Of the children currently held at the Homestead Temporary Shelter, how many have siblings being held at a different temporary shelter, permanent living facility, or location in the United States?
- 12) Please describe the living arrangements for the children held at the Homestead Temporary Shelter, including the number of children assigned to a room, the ratio of bathrooms to children, and the personal privacy considerations afforded to each child.

Exhibit "A"
Rep. Debbie Mucarsel-Powell

- 13) Please describe the clothing and personal hygiene items issued to each child upon arrival, and the frequency at which these items are re-issued throughout a child's care at the Homestead Temporary Shelter.
- 14) Does the Homestead Temporary Shelter adhere to minimum nutritional standards for the food served to the children held at the facility? If yes, please describe nutritional standards in detail and their relation to the U.S.D.A. National School Lunch and School Breakfast Programs nutritional standards, if any.
- 15) Please produce all breakfast, lunch, and dinner menus, as well as any additional snack menus, for food served to children at the Homestead Temporary Shelter in 2019.
- 16) Please describe the educational services provided to children held at the Homestead Temporary Shelter.
- 17) Please describe the recreational opportunities provided to children held at the Homestead Temporary Shelter, including the activities and associated equipment available and the time allotted each day for recreation.
- 18) Please describe the legal services available to children held at the Homestead Temporary Shelter and the frequency at which these services are administered.
- 19) Are legal services available in Spanish to children held at the Homestead Temporary Shelter?
- 20) Are children held at the Homestead Temporary Shelter provided with a legal orientation regarding their rights and status upon their arrival to the facility? If yes, please describe in detail the substance of the orientation and the list of languages in which this orientation is provided. In addition, please produce any and all documents, pamphlets, or guides given to children held at the Homestead Temporary Shelter during the orientation.
- 21) Are free personal phone calls available to be made by children held at the Homestead Temporary Shelter? If yes, please describe the frequency at which these personal phone calls are available, the length that calls are allowed to proceed, the location of each phone available to the children held at the Homestead Temporary Shelter, and whether these calls are made in a private setting.
- 22) Are children held at the Homestead Temporary Shelter able to send and/or receive mail? If yes, please describe the mailing services available to the children held at the Homestead Temporary Shelter.
- 23) Please describe the medical services (physical and behavioral) available to children held at the Homestead Temporary Shelter.

Exhibit "A"
Rep. Debbie Mucarsel-Powell

- 24) How often are medical examinations performed on the children held at the Homestead Temporary Shelter?
- 25) What medical staff is physically present at the Homestead Temporary Shelter each day?
- 26) What is the average medical staff-to-child ratio at the Homestead Temporary Shelter for 2019?
- 27) Please describe process under which a child held at the Homestead Temporary Shelter would request medical treatment.
- 28) What is the average response time at the Homestead Temporary Shelter between a request for health care services for a child and the time at which medical care is provided to the child?
- 29) What is the total per day operating cost of the Homestead Temporary Shelter? Please provide an itemized list of the expenses totaling this per day cost.
- 30) What is the per day operating cost per child held at the Homestead Temporary Shelter? Please provide an itemized list of the expenses totaling this per day cost.
- 31) How long is the Homestead Temporary Shelter anticipated to be in operation?
- 32) Please describe the daily schedule prescribed for a child held at the Homestead Temporary Shelter.
- 33) Please produce all daily, weekly, and monthly schedules, agendas, and calendars created for the children held at the Homestead Temporary Shelter in 2019.
- 34) Does a hurricane and natural disaster evacuation plan exist for the Homestead Temporary Shelter? If yes, please produce the hurricane and natural disaster evacuation plan in effect for the Homestead Temporary Shelter.
- 35) Has anyone at your office or the Department of Health and Human Services communicated with the Miami-Dade County Office of Emergency Management relating to the creation and/or implementation of a hurricane evacuation plan for the Homestead Temporary Shelter for the 2019 hurricane season? If yes, please provide the date of the communications, names of the parties involved, and the contents of the communications.
- 36) What is the current Youth Care Worker-to-child ratio at Homestead Temporary Shelter?
- 37) What is the average Youth Care Worker-to-child ratio at Homestead Temporary Shelter for 2019?

Exhibit "A"
Rep. Debbie Mucarsel-Powell

- 38) What is the current total staff-to-child ratio at Homestead Temporary Shelter?
- 39) What is the average total staff-to-child ratio at Homestead Temporary Shelter for 2019?
- 40) How many staff members employed at the Homestead Temporary Shelter are fluent in Spanish?
- 41) Please describe the hiring process, including a detailed description of the background checks conducted, for a prospective staff member to be employed at the Homestead Temporary Shelter.
- 42) Since January 1, 2017, how many allegations of staff-on-child sexual abuse occurring at the Homestead Temporary Shelter have been reported to your office, the Department of Health and Human Services, or state or local law enforcement? For each allegation, please describe in detail the date of the allegation, the nature and substance of the allegation, whether an investigation was conducted, and the remedial actions taken by your office, the Department of Health and Human Services, or state or local law enforcement.
- 43) Since January 1, 2017, how many allegations of staff-on-child sexual abuse occurring at the Homestead Temporary Shelter have been substantiated by your office, the Department of Health and Human Services, or state or local law enforcement?
- 44) Please describe the process under which a child held at the Homestead Temporary Shelter would report an incident of staff-on-child sexual and/or physical abuse. Please include the name and title of each individual employed at the Homestead Temporary Shelter responsible for handling such reports.
- 45) Is the private operator of the Homestead Temporary Shelter required to report all allegations of sexual abuse to your office or the Department of Health and Human Services? If yes, please describe the process under which the private operator notifies your office of the Department of Health and Human Services. Please include the name and title of each individual employed at the Office of Refugee Resettlement and the Department of Homeland Security responsible for handling such reports.
- 46) Please describe the process your office and the Department of Health and Human Services undertakes when an allegation of staff-on-child sexual abuse occurring at a temporary influx shelter is brought to the attention of your office or the operators of the facility.
- 47) Does your office or the Department of Health and Human Services report all allegations of staff-on-child sexual abuse to local law enforcement?
- 48) Does your office or the Department of Health and Human Services report all allegations of staff-on-child sexual abuse to state law enforcement?

Exhibit "A"
Rep. Debbie Mucarsel-Powell

- 49) How many allegations of staff-on-child sexual abuse occurring at the Homestead Temporary Shelter has your office reported to state or local law enforcement?
- 50) How many staff members employed at the Homestead Temporary Shelter have been fired for allegations relating to staff-on-child sexual abuse? For each instance, please describe in detail the identity of the individual and the circumstances warranting the termination of the individual.
- 51) Has the Homestead Temporary Shelter made any attempts to procure a license to operate from the State of Florida? Please describe the decision to obtain or not obtain a license to operate from the State of Florida and the current status of each application.

In addition to these inquiries, please produce the following documents:

- 1) all contracts and accompanying documentation with Caliburn International Corp. concerning the operation of the Homestead Temporary Shelter since January 1, 2017;
- 2) all contracts and accompanying documentation with Comprehensive Health Services, Inc. concerning the operation of the Homestead Temporary Shelter since January 1, 2017; and
- 3) all documentation relating to investigations conducted into allegations of staff-on-child sexual abuse occurring at the Homestead Temporary Shelter since January 1, 2017.

Ms. MUCARSEL-POWELL. So when I toured the facility, I met several kids there that had been separated from their families at the border. So the family separation policy that you say that is not happening anymore continues to happen. I know that for a fact because I spoke with some of the children.

So my first question to you, Mr. Hayes. How were you able to move 1,400 kids in 2 weeks?

Mr. HAYES. I think that is a great question, ma'am. We did it in two ways. Number one, the capacity at—I just want to clear one thing. The capacity at Homestead was never above 2,700. That was the max capacity we are able to take there, and we didn't quite get there.

In regards to the number of children that we moved, that we did two things. I would specifically point to the fourth operational directive that I—that we have spoken about and you are aware of where, at this time, a recommendation put forward to me by the team, the field team at ORR, and then further considered input forwarded by the senior career staff of the Office of Refugee Resettlement, where we are at this time treating grandparents and adult siblings the same way we would in our background check process, as moms and dads—

Ms. MUCARSEL-POWELL. So let me interrupt you there. So—

Mr. HAYES. If I may finish, please, ma'am? And also the numbers have significantly dropped in referrals coming into—into us as well.

Ms. MUCARSEL-POWELL. That is not the story that I heard last time. That you were getting more referrals is what I heard about a month ago, that you were expecting 500 more kids to go to Homestead. So let me just ask you, how many of those kids were moved with family members? Out of the 1,400 kids, how many of them are with family members?

Mr. HAYES. So the overwhelming majority of them are, ma'am. The number I know when we were down there last week with a CODEL, it was about 900 that we had moved. And about 80 to 90 of them had been transferred to other licensed permanent shelters because they were long-stayers or what we refer to as Category 4.

Ms. MUCARSEL-POWELL. So can I get a list of that? I would like to—

Mr. HAYES. Sure. We can break that down by category, and we will go ahead and update it with the number 1,400, ma'am.

Ms. MUCARSEL-POWELL. So why are you still holding close to 900 kids at the detention facility?

Mr. HAYES. At the Homestead influx shelter right now, we are working to bring that census down just as quickly and safely as we can. One of the things that we have done, again, we have not designated any children to Homestead since July 3rd, and we have not designated any children to our other influx shelter, Carrizo Springs, since July 17th.

I have got approximately 800 to 900 permanent beds that are set up for teenagers as of a couple of days ago. And if I were to move all of those children immediately into those other permanent beds, that would put me in a situation where I would have—

Ms. MUCARSEL-POWELL. I don't that much time, Director Hayes. I want to move very quickly on a couple of points.

Mr. HAYES. Okay.

Ms. MUCARSEL-POWELL. The kids that are turning 18, are you still sending them to ICE in shackles on the day of their birthday?

Mr. HAYES. We are not sending any children to ICE. As we have talked about numerous times, ma'am, when the child turns 18, our statutory authority over that child ends, and they refer back to the custody of DHS.

Ms. MUCARSEL-POWELL. But they have been referred to ICE in shackles. Correct?

Mr. HAYES. They are not referred to ICE. They are required to go back to ICE because they are no longer children at that time.

Ms. MUCARSEL-POWELL. In shackles on their 18th birthday?

Mr. HAYES. I would defer to my colleagues at ICE to how they process children that age out.

Ms. MUCARSEL-POWELL. And very quickly, the private for-profit company, Caliburn—

Mr. HAYES. Yes, ma'am.

Ms. MUCARSEL-POWELL [continuing]. Which John Kelly is the person that—one of the architects of the family separation policy is now on the board of Caliburn. How did they get a \$340 million non-bid contract, especially when you just said that you were running out of resources. And this was early May before we passed the supplemental bill—\$340 million no-bid contract to Caliburn, when John Kelly, who started the family separation policy, is on the board of this company. Explain that to me, please.

Mr. HAYES. So my response to that would be, ma'am, that the company, Comprehensive Health Services, and that original contract was chosen back in December of 2015, long before Jim Kelly was involved in the administration, and it is an operation and a program that we have maintained into this one.

Ms. MUCARSEL-POWELL. How long is that contract for?

Mr. HAYES. It expires November 30th of this year, ma'am.

Ms. MUCARSEL-POWELL. Well, are you willing to commit today that you are right now in the process of closing down the detention facility that is located at Homestead?

Mr. HAYES. I will not commit that we will close it down, but you do have my commitment that we are working at this very moment to reduce the census down to zero just as quickly, but as safely as we can. But again, in order to meet the child welfare mission that we have at ORR, I want to be able to take kids as quickly as possible from the Border Patrol stations. We want to put them in permanent beds, but if we don't have permanent beds—

Ms. MUCARSEL-POWELL. Well, look, I have spoken with so many kids, many of them that have been there for months. And I know that you have been now recently, because of my oversight, reduced the length of time that the kids have been in Homestead. Thank goodness that we have brought awareness to this issue. If not, we would see 3,000 kids in Homestead that are there without being reunified with family members. I know that most of them have family members in this country.

Thank you. And I really do expect answers to my 51 questions.

Mr. HAYES. Yes, ma'am.

Chairman NADLER. The time of the gentlelady has expired. The gentlelady from Pennsylvania.

Ms. DEAN. Thank you, Mr. Chairman.

I want to clarify the record, and to follow up on what my good colleague was just asking you about, I was at Homestead on July the 2nd. We were in your command center, where you rather proudly—or the folks there rather proudly showed us a screen of the last 14 days before a child ages out of Homestead. It was a bar chart, and it showed on the very day we were there, one child was aging out.

And we asked what happens to that child? They said we have been in touch with ICE the entire time. ICE will pick that child up today.

We said it has been reported that they leave in shackles. Is that so? The commander of that center, the private commander, the director of the center for Caliburn said that is so.

So I will want an answer how many children have been sent out of Homestead over the course of this administration, over the course of your care there, where they are being housed for \$775 a day per head, and then they get the birthday gift of being taken out in shackles.

So I hope you will provide that exact number to this committee.

Mr. HAYES. How many have aged out? Yes, ma'am.

Ms. DEAN. How many have aged out. And as I said—

Mr. HAYES. Going back to the history of the program.

Ms. DEAN [continuing]. We got clarity. They go out in shackles. Happy 18th birthday from this administration.

I wanted to see if anybody could help me get the scope of this problem, the numbers. How many children have been separated since the time Donald Trump was sworn in until this day? So pre-zero tolerance, post? What is the census? Does anybody here have that number?

Mr. WHITE. Ma'am, I can—I think I am best positioned to give you the—

Ms. DEAN. Thank you.

Mr. WHITE [continuing]. State of that answer.

Ms. DEAN. Thank you, Commander.

Mr. WHITE. So to do that, you have to look at three distinct periods of time. The first is children who were separated by DHS, referred to ORR, and had already been discharged to a family member or otherwise discharged before the court order. We don't know how many of them there are. We are in the process of finding that out.

As we have gone—

Ms. DEAN. The fact there were some separated before zero tolerance was enacted. Is that correct?

Mr. WHITE. It is absolutely the case that there were significant separations prior to the announcement of zero tolerance. We in ORR observed an increase far above the historic norm starting in July of 2017.

Ms. DEAN. I hope you will forgive me. Can you give me round numbers, just total numbers, a census? Because I do want to talk about conditions I observed in Texas when I visited there on the 1st of July.

Mr. WHITE. So here is what we can tell you. During what we call the legacy class period, we know that number, as we reported to the court, is 2,814. We don't yet know, but we are in the process

of finding out and have a court deadline of October 25th, to answer how many were referred after July 1, 2017, and discharged before the court's order. The number we have—and we provide that on a rolling basis to the ACLU. As of last night, that number was, and I think I gave it earlier, I believe 981.

Ms. DEAN. Okay.

Mr. WHITE. Then there are the children who were separated and referred after June 26th, and Director Hayes provided that number earlier. So the best answer to your question is nobody knows yet.

Ms. DEAN. Nobody knows.

Mr. WHITE. But it is what we have identified in the legacy class, and the expansion class thus far is over 3,700 children.

Ms. DEAN. Okay. Do you have an exact census on how many children were separated by this administration, Mr. Hastings or Chief? And then I need to move on to something else.

Mr. Hastings. Ma'am, as I said earlier—

Ms. DEAN. Yes or no, do you have a number?

Mr. Hastings. I don't have an exact number.

Ms. DEAN. Okay, thank you.

Let me move on. I wish I had more time because I did have the sad privilege of visiting Texas, El Paso Border Station No. 1 and also Clint. Clint is an insanity. We saw only 25 children there. Two and a half months earlier, that facility, which was meant for 100 men, topped 700 children. We spotted three showers and seven porta-potties. I wonder what it looked like with 700 children.

But let me to go to El Paso Border Station No. 1, where I got this, a Jiffy Pop blanket from 1 of 15 women held in a cell. We asked when did you come into this cell? They said today, this morning. We said how long have you been here? Fifty-six days. Where had you been? In temporary housing, not inside.

Fifty-six days. They were brought in because Congress was coming in. Six Congress Members stood in their—I counted the cinder blocks—10 cinder blocks by 13 cinder block cell, which had a low partition and a stainless steel toilet with no seat for 15 women.

We ran the sink. The sink did not work. The women said, oh, yeah, we were told to drink out of the toilet. That water is clean enough. Two of the women cried because they had been separated from their adult daughters. Three of the women were sick, two with epilepsy. They were weeping. They were told to drink out of the toilet.

The Border Patrol agents were there with us. They said oh, no, no, that is not the case. What happened to those 15 women who were brought in only that morning? And by the way, they were in sleeping bags inside. We said when did you get the sleeping bags. They said 4 days ago, and the guard said, yes, they were donated by the Forestry Service.

For 52 days, that is the comfort they had. No cots, no sleeping bags, no personal affects. Cracked lips from exposure.

That is the way we are handling it. Is that acceptable to you, Chief?

Mr. HASTINGS. Ma'am, we are doing the best. As I have described earlier—

Ms. DEAN. Is that acceptable to you?

Mr. HASTINGS. Ma'am, as I said earlier, we are doing the best we can with this crisis.

Ms. DEAN. Telling women to drink out of a stainless steel toilet?

Mr. HASTINGS. Ma'am, there was an open—that door was unlocked, and there was an Igloo cooler right in front of that door full of fresh water, and they had access to that water. It is not acceptable to tell someone to do that, and I don't—

Ms. DEAN. What actions were taken following our visit?

Mr. HASTINGS. There are open investigations into the incidents into Clint. There are various—

Ms. DEAN. Specifically, how were these women's conditions changed? I am not asking about the investigations. How did these women's lives change in the custody in the detention of the United States of America?

Mr. HASTINGS. I can't speak to each one of these women, but as I said earlier, we have invested the supplemental funding into even more space and to give better services and better medical contracts.

