



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

**Testimony Before the
United States House Committee on Energy and Commerce
*Subcommittee on Oversight and Investigations***

**“Examining the Failures of the Trump Administration’s Inhumane
Family Separation Policy”**

Testimony of:

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

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Testimony of:
Ann Maxwell

Assistant Inspector General for Evaluation and Inspections
Office of Inspector General, U.S. Department of Health and Human Services

Good morning, Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee on Oversight and Investigations. I am Ann Maxwell, Assistant Inspector General for Evaluation and Inspections for the Office of Inspector General (OIG), U.S. Department of Health and Human Services (HHS or Department). I appreciate the opportunity to appear before you to discuss OIG's recent issue brief addressing the number of separated children in Office of Refugee Resettlement (ORR) care.

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

Since responsibility for unaccompanied children was transferred to HHS by the Homeland Security Act of 2002, OIG has provided oversight of the Unaccompanied Alien Children (UAC) Program, which is administered by the ORR within HHS's Administration for Children and Families (ACF). OIG's work in this area has been broad and multi-faceted. For example, we have audited grantee expenditures and assessed their internal controls for administering UAC program funds; we have also examined whether ORR grantees met safety standards for the care and release of children in their custody. All of these oversight efforts have one unifying purpose: to promote the protection of children in the Department's care.

In 2018, numerous stakeholders raised serious concerns about the health and safety of immigrant children at HHS-funded facilities. Given the urgency of this situation, and OIG's independent oversight role, we launched a series of reviews examining a variety of safety issues, including the background screening of facility staff that work with children, the challenges care facilities face in ensuring children are safe, and the physical security of the care facilities. We are also examining the challenges that ORR-funded care provider facilities face in meeting children's physical and mental healthcare needs. These reviews will be issued over the next year.

As part of this initiative, we are paying particular attention to the subset of children who were separated from a parent or guardian by the U.S. Department of Homeland Security (DHS) and referred to HHS for care. Consistent with that focus, in our recently published issue brief, *Separated Children Placed in Office of Refugee Resettlement Care*, we sought to confirm the number and status of children in ORR care who had been separated from a parent or guardian by immigration authorities.

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

Pursuant to a June 26, 2018, Federal District Court order, HHS has thus far identified 2,737 children who had been separated from their parents and were in ORR care as of that date.¹ However, prior to that Court order, HHS was not required to identify or track separated children. HHS officials estimated that thousands of additional children may have been separated from a parent or guardian during an influx that began in 2017, but were released from ORR care prior to the official accounting required by the Court. Further, ORR has continued to receive children who have been separated since the June Court order, and DHS has provided limited information to ORR about those separations.

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

On June 26, 2018, in ruling on a class action lawsuit, *Ms. L v. ICE*, a Federal District Court ordered HHS to identify and reunify children who were in ORR care as of that date and who had been separated from a parent by immigration authorities.² Historically, such separations had been rare and were typically done for reasons related to the child's best interest, such as a parent's injury or illness or a DHS determination that the parent was a danger to the child. However, during a recent period of increased enforcement of immigration laws, large numbers of families were separated, with parents taken into Federal custody to await prosecution for immigration offenses and their children transferred to ORR care.

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

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

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

This effort resulted in an initial list of 3,600 potentially separated children, i.e., children for whom HHS found any information in any data source indicating that the child may have been separated from a parent. On July 11, 2018, after conducting additional reviews, ORR certified a

¹ See *Ms. L v. Immigration and Customs Enforcement (ICE)*, (S.D. Cal. June 26, 2018 (Order Granting Plaintiffs' Motion for Classwide Preliminary Injunction)).

