



Report to the Ranking Member,
Committee on Energy and Commerce,
House of Representatives

October 2018

UNACCOMPANIED CHILDREN

Agency Efforts to Reunify Children Separated from Parents at the Border

GAO Highlights

Highlights of GAO-19-163, a report to the Ranking Member, Committee on Energy and Commerce, House of Representatives

Why GAO Did This Study

On April 6, 2018, the Attorney General issued a memorandum on criminal prosecutions of immigration offenses, which, according to HHS officials, resulted in a considerable increase in the number of minor children whom DHS separated from their parents after attempting to cross the U.S. border illegally. On June 20, 2018, the President issued an executive order directing that alien families generally be detained together, and on June 26, 2018, a federal judge ordered the government to reunify separated families. DHS is responsible for the apprehension of individuals at the border, including families, and the transfer of UAC to HHS. HHS is responsible for coordinating the placement and care of UAC.

GAO was asked to examine processes for tracking and reunifying separated families. This report discusses DHS and HHS (1) planning efforts related to the Attorney General's April 2018 memo, (2) systems for indicating children were separated from parents, and (3) actions to reunify families in response to the June 2018 court order. GAO reviewed agency policies and procedures, filings in the relevant court case as of August 23, 2018, and interviewed DHS and HHS officials. GAO also visited four ORR shelters in July 2018 to interview staff responsible for the separated children.

What GAO Recommends

GAO is not making recommendations. GAO previously recommended that DHS and HHS improve their process for transferring UAC from DHS to HHS custody. DHS and HHS provided technical comments that were incorporated, as appropriate.

View GAO-19-163. For more information, contact Kathryn A. Larin at (202) 512-7215 or larink@gao.gov or Rebecca Gambler at (202) 512-8777 or gambler@gao.gov.

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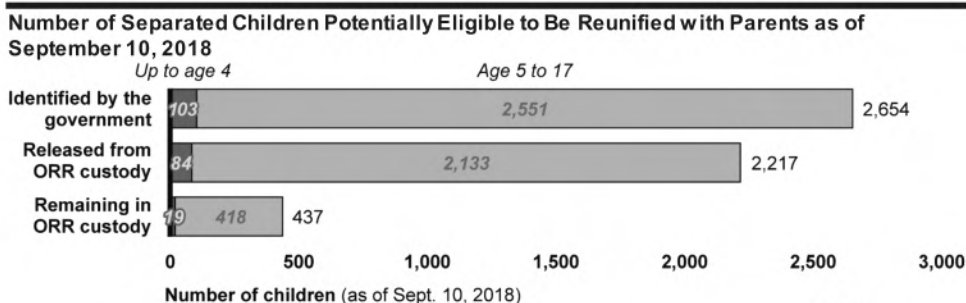
Agency Efforts to Reunify Children Separated from Parents at the Border

What GAO Found

Department of Homeland Security (DHS) and Department of Health and Human Services (HHS) officials we interviewed said the agencies did not plan for the potential increase in the number of children separated from their parent or legal guardian as a result of the Attorney General's April 2018 "zero tolerance" memo. These officials told GAO that they were unaware of the memo in advance of its public release. The memo directed Department of Justice prosecutors to accept for criminal prosecution all referrals from DHS of offenses related to improper entry into the United States, to the extent practicable. As a result, parents were placed in criminal detention, and their children were placed in the custody of HHS's Office of Refugee Resettlement (ORR). DHS and ORR treated separated children as unaccompanied alien children (UAC)—those under 18 years old with no lawful immigration status and no parent or legal guardian in the United States available to provide care and physical custody.

Prior to April 2018, DHS and HHS did not have a consistent way to indicate in their data systems children and parents separated at the border. In April and July 2018, U.S. Customs and Border Protection and ORR, respectively, updated their databases to allow them to indicate whether a child was separated. However, it is too soon to know the extent to which these changes, if fully implemented, will consistently indicate when children have been separated from their parents, or will help reunify families, if appropriate.

In response to a June 26, 2018 court order to quickly reunify children separated from their parents, HHS determined how many children in its care were subject to the order and developed procedures for reunifying these families. The government identified 2,654 children in ORR custody who potentially met reunification criteria. On July 10, 2018, the court approved reunification procedures for the parents covered by the June 2018 court order. This order noted that ORR's standard procedures used to release UACs from its care to sponsors were not meant to apply to this case, in which parents and children who were apprehended together were separated by government officials. DHS and HHS officials and staff at the ORR shelters GAO visited noted some challenges to reunification, including arranging communication between parent and child and coordinating transportation. As of September 10, 2018, 437 children remained in ORR custody for various reasons, such as ineligibility for reunification.



Source: Ms. L. v. ICE, No. 18-0428 (S.D. Cal. Sept. 13, 2018) (joint status report). | GAO-19-163

Note: GAO did not independently verify the accuracy of these data.

ORR= Office of Refugee Resettlement

DHS-001-07592-000185

United States Government Accountability Office

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Abbreviations

CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
ERO	Enforcement and Removal Operations
Flores Agreement	Flores v. Reno Settlement Agreement
HHS	Department of Health and Human Services
ICE	U.S. Immigration and Customs Enforcement
OFO	Office of Field Operations
ORR	Office of Refugee Resettlement
TVPRA	William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC	unaccompanied alien child (or children)

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October 9, 2018

The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Dear Mr. Pallone:

In April 2018, the Attorney General issued a memorandum on criminal prosecutions of immigration offenses (also referred to as the “zero tolerance” policy) that directed Department of Justice (DOJ) prosecutors to accept all referrals of all improper entry offenses from the Department of Homeland Security (DHS) for criminal prosecution, to the extent practicable.¹ The April 2018 memo resulted in a considerable increase in the number of minor children who were separated from their parents or legal guardians after attempting to enter the United States illegally, according to DHS and Department of Health and Human Services (HHS) officials.² According to DHS officials, in implementing the April 2018

¹*Memorandum for Prosecutors Along the Southwest Border. Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a). Office of the Attorney General. April 6, 2018* (referred to in this report as the “April 2018 memo”). Specifically, the memo directed “each United States Attorney’s Office along the Southwest Border—to the extent practicable, and in consultation with DHS—to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a).” 8 U.S.C. § 1325(a) establishes criminal penalties for improper entry by alien for (1) entering or attempting to enter the U.S. at any time or place other than as designated by immigration officers, or (2) eluding examination or inspection by immigration officers, or (3) attempting to enter or obtaining entry to the United States by willfully false or misleading misrepresentation or the willful concealment of a material fact. Generally, a first offense under section 1325(a) is a criminal misdemeanor, with a maximum sentence of 6 months.

²Prior to the April 2018 memo, DOJ had taken action in 2017 to prioritize the criminal prosecution of immigration-related offenses. *Memorandum for All Federal Prosecutors. Renewed Commitment to Criminal Immigration Enforcement. Office of the Attorney General. April 11, 2017*. Specifically, in April 2017, the Attorney General issued a memorandum prioritizing enforcement of a number of criminal immigration-related offenses, including misdemeanor improper entry. The memo prioritizes offenses under U.S. immigration law, which explicitly involve aliens (i.e., those who are not U.S. citizens or nationals), such as improper entry by alien (8 U.S.C. § 1325), illegal reentry of removed aliens (8 U.S.C. § 1326), and unlawfully bringing in and harboring certain removable aliens (8 U.S.C. § 1324), as well as offenses in relation to listed immigration offenses, such as aggravated identity theft (18 U.S.C. § 1028A) and fraud and misuse of visas, permits, and other documents (18 U.S.C. § 1546). For the purposes of this report, we refer to all of these crimes involving U.S. immigration enforcement, as “immigration-related offenses.”

memo, DHS's U.S. Customs and Border Protection (CBP) began referring a greater number of individuals apprehended at the border to DOJ for criminal prosecution, including parents who were apprehended with children.³ In these cases, referred parents were placed into U.S. Marshals Service custody and separated from their children because minors cannot remain with a parent who is arrested on criminal charges and detained by U.S. Marshals Service.⁴ In cases where parents were referred to DOJ for criminal proceedings and separated from their children, DHS and HHS officials stated they treated those children as unaccompanied alien children (UAC)—a child who (1) has no lawful immigration status in the United States, (2) has not attained 18 years of age, and (3) has no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody.⁵ In such cases, DHS transferred these children to the custody of HHS's Office of Refugee Resettlement (ORR) and ORR placed them in one of their shelter facilities, as is the standard procedure the agencies use for UAC. Children traveling with related adults other than a parent or legal guardian—such as a grandparent or sibling—are also deemed UAC.

On June 20, 2018, the President issued an executive order that, among other things, directed the Secretary of Homeland Security to maintain custody of alien families during any criminal improper entry or immigration proceedings involving their members, to the extent possible.⁶ This order

³When we use the term "children," we are referring to minor children under the age of 18. When we use the term "parent," we are referring to parents and legal guardians.

⁴While DOJ and DHS have broad authority to detain adult aliens, children, whether accompanied or unaccompanied, must be detained according to standards established in the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008, and the 1997 *Flores v. Reno* Settlement Agreement (Flores Agreement). See Pub. L. No. 107-296, tit. IV, subtit. D, § 441, 116 Stat. 2135, 2192; Pub. L. No. 110-457, 112 Stat. 5044; Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997). The Flores Settlement Agreement requires among other things, that children be placed in the least restrictive setting appropriate to the child's age and special needs and that children generally be detained separate from unrelated adults. See also *Flores v. Reno*, No. 85-4544 (C.D. Cal. July 24, 2015) (in chambers-order). The U.S. Marshals Service houses and transports individuals arrested by federal agencies, relying on federal, state, local and private jails throughout the U.S. for detention space. These facilities are not equipped to detain children in accordance with the standards described above.