Ms. DEAN. Here is the problem. We also visited Clint, and in Clint, we saw behind glass—you wouldn't let us anywhere near them—six children, little children. We smiled at them. I literally held up a piece of paper where I wrote, "We heart you. We love you."

Do you know what Border Patrol said to me? "What are you doing? You don't have any right to do that." I showed them the note, "We heart you." I said we are just trying to communicate that somebody on the outside cares about them. We are Members of Congress trying to help you.

The children slipped a note under the door to us. We got yelled at because the Border Patrol was worried we were slipping notes. We weren't. The children slipped us a note. I said please translate that. What does it say?

In beautiful printing, the children wrote, "How can we help you, Members of Congress?" Imagine that. The children retained their humanity as the guards on the outside because of the pressures of this administration, the inhumanity and the incompetence of this administration, their humanity is being drained out while the children retain theirs. That is my worry.

Chairman NADLER. The time of the gentlelady has expired. The gentlelady from Texas.

Ms. ESCOBAR. Chairman, thank you so much.

And I want to first say thank you very much for having this hearing. It was shocking to hear the ranking member lament the fact that we are having another hearing on child separation. I would like to bring to everyone's attention a recent article, and I want to just read from it and then ask for unanimous consent to enter it into the record.

"Approximately one-third of children held in shelters operated by the Office of Refugee Resettlement, or more than 4,000 kids, have been designated Category 4, meaning they have no identifiable sponsor in the U.S., CBS News reports. This doesn't necessarily mean that the Government hasn't tried to find their sponsors, usually relatives or family friends living in the U.S., it just hasn't been able to. It also means that these children will be held indefinitely until or unless a sponsor comes forward."

So I would like to ask unanimous consent——
Chairman NADLER. Without objection.
[The information follows:]

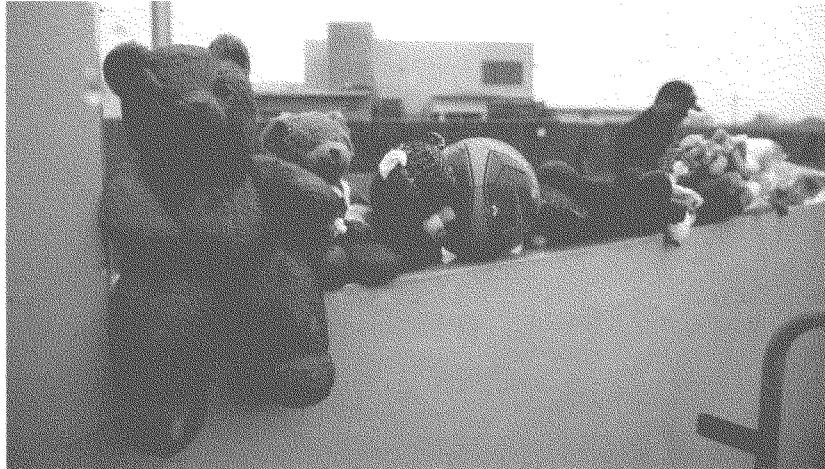
REP. ESCOBAR FOR THE RECORD

VICE News

MIGRANT KIDS

4,000 Migrant Kids Might Have to Spend the Rest of Their Childhood in Federal Custody

By Gaby Del Valle Jul 24, 2019



Thousands of migrant kids could spend the rest of their childhoods in federal custody because the government hasn't been able to find their sponsors.

Approximately one-third of the children held in shelters operated by the Office of Refugee Resettlement, or more than 4,000 kids, have been designated "Category 4," meaning they have no identifiable sponsor in the U.S., [CBS News reports](#). This doesn't necessarily mean that the government hasn't tried to find their sponsors, usually relatives or family friends living in the U.S. It just hasn't been able to.

ADVERTISEMENT

It also means that these children will be held indefinitely until — or unless — a sponsor comes forward.

The number of Category 4 designations is unprecedented — and, according to one anonymous ORR official who spoke with CBS, “alarming.” During the Obama administration, the rate was around 10 percent, former ORR director Bob Carey told CBS.

The reason for the spike in Category 4 designations isn’t immediately clear, though CBS did speak with one attorney who said one of his clients was labeled Category 4 after being separated from his father at the U.S.-Mexico border last summer.

But that doesn’t explain why 4,000 children, some of whom arrived after the family separation policy ended, seem to have no sponsors. Experts who spoke with CBS have a few theories: Prospective sponsors could have been spooked by a federal policy requiring sponsors to be fingerprinted. Certain caseworkers, who are employed by the nonprofits that operate the shelters, not by the government, may simply not be conducting thorough enough searches. Caseworkers are responsible for finding prospective sponsors and vetting them to ensure they’re able to take in migrant kids, a process that occasionally includes visiting sponsors’ homes to make sure they’re suitable for children.

Conditions vary from shelter to shelter. Some shelters are operated by nonprofit organizations that contract with the government. Others — notably the temporary Homestead shelter in south Florida — are operated by for-profit companies and have been accused of not having children’s best interests in mind.

“At Homestead, they had one caseworker who doesn’t speak a word of Spanish,” Hope Frye, an immigration attorney who regularly visits migrant children in federal custody, previously told VICE News. “The children at Homestead said, ‘Our caseworker changes so much, we don’t even know her name.’”

Category 4 kids held at shelters like Homestead and other shelters that house teenagers are at most imminent risk. When children in ORR custody turn 18, they lose all the protections guaranteed to migrant children — and, in some cases, they’re transferred into the custody of Immigration and Customs Enforcement.

Ms. ESCOBAR. Chief, I asked you earlier, I brought up the issue when I was granted extra time earlier about family separation that happens when a grandmother is separated from a grandchild or an aunt from a niece or nephew. So we know that families are being separated that way.

I also want to ask you about a different type of separation that we are seeing in El Paso, and this has been brought to our attention by immigration lawyers, where there is a family that arrives at the port—a father, a mother, and two children. We are now seeing the father and one child returned to Mexico via MPP, and the mother and another child allowed to stay in Mexico who are not MPP'd. Why would Border Patrol separate a family this way?

Mr. HASTINGS. Ma'am, I am not sure of the incident that you are talking to, and I would say if this was a port of entry, which it sounds like they presented at a port of entry, I couldn't speak to that. That would be the Office of Field Operations.

Ms. ESCOBAR. Well, I think it is Border Patrol. So it may not be—I may have that wrong. But it is Border Patrol, and it is not one instance. It has actually been a number of instances that have brought to our attention.

Are you aware of a policy that allows for that?

Mr. HASTINGS. That allows for separation to different areas? I am sorry.

Ms. ESCOBAR. Yes, and that—we have a family unit that enters together. I don't know if it is between ports or at ports. Don't know the entry point. Happy to get you more information. But we have more than one case brought to our attention by lawyers, where a father and a child is MPP'd, sent into Ciudad Juarez to await the asylum hearing, but the mother and the child are allowed to remain in the U.S.

Do you know of a policy that allows for such family separation?

Mr. HASTINGS. I don't know of a policy, but I would want to take a look at what you are describing to have all the details, if possible. And I would be happy to take a look and get back to you.

Ms. ESCOBAR. And to the attorney on our panel, can you think of any reason to do this?

Mr. EDLOW. In terms of separation of the family, again, I would have to defer to the Department of Homeland Security. The Department does not have operational control over separation.

Ms. ESCOBAR. Would there be any reason to have such a policy in the El Paso sector, to separate families this way? Anybody? No, I agree. There is no valid reason to separate families in this way.

Chief, how do you all track the innumerable number of families that are separated this way and in other ways? Especially as Representative Lofgren mentioned earlier, nonverbal kids, how do you track them?

Mr. HASTINGS. So as I said earlier, we track them carefully. But I should explain one thing that I didn't earlier. Every individual that is taken into our custody, this isn't just we make the instant decision. We roll the prints. We enter the biometrics. We check all of the systems of record that we have.

In some cases, we have agreements with other parties outside of the U.S. We check those systems as well. And so before any action is taken, we do due process to make sure that we have the records

of the individuals that we have arrested, a good understanding of what the records, what they may have done, criminal activity or otherwise, prior to making any decisions.

After the decision is made, there is a criminal record or the individual——

Ms. ESCOBAR. But I am not asking about what leads up to it, and my time is running out. How do you track children once they have been separated?

Mr. HASTINGS. So we pass the information on to ORR and work with HHS.

Ms. ESCOBAR. And every single child is now tracked, every single one?

Mr. HASTINGS. We track them, yes.

Ms. ESCOBAR. Okay. One final question because my time is just about up. Has anyone ever been held accountable for botched family separations? Anybody.

Mr. HASTINGS. To my knowledge, no. But I don't know of a botched family separation.

Ms. ESCOBAR. That is what I thought. Thank you.

Thank you, Chairman. I yield back.

Chairman NADLER. The gentlelady yields back. The gentleman from California.

But before the gentleman from California goes, I must stress my astonishment. You don't know of a single botched family separation? Your press has reported hundreds of kids who cannot be identified. Those are botched.

The gentleman from California.

Mr. LIEU. Thank you, Mr. Chair.

And to the witnesses, thank you for being here today.

I would like to start off asking about the case of Sophie, who was a 3-year-old. She crossed the border last year with her grandmother. They went to a legal point of entry in Texas, and this was after the President had purportedly already ended the family separation policy.

Her grandmother carried guardianship documents. This is according to a PBS article. Her grandmother also had Sophie's birth certificate and her asylum request. Nevertheless, she was separated.

Sophie's mother was here in the U.S. legally. For days, they had no idea where she was. Eventually, they tracked her down in Pennsylvania. I am going to show you on a video what happened on Day 47. So if we could play the video?

[Video playing.]

Mr. LIEU. Chief Hastings, Sophie is not a criminal or a national security threat to the United States as a 3-year-old. Correct?

Mr. HASTINGS. I don't know the background in this case, sir.

Mr. LIEU. Do you know any 3-year-olds that are criminal or national security threats to the United States?

Mr. HASTINGS. No, I don't.

Mr. LIEU. Okay. Sophie's grandmother was not a national security or criminal threat to the United States. Correct?

Mr. HASTINGS. I don't know—again, I don't know the background of what her grandmother or relatives were.

Mr. LIEU. So I want to ask your agency questions. If you would agree, could you provide us information about this specific case?

Mr. HASTINGS. We will certainly provide information if you—I don't have the details on this case.

Mr. LIEU. All right. Thank you.

So according to the PBS article, it took 47 days to reunite Sophie, and eventually, the mother was allowed to call Sophie one time a week. And eventually, on the phone, the mother noticed that Sophie started to change, that she seemed to want to hang up quickly, and her mother was worried that Sophie had given up on seeing her family again.

So I want to show you now a second video about what happens with family separations. Can we play that video as well?

[Video playing.]

Mr. LIEU. Earlier at the hearing, Congresswoman Lucy McBath talked about the American Academy of Pediatrics statement opposing separation of children and parents at the border. She asked Chief Hastings about it. He was not familiar with that, nor the research. So I am going to ask Commander White about this statement.

The AAP says that separating children from their parents contradicts everything we stand for as pediatricians, protecting and promoting children's health. In fact, highly stressful experiences like family separation can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short-term and long-term health. This type of prolonged exposure to serious stress, known as toxic stress, can carry lifelong consequences for children.

Are you familiar with that statement?

Mr. WHITE. I am familiar with that statement. I agree with it. It reflects accepted scientific fact. The images you have shown are consistent with what we would expect to see in children in that age group who have experienced family separation and speak to the potential harms that separation inflicts on children.

Mr. LIEU. Thank you very much.

I am going to ask whatever administration official has this information if you could provide it to us. Recently, it was reported that an 18-year-old U.S. citizen was detained by border officials, Francisco Erwin Galicia. During the 23 days he was in the custody of the U.S. Customs and Border Patrol, he was not allowed to shower. He also said he lost 26 pounds during his time in detention.

He also said he slept on the floor, sometimes with aluminum foil blankets. Some had to sleep in the bathroom area. If we could get information of why this U.S. citizen was detained, that would be helpful.

Mr. HASTINGS. Yes, sir, and I can give you some preliminary. The individual came through the Falfurrias checkpoint, and upon—he came through with other illegal aliens. The individual claimed to be a Mexican national who was born in Reynosa, Mexico.⁶

Throughout the process and while he was with Border Patrol, he claimed to be a national, a citizen of Mexico, with no immigration documents to be in or remain in the U.S. Upon further investiga-

⁶Mr. Hastings requested this be changed to, "My understanding is, the individual claimed

tion, we also found that he had a border crossing card, and that border crossing card he had used 53 times to cross the border into the U.S., which further—gives us further indication that he was not a U.S. citizen. At no time in Border Patrol custody did he say that he was a U.S. citizen.

Mr. LIEU. Thank you. And if we could get additional information from the agency, that would be great.

Mr. HASTINGS. Yes, sir.

Mr. LIEU. Appreciate it. I yield back.

Chairman NADLER. I yield to Ms. Dean for a unanimous consent request.

Ms. DEAN. I seek unanimous consent to enter upon the record articles that were presented by Mary Gay Scanlon, representative, my colleague from Pennsylvania, without objection.

Chairman NADLER. Without objection.

[The information follows:]

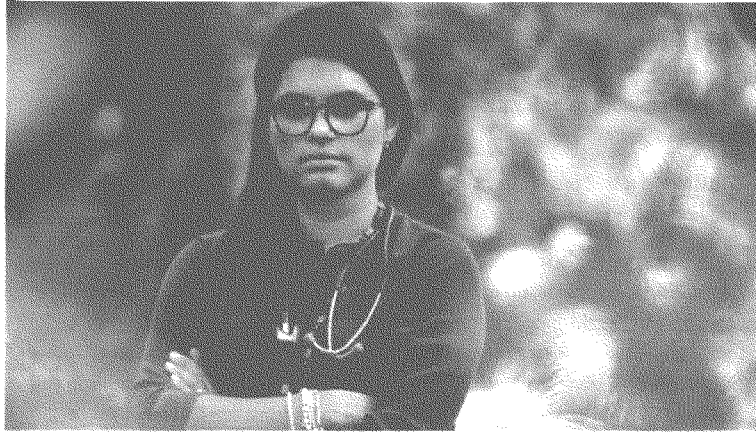
REPS. SCANLON AND DEAN FOR THE RECORD

POLITICS

What a Pediatrician Saw Inside a Border Patrol Warehouse

Dolly Lucio Sevier evaluated dozens of sick children at a facility in South Texas. She found evidence of infection, malnutrition, and psychological trauma.

JEREMY RAFF JUL 3, 2019



JEREMY RAFF / THE ATLANTIC

MCCALLEN, Texas—Inside the Border Patrol warehouse on Ursula Avenue, Dolly Lucio Sevier saw a baby who'd been fed from the same unwashed bottle for days; children showing signs of malnutrition and dehydration; and several kids who, in her medical opinion, were exhibiting clear evidence of psychological trauma. More than 1,000 migrant children sat in the detention facility here, and Sevier, a local pediatrician, had been examining as many as she could, one at a time. But she wasn't permitted to enter the area where they were being held, many of them in cages, and find the sickest kids to examine. Instead, in a nearby room, she manually reviewed a 50-page printout of that day's detainees, and highlighted the names of children with a 2019 birth date—the babies—before moving on to the toddlers.

When it was almost time to leave, Sevier asked to see a 3-year-old girl, and then two other children. But by that point, the friendly and accommodating Border Patrol agent assisting her earlier in the day had been replaced by a dour guard, wearing a surgical mask, who claimed that he couldn't find the toddler. "We can wait," Sevier said, as she recalled to me in an interview. Her tone was polite but firm; she knew that she had the right under a federal court settlement to examine whomever she liked.

"She's having a bath," Sevier recalled the guard as saying, a luxury one official told her is available only to babies removed from their guardians. In the facility's standard cages, there is no soap or showering for the kids. Though 72 hours is the longest a minor can be legally confined in such a facility, some had been there almost a month. Sevier waited.

Finally, the guard returned with news. He had found the girls after all. "We located the bodies," he said, in paramilitary slang. "I'll bring them right in."

I VISITED SEVIER'S MEDICAL PRACTICE last week in the border town of Brownsville, Texas, 60 miles from the Ursula facility, where she'd been a few days before. In mid-June, a team of immigration attorneys had asked Sevier to come with them to their next appointment in Ursula, after they'd had an alarming visit there earlier in the month. They wanted a doctor to evaluate the children and then use the findings to force the government to improve conditions in Texas immigration facilities. It wasn't the kind of work Sevier usually does.

Sevier grew up in Brownsville, and to Rio Grande Valley kids like her, then as now, the border was not a crisis but a culture. Sevier went to nearby Matamoros, Mexico, for dinner, dentist appointments, weddings, and baptisms. Each year on All Saints' Day, she scrubbed relatives' tombstones in Matamoros with soap and water, then shot BB guns with her cousins at the cemetery. She had American classmates who lived in Mexico and commuted to school over the international bridge.