² Subject to certain exceptions, such as when the class member parent is unfit, poses a danger to the child or if the parent voluntarily declines to be reunited.

list of 2,654 children that it believed met the Court's criteria. ORR determined that the remaining 946 children (from the original list of 3,600) did not meet all of the Court's criteria. Of the 946 children, approximately 300 were not included on the certified list because they had been released through standard processes between the date of the Court order and the date the list was certified by ORR. The remaining children were excluded because: (1) they had been separated from a nonparent relative; (2) the adult with whom they traveled was determined to have made a fraudulent claim of parentage; or (3) the information in the child's case file was unclear, and the ORR Director determined that the balance of evidence did not support including the child on the certified list.

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

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

- In October 2018, HHS added 13 children (all of whom were still in ORR care at that time) to the list, for a new total of 2,667.
- In November 2018, HHS reported to the Court that 79 of the children previously reported as separated had not, in fact, been separated from a parent. This reduced the count of separated children to 2,588.
- In December 2018, HHS added 149 children to the list, bringing the number of separated children identified under the Court order to 2,737. These 149 children had been in ORR custody on the date of the Court order and then discharged before being identified as separated.³

In a December 2018 Court filing, HHS reported that only eight separated children eligible for reunification under *Ms. L v. ICE* remained in ORR care and that it was working towards their reunification or other appropriate discharge.

Many Separated Children are Not Covered by the Court Order and Have Not Been Counted

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

³ In most cases, they were released to a parent, guardian, or relative. Nine had been released to distant relatives or unrelated adults, five had been voluntarily repatriated to their country of origin, and one had turned 18 in ORR's care (which means the individual aged out of the UAC program and typically results in transfer to DHS custody).

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

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

HHS was not able to provide a more precise estimate than thousands because, as previously noted, ORR did not have formal tracking systems in place that consistently identified separated children. HHS similarly could not provide information on placements of separated children—as distinct from other unaccompanied children—who were discharged from ORR care prior to the June 2018 Court order (e.g., the number who were released to relatives vs. nonrelatives or foster care).⁴

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

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

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

⁴ HHS told OIG that it has no plans to retroactively identify these children, explaining that any effort to do so would divert limited resources from ORR’s primary focus on children currently in care.

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

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

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

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

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

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

Although HHS has taken several significant steps to better track separated children, it is not yet clear whether these recent changes will be sufficient to ensure that HHS can accurately identify these children in the future. Further, there is still no integrated data system to account for separated families across DHS and HHS.

Therefore, OIG encourages continued efforts to improve communication, transparency, and accountability for the identification, care, and placement of separated children. Maintaining accurate and comprehensive information about separated children would improve ORR’s ability to ensure that they receive the most appropriate care and placement. ACF agreed that improvements are always warranted and has committed to look for opportunities to improve inter-departmental data-sharing and operations with DHS.

Conclusion

In conclusion, the total number of children separated from a parent or guardian by U.S. immigration authorities and transferred to HHS for care is not known. According to HHS officials, it is certainly more—likely thousands more—than the 2,737 who meet the criteria of the *Ms. L v. ICE* court order. Moreover, because HHS cannot provide details specifically about

children who were separated, transferred to ORR custody, and released prior to the lawsuit, whether these children were reunified with their parents remains an open question.

The issue brief discussed in my testimony is one in a series of reports that OIG will release in 2019 related to the care and well-being of children in ORR-funded facilities. In the coming months, we will issue a report examining challenges that HHS and care facilities faced in reunifying separated children. In addition, OIG is engaged in multiple reviews that will assess HHS-funded facilities' efforts to protect all children in their care from harm, as well as facilities' provision of physical and mental health services, including efforts to address trauma. We have already released an early alert from this body of work, *The Tornillo Influx Care Facility: Concerns about Staff Background Checks and Number of Clinicians on Staff*, which highlighted two significant vulnerabilities we identified during our review of the Tornillo influx facility, operated by BCFS Health and Human Services: (1) required Federal Bureau of Investigation fingerprint background checks were not conducted for staff, and (2) insufficient number of staff clinicians to provide adequate mental health care for UAC. Taken as a whole, this work reaffirms OIG's goal of ensuring that children in ORR facilities receive appropriate care and protection.

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