⁵6 U.S.C. § 279(g)(2).

⁶Exec. Order No. 13841, 83 Fed. Reg. 29,435 (June 25, 2018). Although the executive order was announced on June 20, 2018, it was not published in the *Federal Register* until June 25, 2018.

stated that the policy of the administration is to maintain family unity, including by detaining alien families together where appropriate. In addition, on June 26, 2018, a federal judge ruled in the *Ms. L. v. ICE* case that certain separated parents must be reunited with their minor children (referred to in this report as the “June 2018 court order”).⁷ In this case, the American Civil Liberties Union filed a federal lawsuit on behalf of certain parents (referred to as class members) who had been separated from their children.⁸ The government subsequently identified 2,654 children of potential class members in the *Ms. L. v. ICE* case, which we discuss in greater detail later in this report.⁹ As of September 25, 2018, this litigation was ongoing. The Secretary of HHS directed HHS’s Assistant Secretary for Preparedness and Response to lead family reunification efforts.

⁷For parents covered by the June 2018 order, the court ruled that the government may not detain parents apart from their minor children, subject to certain exceptions; that parents must be reunited with their minor children under 5 years of age within 14 days of the order; and parents must be reunited with their minor children age 5 and over within 30 days of the order. The order required these reunifications unless there is a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child. *Ms. L. v. U.S. Immigration & Customs Enforcement (Ms. L. v. ICE)*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction).

⁸This case was filed as a class action—class referring to individuals with a shared legal claim who are covered by the lawsuit. *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. March 9, 2018) (amended complaint). The court certified the following class: “All adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by the DHS, and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody, absent a determination that the parent is unfit or presents a danger to the child.” *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting in part plaintiffs’ motion for class certification). In that order, the court also noted that the class “does not include migrant parents with criminal history or communicable disease, or those who are in the interior of the United States or subject to the [June 20 executive order].”

⁹ORR did not provide us with information on the demographic characteristics of all 2,654 children they identified as being children of potential class members. However, ORR did provide us with data from its UAC Portal on 2,509 of the 2,654 children separated from their parents who were approved for an ORR placement from March 9, 2018, to June 27, 2018, which accounts for about 95 percent of the children potentially covered by the court order. ORR provided this data in response to our initial request; ORR was unable to provide updated data by our reporting deadline. Based on our review of relevant documentation, we determined that the data were sufficiently reliable to describe the ages of children that were separated from parents at the border. Our analysis of the 2,509 children separated from parents who were approved for an ORR placement from March 9, 2018, to June 27, 2018, found that approximately 3 percent of these separated children were ages 0 to 4, 53 percent were age 5 to 12, and 44 percent were age 13 and over.

This report discusses (1) DHS and HHS planning efforts related to the Attorney General's April 2018 memo, (2) DHS and HHS systems for indicating when children were separated from parents, and (3) DHS and HHS actions to reunify families in response to the June 2018 court order.

To address all three objectives, we interviewed DHS and HHS officials. Specifically, we interviewed CBP, U.S. Immigration and Customs Enforcement (ICE), and DHS's Office of Strategy, Policy, and Plans officials, as well as HHS officials from the offices of the Assistant Secretary for Preparedness and Response and ORR. In addition, we visited two ORR shelters in Arizona and two in Texas during the week of July 30, 2018, to interview staff responsible for the intake and release of separated children who had been in these shelters. We selected the shelters on the basis of various factors, including a range of shelter sizes, variation in shelter operator, and whether the shelters had at least 15 percent of total bed capacity occupied by separated children as of July 16, 2018. While our visits to four shelters are not generalizable to the about 100 ORR shelters, they provide examples of shelter staff experiences with children separated from parents at the border.

To describe DHS and HHS planning efforts, we reviewed agency documentation, such as relevant DHS memoranda. To examine DHS and HHS systems for indicating when children were separated from parents and for transferring custody between agencies, we reviewed DHS and HHS documentation related to these systems, including CBP's U.S. Border Patrol's training for referring UAC to HHS care and HHS's UAC policy guide. To examine DHS and HHS actions to reunify families, we reviewed relevant court filings in *Ms. L. v. ICE* as of August 23, 2018.¹⁰ These court filings included information provided to the court by DHS and HHS on the processes used to reunify separated children and parents subject to the court order. The court filings also include information provided to the court by DHS and HHS on the number of children reunited with parents and those remaining in HHS custody. We used that information to describe the number of children reunited with their parents and the number of children remaining in HHS custody. However, we did not independently verify the accuracy of the numbers reported by the agencies to the court.

¹⁰Although the litigation is ongoing as of September 25, 2018, this report does not address any actions in the litigation beyond August 23, 2018, aside from providing information on the number of children reunited or remaining in HHS custody as reported in a September 13, 2018 court filing.

We conducted this performance audit from June 2018 to October 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Care and Custody of Unaccompanied Alien Children (UAC)

Under the Homeland Security Act of 2002, responsibility for the apprehension, temporary detention, transfer, and repatriation of UAC is delegated to DHS,¹¹ and responsibility for coordinating and implementing the placement and care of UAC is delegated to HHS's ORR.¹² CBP's U.S. Border Patrol (Border Patrol) and Office of Field Operations (OFO), as well as DHS's ICE, apprehend, process, temporarily detain, and care for UAC who enter the United States with no lawful immigration status.¹³ ICE's Office of Enforcement and Removal Operations (ERO) is generally responsible for transferring UAC, as appropriate, to ORR, or repatriating them to their countries of nationality or last habitual residence. Under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), UAC in the custody of any federal department or agency, including DHS, must be transferred to ORR within 72 hours after

¹¹Pub. L. No. 107-296, tit. IV, subtit. D, § 441, 116 Stat. 2135, 2192 (codified at 6 U.S.C. § 251). Repatriation is defined as returning unaccompanied children to their country of nationality or last habitual residence.

¹²Pub. L. No. 107-296, tit. IV, subtit. D, § 462, 116 Stat. 2135, 2202 (codified at 6 U.S.C. § 279).

¹³Border Patrol agents apprehend UAC between official U.S. ports of entry, and Office of Field Operations officers encounter these children at ports of entry. ICE apprehends UAC within the United States at locations other than borders or ports of entry. Ports of entry are facilities that provide for the controlled entry into or departure from the United States. Specifically, a port of entry is any officially designated location (seaport, airport, or land border location) where DHS officers or employees are assigned to clear passengers, merchandise and other items, collect duties, and enforce customs laws; and where DHS officers inspect persons seeking to enter or depart, or applying for admission into the United States pursuant to U.S. immigration law and travel controls.

determining that they are UAC, except in exceptional circumstances.¹⁴ In addition, the 1997 *Flores v. Reno* Settlement Agreement (Flores Agreement) sets standards of care for UAC while in DHS or ORR custody, including, among other things, providing drinking water, food, and proper physical care and shelter for children.¹⁵

ORR has cooperative agreements with residential care providers to house and care for UAC while they are in ORR custody. The aim is to provide housing and care in the least restrictive environment commensurate with the children's safety and emotional and physical needs.¹⁶ In addition, these care providers are responsible for identifying and assessing the suitability of potential sponsors—generally a parent or other relative in the country—who can care for the child after the child leaves ORR custody.¹⁷ Release to a sponsor does not grant UAC legal immigration status. Children are scheduled for removal proceedings in

¹⁴8 U.S.C. § 1232(b)(3). The TVPRA also provides special rules for UAC from Canada and Mexico who are apprehended at a land border or port of entry. On a case-by-case basis for UAC from Canada and Mexico, DHS may allow the child to withdraw his or her application for admission and return to his or her country of nationality or last habitual residence without further removal proceedings if the officers screen the UAC within 48 hours of being apprehended and determine that (1) the UAC is not a victim of a "severe form of trafficking of persons" (as that term is defined by statute); (2) there is no credible evidence that the UAC is at risk of being trafficked if repatriated; (3) the UAC does not have a fear of returning to his or her country owing to a credible fear or persecution; and (4) the UAC is able to make an independent decision to withdraw the application for admission to the U.S. and voluntarily return to his or her country of nationality or last habitual residence. 8 U.S.C. § 1232(a)(2)-(4). According to CBP, a UAC who meets the criteria to withdraw an application for admission or voluntarily return is generally returned by CBP with the close cooperation of the foreign government.

¹⁵The court-approved settlement agreement in the case of *Flores v. Reno* was the result of a class action law suit filed against the former Immigration and Naturalization Service (INS) challenging the agency's arrest, processing, detention, and release of juveniles in its custody. The agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of legacy INS, the border security and immigration-related functions of which are now performed by CBP, ICE, and U.S. Citizenship and Immigration Services. Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997). The Flores Agreement is currently the subject of ongoing litigation. See *Flores v. Reno*, No. 85-4544 (C.D. Cal. Sept. 6, 2018) (notice of appeal).

¹⁶ORR is required to promptly place UAC in its custody in the least restrictive setting that is in the best interest of the child. 8 U.S.C. § 1232(c)(2)(A).