[Read: 'Nothing prepares you for the inhumanity of it']

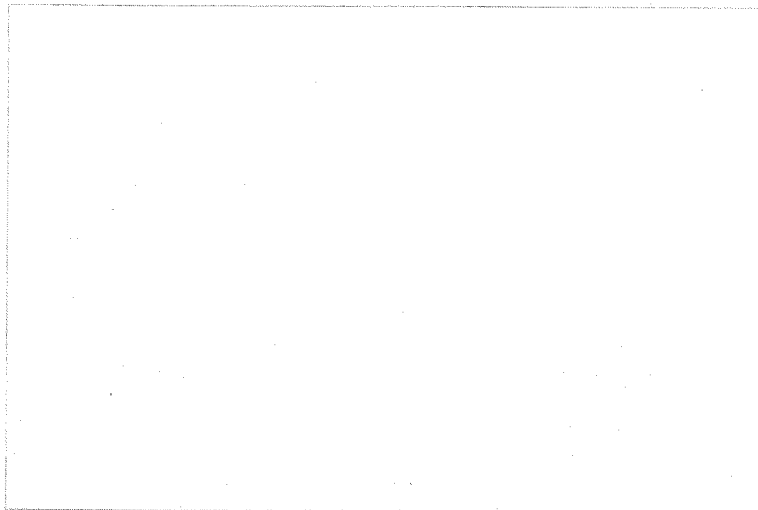
She left the area for college and medical school. From afar, she told me, she began to understand that she had grown up in one of the poorest places in the United States, where low-quality, high-calorie food leaves kids both hungry and obese. Diabetes is widespread, and because access to health care is so limited, diabetic

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Border Patrol's Oversight of Sick Migrant Children - The Atlantic

amputations are far more common than in the rest of the country. She thought that here was a place in need of a doctor like the one she was becoming. So after she completed her pediatric residency at the University of Texas Southwestern Medical Center, in Dallas, five years ago, she returned home.

The morning I visited, Sevier's pediatric clinic was bustling. A mural with characters from the Disney movie *Inside Out*, about the emotional lives of children, brightened the hallway. For Sevier, the role of a pediatrician includes "being the voice for the kid, the advocate." In some families, she explained, children's experiences "are just not valued." A child who is overweight or has a preteen crush may be the subject of ridicule, not attention and understanding. "I get to chip away at that in my office," Sevier told me.



Sevier at her medical practice in late June. (Jeremy Raff / The Atlantic)

She tried to take this same approach in Ursula. Neighboring the immigration facility are cold-storage warehouses that keep produce fresh despite the oppressive Texas sun and triple-digit temperatures outside. Opened under former President Barack Obama, the Border Patrol warehouse is chilly too; migrants have long referred to it as the *hielera*, or ice box. Even its official name sounds agricultural:

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the Centralized Processing Center. But while the crisp produce moves swiftly across the border, a reminder of the close ties between Mexico and the United States that Sevier knows so well, the migrants inside Ursula spend their first nights in America stuck beneath lights that never turn off, shivering under sheets of Mylar.

Sevier set up a makeshift clinic—stethoscope, thermometer, blood-pressure cuffs—in a room, lined with computer stations, that agents use for paperwork. Each of the agent stations had its own bottle of hand sanitizer and disinfectant wipes. But when Sevier asked the 38 children she examined that day about sanitation, they all said they weren't allowed to wash their hands or brush their teeth. This was “tantamount to intentionally causing the spread of disease,” she later wrote in a medical declaration about the visit, the document that the lawyers filed in federal court and also shared with me. (Asked for comment on this story, a Customs and Border Protection official wrote in an email that the agency aims to “provide the best care possible to those in our custody, especially children.” The agency’s “short-term holding facilities were not designed to hold vulnerable populations,” the official added, “and we urgently need additional humanitarian funding to manage this crisis.”)

As agents brought in the children she requested, Sevier said, the smell of sweat and soiled clothing filled the room. They had not been allowed to bathe or change since crossing the Rio Grande and turning themselves over to officials. Sevier found that about two-thirds of the kids she examined had symptoms of respiratory infection. The guards wore surgical masks, but the detainees breathed the air unfiltered. As the children filed in, Sevier said she found evidence of sleep deprivation, dehydration, and malnutrition too.

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Government inspectors said they observed filth and overcrowding at the Ursula facility days before Sevier's visit. (Department of Homeland Security Office of Inspector General).

BEYOND THE CHILDREN'S PHYSICAL AILMENTS, Sevier also began to worry about their mental health. She asked to see a 2-year-old from Honduras along with his teenage brother, who she hoped could provide the baby's medical history. The older boy was excited because officials had kept them separate for more than two weeks. But when the guards brought the toddler over from the "day care" where the littlest detainees are held, he stared with wide eyes, Sevier recalled, and began panting heavily, hoarsely, and persistently for the rest of the encounter.

During the exam, she noticed that the toddler behaved differently from the kids his age she sees every day. In an exam room at her clinic decorated with a *Lion King* mural, I watched her do a routine checkup on a slightly younger boy. This toddler pulled back when Sevier touched him, but was easily soothed by his mother. The reaction was normal—"a small oscillation between worried and okay," Sevier explained. A little shyness is typical, she said, but toddlers "shouldn't be fearful of a stranger." When they are afraid—when the memory of their last shots is fresh in their mind, for instance—they resist Sevier by crying, clinging to their caregiver, or squirming beneath her stethoscope.

At Ursula, however, the children Sevier examined—like the panting 2-year-old—were "totally fearful, but then entirely subdued," she told me. She could read the fear in their faces, but they were perfectly submissive to her authority. "I can only explain it by trauma, because that is such an unusual behavior," she said. Sevier had brought along Mickey Mouse toys to break the ice, and the kids seem to enjoy playing with them. Yet none resisted, she said, when she took them away at the end of the exam. "At some point," Sevier mused, "you're broken and you stop fighting."

Sevier made her way down the list of names. A 15-month-old baby with a fever had been in detention for three weeks. His uncle had fed him from the same dirty formula bottle for days on end, until a guard replaced it with a new one. Because

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"all parents want the best health for their infant," Sevier later wrote in the medical declaration, denying them "the ability to wash their infant's bottles is unconscionable and could be considered intentional mental and emotional abuse." Before her visit, the uncle had asked for medical attention because the baby was wheezing. In response, a guard had touched the baby's head with his hand and concluded, "He's not hot," the uncle told Sevier.

"Denied access," Sevier wrote. "Status: ACUTE."

At her workstation, Sevier saw some quiet displays of resilience. A 17-year-old girl, with long black hair and a flat affect, entered the room carrying a green plastic bundle—her four-month-old son, wrapped in the kind of bed pad used for incontinent patients in a hospital. The mother explained that the boy had had diarrhea for several days and had soiled his clothes. Guards declined to provide clean baby clothes, she told Sevier, so she managed to obtain two extra diapers and flatten them out into rectangles—one for the baby's back, one for his chest. She had connected them like a disposable tunic, then wrapped him in the plastic pad. Inside the package, the baby was dirty and sticky, Sevier said. Diaper fluff clung to his hands, his armpits, and the folds of his neck. He wore no socks.

"I carry my baby super close to me to keep his little body warm," the mother told Jodi Goodwin, one of the attorneys with Sevier, who interviewed her the same day. Goodwin included her testimony in the court filing, which was a request for a temporary restraining order against the government on the migrants' behalf. On Friday, a federal judge read her testimony, among others, in court and ordered the government to work with a mediator to improve Border Patrol holding facilities "post haste."

THESE AREN'T EVEN THE SICKEST children in the government's care—those kids are quarantined at a different station, in Weslaco, Texas. When the team of lawyers visited Ursula without Sevier, "every single kid was sick," Goodwin told me. When they returned three days later with the doctor, Goodwin asked to see four kids whom another attorney had previously flagged to the guards as especially sick. But they were already gone. The guards told Goodwin that their illnesses were severe enough that they had been admitted to the intensive-care unit at a local hospital.

The source of illness in a facility like Ursula is largely the facility itself, though the idea that immigrants carry infectious diseases is a durable conspiracy theory that even the American president has perpetuated. It is the filth, sleep deprivation, cold, and “toxic stress” of these human warehouses that diminish the body’s capacity to fight illness, Julie Linton, a co-chair of the American Academy of Pediatrics Immigrant Health Special Interest Group, told me. Linton, a South Carolina-based pediatrician, visited Ursula last June and later testified before Congress to urge better access for health-care providers to children in detention.

[Read: Children cannot parent other children]

Border Patrol has long maintained that it is not equipped to handle children, who are supposed to be transferred into the custody of the Office of Refugee Resettlement within three days. After that, many kids are housed in licensed child-care facilities that look more like the average public school than a jail. The federal government has attributed slow transfers to the sharp uptick in the number of migrants at the southern border; in May, 144,200 migrants were taken into custody—the highest monthly total in 13 years.

Days before Sevier’s visit, reports of poor conditions at a similar facility in Clint, Texas, drew outrage around the country. Kevin McAleenan, the acting head of the Department of Homeland Security, told reporters the outcry was based on “unsubstantiated allegations regarding a single Border Patrol facility.”

But his own agency’s watchdogs soon contradicted him—the problems are not restricted to Clint. Ahead of Sevier’s visit, government inspectors toured Border Patrol camps in South Texas, including Ursula. Their report, released Monday, described “dangerous overcrowding and prolonged detention of children and adults in the Rio Grande Valley.” One Border Patrol supervisor, according to the report, called his holding facility “a ticking time bomb.” Congress last week authorized an additional \$4.6 billion for Border Patrol and other agencies, despite the objections of progressive lawmakers, who said the bill did not go far enough to protect children in government custody.

SEVIER SPENT YEARS CULTIVATING a physician’s empathetic-but-detached habits of mind. During her medical residency, an 8-year-old rescued from near-drowning arrived at the hospital. For the first time, Sevier had to insert a breathing tube down a child’s throat. Vomit began filling his esophagus and lungs.

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"Suction," she commanded without missing a beat, surprising even herself, she told me. It's what she was supposed to do—how she was supposed to act.

At Ursula, traumatized children with untreated illnesses sat before her. She probed, pressed, and listened. She took notes; she entered their data into a spreadsheet; she compartmentalized. She thought about a social event she'd promised to attend at 6 o'clock.

At 5:53, the guard with the surgical mask brought in the 3-year-old Sevier had requested to see, holding her by the armpits, like a puppy. Thin and subdued, the girl was crying but didn't turn away. "Underweight, fearful child in no acute distress," Sevier wrote. "Only concern is severe trauma being suffered from being removed from primary caregiver."

After the exam, the child lingered, and Sevier offered to hold her. She climbed into the doctor's lap and fell asleep in less than a minute. The squalor, the lighting, the agents, and the event that evening fell away from Sevier's consciousness. As if in rebellion against her careful training, her mind shut down, she told me. And for what seemed like an eternity, she sat in vacant silence with the child.

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POLITICO



John Moore/Getty Images

LAW AND ORDER

The Border Patrol Hits a Breaking Point

Behind this week's migrant-center horrors lies an agency plagued by years of dysfunction—and Trump is only its latest problem.

By GARRETT M. GRAFF | July 15, 2019

Vice President Mike Pence's Friday visit to a Border Patrol detention facility in Texas didn't go according to plan. Meant to pressure Democrats to address the migrant crisis at the southern border, the visit instead appeared to horrify those who accompanied Pence and raised pointed questions about U.S. Customs and Border Protection, America's most troubled law enforcement agency.

Nearly 400 migrants were crammed into a converted vehicle sally port; many hadn't showered in weeks, and space was so tight there was no room for cots for them to sleep. "The stench was horrendous," the *Washington Post's* Josh Dawsey wrote, noting that Border Patrol agents were wearing face masks and saying, "Pence appeared to scrunch his nose when entering the facility, stayed for a moment and left."

"It's tough stuff," Pence said. "I was not surprised by what I saw," the vice president told reporters. "I knew we'd see a system that was overwhelmed."

The visit capped one of the worst weeks in modern memory for the CBP and the U.S. Border Patrol, as the agencies tasked with meeting record-setting numbers of migrants seeking asylum from violence in Central America reeled from personnel scandals, leadership scandals and the scandal of their treatment of those asylum-seekers. Agents were caught making racist comments in a Facebook group—a group that the chief of the Border Patrol evidently was a member of herself—and minting a commemorative coin mocking the idea of taking care of children and migrants.

Last week's scandals followed months of worrisome headlines concerning CBP: At least 12 migrants have died in the agency's custody since September, and its agents have been accused of everything from sexual abuse of migrant children, to trafficking firearms, to running down a border crosser with a truck. One Border Patrol agent was arrested and charged with being a serial killer. (Both Border Patrol union President Brandon Judd and CBP did not respond to requests for comment for this piece.)

Now it will be Mark Morgan's job to clean up these problems. He was appointed to be CBP's acting head last Sunday after a short stint as acting head of U.S. Immigration and Customs Enforcement, where he spent much of his tenure advocating for a series of dramatic, publicly telegraphed immigration raids that ended up playing out more quietly than expected over the weekend.

But CBP's 16-year track record suggests the problems run deeper than one commissioner—especially an acting one—will be able to fix, and it's even less clear whether Morgan is the man to fix it.

The problems underlying CBP's almost theatrical failures trace back to its creation amid the post-9/11 reorganization of the Department of Homeland Security and have been exacerbated by a long-standing failure of leadership that goes up to both Congress and the White House and has lasted through three administrations. Both the modern Border Patrol and its parent CBP have been plagued by poor leadership and management at all levels, and by recruiting challenges that have left them with a subpar, overstressed workforce and a long-running toxic culture. Most deeply, however, they are plagued today by a huge and unresolved mismatch between the agency's founding identity and its current mission.

Most Border Patrol agents serving today signed up for a tough job in a quasi-military agency protecting the country against terrorists and drug dealers. They've found themselves instead serving as a more mundane humanitarian agency—the nation's front-

line greeter for families of migrants all too happy to surrender themselves after crossing the border. CBP's doesn't have the culture to meet this challenge, nor does it have the manpower or support from the rest of government. The latest bad headlines have come even as the promises made by candidate Donald Trump to invest in the Border Patrol have not been fulfilled; far from an increase of thousands of agents, the agency is actually now smaller than it was under President Barack Obama. As one former Border Patrol union official told me, "Trump is not delivering."

It's unclear how willing or able Morgan will be to bring the agency's culture and resources in line with its actual responsibilities. In 2016, the former FBI agent was appointed chief of the Border Patrol amid the agency's lone period of serious reform, and was actually fired by Trump as one of the president's first actions in office. But he has unexpectedly earned his way back into the president's favor by appearing repeatedly on Fox News as a pro-Trump, anti-immigration pundit. In his most infamous turn on TV, he told Fox host Tucker Carlson in January that he could tell whether a kid would become a member of the violent MS-13 gang just by looking in his eyes.

The ferocity of Morgan's pro-Trump conversion has puzzled former CBP colleagues, who remember him as a reasonable, reform-minded—even progressive—officer and agent who had been originally lent to the agency by then-FBI Director James Comey. "Many of the opinions he's voiced in the last two years were never said when he was at internal affairs and at the Border Patrol," one former colleague told me. "It's a bit of a surprise." They were similarly surprised when the president appointed Morgan as acting ICE director in May as Trump sought leaders at DHS who would execute his harsh immigration plans—and even more so when Trump now returned him to the agency Trump himself had originally fired Morgan from.

Even if Morgan does try to bring much needed reform to CBP in the spirit of reform, though, he won't find patching things up so easy. Congressional leaders might express shock at today's most recent crisis, and paint the trouble as a symptom of Trump's heartless policies, but in fact the agency's problems are deep-seated, and they have lingered in plain view for years.

Being a Border Patrol agent is often hard, grinding work—outdoors, in cold northern winter nights and searing southern desert summer days, confronting high-stress, volatile situations, where you never know whether the next person you encounter could be an

armed drug smuggler or a family searching for safety. The pay isn't great and duty stations are often in remote areas, where it's hard to house spouses or children.

For decades, patrolling the border had been lonely work, too, as agents often patrolled alone with backup sometimes hours away. The agency was comparatively tiny, and amid the security reckoning that took place in the wake of 9/11, its own studies concluded the Border Patrol did not have "operational control" over 97 percent of the border. It had money to handle just 60 detainees a night nationwide—fewer detainees than are today often crammed into a single cell inside the overstretched facilities along the southern border.

That all changed after al-Qaida's terror attacks. Pennsylvania Governor Tom Ridge was brought to Washington to serve as George W. Bush's first homeland security adviser and later the first secretary of the newly formed Department of Homeland Security. He recalled to one interviewer that he faced a seemingly unending supply of federal funding: "People just wanted to give me unlimited amounts of money."

DHS' newly created CBP, created out of the merger of multiple other agencies from across government, was primarily made up of two distinct units: The blue-uniformed officers known as the Office of Field Operations, who police the nation's legal ports of entry and border crossings, and the green-uniformed Border Patrol agents, who patrol areas in between legal crossings and conduct interior enforcement efforts within 100 miles of an international border or seacoast, an area in which two-thirds of the U.S. population resides. (Other smaller divisions of CBP focus on more specific tasks, like intelligence and the brown-uniformed Air and Marine Operations, which houses CBP's helicopter and boat units.)

The money pouring into Ridge's hands paid for a more than doubling of the Border Patrol, which surged from 9,200 agents in 2001 to more than 21,000 during its peak in the first term of the Obama administration, and similarly rapid expansion at CBP's OFO, a rate of growth that completely outstripped CBP's systems to manage its employees. When in 2014 I wrote the first comprehensive history of that ill-considered hiring surge, the rise of what CBP called "the Green Monster," one DHS official told me, "[Congress'] view was, 'We're going to field a small army and make up for decades of neglect by previous administrations.' Almost any body in the field was better than no body."

CBP recruited that new army by lowering its hiring standards—already the lowest among top federal law enforcement agencies—and shoveling agents through the academy and into the field before even completing background checks. "We weren't prepared," one former

training officer told me. Agents called it “No Trainee Left Behind.” Management structures and processes failed, oversight lessened and by the end of the Bush administration, more than half of the Border Patrol had been in the field for less than two years. Already at that point, agent misconduct and criminality were on the rise—the lax hiring standards and background checks had populated the new border army with the wrong sort of person. “We made some mistakes,” Bush’s CBP Commissioner Ralph Basham told me in 2014. “We found out later that we did, in fact, hire cartel members.”

Corruption among CBP’s ranks got so bad that in Obama’s first year, CBP and DHS leadership ordered the agency to change its definition of “corruption” to downplay the number of total incidents; sexually assaulting detainees was no longer considered “corruption” worthy of reporting to Congress.

The situation continued to deteriorate as the Obama administration went on. A CATO Institute study found that from 2006 to 2016, CBP and the Border Patrol’s misconduct and disciplinary infractions outstripped all other federal law enforcement. Border Patrol agents were six times as likely as FBI agents to be fired for disciplinary infractions or poor performance and “12.9 times as likely as Secret Service agents.” Moreover, CATO found “it is virtually impossible to assess the extent of corruption or misconduct in U.S. Customs and Border Protection ... because most publicly available information is incomplete or inconsistent.” As I totaled up in 2014, there were 2,170 misconduct arrests of CBP officers and agents—ranging from corruption to domestic violence from 2005 through 2012—meaning that one CBP officer or agent was arrested every single day for seven years.

There were so many examples of corruption that CBP created its own internal website, called “Trust Betrayed,” featuring the stories of turncoat CBP officers and Border Patrol agents, as a cautionary warning to others. Examples from the site, released to BuzzFeed’s Jason Leopold earlier this year, include agents bribed by cartels to wave certain individuals through immigration lanes and provide documents to smugglers, and even smuggle undocumented immigrants themselves.

Addressing that epidemic of misconduct—and worse—proved all but bureaucratically impossible. CBP’s crime and corruption epidemic collided with the institutional trade-offs made to create DHS; obscure government job descriptions and law enforcement responsibilities, negotiated in the abstract when DHS was being created, meant that Congress didn’t grant CBP the ability or authority to investigate its own employees. Whereas any even moderately sized local police department has an internal affairs department, the nation’s largest law enforcement agency had to refer all misconduct

allegations to either the DHS inspector general, the FBI or ICE—all of which soon found themselves overwhelmed by the flood of CBP problems.

Ronald Hosko, a former FBI assistant director who headed the bureau's criminal division, told me that at one CBP meeting he attended in 2012, top agency officials estimated that perhaps as much as 20 percent of CBP's agent and officer corps needed to be removed from the force. In response, the FBI declared border corruption—e.g., investigating another federal law enforcement agency—as its top priority in combating public corruption.

The flood continued, such that in 2013 the head of the DHS office investigating CBP misconduct in Texas' Rio Grande Valley had fallen so far behind in investigating the rampant misconduct allegations that he began falsifying records—and ended up being indicted himself, along with another agent.

Meanwhile, DHS Secretary Janet Napolitano left CBP rudderless, with a revolving door of nonSenate confirmed, acting leaders. At one point, CBP's top post was vacant, with various officials "acting" as commissioner, for 26 months.

Amid that leadership vacuum, CBP shootings and use-of-force complaints started to rise, too. From 2007 to 2012, more than 1,700 allegations of excessive force were leveled against CBP officers and Border Patrol agents, though the exact number is impossible to reconstruct because the agency's record keeping is so poor. There were more than a hundred shootings, leaving dozens dead, and CBP's standard operation procedure—unlike nearly every other law enforcement agency in the country—was to keep silent about any officer-involved shootings unless specifically asked about them by the media.

Many of those shootings fell far outside the norms of modern policing; an internal report by the Police Executive Research Forum concluded, "Too many cases do not appear to meet the test of objective reasonableness with regard to the use of deadly force." CBP fought releasing the report, refusing to even provide it to Congress, and it was only made public later by the *Los Angeles Times*. Even after the report, the Border Patrol refused to change its rules of engagement.

Similarly, standard hiring practices for other federal law enforcement and intelligence agencies, like candidate polygraphs, were implemented only after the surge. The polygraph exams immediately began to raise questions about the quality of CBP's hiring; some 65 percent of applicants failed, and more than 200 candidates, who would have been hired in the pre-exam hiring surge, admitted to criminal conduct ranging from drug smuggling to

kidnapping and ransoming hostages in the Ivory Coast. One candidate even admitted to wanting to assassinate Obama.

Obama's lone Senate-confirmed CBP commissioner, Gil Kerlikowske—who was in office only for the administration's final two years—represented a rare bright spot in its leadership, a progressive, reform-oriented visionary brought in to confront CBP's by-then legendary corruption and mismanagement. “We had a history of not addressing things as directly as we should,” Kerlikowske told me when he was in office.

Kerlikowske arrived at CBP in the spring of 2014 amid a particularly troubling pattern of CBP-led violence that saw three CBP agents and officers in the Rio Grande Valley charged with murder and attempted murder in separate incidents in just a matter of weeks, including one who kidnapped and raped three Honduran women who surrendered to him while on duty. All three men had been joined CBP during the hiring surge, when standards were low and oversight lax.

Kerlikowske—who had previously helped clean up troubled police departments in places like Seattle and Buffalo and served as Obama's drug czar—allied with the then-new DHS Secretary Jeh Johnson to address the mess at CBP. Johnson finally pushed through the oversight changes that allowed CBP to begin to police its own workforce, and Kerlikowske tried to bring new transparency and good policing practices to CBP.

One of his first moves as commissioner was to ask then-FBI Director James Comey for a top agent to be lent to CBP to help set up an internal affairs capability; Comey sent over Mark Morgan. At the FBI, Morgan had been the special agent in charge of its El Paso Field Office and so was deeply familiar with border issues. “If you wanted someone to take on the challenges outlined in the PERF report, he had all the right credentials,” Kerlikowske says. “Well-established and well thought of, an understanding of the border, plus he's an attorney.”

In May 2014, Kerlikowske released a new use-of-force manual for CBP that brought CBP more in line with other professional police departments around the country; that night, Border Patrol agents in Arizona shot and killed a fleeing, suspected smuggler. The suspect was shot from behind and unarmed.

Then, in July 2016—almost exactly three years ago—Kerlikowske brought Morgan back from the FBI to be chief of the Border Patrol. He was a controversial appointment, the first outsider to run the proud, green-uniformed agency, but Kerlikowske thought it important

to signal a fresh start and passed over the Border Patrol's two top deputies, Ron Vitiello and Carla Provost, who currently holds the role.

"Ron Vitiello or Carla Provost could have easily fit the bill. There's a time and a place to bring in a set of eyes and ears from outside," Kerlikowske recalls. "Ron was hugely successful in reducing use of force problems, but for the Border Patrol's relationship with Congress, the media and some of the advocacy groups, [appointing Morgan] was a clear signal that change would continue. We'd already been successful on internal affairs and the reduction of use of force, you needed to keep moving forward."

Morgan hit the ground running, traveling to meet agents and see as much as he could along the border, but time and the administration quickly ran out on Kerlikowske and Morgan's reform agenda. (The use-of-force reforms put into place by Vitiello, Morgan and Kerlikowske seem to have stuck: In 2012, CBP was involved in 55 shootings, whereas last year there were just 15.)

Morgan's outsider status and the reform agenda had so angered the Border Patrol union that axing him was No. 1 on its wish list when Trump came into office, swept into the White House in part because of his harsh anti-immigrant, pro-wall rhetoric.

Just days into his presidency, Trump visited DHS—and warmly greeted union president Brandon Judd. Morgan was nowhere to be seen and was gone days later. (Morgan, as Axios has reported, was none too pleased to be cast to the curb. "The fact they are pushing for me to leave immediately is heartless and void of any decency and compassion," Morgan wrote to Kevin McAleenan, then the No. 2 at CBP. "I am being removed in the name of politics—and politics at its worst.")

Over the past two years, with the reformers out and the revolving door at CBP spinning again, transparency has regressed under Trump.

While most misconduct allegations dropped in fiscal year 2017, criminal allegations against CBP agents and officers actually jumped 7 percent according to the most recent statistics available. There were 245 CBP agents and officers arrested in fiscal year 2017—meaning that an agent or officer was arrested every 36 hours—including seven employees arrested twice and one employee arrested three times in that single year; as a sign of just how much CBP continues to struggle with the legacy left it by the Bush and Obama administrations, most of those arrested had been brought on during the hiring surge. (Ironically, one agent last year even pleaded guilty to being an undocumented immigrant.)

More recently, there was the Texas Border Patrol agent arrested and charged last year with being a serial killer, responsible, prosecutors say, for the deaths of at least four women, all sex workers, around Laredo, Texas. That agent, Juan David Ortiz, appears to have shot the women with his CBP-issued handgun, a .40-caliber HK P2000.

That an alleged serial killer lurked amid the ranks of the Border Patrol should appear shocking, yet crime and corruption remains so rampant in CBP that Ortiz wasn't even the first agent from his own sector charged with murder that year. Months before, another Border Patrol agent, Ronald Anthony Burgos-Aviles, was arrested and charged with a double homicide, accused of killing his lover and their 1-year-old son; he allegedly stabbed the mother nearly 30 times. Like the three agents and officers arrested in that spring 2014 violence spree, both of the Laredo agents charged with murder last year had joined CBP during the Bush and Obama administration hiring surge.

Use-of-force issues on the job continue to worry critics, too. Even today, it's still not clear how many people have died in encounters with CBP officers and agents; an *Arizona Republic* investigation uncovered at least four people who died in incidents with the Border Patrol that the agency's own records didn't include; more recently, an April investigation this year by ProPublica and the *Los Angeles Times* found 22 people have died and more than 250 people have been injured in recent years in high-speed vehicle pursuits by the Border Patrol, which refused to release those numbers and continues to have vehicle pursuit policies at odds with the standards of progressive police departments across the country.

The union, meanwhile, has often resisted efforts to modernize and update use of force policies and bring more transparency to officer-involved shootings. When CBP announced it would recognize officers and agents who de-escalate confrontations and avoid using deadly force, the union called the new award "despicable" and said it "will get Border Patrol agents killed."

That bellicose attitude is propped up by a long-standing damaging insular culture that tolerates and protects wrongdoers. In 2016, an outside advisory group headed by New York Police Department Commissioner Bill Bratton concluded, "The CBP discipline system is broken." It noted, among other problems, that CBP doesn't have any systems to monitor or suspend employees arrested for domestic violence or alcohol abuse, standard practice for police departments nationwide. Bratton's advisory group noted that CBP's discipline

system was less rigorous, in fact, for its *armed* officers and agents than the Transportation Security Administration's system for its *unarmed* airport screeners.

ProPublica's bombshell revelations this month of a secret CBP Facebook group with some 9,500 members in which current and former Border Patrol agents and CBP officers traded racist memes and misogynistic jokes prompted quick condemnation by leaders like Acting DHS Secretary Kevin McAleenan and Border Patrol Chief Carla Provost. Yet CBP's protestations of outrage about the unprofessional conduct quickly were undermined, first by POLITICO reporting that DHS officials knew about and monitored racist social media posts, perhaps even for as long as three years, and then *The Intercept's* reporting that Provost appeared to participate in the Facebook group herself.

That CBP's internal culture had problems would hardly have been a surprise to agency leaders, right down to the routine dehumanization of the very people they're tasked with helping.

Prosecutors have revealed that the Border Patrol agent set to go on trial next month for running down a border crosser referred to immigrants as "mindless, murdering savages." Border Patrol agents routinely call migrants or detainees "tonks," a moniker that agents joke stems from the sound a detainee's head makes when hit with a flashlight, and such racist terms even surface in the agency's academy.

In 2014, the American Civil Liberties Union filed a complaint with DHS on behalf of 116 children who reported abuse in CBP custody; DHS closed the investigation after just four months, with no outcome. Last year, the ACLU and the University of Chicago followed up with a report called "Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection." One child reported being told by a CBP officer, "I am going to take you back to the river so that you can die." Others reported physical and sexual abuse at the hands of CBP employees.

CBP's culture can be so toxic that its own agents and officers speak out, which is what happened in 2017 when employees reported CBP officers at the Newark Airport had set up a "rape table" at the New Jersey airport where officers would sexually assault other officers. In an incident reported last week by CNN, one Border Patrol agent documented an incident in which agents attempted to humiliate a Honduran migrant by forcing him to hold a sign that read, in Spanish, "I like men." The senior agent on site took no action, so the whistleblower agent reported it to more senior officials.

Following the reports earlier this month about the Border Patrol's secret social media group, former agent Jenn Budd posted on Twitter about her disgust with the false outrage mustered by CBP's leadership and Provost, the first woman to head the Border Patrol: "They are shocked to discover a FB page with horrible pics and quotes. My ass!"

As Budd wrote in her thread, "Carla Provost graduated the academy 1month before I entered. We likely had the same instructors. I know she knows the same things I do. Like how some instructors forced female agents to have sex, or they would be fired on their subjective Spanish exams." Her Twitter thread continued with allegations of sexual harassment and assault and of how "agents often set up dates with migrants they've apprehended after they get off duty and meet them in Mexico."

The years of poor management and leadership from DHS, three presidents and Congress itself have been only exacerbated by CBP's unwillingness to reckon with its modern role. Its culture and duties seem part police force, part occupying army and part frontier cavalry. None of those pieces of institutional DNA have equipped agents and management for what has become the Border Patrol's main role over the past five years: Humanitarian relief organization.

Back during the hiring surge, the recruiting campaign and CBP's mission emphasized fighting terrorists and the all-American nature of its work—the Border Patrol sponsored a NASCAR team, and recruited at bull-riding competitions and country music concerts. CBP spent that first decade after 9/11 recruiting and equipping what it touted would be an elite counterterrorism force—the first line of defense against Islamic terrorists and drug cartels. But this only perpetuated a message and culture that has left the agency ill-suited to confront what it actually has to do in the second decade after 9/11: Provide humanitarian aid for women, children and families amid global instability that has strained border forces worldwide.

CBP went out and recruited Rambo, when it turned out the agency needed Mother Teresa.

There is little sign that DHS leadership, particularly under the Trump administration, is willing to consider the depth of agency realignment and reinvestment necessary to match CBP and the Border Patrol with what it finds its current mission to be—nor does there seem to be any appetite inside the Trump administration to address what officials would call the "whole of government" failure to meet the migrant crisis.

Even today, recruiting ads continue to make the Border Patrol look like an action movie, with stirring music and fancy toys, from helicopters to canines to ATVs, and lots and lots of weapons. On CBP's website, "counterterrorism" is listed first under the agency's mission—ahead of "customs" and "immigration," and the first item on the agency's own job description for officers states a "typical assignment" is "detecting and preventing terrorists and terrorist weapons from entering the United States." In its first sentence of the agency's "About" listing, CBP says it "is charged with keeping terrorists and their weapons out of the U.S." Nowhere in its recruiting material does it list anything having to do with "providing humanitarian assistance," "rescuing migrants," or "aiding families and children fleeing drug violence," the tasks that have over the past 10 years have consumed more and more of the Border Patrol's time.

The photo last month of a drowned migrant father and daughter in the Rio Grande drew global attention to the human toll of the migrant surge, but to agents along the border such drama is a near-daily occurrence. Just days later, one of CBP's Twitter accounts posted video of agents aboard a boat performing CPR on a teen pulled from the Rio Grande. In fact, today, its most elite unit, the agency's equivalent of the SEALs or Delta Force, primarily is tasked with rescuing migrants in medical distress.

On July 11, 2016—Mark Morgan's first day as chief of the Border Patrol, almost three years to the day before he'd be back leading all of CBP—I went out on patrol with agents in the Rio Grande Valley, the epicenter of the migrant flood from Central America's Northern Triangle countries—Honduras, El Salvador and Guatemala—that have been beset by gangs and drug-fueled violence and caused hundreds of thousands to flee north.

Back then, in 2016, the challenge was so-called unaccompanied minors, UACs in CBP parlance, children fleeing by themselves; even in 2016, the trend was years old. The Rio Grande Valley alone in 2014 had seen more than a quarter-million migrants. In 2016, the 1,100 or so Border Patrol agents in the RGV sector were stopping upward of 500 a day. That night out on patrol, we detained 37 migrants in 30 minutes, handing ultimately four successive groups of crossers over to other agents. It was all very low drama and routine—agents reaching for clipboards rather than weapons. "It's gonna be a 600, 700 day," said the agent I was accompanying.

The migrant situation has gotten only worse—and the numbers larger—since. In recent years, the flood has been fewer UACs and more family units, with fathers, mothers and children—even grandparents—all crossing together, often turning themselves in at legal crossing points. This spring saw 100,000-plus migrants stopped by CBP each month, dwarfing its capabilities to house the detainees, provide food or medical care. Media and

congressional leaders have swarmed to the border to cover this “emergency crisis,” except that while it’s certainly a crisis, it isn’t really an emergency: It’s been happening every day for years—and McAleenan has been warning about the numbers throughout the Trump presidency.

“Kevin and others have said for months that these numbers are a crisis. It is a crisis,” says Kerlikowske, who had McAleenan as a top deputy as CBP. “They weren’t crying wolf. Kevin isn’t one to do that.”

Indeed, in recent days, official CBP social media accounts have been posting past videos of CBP leaders trying to raise the alarm on the humanitarian crisis. There’s clear frustration that CBP is bearing the brunt of the bad press, when it’s just the start of the problem. ICE and the Department of Health and Human Services are supposed to be responsible for long-term detention and asylum and refugee help, but both agencies are also overwhelmed and unable to accept new migrants or detainees—leaving them to linger and suffer in the overcrowded Border Patrol and CBP facilities like what Vice President Pence toured Friday. Meanwhile, the agencies are all led by a president who governs in sound bites rather than through informed policy processes.

“This is a mess. The men and women in the CBP are being treated absolutely unfairly,” one former Border Patrol leader told me last week, requesting anonymity because of the partisan rancor surrounding his former agency. “The Border Patrol and CBP overall have been warning of what is coming. Nobody listened.” He added: “Do we have children being detained past 72 hours in places they shouldn’t be? That’s not the Border Patrol’s fault.”

The commemorative coin, touting the “New Patrol” focused on feeding children and providing medical care, recognizes what agents fear their lot has become: An exhausted agency, unable to focus on what it think it should be doing, arresting drug smugglers and human traffickers.

Agents who signed up to work outdoors, chasing smugglers through the brush and desert, instead spend long shifts sitting on stools processing paperwork, providing medical care or watching over children and families amid squalid conditions.