¹⁷Qualified sponsors are adults who are suitable to provide for the child's physical and mental well-being and have not engaged in any activity that would indicate a potential risk to the child. See 8 U.S.C. § 1232(c)(3).

immigration courts to determine whether they will be ordered removed from the United States or granted immigration relief.¹⁸

Prior to the Attorney General's April 2018 memo, according to DHS officials, accompanied children at the border were generally held with their parents in CBP custody for a limited time before being transferred to ICE and released pending removal proceedings in immigration court. However, according to DHS and HHS officials, DHS has historically separated a small number of children from accompanying adults at the border and transferred them to ORR custody for reasons such as if the parental relationship could not be confirmed, there was reason to believe the adult was participating in human trafficking or otherwise a threat to the safety of the child, or if the child crossed the border with other family members such as grandparents without proof of legal guardianship. ORR has traditionally treated these children the same as other UAC.

Standard Processes and Procedures for the Transfer, Care, and Release of Unaccompanied Alien Children

In 2015 and 2016, we reported on DHS's and HHS's care and custody of UAC, including the standard procedures that DHS follows to transfer UAC to ORR (see fig. 1).¹⁹ In general, DHS is to notify ORR that they have a child needing placement, and DHS is required to transfer the child to ORR custody within 72 hours of apprehension, except under exceptional circumstances.²⁰ According to ORR's UAC policy guide, ORR officials are to identify an appropriate shelter, based on the needs of the

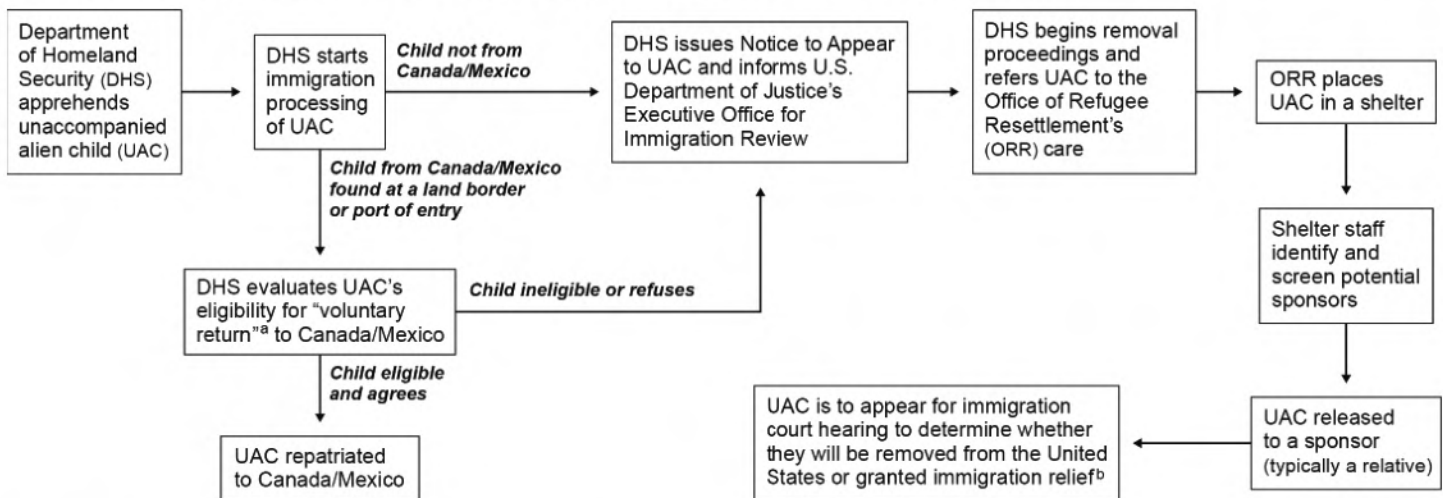
¹⁸There are several types of immigration relief that may be available to these children, for example, asylum or Special Immigrant Juvenile status. For more information, see GAO, *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care*, GAO-16-180 (Feb. 5, 2016: Washington, D.C.)

¹⁹GAO, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521 (Washington, D.C.: July 14, 2015) and GAO-16-180.

²⁰See 8 U.S.C. § 1232(b).

child, with available space, and DHS generally transports the children to the ORR shelter.²¹

Figure 1: Transfer, Care, and Release of Unaccompanied Alien Children in Federal Custody



Sources: GAO analysis of DHS and ORR documents and interviews of officials from these agencies as previously shown in GAO-16-180. | GAO-19-163

^aVoluntary return refers to (1) the process by which DHS evaluates the eligibility of a UAC from a contiguous country to withdraw his or her application for admission to the United States pursuant to section 8 U.S.C. § 1232(a)(2), or (2) in the case of UAC from non-contiguous countries, an immigration judge allowing an arriving alien to withdraw an application for admission during removal proceedings where certain requirements are met; followed, in both scenarios, by the unaccompanied child's decision to voluntarily withdraw and their return to home country.

^bImmigration relief refers to various forms of relief or protection from removal that may be available to the children. There are several types of immigration relief that may be available to these children; for example, asylum or Special Immigrant Juvenile status.

According to ORR's UAC policy guide, the agency requests certain information from DHS when DHS refers children to ORR, including, for

²¹Office of Refugee Resettlement, *ORR Guide: Children Entering the United States Unaccompanied*, accessed August 23, 2018, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>. ICE's Enforcement and Removal Operations provides long-distance travel for UAC within the United States via commercial airlines, charter aircraft, or bus. In some areas, CBP transports UAC to shelters that are within the local commuting area.

example, how DHS determined the child was unaccompanied.²² Depending on which DHS component or office is referring the child to ORR, DHS may provide information on the child in an automated manner directly into ORR's UAC Portal—the official system of record for children in ORR's care—or via email.²³ As of August 2018, not all DHS offices were entering information directly into ORR's UAC Portal. In cases in which the information is sent via email, the ORR Intakes Team must manually enter it into the UAC Portal.²⁴

Once at the shelter, shelter staff typically conduct an intake assessment of the child within 24 hours, and then are to provide services such as health care and education.²⁵ According to the policy guide, shelter staff are responsible for meeting with the child to begin identifying potential sponsors, which can include parents. Shelter staff ask the child to provide names and phone numbers of potential sponsors, where available.

To identify and assess the suitability of potential sponsors, including parents, ORR care providers collect information from potential sponsors to establish and identify their relationship to the child.²⁶ As we reported in 2016, the process begins during intake when staff ask children if there is

²²Other information that ORR requests from DHS includes: biographical information such as name, gender, and date of birth; health information; identifying information and contact information for a parent, legal guardian, or other related adult providing care for the child prior to apprehension, if known. ORR also requests information concerning whether the child or youth is a victim of trafficking or other crimes; the child or youth was apprehended with siblings or other relatives; the child or youth is an escape risk; the child or youth has a history of violence, juvenile or criminal background, gang involvement, or is a danger to themselves or others; and, any special needs or other information that would affect care and placement for the child.

²³CBP officials also told us that its officials included biographical information and details regarding the apprehension of the alien, in packets provided to ORR when UAC are transferred to ORR custody.

²⁴The ORR Intakes Team is made up of ORR headquarter staff who receive referrals of UAC from federal agencies and make the initial placement of these children in ORR facilities.

²⁵As previously discussed, ORR has cooperative agreements with residential care providers. For the purposes of this report, we refer to the staff of these providers as "shelter staff" or "care providers." By contrast, we refer to federal ORR officials as "ORR officials," "ORR staff," or "ORR field staff."

²⁶According to an HHS official, ORR's process for placing UAC with sponsors is designed to comply with the 1997 Flores Agreement, the Homeland Security Act of 2002, and TVPRA.

someone in the United States they know or were planning to live with.²⁷ Potential sponsors must complete a family reunification application, which includes basic questions about the sponsor and child and their relationship to each other, as well as questions about where the family will live, who else lives at the address, who will care for the child if the sponsor is no longer able to do so, and the sponsor's financial information, among others. As part of the application, the potential sponsor must also provide other documents such as a sponsor care agreement that outlines the sponsor's responsibilities such as providing for the child's physical and mental well-being, education, medical care, and ensuring the child attends future immigration related hearings. Potential sponsors must also provide proof of identity, proof of address, and other documents and agree to be screened. The screening conducted on potential sponsors includes various background checks and the level of the background check depends on the relationship of the sponsor to the child. For example, public record checks are conducted on all potential sponsors. All potential sponsors who are not parents also receive a criminal history check through the Federal Bureau of Investigations database based on digital fingerprints; however, in certain cases, parents also receive this same check.²⁸ Similarly, immigration status checks and child abuse and neglect checks are conducted depending on the sponsor's relationship to the child and whether there are documented risks to the child.

In June 2018, ORR implemented increased background check requirements that were outlined in an April 2018 memorandum of agreement with DHS. These changes require ORR staff to collect fingerprints from all potential sponsors, including parents, and all adults in the potential sponsor's household. According to the April 2018 agreement between ORR and DHS, ORR is to transmit fingerprints of potential sponsors and others, as appropriate, to ICE to perform criminal and immigration status checks on ORR's behalf. ICE is to submit the results to

²⁷GAO-16-180. According to ORR's UAC policy guide, if a child is either too young or there are other factors that prohibit the care provider from obtaining potential sponsor information from the unaccompanied alien child, the care provider may seek assistance from the child's home country consulate in collaboration with the ORR Federal Field Specialist or from a reputable family tracing organization.

²⁸These cases included where there was a documented risk to the safety of the unaccompanied child, the child was especially vulnerable, and/or the case was being referred for a mandatory home study.

ORR, and ORR uses this information, along with information provided by, and interviews with, the potential sponsors, to assess their suitability.²⁹

After reviewing results of all of the background checks, care providers make recommendations for release, which ORR officials approve or disapprove, according to ORR's UAC policy guide.³⁰ Sponsors are to sign a sponsor care agreement that acknowledges their responsibilities, including providing for the safety and education of the child and agreeing to ensure they appear at all immigration court hearings. ORR policy requires that home studies be conducted under certain circumstances, such as when releasing a child to a non-relative who is seeking to sponsor multiple children, and home studies may be recommended prior to placement in any case in which there are questions about the ability of the sponsor to meet the child's needs and provide a safe environment. The TVPRA also requires home studies be conducted for certain children, such as special needs children or children who are victims of a severe form of trafficking in persons.³¹

Timeline of Key Actions

Since 2017, there have been several key actions related to DOJ's prioritization of immigration offenses for criminal prosecution, DHS's referral of individuals apprehended along the border to DOJ for criminal prosecution, and court orders affecting separated parents and children. The textbox below provides information on some of these key actions.

²⁹ORR continues to conduct the additional background checks, such as the child abuse and neglect checks as part of its screening process.

³⁰In addition to the information ORR receives from shelter staff, a third party contractor also reviews the case and provides input to ORR regarding release decisions.

³¹Pursuant to the TVPRA, a home study is required to be conducted for (1) a child who is a victim of a severe form of trafficking in persons (as that term is defined by statute); (2) a special needs child with a disability; (3) a child who has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened, and (4) a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence. 8 U.S.C. § 1232(c)(3)(B).

Key Actions Related to Prioritization of Immigration Offenses for Criminal Prosecution and Separation of Parents and Children Apprehended at the Border

- **April 11, 2017:** Attorney General directs federal prosecutors along the southwest border to prioritize prosecutions of immigration-related offenses.
- **March 9, 2018:** The American Civil Liberties Union files an amended complaint in federal court on behalf of a class of alien parents who have been separated from their children by the government and whose children are detained in Office of Refugee Resettlement custody, asking the court to prohibit separation and require reunification of class members with their children.
- **April 6, 2018:** Attorney General directs federal prosecutors along the southwest border to adopt a “zero-tolerance policy” for improper entry immigration-related offenses.
- **April 6, 2018:** President Trump issues a memorandum titled ‘Ending “Catch and Release” at the Border of the United States and Directing Other Enhancements to Immigration Enforcement.’
- **May 4, 2018:** The Secretary of Homeland Security approves prosecuting all adults apprehended crossing the border illegally, including those apprehended with minors, at the recommendation of leaders from three Department of Homeland Security (DHS) agencies.
- **June 20, 2018:** President Trump signed Executive Order 13841 directing DHS to maintain custody of alien families during any criminal improper entry or immigration proceedings involving their members, to the extent possible.
- **June 26, 2018:** A federal court order prohibits the government from detaining class members in DHS custody apart from their minor children and orders the government to reunite class members with their children, absent a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunified with the child.
- **June 27, 2018:** According to U.S. Customs and Border Protection (CBP) officials, CBP issued guidance halting referrals of parents who enter the country illegally as part of a family unit to the Department of Justice for “zero-tolerance” prosecutions and outlines the situations in which children and parents may still be separated.^a
- **July 10, 2018:** Court-ordered deadline for the reunification of class members and children aged 0-4.
- **July 26, 2018:** Court-ordered deadline for the reunification of class members and children aged 5-17.

Source: GAO analysis of Department of Justice memos, Executive Order 13841, and federal court documents from *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Aug. 23, 2018). | GAO-19-163

^aCBP officials stated that a parent may still be separated from his or her child in certain circumstances, such as if the parent has a criminal history or communicable disease, or if the parent is unfit or presents a danger to the child.

DHS and HHS Planning for Family Separations

According to DHS and HHS officials we interviewed, the departments did not take specific steps in advance of the April 2018 memo to plan for the separation of parents and children or potential increase in the number of children who would be referred to ORR. DHS and HHS officials told us that the agencies did not take specific planning steps because they did not have advance notice of the Attorney General’s April 2018 memo. Specifically, CBP, ICE, and ORR officials we interviewed stated that they became aware of the April 2018 memo when it was announced publicly.

Though they did not receive advance notice of the April 2018 memo, ORR officials stated that they were aware that increased separations of parents and children were occurring prior to the April 2018 memo, and

one Border Patrol sector³² launched an initiative aimed at addressing increasing apprehensions of families in that sector.³³

Specifically, during 2017, ORR officials noted an increase in the percentage of children in ORR's care who were separated from their parents, and ORR officials stated that they discussed this trend with DHS officials in November 2017. Specifically, according to ORR officials, the percentage of children referred to ORR who were known to be separated from their parents rose by more than a tenfold increase, from 0.3 percent in November 2016 to 2.6 percent by March 2017, and then to 3.6 percent by August 2017. In addition, the ORR shelter and field staff we interviewed at four ORR facilities in Arizona and Texas told us they started noticing an increase in the number of children separated from their parents in late 2017 and early 2018, prior to the introduction of the April 2018 memo. The DHS officials we interviewed stated that, in some locations across the southwest border, there was an increase in the number of aliens CBP referred to DOJ for prosecution of immigration-related offenses after the Attorney General's April 2017 memo³⁴, and CBP officials we interviewed stated that historically some separations have always occurred if a parent is referred for criminal prosecution. In addition, CBP officials stated that there may have been an increase in children separated from non-parent relatives or other adults fraudulently posing as the child's parents.³⁵

³²Border Patrol divides responsibility for border security operations geographically among sectors.

³³As noted previously, Border Patrol officials stated that some family separations not related to prosecutions of violations of 8 U.S.C. § 1325(a) have always occurred, such as in cases in which the parent could be a threat to the health and safety of the child or the adult may not be the child's parent. Depending on the circumstances of the case, some parents and children may be reunited prior to leaving DHS custody, or the child could be transferred to ORR's care.

³⁴As noted previously in this report, in April 2017, the Attorney General issued a memorandum prioritizing enforcement of a number of criminal immigration-related offenses, including misdemeanor improper entry. Historically, parents referred for prosecution were placed into U.S. Marshals Service custody and separated from their children because minors cannot remain with a parent who is arrested on criminal charges and detained by U.S. Marshals Service.

³⁵In June 2018, DHS issued a press release noting an increase in the number of aliens using children to pose as family units to gain entry into the United States in 2017 and 2018. CBP officials we interviewed reported that, since 2017, Border Patrol agents and CBP officers have been focusing increased attention on the documents used to support the relationship of the parent and child.

According to ORR officials, in November 2017, ORR officials asked DHS officials to provide information about the increase. In response, DHS officials stated that DHS did not have an official policy to separate families, according to ORR officials. A few months prior to April 2018 memo, ORR officials said they saw a continued increase in separated children in their care. ORR officials noted that they considered planning for continued increases in separated children, but HHS leadership advised ORR not to engage in such planning since DHS officials told them that DHS did not have an official policy of separating parents and children.

From July to November 2017, one Border Patrol sector on the U.S. southwest border conducted an initiative to address an increase in apprehensions of families that sector officials had noted in early fiscal year 2017. Specifically, Border Patrol officials in the El Paso, Texas, sector reached an agreement with the District of New Mexico U.S. Attorney's Office to refer more individuals who had been apprehended, including parents who arrived with minor children, for criminal prosecution. Prior to this initiative, the U.S. Attorney's Office in this district had placed limits on the number of referrals it would accept from Border Patrol for prosecution of immigration offenses.³⁶ According to Border Patrol officials, under this initiative, the U.S. Attorney's Office agreed to accept all referrals from Border Patrol in the El Paso sector for individuals with violations of 8 U.S.C. § 1325 (improper entry by alien) and § 1326 (reentry of removed aliens), consistent with the Attorney General's 2017 memo directing federal prosecutors to prioritize such prosecutions.³⁷ For those parents placed into criminal custody, Border Patrol referred their children to ORR's care as UAC. According to a Border Patrol report on the initiative, the El Paso sector processed approximately 1,800

³⁶According to a November 2017 Border Patrol memo, on July 6, 2017, the District of New Mexico, Acting United States Attorney removed all restrictions imposed on referrals from Border Patrol's El Paso Sector, which had previously been limited to 25 referrals for 8 U.S.C. § 1325 misdemeanor cases per month and 150 referrals for 8 U.S.C. § 1326(a)(1) felony cases per month.

³⁷According to Border Patrol, all individuals apprehended, referred, and accepted for prosecution were generally prosecuted for criminal immigration violations such as improper entry by alien (8 U.S.C. § 1325), illegal reentry of removed aliens (8 U.S.C. § 1326). According to a DHS press release issued on June 15, 2018, parents prosecuted for illegal entry were transferred to DOJ custody for criminal proceedings, then subsequently transferred to ICE for immigration proceedings. The press release states that any individual subject to removal from the United States may seek asylum or other protections available under the law, including children who, depending on the circumstances, may undergo separate immigration proceedings.

individuals in families and 281 individuals in families were separated under this initiative. Border Patrol headquarters directed the sector to end this initiative in November 2017, and Border Patrol officials stated that there were no other similar local initiatives that occurred prior to the Attorney General's 2018 memo.

In an April 23, 2018, memo, CBP's Commissioner, U.S. Citizenship and Immigration Services' Director, and ICE's then-Acting Director sought guidance from the Secretary of Homeland Security regarding various approaches for implementing DOJ's April 2018 memo. In the April 23 memo, these officials recommended that DHS refer all adults who are apprehended between ports of entry to DOJ for prosecution for violations of 8 U.S.C. § 1325(a), including those arriving with minor children. The Secretary of Homeland Security approved the recommended approach on May 4, 2018, and on May 11, 2018 issued a memo directing DHS law enforcement officers at the U.S. southwest border to refer to DOJ for criminal prosecution all such individuals to the extent practicable.