The failure to recognize where the Border Patrol’s work was heading represents a systemic failure of imagination and indictment of national leadership—not just at CBP, DHS and the Trump administration but also the Obama administration, and Congress, too. Even as the House and Senate have rushed to negotiate a high-stakes border aid package in recent weeks, it’s worth asking: Why, years after it became apparent that migrants were the

biggest challenge facing CBP and the southern border, did it take a father and daughter drowning in the Rio Grande before Congress would begin providing CBP the resources to meet its critical needs? Why hasn't CBP done more to transform itself on the southern border—to retrain officers and agents, to rebuild facilities, to reform supply chains, to expand medical capabilities? And why aren't leaders more focused on ensuring that ICE and HHS are fulfilling their jobs too? This should be HHS' scandal as much as it is DHS' scandal.

These looming problems were apparent even in 2016 to the hard-nosed leaders of the union. Sitting in his office in McAllen, Texas, local union leader Chris Cabrera told me then how many lives agents saved everyday. “You won't find anyone who rescues more people, saves more aliens' lives, aids more drowning victims or recovers more dead bodies than the Border Patrol,” Cabrera said. “If you look at the Border Patrol, we're the largest humanitarian organization on the Southwest border.”

It was a remarkable statement then—coming amid Trump's heated, racist anti-Mexico campaign rhetoric, as the Border Patrol union became the first union to endorse his candidacy, followed later by ICE's union. Yet that statement today captures the myriad complexities and contradictions rolled into the Trump administration's modern immigration policy.

On the one hand, surely the Border Patrol saves more lives of migrants crossing than any other organization—yet its own inability and failure of leadership and resources to respond to the flood of asylum-seekers means that migrants' lives remain in deadly jeopardy even after crossing the border. At least 12 migrants have died in CBP custody since September, including a Nicaraguan last week. In the decade before, not a single migrant died in CBP custody.

Kerlikowske, who led CBP through that UAC crisis in the Rio Grande Valley, says it's worth considering a wholesale shift in CBP's workforce—one that enlists a civilian workforce alongside the agents to aid and process migrants, leaving the armed law enforcement to focus on the Border Patrol's mission of combating drugs and human trafficking—what patrol parlance calls the “runaways,” rather than the “give-ups.”

“Over these last number of years, it's people turning themselves and looking for someone in a green uniform,” Kerlikowske says. “Is that something you need an armed, trained Border Patrol agent? Could you hire a civilian workforce to do the majority of that review and processing?”

Yet it's proved impossible over the past decade for CBP and DHS to have the long-term leadership able to push through such big changes and reimagining. Morgan is the third CBP leader in just over two years, and the 10th in the agency's 13 years of existence, and the polarization that surrounds immigration and the border under Trump has made Democrats reluctant to support even common-sense changes, investments and improvements along the border.

Today, the Border Patrol has made zero progress toward hiring the 5,000 new agents promised by Trump. One bungled hiring experiment over the past year cost the government \$2 million per recruit and yielded only 33 new agents before it was canceled in April. Because of those recruiting and retention challenges, the Border Patrol is actually *smaller* than it was under Obama, and its pilot ranks specifically are so depleted that it was unable to meet four out of every five requests for helicopter assistance during the Trump presidency. In the lower ranks, recruiting and retention remain a critical problem; CBP recently began offering retention bonuses to stem its attrition rates. Workforce morale too is suffering in the Trump era—and it has never been strong at DHS and CBP, which routinely comes out at the bottom of government workforce surveys.

"The results haven't held up to the hope," one former Border Patrol union official told me, who requested anonymity to speak frankly about sensitive internal political dynamics. "The agents thought they were going to the belles at the ball [under the Trump administration]. Trump is not delivering."

In one of his final appearances before Congress before he too departed this spring, DHS Inspector General John Kelly—not to be confused with the DHS secretary and White House chief of staff of the same name—told lawmakers, "[CBP] will be challenged to achieve their goals. They have not achieved their goals in the past."

When he departed ICE to make room for Morgan, Ron Vitiello was no less blunt: "The system is in a meltdown," he said.

And there's McAleenan himself, who during a March visit to the El Paso border, said: "The breaking point has arrived."

7/24/2019

Migrants report misconduct and sexual assault at Yuma border facility

Reports of misconduct and sexual assault of migrant kids surface at Yuma border facility

Rafael Carranza, Arizona Republic Published 8:09 p.m. MT July 9, 2019 | Updated 4:55 p.m. MT July 10, 2019

Underage migrants held at the Border Patrol's holding facilities in Yuma have reported poor conditions, as well as allegations of misconduct and even sexual assault at the hands of U.S. border agents.

The accusations are detailed in reports compiled by case managers working for the Department of Health and Human Services, which takes custody of migrant youths after they've been processed at the U.S.-Mexico border, [NBC News reported Tuesday](https://www.nbcnews.com/politics/immigration/migrant-kids-overcrowded-arizona-border-station-allege-sex-assault-retailation-n1027886?cid=sm_nod_nn_tw_ma).
(https://www.nbcnews.com/politics/immigration/migrant-kids-overcrowded-arizona-border-station-allege-sex-assault-retailation-n1027886?cid=sm_nod_nn_tw_ma)

The Arizona Republic has not reviewed the reports. But these accusations, the first to come out of Arizona, surfaced amid renewed scrutiny on the federal government's treatment of migrants at the border.

The U.S. Department of Homeland Security's watchdog Office of the Inspector General released two reports earlier this month calling on Customs and Border Protection — the agency that oversees Border Patrol — to address serious problems with overcrowding and squalid holding conditions at Border Patrol facilities in El Paso and the Rio Grande Valley.

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Examples of sexual assault and misconduct in Arizona include a 15-year-old Honduran girl who reported that a male agent had groped her during a pat down in front of other officers.

A 16-year-old Guatemalan boy alleged that after migrants made complaints about the food and water, the agents took away the mats in their cells, making them sleep on the concrete floor.

In a statement, Customs and Border Protection said they take all allegations seriously and that the agency investigates all formal complaints, noting that the agency provides several ways to report misconduct.

"The allegations do not align with common practice at our facilities and will be fully investigated," the statement read. "It's important to note that the allegation of sexual assault is already under investigation by the Department of Homeland Security's Office of Inspector General."

However, [President Donald Trump has as recently as Sunday](https://twitter.com/realDonaldTrump/status/1147956460403859462?ref_src=twsrc%5Etfw) (https://twitter.com/realDonaldTrump/status/1147956460403859462?ref_src=twsrc%5Etfw) called previous allegations of misconduct and poor conditions at other Border Patrol facilities "phony and exaggerated."

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7/24/2019

Migrants report misconduct and sexual assault at Yuma border facility



Donald J. Trump
@realDonaldTrump

The Fake News Media, in particular the Failing @nytimes, is writing phony and exaggerated accounts of the Border Detention Centers. First of all, people should not be entering our Country illegally, only for us to then have to care for them. We should be allowed to focus on

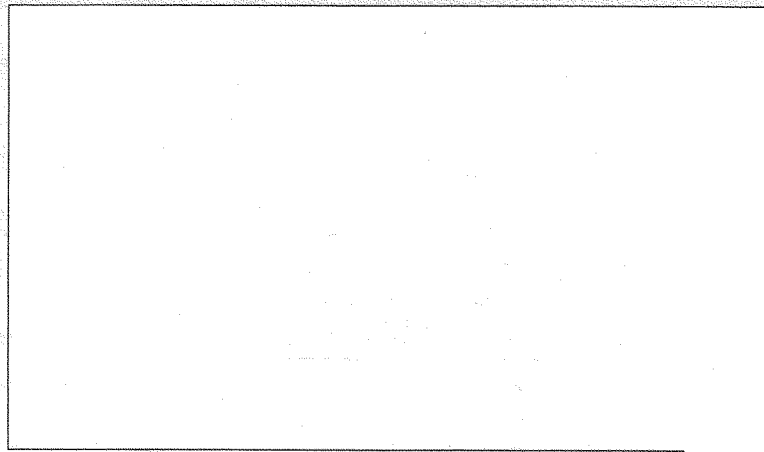
109K 3:48 PM - Jul 7, 2019

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The Yuma Sector, which covers the western third of Arizona's border with Mexico, has [seen a dramatic rise in the number of migrant families and minors](#) ([/story/news/politics/border-issues/2018/12/11/migrant-families-crossing-border-neatly-unimpeded-colorado-river/2239734002/](#)). It's been the third-busiest crossing area along the entire border, behind El Paso and the Rio Grande Valley.

From January to May, agents apprehended 37,235 migrants traveling as families or unaccompanied minors, according to CBP statistics. A sector-by-sector breakdown for the month of June is not yet available.

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In March, Border Patrol officials in Yuma began to [release migrant families directly into that border community](#) ([/story/news/politics/border-issues/2019/04/04/yuma-sector-crossing-migrant-families-us-mexico-border-patrol-colorado-river/3346773002/](#)) stating that they didn't have the capacity to hold them, even for short periods of time.

The sector said it had the capacity to hold 400 migrants at any given time at its three facilities, but were routinely above capacity.

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<https://www.azcentral.com/story/news/politics/border-issues/2019/07/23/reports-abuse-migrant-kids-surface-yuma-border-facility/1689876001/>

2/4

7/24/2019

Abner, 17, describes 11 days of hunger and thirst at Yuma's border station

BORDER CRISIS**Abner, 17, describes 11 days of hunger and thirst at Yuma's border station**

Abner said he gave food to younger migrant kids so they wouldn't go hungry, saw a guard hit a boy, and drank from the sink by cupping his unwashed hands.



Your Video Begins in: 00:23

||

Migrant boy describes harsh conditions at Yuma border detention

JULY 22, 2019 08:47

July 22, 2019, 8:50 PM EDT

By Julia Ainsley and Didi Martinez

CHICAGO -- Abner, a 17-year-old Guatemalan boy, vividly recalls the first 48 hours he spent inside the U.S. Border Patrol station in Yuma, Arizona. He was awake for all of them because there was no space to lie down.

Packed into a cell with other migrant boys, Abner said the older children would give the 8, 9, and 10-year-olds space to lie down on the floor while they would try to sleep sitting or standing up. With nothing to cover him, Abner would tremble.

"I had to stay almost two days like this, standing. I didn't sleep. And they didn't treat me well because I would ask for at least food or water or something to cover myself with and they would deny it," Abner told NBC News in Spanish.

Abner said he and other older migrant kids jammed into a cell at the Yuma border station would give younger kids space to lie on the floor while they slept sitting or standing up. NBC News

Eventually, he learned to sleep on a pile of trash in the corner of the cell, said Abner, who does not want his full name or his face used out of fear he will be targeted for deportation.

Earlier this month, NBC News reported that children held at the Yuma station between April and June had told government case managers about overcrowding and poor conditions, including retaliation for complaints, at least one sex assault and sleeping on

<https://www.nbcnews.com/politics/immigration/abner-17-describes-11-days-hunger-thirst-yuma-a-border-n1032461>

1/4

7/24/2019

Abner, 17, describes 11 days of hunger and thirst at Yuma's border station

concrete.

In total Abner spent 11 days from late May to early June in the Yuma border station. He describes them as filled with hunger and thirst, extreme temperatures and fear of the guards manning the facility. They refused to give him food when he asked, mocked him if he asked what time it was, and, on one occasion, punched another boy in the stomach, Abner said.



Migrant children allege sexual assault and retaliation at border patrol detention center

JULY 10, 2019 01:38

"With a punch they knocked the wind out of him ... But I don't know why," Abner said, describing what he said happened to the 16-year-old.

Abner said he and his cellmates were only fed twice a day, leading him to become very hungry.

"They would give us (food) around 10 [a.m.] and around 5 [p.m.], around that time," he said. "After that, they wouldn't give us anything. And I would get hungry at night and they wouldn't give us anything. We would ask but they wouldn't give us," he said.

The older boys in Abner's cell learned to protect the younger children, whose cries would anger the guards.

"Sometimes, we would give one [hamburger] to the little ones. Because the little ones were the ones that wanted to eat more than others. At least, [the older kids could] stand the hunger a little more," Abner said.

The U.S. border station in Yuma, Arizona. NBC News

For water, they had only the sink in their cell, and they had no hand soap. They drank from the sink by cupping their unwashed hands.

Abner said he lost track of whether it was day or night because the lights were always on in his cell and they were yelled at for going near the windows.

<https://www.nbcnews.com/politics/immigration/abner-17-describes-11-days-hunger-thirst-yuma-s-border-n1032461>

2/4

7/24/2019

Abner, 17, describes 11 days of hunger and thirst at Yuma's border station

"Sometimes we would ask what time it was and they would tell us, 'Oh do you have a meeting to go to?' And they would reprimand us on why we were asking," Abner said.

A Customs and Border Protection official told NBC News that Abner's claims "are inconsistent with CBP's records corresponding to the juvenile migrant's time in custody from May 25 to June 5, 2019."

Said the official, "CBP processing and notification to the Office of Refugee Resettlement (ORR) were completed the day following his apprehension, on May 27, and he remained in CBP's custody until ORR placement was provided on June 5. It is important to note that CBP takes all reports of employee misconduct seriously and the juvenile's allegations of mistreatment have been referred to CBP's Office of Professional Responsibility."

Overcrowding of children in border stations has decreased since June, with more funding for detention space and a drop in immigrants crossing the southern border overall. Acting Department of Homeland Security Secretary Kevin McAleenan was asked about the poor conditions in border stations at a Congressional hearing last week, and he said agents did the best they could under the conditions.

A group departs U.S. Border Patrol vans in Yuma, Arizona, on June 3, 2019. Randy Hoefft / Yuma Sun via AP

After leaving the Yuma station, Abner was held at a facility run by the Department of Health and Human Services, where he recalls playing soccer and making friends. He is now reunited with his father in Chicago and waiting to hear from his lawyer about the next step in his court case.

His father said that when he first saw Abner at Chicago's O'Hare airport during their reunion, "My heart flew out of my body."

Abner has four sisters back in Guatemala. He wants them to come to the United States to escape extreme poverty, but he worries about them experiencing the treatment he says he experienced at the hands of Customs and Border Protection.



Julia Ainsley

Julia Ainsley is a correspondent covering the Department of Homeland Security and the Department of Justice for the NBC News Investigative Unit.

Didi Martinez

Didi Martinez is a researcher with the NBC News Investigative Unit.



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Chairman NADLER. And Chief Hastings, let me ask you one question before we adjourn the hearing—oh, Mr. Swalwell?

Mr. SWALWELL. Yes.

Chairman NADLER. You are recognized.

Mr. SWALWELL. Thank you, Chairman.

And following up, Chief, on Mr. Lieu's questioning, isn't it true, though, that Mr. Galicia's mother showed CBP Mr. Galicia's birth certificate?

Mr. HASTINGS. To my knowledge, that was not CBP. I believe that was ICE, and ICE made the final decision. So I wouldn't want to say what took place after he was in ICE custody. I am just speaking to what happened while he was in CBP, Border Patrol custody.

Mr. SWALWELL. So what is CBP doing, now that we know that this is something that could occur, to reduce the likelihood that CBP would detain a U.S. citizen?

Mr. HASTINGS. As I said before, that individual claimed that he was a Mexican national, and we did run the proper—through all our systems and saw that he had crossed by a border crossing card, which gives indication that he was, indeed, a Mexican national.

Mr. SWALWELL. Thank you, Chief.

Ms. SHAW, has your office ever received information or looked at the extent to which ICE and CBP mistakenly could detain a U.S. citizen?

Ms. SHAW. I don't have information about specific cases, but I do know that we have learned anecdotally that it has happened. I don't believe that we have prior work in this area, and I can confirm we don't currently have ongoing work.

Mr. SWALWELL. Chief Hastings, I want to go back to something Mr. Johnson talked to you about earlier, which is the Facebook group. And first, I want to say, you know, I am the son of a police officer. I worked as a prosecutor. My brothers today work in Alameda County as police officers, and I have great respect for the sworn men and women at CBP.

But I have also been troubled by what I have seen at the border, at detention facilities, a lack of access that Members of Congress have been given when we have tried to present at facilities. But I was really troubled by the Facebook group, just because I think it undermines the good work that the overwhelming majority of CBP officers are trying to do on a day-to-day basis.

Just as many times you see people in the immigration debate, they will take the crimes that immigrants commit, and they will try and project that on the whole immigrant community and say that every immigrant is going to commit a crime. We know that is certainly not the case.

But when a Facebook group like this exists, it makes it really hard for us to have confidence that CBP officials are able to carry out their duties with fairness and with compassion for the people that they are charged with taking care of and keeping in custody.

So when do you expect a review to be completed, to follow up on Mr. Johnson's question.

Mr. HASTINGS. So as I said, we have taken quick action with the cease and desist letters, quick action with the administrative duties that we have prescribed in the most egregious cases. And we have

also, as I said, OPR and OIG are leading the charge on finishing, completing those investigations quickly, and we anticipate they will be done quickly.

Mr. SWALWELL. And Chief, I believe that there is so many additional—first, I just want to back up and say it is my belief that families should not be separated, that there are families in the United States who are related to many of these individuals and that is the best place for them to go. But while this administration's policy is in place, I recognize that it is straining the resources you have, and I have met with your officials. I have been on tours with them.

Do you believe that in addition to making sure that there are beds and food and shelter for the people that you are detaining, that your own officers may need trauma counseling or additional resources for trauma counseling to prevent what we are seeing on these Facebook pages?

Mr. HASTINGS. We do offer employee assistance. It is completely voluntary. It is completely available to all agents without management knowing, and that is one of the many things we offer to our agents.

Mr. SWALWELL. Have you seen an increase, though, in those taking you up on those services over the last few years as the number of people in CBP custody has increased?

Mr. HASTINGS. The EAP services I spoke to are confidential. So I don't see the reports of how many agents are taking advantage of that—that program.

Mr. SWALWELL. And again, I believe that this is almost primarily a mess of the President's making. We expect, though, that CBP officials would conduct themselves, you know, professionally and with compassion. But I can just imagine with the conditions that I have seen, not only the toll it is taking on the immigrants who are being detained, the children who are being separated, but also the CBP officers who live and see this every day.

And I would hope that we can find a way, Mr. Chairman, to see if there has been an increase in those seeking counseling because, again, everyone involved in this mess this President has made I think is going to have to live with the long-term effects.

And I would yield back.

Chairman NADLER. The gentleman yields back. The gentlelady from Pennsylvania—from Texas.

Ms. GARCIA. Mr. Chairman, I just wanted to submit for the record, ask unanimous consent that three articles related to first one about a 16-year-old child's death, another one about the conditions that demonstrate that the conditions were not in the best interests of the children, and also one on ICE opening three new detention centers, all for the record.

Chairman NADLER. Without objection.

[The information follows:]

REP. GARCIA FOR THE RECORD

NEWS

Autopsy Offers Jarring New Details About the Death of a 16-Year-Old Guatemalan Boy

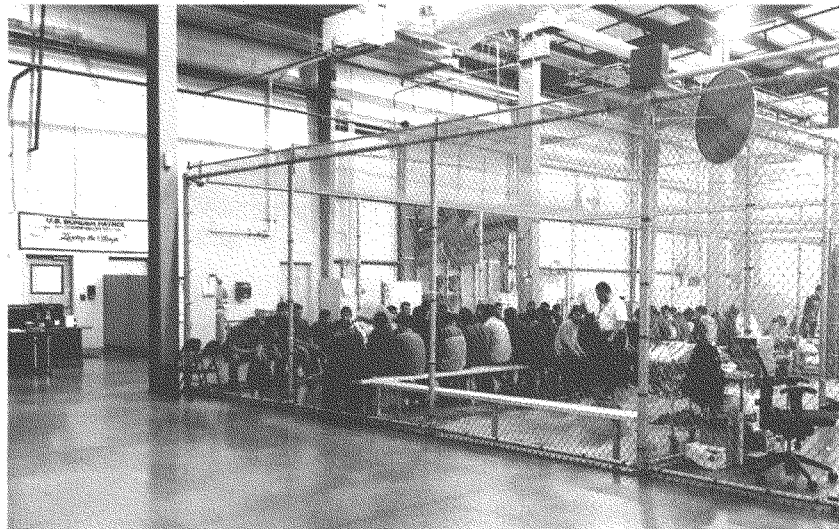
Days after he was supposed to be in a children's shelter, Carlos Gregorio Hernandez Vasquez died of the flu near the toilet in his Border Patrol holding cell.

BY **ROBERT MOORE**

DATE **JUL 24, 2019**

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NOTES **58 COMMENTS**



U.S. Border Patrol agents conduct intake of migrants at the Central Processing Center in June 2018 in McAllen.

U.S. Customs and Border Protection/Getty Images

After a sixteen-year-old Guatemalan boy died in Border Patrol custody in May, officials gave a basic account of what happened. Carlos Gregorio Hernandez Vasquez crossed the border alone near Weslaco on May 13, and was then held at a processing center for unaccompanied minors in nearby McAllen for six days until falling ill on May 19. That day, a nurse practitioner found that he had a 103-degree fever, and he tested positive for the flu. He was prescribed Tamiflu and transferred to the Border Patrol station at Weslaco. Hernandez died the next morning.

Now an autopsy report obtained by *Texas Monthly* provides new details about the death of Hernandez, the fifth Guatemalan child to die since December after being taken into Border Patrol custody. Conducted by Dr. Norma Jean Farley, a contract forensic pathologist for Hidalgo County, the autopsy concludes that Hernandez succumbed to the flu, complicated by pneumonia and sepsis, on or near the toilet of his South Texas Border Patrol cell.

He was fed at 2 a.m. May 20, and agents reportedly checked on him every hour, according to the autopsy. But some time later, in a video that Farley apparently reviewed, Hernandez “is seen lying on the floor, vomiting on the floor, and walks over to the commode, where he sits and later lies back and expires.”

The exact time of Hernandez’s collapse isn’t known because, as the report notes without explanation, “the time on the video is incorrect.” Regardless, the boy was found at 6 a.m. that same morning and declared dead twelve minutes later.

The circumstances of Hernandez’s death strengthen the criticism of Border Patrol’s handling of sick children. The agency is required to transfer unaccompanied children to the Office of Refugee Resettlement within 72 hours, but officials have acknowledged repeatedly failing to meet that requirement this year, including in Hernandez’s case. Hernandez was also never taken to a hospital despite the apparent seriousness of his illness and the fact that the flu has claimed the lives of two other Guatemalan children in Border Patrol custody in the last six months.

A veteran forensic pathologist who reviewed Hernandez’s autopsy, as well as the three other autopsies available for migrant children who died in custody, said she was alarmed at the conditions the children were kept in.

“Prolonged custody of mixed groups of migrants from different regions in close quarters increases the likelihood of transmission of respiratory pathogens such as influenza,” said Dr. Judy Melinek, a board-certified forensic pathologist in San Francisco and CEO of PathologyExpert Inc. “In my opinion, there needs to be a public health audit of the policies and conditions in these migrant camps and a forensic review of all migrant deaths.”

Dr. Jonathan Winickoff, a professor of pediatrics at Harvard Medical School and MassGeneral Hospital for Children, pointed out that flu deaths are “fairly rare events” for children living in the United States—a rate of about one death per 600,000 children. By contrast, Customs and Border Protection held 230,000 children between October and May and three of them died of the flu, though Winickoff noted that children in migrant detention are also at higher risk than the general population of contracting influenza and other infectious diseases in the first place.

CBP did not respond to specific questions about Hernandez’s care. However, a spokesperson said people with flu “are handled as appropriate, depending on the specific circumstances. Children with flu may be diagnosed and treated on-site by CBP medical

personnel or may be referred as appropriate to the local health system for diagnosis and treatment.”

All of the children who’ve died since December were initially taken into custody by agents from the El Paso and Rio Grande Valley sectors of the Border Patrol. Before December, no child had died in Border Patrol custody in a decade.

- Jakelin Caal Maquin, 7, died Dec. 8 in an El Paso hospital, a day after she and her father crossed the border in remote southwestern New Mexico. An autopsy report showed she died of a bacterial infection that spread to her bloodstream and caused multiple organ failure
- Felipe Gomez Alonzo, 8, died on Christmas Eve in a hospital in Alamogordo, New Mexico, six days after he and his father crossed into the United States near El Paso. He died of influenza B and bacterial infection, according to an autopsy report.
- Juan DeLeon Gutierrez, 16, died April 30 in Corpus Christi. He crossed the border in the El Paso area April 19 without parent or guardian. He fell ill at an Office of Refugee Resettlement shelter in Brownsville and was treated for several days at a Corpus Christi hospital before he died. The Nueces County medical examiner said no autopsy was performed because Gutierrez was not in custody at the time of his death and died of

natural causes.

- Wilmer Josue Ramirez Vasquez, 2½, died May 14 after several weeks in an El Paso hospital. He crossed with his mother in El Paso on April 3. Wilmer died of “multiple intestinal and respiratory infectious diseases,” including influenza A, according to an autopsy report.

58

COMMENTS

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Plans to Close Carrizo Springs Demonstrate Conditions That are Not in Children's Best Interests

 [amnestyusa.org/press-releases/carrizo-springs-facility-closure/](https://www.amnestyusa.org/press-releases/carrizo-springs-facility-closure/)

Responding to reports that the Department of Health and Human Services will be shutting down the facility in Carrizo Springs, Texas, Denise Bell, the Researcher for Refugee and Migrant Rights at Amnesty International USA said:

"The closure of the Carrizo Springs facility makes clear the crisis of the government's own making: these temporary emergency facilities arose because of the government's deliberate policy to punish children, resulting in the prolonged and indefinite detention of thousands of children.

"Temporary emergency shelters are never a home for children, and Carrizo and other detention facilities like it only demonstrate that these disastrous policies only endanger children, and are never, ever, in the best interests of the child. All children have a right to be safe and secure with their families and loved ones: the government's policies of detaining children seeking safety are unnecessarily cruel and shameful."

Amnesty International USA calls for the Trump Administration to close the other temporary emergency facility at Homestead and release children immediately to appropriate sponsors. AIUSA also calls for the Administration to ensure that its policies and practices regarding the care of unaccompanied children conform to the best interests of the child standard, as outlined in *Flores* agreement and in international law, no matter the type or location of the facility.

Background:

Amnesty International USA visited the Carrizo Springs facility on July 20, 2019. Amnesty International USA's executive director, Margaret Huang will be testifying on the conditions she witnessed at the facility, as well as the Homestead and Tornillo detention facilities before the Subcommittee on Labor/HHS/Education of the House Appropriations Committee, on Wednesday, July 23 at 10AM EST.

On July 17, 2019, Amnesty USA published a new report detailing conditions at the Homestead facility, which outlines how children at Homestead are detained for extended periods of time and given inadequate care.

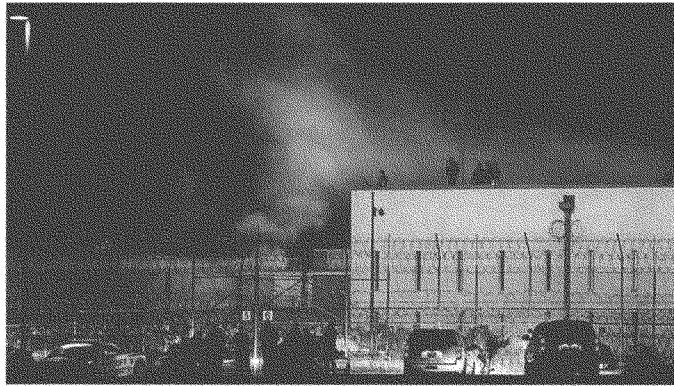
Mother Jones

POLITICS JULY 9, 2019

ICE Just Quietly Opened Three New Detention Centers, Flouting Congress' Limits

The facilities are all run by private prison companies, and one experienced a violent riot.

NOAH LANARD



Officers stand on the roof of and outside the Adams County Correctional Facility during a 2012 riot. ICE recently started sending asylum seekers to the prison. **Lauren Wood/AP**

When members of Congress reached a bipartisan deal to end the government shutdown in February, they gave Immigration and Customs Enforcement a simple instruction: Stop detaining so many people. Instead, ICE pushed its detention population to an all-time high of 54,000 people, up from about 34,000 on an average day in 2016 and well above the 40,520 target Congress set for ICE.

Now, just after Congress rejected another request for more detention money, ICE is continuing to spend money it hasn't been given. *Mother Jones* has learned that ICE has started using three new for-profit immigration detention centers in the Deep South in recent weeks. One of them has seen the death of three inmates following poor medical treatment and a violent riot in 2012 that left a guard dead.

Interviews with lawyers and prison officials and ICE records reveal that the agency has begun detaining migrants at the Adams County Correctional Center, a Mississippi prison operated by CoreCivic; the Catahoula Correctional Center, a Louisiana jail run by LaSalle Corrections; and the South Louisiana ICE Processing Center, run by GEO Group in Basile, Louisiana. ICE has not previously disclosed its use of the Adams County and Catahoula centers, though GEO Group did announce in April that ICE would soon begin using the Basile facility. On Tuesday, ICE spokesman Bryan Cox confirmed that all three facilities started housing ICE detainees late last month. Together, the three detention centers can hold about 4,000 people, potentially expanding ICE's presence in Louisiana and Mississippi by 50 percent.

Conditions at the Adams County prison have been particularly bad. Complaints by inmates there about inadequate medical care, staff mistreatment, and rotten food contributed to a 2012 riot that left one guard dead and more than a dozen people injured. The Justice Department announced in May that it would stop using the prison. ICE has decided to fill that void.

ICE had the capacity to detain only about 2,000 people in Louisiana and Mississippi at the start of Donald Trump's presidency. But contracts signed with private prison companies in the past year have pushed ICE's capacity in those states above 10,000 people. The horrifying conditions uncovered by *Mother Jones* at the Winn Correctional Center in Louisiana and by *The Nation* at Adams County helped push Barack Obama's Justice Department to move to end its use of private prisons. Since June, ICE has started sending asylum seekers to both of those prisons.

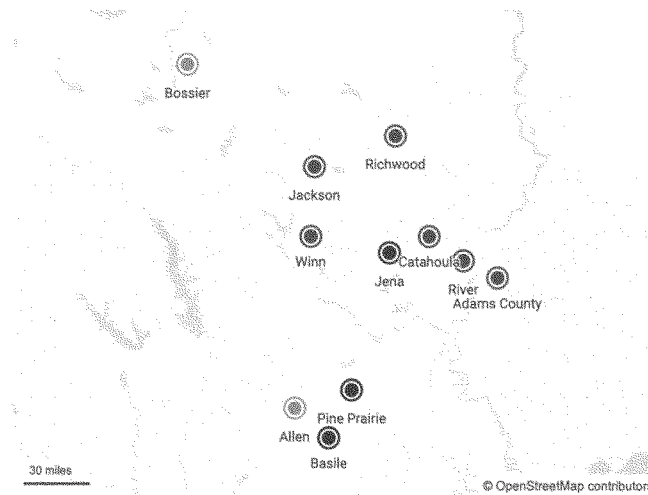
Concentrating asylum seekers in Southern states makes it particularly likely that they will lose their cases because of the region's harsh judges and shortage of immigration lawyers. There are not enough judges in Louisiana to hear the new cases, and there are no immigration courts in Mississippi. As a result, many of these new asylum seekers will be forced to represent themselves in video hearings with out-of-state judges. (The Southern Poverty Law Center and American Civil Liberties Union of Louisiana are suing ICE to try to force it to release more asylum seekers from detention in Louisiana and other Southern states.)

Homero López, the executive director of the Louisiana legal aid organization ISLA, says that even some Louisiana detainees who can afford a lawyer aren't able to get one because of how quickly ICE is expanding in the state. "ICE is saying they want to get to 15,000 [detainees] by the end of the summer in Louisiana," López says, based on what he's heard from guards and other lawyers. "There's an intentional, purposeful approach behind this of putting people where they can't access counsel."

The Trump administration argues that it needs to expand capacity so that it can keep asylum seekers in detention while their cases are pending. Carla Provost, the head of the Border Patrol, said in May that the United States would "lose control" of its border if it began quickly releasing single adults. Most of the record number of families crossing the border are already being released because of a legal settlement that prevents children from being detained for more than about 20 days. But single adults, most of whom used to be released while their asylum cases were pending, are often detained indefinitely under a Trump administration policy that has pushed detention populations to record highs.

ICE Jails and Detention Centers in Louisiana and Mississippi

Adams, Bossier, Catahoula, Jackson, River, Richwood, and Winn have come online since February.



Operator

- LaSalle Corrections
- Local Sheriff
- GEO Group
- CoreCivic

ICE started using another CoreCivic prison four hours north of Adams County last year.

Map: Mother Jones • Source: ICE

The Catahoula jail is the fifth LaSalle jail or prison in Louisiana that ICE has started using since February, the month Congress told ICE to cut back on detention. An assistant warden told *Mother Jones* that ICE began sending people there last week, shortly after Congress voted to provide \$4.6 billion to address the humanitarian crisis at the southern border without giving ICE the extra detention money it had requested. Asked how detaining immigrants compared to holding criminals, the warden said, "It's a breeze." (The bill gave ICE an additional \$208 million, but Congress directed that it go to areas like detainee medical care.)

Sarah Pierce, a policy analyst at the nonpartisan Migration Policy Institute, says it's unclear where ICE is getting the money for the expansion, given that Congress just made a point of not giving it additional detention money. Pierce considers the expansion "especially brazen" in light of the recent reports showing children in Customs and Border Protection custody lacking "even the most basic resources." She asks where immigration officials are finding the money to detain thousands of additional immigrants "if the administration cannot provide children with soap."

ICE still hadn't finalized the contract for the 2,232-person Adams County prison when Congress voted on the June spending bill, according to reporting from the *Natchez Democrat*. Marshall Goff, an attorney with the Mississippi law firm Chhabra & Gibbs, says his firm got its

first clients from Adams County in the past two weeks and that many of the people being held there are asylum seekers.

Laura Rivera, a staff attorney with the Southern Poverty Law Center, says that some of her clients who were transferred to Adams County last week are still not showing up in ICE's detainee locator tool. She says ICE also violated its own detention standards by failing to notify her of the transfer. "People just disappear from the system," Rivera says. "It makes it extraordinarily hard to represent them." Like all of the new ICE jails in the South, Adams County is remote. It is located on Hobo Fork Road on the outskirts of Natchez, a small city about two hours south of Jackson.

After Catlin Carithers was killed in the 2012 riot, Deborah Temple, a guard who was standing next to him at the time of the attack, said in an affidavit that she and colleagues had warned prison officials multiple times that the prison was dangerously understaffed. "My co-workers and I were told not to worry about it and to 'suck it up,'" Temple said. "In fact, I was told to 'put my big girl panties on and get back to work.'" The Justice Department's Office of the Inspector General concluded in a 2016 report:

Four years after the riot, we were deeply concerned to find that the facility was plagued by the same significant deficiencies in correctional and health services and Spanish-speaking staffing. In 19 of the 38 months following the riot, we found CoreCivic staffed correctional services at an even lower level than at the time of the riot in terms of actual post coverage. Yet CoreCivic's monthly reports to the BOP, which were based on simple headcounts, showed that correctional staffing levels had improved in 36 of those 38 months.