Although ORR officials told us that they had not received advanced notice of the April 2018 memo, ORR field and shelter staff stated they made changes to daily operations as a result of the increased number of separated children being transferred to their care.³⁸ For example:

- HHS officials reported that their coordination calls with ORR field staff increased over time with daily calls starting in July 2018. ORR field staff also increased their coordination with ICE's Field Office Juvenile Coordinators to obtain information about the parents of separated children.³⁹
- Staff in the two shelters we visited in Arizona told us that they modified their space to accommodate an increase in younger children. For example, the shelters converted space previously used for classrooms for older children to be space for children under age 5, with one shelter adding cribs, smaller tables and chairs, and toys appropriate for younger children. One shelter also provided additional training to staff to adequately care for the increased number of children under age 12. In past years, the majority of children in ORR

³⁸According to HHS officials, ORR continually monitors its internal bed capacity for UAC as demand for bed capacity fluctuates seasonally and at times in unpredictable ways.

³⁹ICE's Field Office Juvenile Coordinators are responsible for coordinating the placement of UAC with ORR.

care have been 13 to 17 years old, according to ORR data.⁴⁰ For example, ORR reported that in fiscal years 2015, 2016, and 2017, 82 percent of unaccompanied children in its care were ages 13 to 17.

DHS and HHS Systems for Indicating When Children Were Separated from Parents

Prior to the Attorney General's April 2018 memo, DHS and HHS data systems did not systematically collect and maintain information to indicate when a child was separated from his or her parents, and ORR officials stated that such information was not always provided when children were transferred from DHS to HHS custody. Specifically, prior to April 2018, CBP's and ORR's data systems did not include a designated field to indicate that a child was unaccompanied as a result of being separated from his or her parent.⁴¹ According to agency officials, between April and August 2018, the agencies made changes to their data systems to help notate in their records when children are separated from parents.⁴²

Regarding DHS, CBP agencies Border Patrol and OFO made changes to their data systems to allow them to better indicate cases in which children were separated from their parents; however, ORR officials stated, as of early September 2018, they were unaware that DHS made these systems changes.⁴³

- Border Patrol's data system automatically populates a referral form from the information agents entered into their data system, which agents then send to ORR when referring an unaccompanied child.⁴⁴

⁴⁰Office of Refugee Resettlement, *ORR Facts and Data*, accessed August 22, 2018, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

⁴¹ORR officials told us that this information might be recorded in various text box fields in the UAC Portal, but that there was no specific, searchable field specifically for this information.

⁴²Throughout the remainder of this report, we use "unaccompanied children" rather than UAC, because this is the term used by HHS.

⁴³DHS and ORR officials told us that DHS components provide information on children referred to ORR through various mechanisms such as via email to ORR's Intakes Team or by entering the information into the ORR's UAC Portal directly. According to ORR officials, Border Patrol can automatically push referral data into the UAC Portal; ICE ERO has access to enter data directly into the Portal and should include information about separation in its referral notes; and OFO generally submits referrals via email and the ORR Intakes Team enters the information into the Portal.

⁴⁴According to Border Patrol officials, ORR's UAC Portal automatically uploaded the information transmitted by Border Patrol upon receipt. The Border Patrol referral form includes information such as a parent's name, phone number, and address, if known.

According to Border Patrol officials, Border Patrol modified its system on April 19, 2018, to include yes/no check boxes to allow agents to indicate that a child was separated from their parent(s).⁴⁵ Prior to this system modification, Border Patrol agents typically categorized a separated child as an unaccompanied child in its system, but did not include information to indicate the child had been separated from a parent. However, Border Patrol officials told us that information on whether a child had been separated is not automatically included in the referral form sent to ORR. Rather, agents may indicate a separation in the referral notes sent electronically to ORR, but they are not required to do so, according to Border Patrol officials. Therefore, while the changes to the system may make it easier for Border Patrol to identify children separated from their parents, ORR officials stated ORR may not receive information through this mechanism to help it identify or track separated children.

- CBP's OFO, which encounters families presenting themselves at ports of entry, also modified its data system⁴⁶ and issued guidance to its officers on June 29, 2018, to track children separated from their parents.⁴⁷ According to OFO officials, prior to that time, OFO designated children separated from their parents as unaccompanied. As of August 2018, OFO officials stated that while OFO has access to the UAC Portal, not all field staff input referrals directly in the UAC Portal. Rather, OFO officials typically email the referral request to ORR. OFO officials stated they have taken a phased approach to training OFO officers on the UAC Portal, and that they have ongoing efforts to ensure OFO officers make referrals to ORR directly in the UAC Portal.

Regarding HHS, ORR made changes to the UAC Portal for indicating that a child was separated from his or her parents.

⁴⁵Border Patrol maintains the E3 data system, which Border Patrol agents use to transmit and store data collected when processing and identifying individuals apprehended at the border, including children who are unaccompanied due to separation from a parent.

⁴⁶OFO uses the Secure Integrated Government Mainframe Access system to collect information about individuals in its custody.

⁴⁷Families presenting themselves at ports of entry would typically not be in violation 8 U.S.C. § 1325(a), which establishes criminal penalties for improper entry into the United States. Rather, OFO officials stated that, both before and after the April 2018 memo, they separated parents and children due to circumstances such as a parent's criminal history or if the parent presents a potential danger to the child.

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- ORR updated the UAC Portal to include a check box to indicate a child was separated from a parent. According to ORR officials, ORR made these changes on July 6, 2018, after the June 20 executive order and June 2018 court order to reunify families. According to ORR officials, prior to July 6, 2018, the UAC Portal did not have a systematic way to indicate whether a child was designated as unaccompanied as a result of being separated from a parent at the border. The updates allow those Border Patrol agents with direct access to the UAC Portal to check this box if a child was separated from a parent.⁴⁸

Border Patrol issued guidance on July 5, 2018, directing its agents to use the new indicator for separated children in the UAC Portal and provide the parent's alien number in the UAC Portal when making referrals to ORR as of July 6, 2018. Border Patrol officials told us that agents began adding that information at that time. However, ORR officials also said that DHS components with access to the UAC Portal are not yet utilizing the new check box consistently and the ORR Intakes Team completes the box based on information in DHS's referral email, if DHS has not entered the information. Furthermore, staff at two ORR shelters we visited were not aware of these changes to the UAC Portal.

ORR officials stated that the amount of information provided by DHS about a child's separation from his or her parents varied from child to child. CBP officials stated that, in addition to the referral, Border Patrol agents and CBP officers provide packets of information to ORR when unaccompanied children are transferred to ORR custody that includes information about separation from a parent; however, ORR officials told us that ORR rarely receives some of the forms in the packets to which

⁴⁸Border Patrol officials told us that most Border Patrol agents do not have access to ORR's UAC Portal, but that Border Patrol's Juvenile Coordinators do and they are responsible for entering this information directly into the Portal.

CBP officials referred. In addition, the forms themselves do not contain specific fields to indicate such a separation.⁴⁹

Staff at three of the four shelters we visited in Arizona and Texas said that in most, but not all cases during the spring of 2018 DHS indicated in the custody transfer information that a child had been separated. For example, staff at one shelter said that, in most cases, custody transfer information it received from DHS for children separated from their parents indicated that separation, but estimated that for approximately 5 percent of the separated children in its care there was no information from DHS indicating parental separation. In these cases, shelter staff said they learned about the separation from the child during the shelter's intake assessment. Staff at the same shelter, which cares for children ages 0 to 4, noted that intake assessments for younger children are different from intake for older children, as younger children are unable to provide detailed information on such issues as parental separation. According to staff at three shelters we visited, if staff learned that any child was separated from a parent at the border and it was not already recorded by DHS, they completed a significant incident report. The significant incident report is uploaded to the UAC Portal and routed to ORR field staff so that they are aware that the shelter has a separated child in its care.

We have previously identified weaknesses in DHS and HHS's process for the referral of unaccompanied children. In 2015, we reported that the interagency process to refer and transfer unaccompanied children from DHS to HHS was inefficient and vulnerable to errors because it relied on emails and manual data entry, and documented standard procedures, including defined roles and responsibilities, did not exist.⁵⁰ As we reported, best practices of high-performing organizations include, among

⁴⁹Specifically, the CBP officials said the packets may have included, among other forms, Form I-213, Record of Deportable/Inadmissible Alien. The Form I-213 documents an alien's biographical information, such as the alien's and parents' names, nationality, and contact information, if known; details regarding the apprehension of the alien; and key information Border Patrol agents and OFO officers learned while interviewing the alien. CBP officials reported that prior to May 5, 2018, the Form I-213 was provided to ORR on a case-by-case basis and CBP did not require agents to include this form in its transfer packet. However, in the weeks after the April 2018 memo, CBP heard from HHS and other DHS offices that the lack of a Form I-213 was, in some cases, an impediment to reunification. Border Patrol issued reminders to include this form in the transfer packet to its agents on May 31 and June 14, 2018 and OFO did the same on June 22, 2018, according to CBP officials.