In July 2015, the Mississippi prison held about 2,300 immigrants, mostly from Mexico, serving criminal sentences in the custody of the Justice Department's Bureau of Prisons. Only four of the prison's 367 staff members spoke fluent Spanish, according to the Justice Department report. CoreCivic's current job postings for the prison do not ask that supervisors be able to speak Spanish or any language other than English. Goff is particularly concerned by the lack of language skills. "If one of these detainees has a medical emergency on the unit, and nobody there speaks Punjabi or whatever language the detainee speaks," he explains, "the detainee could die while staff are trying to get in touch with an interpreter."

In *The Nation's* 2016 investigation, Seth Freed Wessler documented three cases where immigrant inmates died following poor medical treatment at Adams County. In one case, Juan Villanueva, a 39-year-old man from Mexico, complained in November 2011 that he had a swollen rib cage and that he was having trouble breathing. After Villanueva started throwing up blood in March 2012, a doctor recommended anti-nausea medication. As Wessler wrote:

Villanueva visited the clinic at least six times in four months. Not once did he see a doctor, despite his rapidly deteriorating health. On March 15, 2012, medical staff sent Villanueva to the hospital, where an X-ray showed a huge mass on his right lung. By the time he was diagnosed with lung cancer, it had metastasized to his brain.

Villanueva was transferred to a government medical facility for prisoners shortly before the riot and died about two months later. Justice Department investigators found that inadequate medical staffing levels continued at Adams for years after the riot.

Yoel Alonso, a Cuban asylum seeker, was moved to Adams County from a Louisiana detention center last Monday. He suffered from gout in Cuba, but the condition quickly worsened in ICE custody, and he has been using a wheelchair since December. After I met Alonso's wife, Midalis Rodriguez, at her home outside Miami in May, she described Louisiana as "that hell," a place with no respect for human rights. Rodriguez told me on Monday that she had spoken to her husband the day before, six days after he was sent to Adams County. Alonso told her that conditions in Mississippi were even worse than they had been in Louisiana.

"It's a shame to say it," Rodriguez said in Spanish, "but Yoel left a dictatorship and entered a new one."

Ms. GARCIA. Thank you.

Chairman NADLER. This concludes today's hearing. We thank all of our witnesses for participating.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

And with that, without objection, the hearing is adjourned.

[Whereupon, at 2:49 p.m., the committee was adjourned.]

APPENDIX



CWS Statement to the U.S. House Committee on the Judiciary, pertaining to its hearing "Oversight of Family Separation and U.S. Customs and Border Protection Short-Term Custody under the Trump Administration" on Thursday, July 25, 2019

As a 73-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions and 25 refugee resettlement offices across 17 states, Church World Service (CWS) urges Congress to condemn family separation and inhumane treatment at the border - and put an end to the dehumanizing practices occurring in CBP facilities. Children, families, women and men are fleeing violence, gang conscription, trafficking and sexual exploitation in the Northern Triangle. Individuals seeking safety within the region and in the United States have clear and compelling protection concerns and the United States has moral and legal obligations under international and U.S. law to see that individuals seeking protection are not returned back into the hands of traffickers and others who seek to exploit them.

CWS is outraged to hear that administration officials have proposed setting the Presidential Determination on refugee admissions at zero in FY 2020, which would destroy thousands of people's lives who we have promised to protect, including those who the United States has already approved. Congress must hold the administration accountable to consult with Congress prior to setting the refugee admissions goal, to stop its attacks on asylum seekers, and to commit to resettling 95,000 refugees in 2020. Congress must do its constitutional duty and demand that the U.S. once again be a beacon of hope for refugees.

CWS remains gravely concerned by reports of ongoing family separation. A recent report has uncovered evidence that DHS has continued the systemic practice of child separation, long after the June 20, 2018 Executive Order that supposedly ended the administration's harmful 'zero tolerance' policy. DHS officials continue to illegally separate children from their parents based on faulty and unproven claims of criminal activity or other characteristics that are unrelated to a parent's ability to care for their child. CWS is deeply concerned by policies that have caused family separation at and between ports of entry, including of asylum seekers, as well as policies that detain and prosecute parents for migration related offenses. Tearing children away from their parents, absent a documented child protection concern, is unconscionable. This practice neglects due process and is extremely harmful to both children and their parents. CWS urges Congress to see the administration end family separation, eliminate criminal prosecution for migration-related offenses, and ensure swift family reunification.

CWS is strongly opposed to immigrant and family detention and any proposal that would undermine Flores protections. Detention in CBP custody is plagued with systemic abuse and inadequate access to medical care. Numerous reports have revealed the systemic human rights abuses, sexual assaults, and dehumanizing conditions that exist in the detention facilities overseen by the current administration. These exceedingly overcrowded detention centers are unsanitary, unhealthy, unsafe and are leading to extreme, and sometimes fatal, mental and physical health outcomes for children. These conditions and abuses are unconscionable and are not a result of a lack of funding or resources, but rather, are the result of intentional policies put in place to deter children and families from seeking protection. The American Association of Pediatrics has found that family detention facilities do not meet basic standards for children and "no child should be in detention centers or separated from parents." CWS demands that Congress reject any proposal that would expand family detention or violate the Flores agreement's long-standing consensus that children should not be detained for longer than 20 days. CWS also urges Congress to cut funding for detention, deportations, and border militarization - and to exert robust oversight over DHS detention centers to end harmful abuses.

CWS urges the administration to rescind its April 2018 information-sharing agreement between DHS and the Department of Health and Human Services (HHS) that turns HHS into an immigration enforcement agency. This practice prolongs family separation and results in children remaining in unsafe and unsanitary detention facilities for far too long. The agreement "requires HHS to share the immigration status of potential sponsors and other adults in their households with DHS to facilitate HHS's background checks." The population of detained unaccompanied children ballooned, and the Office of Refugee Resettlement (ORR) at HHS continues to share information about all potential sponsors with DHS, needlessly prolonging child detention since sponsors are afraid to come forward out of concern about immigration consequences for themselves or a loved one. We demand that the administration immediately revoke this agreement so that children can be released as soon as possible and sponsors are not forced to choose between caring for their children or risking deportation.

CWS is equally troubled by any proposal that would weaken or eliminate provisions in the Trafficking Victims Protection Reauthorization Act (TVPRA), which provides important procedural protections for unaccompanied children in order to accurately determine if they are eligible for relief as victims of trafficking or persecution. Weakening existing legal protections, especially for children, undermines the United States' moral authority as a leader in combating human trafficking and increases vulnerabilities for trafficking victims by curtailing access to due process, legal representation, and child-appropriate services. CWS urges the administration and Congress to affirm the right of all people to seek protection and ensure that individuals seeking safety are not returned to their traffickers and exploitation.

Our faith traditions call us to welcome the stranger. CWS calls on the administration to stop detaining children and families - and ensure that all people are treated with the inherent dignity they deserve.

**NATIONAL
IMMIGRANT
JUSTICE CENTER**
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Statement of the National Immigrant Justice Center (NIJC)

**U.S. House Judiciary Committee Hearing
Oversight of Family Separation and U.S. Customs and Border Protection Short-Term
Custody under the Trump Administration**

July 25, 2019

Background: The Trump administration continues to systemically tear apart immigrant families while hiding information about its actions from Congress, lawyers, and the public. Recently released FOIA documents along with testimonies from victims of the practice show the Department of Homeland Security regularly separates children from their parents on the basis of suspected and often erroneous gang affiliation, criminal histories that have no bearing on a parent's fitness, and prosecutions for migration-related offenses (i.e. "zero tolerance").¹ These continuing separations, made without any transparent governing process or policy, manifest a systematic circumvention of due process rights and leave children and families suffering incalculable trauma.

NIJC represents parents who were torn from their children on the basis of unsubstantiated allegations of criminality, months after the administration claimed to have stopped engaging in this abusive practice. Here are just a few recent examples.

Maria, a 19-year-old Salvadoran woman, fled El Salvador after suffering physical and sexual violence at the hands of gang members. In February 2019, immigration officials detained her and her three-year-old son into freezing cold conditions in a CBP processing center (*hielera*). Her son was then taken and placed ORR custody. In the newly released HHS document, Maria's reason for separation is listed as "parent has a criminal history (US or home country)." It was not until a month after the separation, however, that Maria was told that the reason for the separation was based on allegations of a criminal record in her home country. NIJC lawyers working on her case had to obtain official documents from El Salvador confirming that she in fact had no criminal record. Maria and her son were apart for three months, before finally reuniting in June 2019. When they reunified, Maria's son was withdrawn, and did not appear to recognize his mother.

Diana, a 25-year-old woman, fled El Salvador with her then one-year old baby, and upon arriving were immediately taken to a freezing cold processing facility (*hielera*) in March 2019. Diana came to the U.S. for seek asylum because of credible death threats from gang members and years of gender violence. DHS inappropriately classified Diana as a "high security" detainee and tore her daughter away mid-breast feeding on her second birthday. After extensive work by NIJC lawyers Diana finally learned the reason for the separation. On one occasion, Diana was

¹ Jesse Franzblau, "Family Separation Policy Continues, New Documents Show," National Immigrant Justice Center, June 22, 2019, <https://bit.ly/2Z1zWrA>.

NATIONAL IMMIGRANT JUSTICE CENTER

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forced to carry a small amount of marijuana under death threat by a powerful gang leader who was sexually abusing her. The very reason she fled to the United States for protection is now the basis of her continued separation from her young daughter, who was released from ORR custody to the care of a family friend. Deborah and her daughter continue to suffer excruciating trauma from being apart.

Elena is a Salvadoran mother of two children (17 and 12 years old) who was separated from her children after she entered the U.S. in April 2019. She was separated because a decade earlier she happened to be questioned by Salvadoran police and confused for a gang suspect because gang members were brought to the police station at the same time. After realizing their mistake, Salvadoran authorities released her after about three days with zero charges. NIJC provided the Justice Department with an official clearance document from the Salvadoran government, and Elena was released and reunified with her children, after being separated for more than two months.

Mariana is an Angolan mother who entered the U.S. in April 2019 with her two children (seven and five years old). She was separated from her children because the U.S. government appears to be asserting that her participation in peaceful demonstrations in support of running water, electricity and better schools classify her as a terrorist. She is seeking asylum based on severe gender violence by Angolan government soldiers. She remains detained, separated from her children, and is suffering from health issues.

Separations are also happening because agents falsely question family relationships. After fleeing violence in Guatemala, a teenage boy was separated from his father due to alleged, yet unfounded, fraudulent familial ties. When the separation initially happened, officials did not give the teenage boy or his father any explanation. Later, lawyers discovered that border officials separated the father and son because they questioned the father-son relationship, despite the fact that the boy's father presented official Guatemalan birth certificates.

When NIJC represents a separated parent, we find that they are sometimes given some verbal indication at their credible fear interviews of the basis for the separation, but no specific details or documentation. NIJC has asked numerous government officers for documentation to substantiate allegations of gang affiliation or criminal history. In all but one case, the government has refused to provide us with documentation reflecting the reason or justification for the separation. The time it takes to determine the reason for the separation and then obtain documents refuting the basis of the separation extends the separations of parents from their children by a minimum of several weeks.

For more information, please contact Jesse Franzblau, Senior Policy Analyst at the National Immigrant Justice Center, at jfranzblau@heartlandalliance.org or 202-879-4312.



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE HOUSE COMMITTEE ON
THE JUDICIARY

HEARING ON OVERSIGHT OF FAMILY SEPARATION AND U.S. CUSTOMS AND BORDER
PROTECTION SHORT-TERM CUSTODY UNDER THE TRUMP ADMINISTRATION

July 25, 2019

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The American Immigration Council (Council) is a non-profit organization that has worked to increase public understanding of immigration law and policy - and the role of immigration in American society - for over 30 years. We write to thank the Committee for scheduling this hearing to discuss the impact of the President's prior "zero tolerance" policy and ongoing family separations at the border.

The full scale and impact of these policies remain unknown. Conducting a comprehensive and meaningful investigation of the agencies involved in the implementation of these policies will help to create greater levels of accountability and develop a historical record that we hope will prevent the United States from ever revisiting such policies in the future.

As the Committee is aware, former Secretary of Homeland Security (DHS), John Kelly, confirmed that the department was considering a policy to systematically separate families at the border in March 2017 – more than a full year before the announcement of the administration's "zero tolerance" policy directing federal law enforcement to prosecute all adult immigrants who entered the country unlawfully. **The Council and its partner organizations uncovered a significant number of instances of kids – including at least eight infants under the age of one and at least 37 kids ages two and under - who had been separated from their families in the intervening time between Secretary Kelly's remarks in March of 2017 and the formal announcement of "zero tolerance" in April 2018.**

Specific examples of separations occurring in the summer and fall of 2017 were cited in a formal [administrative complaint](#) to the DHS Offices for Civil Rights and Civil Liberties and Inspector General. The individual complaints that the Council and its partner organizations collected and conveyed to the DHS clearly documented the extreme trauma that this new policy forced upon immigrant families, and the related negative impact on their ability to effectively pursue relief in their respective immigration cases. Despite clear evidence of direct and possibly irreparable harm, the administration nevertheless moved



forward with a significant expansion of its family separation policy in formally announcing a “zero tolerance” policy mandating the criminal prosecution of everyone who crossed the southern border, including adults traveling with children.

The Council, along with the National Immigrant Justice Center, Kids in Need of Defense, Women’s Refugee Commission, and Florence Immigrant & Refugee Rights Project filed [requests for information](#) regarding family separation under the Freedom of Information Act (FOIA) in April 2018. The requests sought policies, guidelines, or procedures used by government agencies to address the processing and treatment of families at the U.S.-Mexico border, the separation of adult family members from minor children, the criminal prosecution of adult family members, and efforts to reunify families. In response, the Council has received a variety of key documents from the Department of Health and Human Services (HHS) that describe the scale and impact of family separation at the border following the implementation of “zero tolerance” that we believe could be of value in the Committee’s investigation of these policies.

These documents reveal that from January 2018 through March of 2019, the administration separated at least 3,109 kids from their families. Detailed information including the age, gender, country of origin, and reunification status for every child listed in the documents during the period described above is available [here](#). This information confirms that at least 108 kids under the age of five were seized by federal immigration authorities at the border. Critically, these documents clearly demonstrate that family separations continue at the border with as many as five kids seized daily. Reports highlighting the emotional and physical distress experienced by the kids and families impacted by this policy continue to surface.

The documents received in response to the Council’s FOIA request also confirm that despite the extensive, documented harm inflicted by these policies, the administration continues to separate families at the border on a regular basis. These ongoing separations are carried out on the basis of suspected allegations of “criminal history”, “medical issues”, “gang affiliation”, or because a familial relationship is “not verifiable”. The documents suggest that the administration may be relying on unsubstantiated information regarding alleged criminal histories and gang affiliation. Perhaps most importantly, the seizure of kids based on these allegations is carried out without any meaningful level of due process as parents are not presented with the evidence forming the basis for the separation or a meaningful opportunity to challenge their separation in before a neutral third party.

The emotional and physical stress children and families are experiencing as they seek refuge in the United States is exacerbated by the additional trauma of being separated from their siblings, parents or other relatives and caregivers. We can no longer afford to sit idly by as the administration continues to pursue these policies with impunity. It is incumbent upon all of us to take meaningful action to elicit change and create meaningful accountability for those responsible for the creation and implementation of these policies. The American Immigration Council believes that the United States should honor its legacy of providing safe haven to those fleeing violence and its commitment to the fundamental value of family unity and reunification. Put simply, policies that tear kids from their families are contrary to our collective values, and they should be reserved for only the most extreme circumstances.



We thank you for the opportunity to submit this statement, and for the Committee's efforts to engage in a thoughtful conversation about the impact of immigration enforcement policies that lead to the separation of families at the border.

House Committee on the Judiciary
Hearing on “Oversight of Family Separation and U.S. Customs and Border
Protection Short-Term Custody Under the Trump Administration”
July 25, 2019
Questions for the Record
Submitted by the Honorable Greg Stanton

Questions for Director Hayes:

1. **Director Hayes**, how many ORR-funded shelters are in our country specifically for children five years old and under?
2. **Director Hayes** testified before the Appropriations subcommittee on July 24, 2019 that HHS has plans to double its permanent bed capacity to 20,000 by December 31, 2020.
 - i. Who projected the increase of permanent bed capacity from 10,000 to 20,000? What is the basis for this projection?
 - ii. How many tender-age children do you estimate ORR will receive between now and December 31, 2020?
3. **Director Hayes** confirmed that Phoenix is still under consideration for a permanent housing facility for unaccompanied children. What is the specific criteria taken into consideration while trying to select a facility?
 - i. What age groups of children will this facility be housing?
 - ii. By when is a decision expected to be reached?
4. **Director Hayes**, what specific training do ORR staff receive for taking care of children that are still breastfeeding?
5. **Director Hayes**, what is the average length of stay for children in tender-age facilities? Please provide a breakout by age and length of time in your care.
6. **Director Hayes**, are you aware of the psychological harm being caused to the children housed in tender-age facilities due to the separation from their parent and/or guardian?
7. **Director Hayes**, what training or workshop(s) do ORR staff receive on the harms caused to children when they are separated from their parent and/or guardian?
8. **Director Hayes**, how many children under the age of 5 are currently in ORR custody?

- i. How many have been in ORR custody at some point over the past year?
- 9. **Director Hayes**, how many tender-aged children are currently in a facility or a group setting and not in a single-family-home?
 - i. How long would a young child remain in such a facility--is that intended to be a long-term placement setting for them?
- 10. **Director Hayes**, has ORR consulted with early childhood development experts or the research on the impacts of congregate care on young children's development?
 - i. What early childhood development experts have you involved in devising, monitoring and participating in their care?
 - 1. In particular, have you worked with infant and early childhood mental health experts to understand and take steps to address the effects of the severe trauma they have experienced?
- 11. **Director Hayes**, Recently, Krish O'Mara Vignarajah, the President CEO of Lutheran Immigration and Refugee Service (LIRS), testified before the Labor-HHS Appropriations Subcommittee that LIRS has the ability to move children currently in congregate care into family foster placements immediately. What is ORR's justification for establishing contracts to establish new congregate care facilities for young children when this alternative exists?
- 12. **Director Hayes**, there are a number of internationally recognized infant and early childhood mental health experts who are ready and willing to advise and assist you in providing appropriate mental health care for young children. Would you be open to working with them on your policies and practices?