⁵⁰GAO-15-521.

other things, ensuring the compatibility of the standards, policies, procedures, and data systems to be used.⁵¹ To increase the efficiency and improve the accuracy of the interagency unaccompanied children referral and placement process, we recommended that the Secretaries of DHS and HHS jointly develop and implement a documented interagency process with clearly defined roles and responsibilities, as well as procedures to disseminate placement decisions, for all agencies involved in the referral and placement of unaccompanied children in HHS shelters. In response, DHS and HHS agreed to establish a joint collaborative process for the referral and transfer of unaccompanied children from DHS to ORR shelters.

As noted, beginning in April 2018, Border Patrol, OFO, and ORR have made updates to their data systems to better identify children who are unaccompanied as a result of being separated from parents at the border. However, it is too soon to know the extent to which these changes, if fully implemented, will consistently indicate when children have been separated from their parents, or will help reunify families, if appropriate. Furthermore, while these data system updates are a positive step, they do not fully address the broader coordination issues we identified in our previous work. In addition, officials from DHS's Office of Strategy, Policy, and Plans told us that DHS delivered a Joint Concept of Operations between DHS and HHS to Congress on July 31, 2018, which provides field guidance on interagency policies, procedures, and guidelines related to the processing of unaccompanied children transferred from DHS to HHS. DHS submitted the Joint Concept of Operations to us on September 26, 2018, in response to our recommendation. We are reviewing the extent to which the Joint Concept of Operations includes a documented interagency process with clearly defined roles and responsibilities, as well as procedures to disseminate placement decisions, for all agencies involved in the referral and placement of unaccompanied children, including those separated from parents at the border, in HHS shelters. Moreover, to fully address our recommendation, DHS and HHS should implement such interagency processes.

⁵¹GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington, D.C.: October 2005).

DHS and HHS Actions to Reunify Families in Response to the June 2018 Court Order

DHS and HHS took various actions in response to the June 26, 2018, court order to identify and reunify children separated from their parents. As previously discussed, the June 2018 court order required the government to reunite class member parents with their children under 5 years of age within 14 days of the order, and for children age 5 and over, within 30 days of the order.⁵² The actions taken by DHS and HHS included (1) identifying the children and their parents to be reunited per the court order and (2) developing and implementing plans for reunifying children with parents in ICE custody and parents no longer in ICE custody. HHS officials told us that there were no specific procedures to reunite children with parents from whom they were separated at the border prior to the June 2018 court order. Rather, the agency used its standard processes and procedures, developed to comply with the TVPRA, to consider potential sponsors for unaccompanied children in their custody; if a parent was available to become a sponsor, reunification with that parent was a possible outcome.⁵³

DHS and HHS Efforts to Identify Potential Class Members. To create the list of potential class members (that is, those parents of a separated child covered under the lawsuit) eligible for reunification per the June 2018 court order, DHS and HHS officials told us that they generated the list based on children who were in DHS or HHS custody on that date. According to officials, this process was used because the class certification order limits membership to adult parents who have been or will be detained in immigration custody and who have a minor child who

⁵²*Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction). The court certified the following class: “All adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by the DHS, and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody, absent a determination that the parent is unfit or presents a danger to the child.” *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting in part plaintiffs’ motion for class certification).” In that order, the court also noted that the class “does not include migrant parents with criminal history or communicable disease, or those who are in the interior of the United States or subject to the [June 20 executive order].”

⁵³As noted previously, on June 20, 2018, President Trump issued Executive Order 13841, which stated that “[i]t is the policy of this Administration to rigorously enforce our immigration laws...It is also the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources.” The executive order directed DHS to maintain custody of alien families during any criminal improper entry or immigration proceedings involving their members, to the extent possible.

“is detained in ORR custody, ORR foster care, or DHS custody.”⁵⁴ As a result, DHS and HHS officials told us that a parent of a separated child would only be a class member if his or her child was detained in DHS or HHS custody on June 26, 2018. After developing the class list, DHS and HHS officials told us that they next determined whether class members were eligible for reunification. In accordance with the June 2018 court order, a class member could be determined ineligible for reunification if it was determined that the parent was unfit or presented a danger to the child.⁵⁵ According to the June 2018 court order, “fitness” is an important factor in determining whether to separate parent from child and, in this context, could include “a class member’s mental health, or potential criminal involvement in matters other than ‘improper entry’ under 8 U.S.C. § 1325(a), among other matters.”⁵⁶

Parents of children who were separated at the border but whose children were released by ORR to sponsors prior to the June 2018 court order were not considered class members, and according to HHS officials, the department was not obligated to reunite them with the parent or parents from whom they were separated. Further, HHS officials told us that they do not know how many such children separated from parents at the border were released to sponsors prior to the order and that the court order does not require the department to know this information. HHS officials stated that HHS policy has been that once ORR releases a minor to a sponsor, HHS’s custodial relationship to that minor ends. Anecdotally, ORR field staff in Texas and staff at the two shelters we visited in Arizona said they had released children separated from parents

⁵⁴*Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction). In addition to ORR shelters, children in ORR custody may also be placed in ORR foster care. There are different types of ORR foster care placements, depending on the circumstances, including transitional (short-term) foster care, long-term foster care, and therapeutic foster care. ORR’s system for foster care placements is separate from state-run child welfare and foster care systems. See GAO-16-180 for more information.

⁵⁵*Id.*; *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting in part plaintiffs’ motion for class certification).

⁵⁶*Id.* The court certified the following class: “All adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by the DHS, and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody, absent a determination that the parent is unfit or presents a danger to the child.” In that order, the court also noted that the class “does not include migrant parents with criminal history or communicable disease, or those who are in the interior of the United States or subject to the [June 20 executive order].”

during the spring of 2018 to sponsors prior to the court order through their standard procedures for releasing children to sponsors. Staff at one shelter said they had released a few children to a grandparent, aunt, and uncle during that time period.

Because there was no single database with easily extractable, reliable information on family separations, HHS officials reported using three methods to determine which children in ORR's custody as of June 26, 2018, had been separated from parents at the border:

1. **Data Reviewed by an Interagency Data Team.** An interagency team of data scientists and analysts—led by HHS's Office of the Assistant Secretary for Preparedness and Response with participation from CBP, ICE, and ORR—used data provided by DHS and HHS, as well as other information on separated children provided by ORR field and shelter staff, to identify the locations of separated children and parents, according to HHS officials.⁵⁷ Specifically, agency officials told us the team compared records in multiple data sets, most notably ICE's Enforcement Integrated Database, which has information on adults apprehended at the border, and HHS's UAC portal, which has information on unaccompanied children, including children separated from their parents at the border.⁵⁸ Team members told us their goal was to identify patterns that could connect adults and children with records in the different datasets. According to officials, one example of a pattern officials identified that could indicate a possible separation was if an adult and child with the same last name were detained in the same location at the same time. Officials told us that ORR headquarters, field, and shelter staff provided manually tracked lists of children and parents that were possibly separated, and that they used those lists to supplement their review of the data. They told us that if there were discrepancies among data points, for example, if a piece of data was missing, they would work with agency personnel to resolve the conflict.

⁵⁷HHS officials said the Interagency Data Team was initially formed after the June 20, 2018 executive order, but shifted its focus to respond to the June 26, 2018, court order.

⁵⁸The Enforcement Integrated Database is a shared common database repository for several DHS law enforcement and homeland security applications. The database captures and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by certain DHS components.

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2. **Case File Review.** In response to the June 2018 court order, HHS reported that staff reviewed about 12,000 electronic case files of all children in its care as of June 26, 2018. HHS officials told us that for about 4 days, more than 100 HHS staff from across the agency—including ORR and the Public Health Service—reviewed electronic case files in ORR’s UAC Portal. According to ORR officials, staff members conducting case file reviews were provided verbal training and a point of contact for questions, but there were no written training materials. The training instructed staff to look for indications of separation in specific UAC Portal sections of each child’s case file. According to HHS officials, HHS staff were instructed to look for words such as “zero tolerance,” “separated from [parent/mother/father/legal guardian],” and “family separation.” Also, HHS staff were instructed to examine an intake question that specifically asks children “who did you travel with?” and a field that asks children to describe their parent’s current whereabouts. HHS officials said if any of the case file materials contained indications of family separation, then staff flagged the case, and it was further investigated by other ORR staff.

ORR field staff in Texas (who participated in the manual case file review) confirmed that they were instructed to review UAC Portal information. First, they looked to see if DHS identified the child as separated. If not, they reviewed intake information, significant incident reports, and case notes for indications of separation. The field staff said that because of their familiarity with the UAC Portal, they could look for indications of separation fairly quickly. However, for HHS staff not familiar with the UAC Portal, the review likely required more searching, according to the field staff. The field staff added that the UAC Portal does not allow for keyword searches so if the information was in a significant incident report or case note, staff would have to read through the notes or significant incident report to find the information.

3. **Review of Information Provided by Shelters.** According to HHS officials, shelter staff were asked to provide lists of children in their care who were known to be separated from parents based on the shelter’s records. As previously noted, shelters may know that a child is separated if (1) that information is included in the UAC Portal at the time the child is placed or (2) the child tells shelter staff that he or she was separated from their parent at the border. Staff in the four shelters we visited told us that they provided information to ORR on children the shelters identified as potentially having been separated from their parents. There was a lot of back and forth with ORR headquarters to confirm which children were separated, according to

staff at two shelters. In addition, HHS officials and staff at two shelters said that during this process, shelter staff were required to certify the number of separated children in their care.

On the basis of its reviews, as of September 10, 2018, the government had identified 2,654 children of potential class members in the *Ms. L. v. ICE* case.⁵⁹ Of the 2,654 children, 103 were age 0 to 4 and 2,551 were age 5 to 17.⁶⁰ As described above, the number of children of potential class members does not include all children who were separated from parents at the border by DHS. For example, the 2,654 count of children does not include those who were separated from parents but released to sponsors prior to the June 2018 court order. This number also does not include more than 500 children who were reunified with parents by CBP in late June 2018 because these children were never transferred to ORR custody.⁶¹ As of September 10, 2018, 2,217 of the 2,654 identified children had been released from ORR custody, according to a joint status report filed in the *Ms. L. v. ICE* case (see table 1).⁶² About 90 percent of the released children were reunited with the parent from whom they were separated and the remaining children were released under other circumstances, such as to another suitable sponsor.

⁵⁹*Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Sept. 13, 2018) (joint status report). According to the status report, filed September 13, 2018, the data presented reflects approximate numbers maintained by ORR as of at least September 10, 2018. We did not independently verify the accuracy of these data. For the purposes of this report, we use the term "government" to refer to the defendants in the *Ms. L. v. ICE* case.

⁶⁰Children were grouped into two groups by age (0-4 years old and 5-17 years old), because the June 2018 court order required HHS to reunify children ages 0-4 years old before reunifying children ages 5-17 years old.

⁶¹According to CBP, following issuance of the June 20, 2018, executive order (directing DHS to maintain custody of alien families during any criminal improper entry or immigration proceedings involving their members, to the extent possible), the agency began reunifying children in its custody with parents, and by June 23, 2018, the agency had completed reunification of 522 children with parents. CBP officials also reported that the agency had reunified children and parents in its custody after the April 2018 memo and before the June executive order. According to officials, these reunifications occurred when parents completed court proceedings and returned to Border Patrol stations where children were still located because HHS had not yet been able to place them.

⁶²*Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Sept. 13, 2018) (joint status report). According to the status report, the data presented reflects approximate numbers maintained by ORR as of at least September 10, 2018.

Table 1: Number of Children Separated from Potential Class Member Parents at the Border and Number Who Had Been Reunified in Response to the June 26, 2018 Court Order (as of September 10, 2018)

	Children age 0 to 4	Children age 5 to 17	Total children
Number of children separated from class member parents ^a	103	2,551	2,654
Number of children reunified with separated parent	72	1,913	1,985
Number of children released from Office of Refugee Resettlement (ORR) custody under other circumstances ^b	12	220	232
Number of children that remain in ORR custody, as of September 10, 2018 ^c	19	418	437

Source: *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Sept. 13, 2018) (joint status report). | GAO-19-163

Note: The “June 26, 2018 court order” refers to the order in the *Ms. L. v. ICE* class action lawsuit that required the government to reunite class member parents with their children under 5 years of age within 14 days of the order, and for children age 5 and over, within 30 days of the order, absent a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunified with the child. *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction). We did not independently verify the accuracy of these data. According to the September 13, 2018 status report, the data presented reflects approximate numbers maintained by ORR as of at least September 10, 2018.

^aChildren separated from class member parents represents the total number of possibly separated children of potential class member parents originally identified by the government as being subject to the court order in the *Ms. L. v. ICE* case.

^bChildren released from ORR under other circumstances include discharges to other sponsors and children who turned age 18.

^cAccording to the September 13, 2018 joint status report, this category includes children remaining in ORR care where the parent is in the class but not eligible for reunification or is not available for discharge at this time, including cases in which the parent is presently outside the United States; the parent is in other federal, state, or local custody; or there is an ongoing case review of a “red flag” related to safety and well-being. This category also includes cases in which the parent is not in the class, including cases in which: further review shows the child was not separated from parents by the Department of Homeland Security; a final determination has been made that the child cannot be reunified because the parent is unfit or presents a danger to the child; the parent is presently departed from the United States and the parent’s intent not to be reunified has been confirmed by the American Civil Liberties Union; or the parent is in the United States and has indicated an intent not to reunify.

Plan for Reunifying Children with Class Member Parents Within and Outside ICE’s Custody. The process used to reunify separated children with their class member parents in the *Ms. L. v. ICE* case evolved over time based on multiple court hearings and orders, according to HHS officials. After the June 2018 court order, HHS officials said the agency planned to reunify children using a process similar to their standard procedures for placing unaccompanied children with sponsors. However, according to agency officials, the agency realized that it would be difficult to meet the court’s reunification deadlines using its standard procedures and began developing a process for court approval that would expedite reunification for class members. As a result, from June 26, 2018 to July

10, 2018, the reunification process was refined and evolved iteratively based on court status conferences, according to HHS officials. ORR field and shelter staff we interviewed noted the impact of the continually changing reunification process; for example, staff at one shelter told us there were times when she would be following one process in the morning but a different one in the afternoon.

On July 10, 2018, the court approved reunification procedures for the class members covered by the June 2018 court order.⁶³ In the July 10, 2018 order that outlined these procedures, the court noted that the standard procedures developed by ORR pursuant to the TVPRA were meant to address “a different situation, namely, what to do with alien children who were apprehended without their parents at the border or otherwise” and that the agency’s standard procedures were not meant to apply to the situation presented in this case, which involves parents and children who were apprehended together and then separated by government officials.⁶⁴ The reunification procedures approved in the *Ms. L. v. ICE* case apply only to reunification of class members with their children and included the following general steps: (1) determining parentage and (2) determining whether the parent is fit to take care of the child or presents any danger to the child. Specifically:

1. **Determining Parentage.** Before July 10, 2018, to determine parentage for children ages 0 to 4, HHS officials said they initially used DNA swab testing instead of requiring documentation, such as birth certificates, stating that DNA swab testing was a prompt and efficient method for determining biological parentage in a significant number of cases. HHS officials told us that there were occasions in which they interacted with an individual claiming to be a parent who withdrew their claim of parentage when they learned they would be required to submit DNA. On July 10, 2018, the court approved the use

⁶³See *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. July 10, 2018) (order following status conference); see also *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. July 13, 2018) (defendants’ status report regarding plan for compliance and order following status conference); *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. July 15, 2018) (notice from defendants).

⁶⁴ See *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. July 10, 2018) (order following status conference). As previously discussed, the June 2018 court order required the government to reunite class member parents with their children under 5 years of age within 14 days of the order, and for children age 5 and over, within 30 days of the order, absent a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child. *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction).

of DNA testing “only when necessary to verify a legitimate, good-faith concern about parentage or to meet a reunification deadline.”⁶⁵ HHS officials told us that at that point, to determine parentage, ORR relied on the determinations made by DHS when the family was separated and information ORR shelter staff had already collected through assessments of the children in their care. Unless there were specific doubts about the relationship, ORR did not collect additional information or DNA to confirm parentage, according to HHS officials.

2. **Determining Fitness and Danger.** To reunify class members, HHS also followed the procedures approved by the court on July 10, 2018 for determining whether a parent is fit and whether a parent presents a danger to the child. HHS used the fingerprints and criminal background check of the parent conducted by DHS when the individual was first taken into DHS custody rather than requiring the parent to submit fingerprints to ORR, as potential sponsors are typically required to do for unaccompanied children. HHS did not require fingerprints of other adults living in household where the parent and child will live. According to HHS officials, ORR personnel reviewed each child’s case file for any indication of a safety concern, such as allegations of abuse by the child. HHS did not require parents to complete an ORR family reunification application as potential sponsors are typically required to do for unaccompanied children.

Class Member Parents in ICE custody. DHS and HHS took steps to coordinate their efforts to reunify children with parents who remained in ICE custody, but experienced some challenges. For example, DHS and HHS officials told us that they facilitated telephone conversations between parents and their children. However, even though a call had been scheduled, DHS and HHS officials said there were instances when either the parent or the child was unavailable to talk. In addition, ORR shelter staff told us it was difficult contacting ICE detention centers and reaching the detained parents, especially when trying to establish the first contact. ICE officials said that they compiled a list of detention center contacts and distributed it to HHS to help ORR field and shelter staff

⁶⁵ *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. July 10, 2018) (order following status conference). According to agency officials, in general, the DNA testing process HHS used took about a week from when the DNA was collected to when the results were used to determine parentage. In its ordinary operations, HHS uses documentary evidence (e.g., birth certificates), but that process can take months, and would have been too long to comply with the reunification deadline in the June 2018 court order, according to the government. In limited instances for children 5-17, HHS also used DNA testing to affirmatively verify that an adult is a biological parent, as it did with the group of children ages 0-4.

arrange communication between children and parents; however, ICE officials later learned that not all ORR field and shelter staff were using the provided contact list. Also, during phone calls between the parent and the child, one ORR field staff person we interviewed said initially she was able to speak to the parent, but then the practice changed. Specifically, she told us that ICE personnel monitoring the phone calls between parents and children began terminating calls when they heard her speaking, explaining that the call was supposed to be between the child and the parent only. She said this was problematic because it inhibited her ability to determine if there were questions regarding parentage, parental fitness, or any possible danger to the child. According to ICE officials, they were concerned that ORR staff were consuming too much of the 10 minutes allotted for parents and children to speak and were also going over the allotted time. As a result, there was less time available for other parents to speak with their children in ORR custody.

DHS and HHS also coordinated the transportation of parents and children so they could be reunified. According to DHS officials, the agency was responsible for transportation to reunify parents with children ages 0-4. For children ages 5-17 who were reunified with their parents at reunification facilities, DHS was responsible for transporting parents and HHS was responsible for transporting children. HHS officials said there were challenges related to the transport and physical reunification of families, including children having to wait for parents for unreasonably long amounts of time and parents transported to the wrong facilities. However, an ICE official told us that ICE was unaware of any instances in which a parent had been transported to the wrong facility. Shelter staff we interviewed also told us there were times when the parent was not available because the parent was in transit, resulting in long waits for the children and the accompanying shelter staff. In one case, staff at one shelter told us that they had to stay two nights in a hotel with the child before reunification could occur.