Questions for Chief Hastings and Commander White:

- 1. **Chief Hastings**, what specific training do Border Patrol agents receive for separating a baby who is still breastfeeding?
- 2. **Commander White**, In the ORR-contracted facility visited, several children had been separated from their parents. For children whose parents were in criminal custody, the information in the child's file only said the parents were in "criminal custody" while for other children, the information only read "ICE Custody." No detail was given as to the nature or recency of the criminal charges or additional information as to why the parent was in ICE custody. Staff specifically said that the lack of information impeded their job. Why would it be helpful for ORR staff to know the nature and recency of criminal charges of a parent of a child in ORR custody?

- ii. **Chief Hastings**, how much detail is CBP required to give to ORR about the nature and recency of the criminal charges of the parent? Is this information affirmatively given to ORR?
- iii. **Commander White**, could lack of information related to *why* a child was separated delay reunification efforts?

RESPONSES FROM CHIEF HASTINGS

Question#:	1
Topic:	Breastfeeding
Hearing:	Oversight of Family Separation and U.S. Customs and Border Protection Short-Term Custody under the Trump Administration
Primary:	The Honorable Greg Stanton
Committee:	JUDICIARY (HOUSE)

Question: What specific training do Border Patrol agents receive for separating a baby who is still breastfeeding?

Response: USBP prioritizes the safety and wellbeing of all aliens in its custody, particularly at-risk populations such as infants and toddlers. USBP agents do not receive this type of training. US Border Patrol agents comply with TEDS and the *Ms. L v ICE* preliminary injunction, which provides guidelines under which a family separation can occur and prioritizes the safety and wellbeing of all aliens in its custody, particularly nursing children. Each separation is handled on a case-by-case basis, and special consideration is given to any case that may involve a tender age child. If such a separation were to occur involving a tender age child, then expedited placement with the U.S. Department of Health and Human Services would be requested.

Question#:	2
Topic:	Required Details
Hearing:	Oversight of Family Separation and U.S. Customs and Border Protection Short-Term Custody under the Trump Administration
Primary:	The Honorable Greg Stanton
Committee:	JUDICIARY (HOUSE)

Question: How much detail is CBP required to give to ORR about the nature and recency of the criminal charges of the parent?

Response: The Department of Health and Human Services-Office of Refugee Resettlement is not a law enforcement entity and the law limits how much information CBP can relay to Office of Refugee Resettlement (ORR) regarding a parent who has been separated from a minor. Generally, CBP will advise ORR that a parent has been charged with an offense and has been separated from the child in accordance with the *Ms. L. v ICE* preliminary injunction.

When a child is referred to ORR, CBP provides the child's I-213, as well as general information regarding the reasons for the separation. CBP provides ORR with biographical information about the separated parent or legal guardian. Additionally, CBP may provide additional information in a general "notes" section of their data push to HHS ORR that is used by ORR if reunification is determined to be appropriate by ORR. When additional information is needed, ORR staff can request it through email or phone communication.

Question: Is this information affirmatively given to ORR?

Response: Yes.

RESPONSES FROM DIRECTOR HAYES AND COMMANDER WHITE

House Committee on the Judiciary
Hearing on “Oversight of Family Separation and U.S. Customs and Border
Protection Short-Term Custody Under the Trump Administration”
July 25, 2019

Questions for the Record Submitted by the Honorable Greg Stanton

Questions for Director Hayes:

1. **Director Hayes**, how many ORR-funded shelters are in our country specifically for children five years old and under?

Response: ORR has one shelter facility that is specifically licensed to serve children five years old and under. However, there are numerous other ORR care provider programs that serve children five years old and under in addition to other age groups. This includes transitional foster care programs that serve children under 13 years of age (tender age children), sibling groups with one sibling under 13 years of age, pregnant/parenting teens, and children with special needs. Children placed in transitional foster care programs are placed with individual foster families. ORR prioritizes placing tender age children in transitional foster care programs over other levels of care whenever possible. ORR has 23 transitional foster care programs. In all cases, ORR strives for placement in the least restrictive setting that meets the child’s individual needs.

2. **Director Hayes** testified before the Appropriations subcommittee on July 24, 2019 that HHS has plans to double its permanent bed capacity to 20,000 by December 31, 2020.
 - i. Who projected the increase of permanent bed capacity from 10,000 to 20,000? What is the basis for this projection?

Response: ORR’s Division of Planning and Logistics projects bed capacity needs by analyzing historical migration patterns and ORR length of care data with the goal of ensuring that there is sufficient permanent state-licensed bed capacity to allow ORR to expeditiously receive unaccompanied alien children referred by the Department of Homeland Security and prevent placement of children in influx care facilities. Due to the unpredictable nature of migration patterns, ORR continuously monitors and refines its projected permanent bed capacity needs and will keep Congress apprised of changes in caseload projections that may alter the number of permanent beds needed.

- ii. How many tender-age children do you estimate ORR will receive between now and December 31, 2020?

Response: ORR does not project estimated referrals by age range. Historically,

about 3 percent of children referred to ORR care are 0-5 years old and about 13 percent are 6-12 years old.

3. **Director Hayes** confirmed that Phoenix is still under consideration for a permanent housing facility for unaccompanied children. What is the specific criteria taken into consideration while trying to select a facility?
 - i. What age groups of children will this facility be housing?
 - ii. By when is a decision expected to be reached?

Response: ORR is currently searching for potential UAC facility sites via two methods: GSA Lease and Funding Opportunity Announcements (FOA). ORR routinely utilizes the FOA method to solicit potential grantees. This year ORR entered a new partnership with the U.S. General Services Administration (GSA) to search for facility locations in an ongoing process. The two methods for acquiring permanent licensed bed capacity are described further below.

U.S. General Services Administration Lease

ORR continues to explore the possibility of opening a permanent facility in Phoenix by leasing property through GSA. ORR looks at several factors when evaluating whether a property is conducive to the care of children (i.e., whether it is safe and can be appropriately staffed). These factors include proximity to Spanish-speaking population; square footage, ability to secure the building/site; access to recreational space; proximity to medical facilities and hospitals; proximity to transportation hubs; natural disaster history for the area (e.g., storms, earthquakes, floods, tornadoes); proximity to other hazards (e.g., industrial hazards); and proximity to the southern border.

Funding Opportunity Announcement

Before awarding a grant to an organization to care for UAC, grant applications receive a comprehensive review, conducted by a panel of independent subject matter experts who are selected from a group of qualified individuals to become grant reviewers and/or a panel chairperson. Subject matter experts for ORR grant applications include child welfare experts. This panel comes to a consensus on the panel reviewers' comments and the overall average score for the application.

The consensus and score for the application is then reviewed by a federal staff member to ensure that they correspond to the appropriate published Funding Opportunity Announcement evaluation criteria. Once approved by the federal staff member, the final score for each application is sent to ORR for consideration in making their funding decisions. The applications are then ranked based on the average score for each application. For more information about the HHS/ACF grant application review process, please see <https://www.acf.hhs.gov/grants/howto#chapter-7>.

ORR awarded two grants for permanent licensed facilities in Phoenix through a Funding Opportunity Announcement that was posted on October 16, 2018. Funding was issued for

these facilities on February 1, 2019. One facility has transitional foster care and shelter care beds serving children five years of age and under. The other is a shelter care program serving children 3-12 years of age. The shelter care beds for children five years of age and under are operational. The remaining beds are not yet fully operational, and the programs are at various stages of the startup and licensing process.

4. **Director Hayes**, what specific training do ORR staff receive for taking care of children that are still breastfeeding?

Response: ORR grantee programs that are licensed to care for children, including breastfeeding/weaning infants, are required to take trainings relevant to the populations they serve as mandated by state licensing requirements and the terms of their cooperative agreement with the Office of Refugee Resettlement.

5. **Director Hayes**, what is the average length of stay for children in tender-age facilities? Please provide a breakout by age and length of time in your care.

Response: ORR only has one facility specifically licensed to serve children five years old and under in a shelter environment. That facility opened in July 2019. The average length of stay (length of time children spent at this specific facility) for children who were discharged in July 2019 was nine days.

There are numerous other ORR care provider programs that serve tender age children in addition to other age groups. Attached you will find a table showing the average length of care (the overall time that children spent in ORR custody) of tender age children who were discharged from ORR custody in fiscal year-to-date 2019 (Oct 2018 – Jul 2019), broken down by level of care and age at the time of referral.

6. **Director Hayes**, are you aware of the psychological harm being caused to the children house in tender-age facilities due to the separation from their parent and/or guardian?

Response: ORR is aware of the potentially increased risk of psychological harm that may be associated with separation from a parent and/or legal guardian and the vulnerability of the UAC population as a whole. ORR does not separate children from their parent and/or legal guardian. Part of ORR's mission is to place UAC with a parent and/or legal guardian or other appropriate sponsor as quickly as can safely be accomplished.

ORR provides clinical services to all children in its care. ORR clinical techniques use trauma-informed care as a basis for service delivery. Children and youth who would benefit from therapeutic counseling have access to weekly individual and/or group clinical counseling sessions to address their psychosocial and emotional needs (see ORR Policy Guide Section 3.3 Care Provider Required Services at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states->

unaccompanied-section-3#3.3).

7. **Director Hayes**, what training or workshop(s) do ORR staff receive on the harms caused to children when they are separated from their parent and/or guardian?

Response: ORR works to ensure that care provider staff are trained in techniques for child-friendly and trauma-informed techniques in interviewing, assessment, and observation, as well as on identifying children who have been smuggled (i.e., transported illegally over a national border) and/or trafficked while in the United States, and children who have been separated from a parent or legal guardian where the child was not identified by DHS as separated at the time of referral to ORR. Care providers must deliver services in a manner that is sensitive to the age, culture, native language, and individual needs of each child. Furthermore, staff who are required to have professional certifications (i.e., mental health clinicians) must maintain licensure through continuing education requirements.

8. **Director Hayes**, how many children under the age of 5 are currently in ORR custody?

Response: As of August 14, 2019, ORR has 405 children in custody who are five years old and under.

- i. How many have been in ORR custody at some point over the past year?

Response: For fiscal year-to-date 2019 (Oct 2018 – Jul 2019), ORR received 1,842 referrals for children who were five years old and under at the time of referral.

9. **Director Hayes**, how many tender-aged children are currently in a facility or a group setting and not in a single-family-home?

Response: Below is a breakdown of the number of tender age children who were in ORR custody on August 14, 2019, by level of care. Children in transitional foster care and long term foster care programs are placed with individual foster families. Children in all other levels of care are in a group setting.

Census on 8/14/19 by current age			
Level of Care	# of UAC Age 0-5	# of UAC Age 6-12	Total # of UAC Age 0-12
Shelter	183	391	574
Transitional Foster Care	211	621	832
Residential Treatment Center	0	4	4
Staff Secure	0	2	2
Long Term Foster Care	11	17	28
Grand Total	405	1,035	1,440

- i. How long would a young child remain in such a facility--is that intended to be a

long-term placement setting for them?

Response: ORR prioritizes placing tender age children in transitional foster care programs over other levels of care whenever possible. Regardless of the level of care in which a child is placed, ORR strives to release the child to a qualified sponsor as quickly and safely as possible. However, there may be instances in which a child is expected to have a protracted stay in ORR custody because they do not have a viable sponsor or other circumstances. In those cases, ORR will consider the child for placement in a long term foster care program.

10. **Director Hayes**, has ORR consulted with early childhood development experts or the research on the impacts of congregate care on young children's development?

- i. What early childhood development experts have you involved in devising, monitoring and participating in their care?
 - 1. In particular, have you worked with infant and early childhood mental health experts to understand and take steps to address the effects of the severe trauma they have experienced?

Response: ORR consults research studies and engages with other operating divisions within HHS's Administration for Children and Families, such as the Children's Bureau, the Office of Trafficking in Persons, and the Office of Child Care, on the provision of services to UAC. ORR consulted with the Children's Bureau specifically on the topic of the effects of congregate care on young children. ORR weighs the findings and recommendations it obtains against its policies to identify areas where improvements can be made in the provision of services and makes changes where appropriate. Additionally, ORR continuously looks for ways in which to reduce length of stay in ORR care while also ensuring safe release to a qualified sponsor. Many ORR staff who are involved in devising policy and monitoring care provider programs are licensed social workers and/or have substantial social work experience. Care provider grantee staff who deliver clinical services receive training in early childhood development and trauma-informed care.

11. **Director Hayes**, Recently, Krish O'Mara Vignarajah, the President CEO of Lutheran Immigration and Refugee Service (LIRS), testified before the Labor-HHS Appropriations Subcommittee that LIRS has the ability to move children currently in congregate care into family foster placements immediately. What is ORR's justification for establishing contracts to establish new congregate care facilities for young children when this alternative exists?

Response: ORR is always looking to establish additional foster care capacity. Shelter care facilities are used for short term placements, and children placed in shelter care facilities are expected to be quickly released to a sponsor. ORR recently funded 20 grants for transitional foster care and shelter care beds under a Funding Opportunity Announcement (FOA) issued on March 25, 2019. As a result, ORR expects to increase its bed capacity

by an estimated 3,175 beds, including 700 transitional foster care beds. ORR will issue a new FOA for transitional foster care and shelter care beds in the next 30 days to further increase permanent bed capacity.

12. **Director Hayes**, there are a number of internationally recognized infant and early childhood mental health experts who are ready and willing to advise and assist you in providing appropriate mental health care for young children. Would you be open to working with them on your policies and practices?

Response: ORR would, as appropriate, welcome the opportunity to work with internationally recognized infant and early childhood mental health experts on providing appropriate mental health care for young children.

Questions for Chief Hastings and Commander White:

1. **Chief Hastings**, what specific training do Border Patrol agents receive for separating a baby who is still breastfeeding?

Response: ORR defers to DHS to address this question.

2. **Commander White**, In the ORR-contracted facility visited, several children had been separated from their parents. For children whose parents were in criminal custody, the information in the child's file only said the parents were in "criminal custody" while for other children, the information only read "ICE Custody." No detail was given as to the nature or recency of the criminal charges or additional information as to why the parent was in ICE custody. Staff specifically said that the lack of information impeded their job. Why would it be helpful for ORR staff to know the nature and recency of criminal charges of a parent of a child in ORR custody?

Response: Based on available information received from DHS, ORR residential care providers note in children's case management files whether the child's parent is in ICE custody, or in criminal custody (such as in the custody of the U.S. Marshals Service, the Bureau of Prisons, or state or local correctional custody). At present, ORR generally is better able to establish contact with parents in the custody of ICE than those in federal or non-federal criminal custody. ORR is in discussions with the U.S. Department of Justice to strengthen opportunities to be in contact with parents of separated children while the parents are in the custody of the U.S. Marshals Service.

Information provided by DHS regarding the criminal history or criminal charges of parents varies. In cases where insufficient detail regarding parent criminal history has been received through the child's referral, ORR federal staff seek additional information from the referring agency.

For the grantee and federal personnel working on case management and release decisions for the child, the nature and dates of the parent's criminal charges are very important.

Knowing the details of the criminal history enables the grantee case manager, the case coordinator, and the ORR Federal Field Specialist or Federal Case Management Team member to determine if the parent's criminal history poses a threat to the child, and therefore whether the parent is a viable sponsor or should be involved in the sponsorship process at all.

- i. **Chief Hastings**, how much detail is CBP required to give to ORR about the nature and recency of the criminal charges of the parent? Is this information affirmatively given to ORR?

Response: ORR defers to DHS to address this question.

- ii. **Commander White**, could lack of information related to *why* a child was separated delay reunification efforts?

Response: Under the *Ms. L* preliminary injunction, the government must reunify parents and children separated at the border except under certain circumstances (such as criminal history or concerns related to parental fitness or danger).

Information provided by DHS regarding the parent's criminal history or criminal prosecution varies. In cases where insufficient detail regarding parent criminal history has been received through the child's referral, ORR federal staff seek additional information from the referring agency. Continued lack of detailed information regarding the circumstances requiring the separation of a child from a parent or legal guardian at apprehension can delay or complicate reunification efforts.

The child welfare decisions surrounding sponsorship, release, and reunification systems can be made most effectively with regard to child safety and to timeliness if the ORR program is provided robust information on the specific circumstances surrounding separation (which is required in order to comply with the terms of the preliminary injunction and subsequent court orders), including the specifics of past criminal charges or convictions including dates.

The below table contains the average length of care (LOC) of tender age children who were discharged from ORR custody in fiscal year-to-date 2019 (Oct 2018 – Jul 2019), broken down by level of care and age at the time of referral.

Average LOC for those discharged FY19-YTD where child was 0-12 at time of referral								
Age at time of referral	Level of Care / Average LOC (days)							
	Shelter	Transitional Foster Care	Staff Secure	Therapeutic Staff Secure	Therapeutic Group Home	Residential Treatment Center	Long Term Foster Care	Total Average
0	66	79	-	-	-	-	489	72
1	64	65	-	-	-	-	396	65
2	58	62	-	-	-	-	457	65
3	54	68	-	-	-	-	-	63
4	68	61	-	-	-	-	-	62
5	71	55	-	-	-	-	-	58
6	57	53	-	-	-	-	1,023	56
7	51	49	-	-	-	202	774	50
8	49	51	-	-	-	290	1,267	55
9	49	54	-	-	-	-	1,319	54
10	50	49	-	-	-	218	1,112	51
11	49	47	-	1,904	-	186	352	49
12	54	51	242	-	318	-	747	55
LOC Average	57	57	242	1,904	318	224	794	58