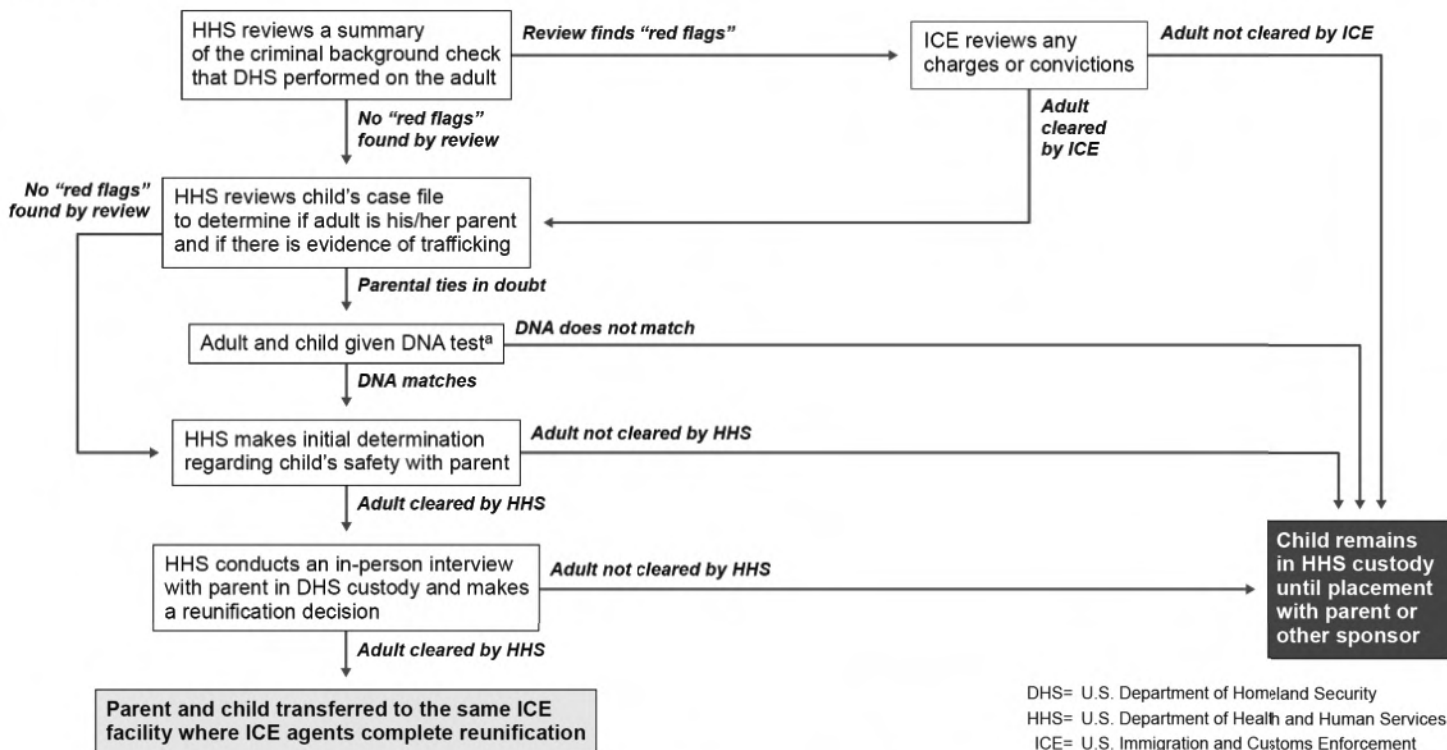
According to agency officials, to facilitate reunification, DHS moved detained parents to a detention facility close to their children.⁶⁶ Prior to transporting the child, ORR personnel conducted additional interviews with the parent to obtain verbal confirmation of parentage and the parent's desire to reunify with the child. After the interviews, HHS

⁶⁶ORR's standard procedures for placing unaccompanied children with sponsors do not consider adults in ICE detention to be an available sponsor, according to ORR officials.

transferred custody of the child to ICE and provided ICE with documentation confirming parentage and that the parent did not present a danger to the child. ICE coordinated with a contractor to transport the family to a pre-identified release site. Finally, if an adult used a court-approved form to make an election to be removed without the child from whom they were separated, ICE was to notify HHS immediately.⁶⁷ In such cases, all supporting paperwork was to be sent to HHS or be made immediately available electronically between HHS and ICE. See figure 2, which shows the reunification process DHS and HHS developed to reunify children with parents in ICE custody, in response to the court order.

⁶⁷See *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. July 24, 2018) (Exhibit Notice and Election Form). The form, entitled "Notice of Potential Rights for Certain Detained Alien Parents Separated from their Minor Children," provides notice of the *Ms. L. v. ICE* case to potential class members and outlines class membership eligibility and the rights of class members. On page 2 of the form, the form provides the following notice: "You DO NOT have to agree to removal from the United States in order to be reunified with your child. Even if you continue to fight your case, the government must still reunify you. IF YOU LOSE YOUR CASE AND THE GOVERNMENT IS GOING TO REMOVE YOU FROM THE UNITED STATES, you must decide at that time whether you want your child to leave the United States with you." The form then directs the parent to choose one option from the following: (1) If I lose my case and am going to be removed, I would like to take my child with me; (2) If I lose my case and am going to be removed, I do NOT want to take my child with me; (3) I do not have a lawyer, and I want to talk with a lawyer before deciding whether I want my child removed with me.

Figure 2: Department of Homeland Security (DHS) and Department of Health and Human Services' (HHS) Process to Reunify Children with Parents in U.S. Immigration and Customs Enforcement (ICE) Custody, Developed in Response to the June 26, 2018 Court Order



Source: GAO analysis of DHS and HHS process to reunify children separated from class member parents at the border. | GAO-19-163

Note: The "June 26, 2018 court order" refers to an order in the *Ms. L. v. ICE* class action lawsuit that required the government to reunite class member parents with their children under 5 years of age within 14 days of the order, and for children age 5 and over, within 30 days of the order, absent a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child. *Ms. L. v. ICE*, No. 18-0428 (C.D. Cal. June 26, 2018) (order granting preliminary injunction). This process documented steps to reunify children ages 5-17 with their class member parents; in general, aspects of the process were also used to reunify children ages 0-4 with their class member parents. A "red flag" refers to a concern regarding the safety of the child if he or she is reunified with the parent. Red flags include the child's claim that the parent is abusive or if the parent has a criminal history involving child abuse, the sexual exploitation of children, human trafficking, or crimes of violence. According to HHS, while these offenses are among the clearest cases, most cases require more investigation to determine whether the parent's criminal history makes reunification unsafe.

^aOn July 10, 2018, the court approved the use of DNA testing "only when necessary to verify a legitimate, good-faith concern about parentage or to meet a reunification deadline." *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. July 10, 2018) (order following status conference). Prior to that date, according to agency officials, DNA testing was performed on many children ages 0 to 4 years old and their parents in order to help determine parentage.

Class Member Parents outside ICE custody. DHS and HHS efforts to reunify children with parents who were not in ICE custody differed based on whether or not the parents were in the United States. According to HHS officials, for families in which the parent was released into the interior of the United States, the reunification process involves the following steps:

- ORR and its shelter staff attempt to establish contact with the parents. HHS officials told us they have two resources to help determine the parent's location. One resource is the ORR Helpline for Unaccompanied Alien Children or Sponsors, which is a call center that collects information from separated parents, including their name and contact information. Also, HHS can contact ICE which may have the parent's contact information.
- ORR is to determine whether parents have "red flags" for parentage or child safety, based on DHS-provided criminal background check summary information and case review of the child's UAC Portal records. For those parents without red flags, ORR reunifies the family either by ORR transporting the minor to the parent or the parent picking up the child at the ORR care provider facility. For those with red flags, ORR will conduct further review to determine parentage or if it is safe for the child to be reunited with the parent.

For class member parents who are outside the United States, the government proposed a reunification plan, which includes the following steps: identify and resolve any concerns regarding parentage or the child's safety; establish contact with parents; determine parent's intention for child (whether to reunite with the child or waive reunification and have a relative or other individual in the United States to serve as the child's sponsor); resolve immigration status of minors to allow reunification; and transport minors to their respective countries of origin.⁶⁸ In September

⁶⁸*Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Aug. 16, 2018) (notice regarding implementation of plan for reunifications abroad). The Interagency Plan for Reunification of Separated Minors with Removed Parents filed on August 16, 2018 outlines the roles and responsibilities for the "UAC Reunification Coordination Group," which consists of individuals from DHS, DOJ, Department of State, and HHS. The plan also outlines coordination with the American Civil Liberties Union Steering Committee (ACLU/Steering Committee) throughout the process, such as the ACLU/Steering Committee's involvement in outreach to parents, establishing and maintaining a hotline phone number for removed parents, and determining and conveying the parents' wishes with regard to reunification to the government. *Id.*

2018, DHS officials told us that the plan has been provisionally approved by the court, and DHS has begun working on implementation plans.

Some separated children subject to *Ms. L. v. ICE* have not been reunified with their parents and remain in ORR custody. As of September 10, 2018, 437 of the 2,654 children identified by the government as potentially covered by the June 2018 court order remain in ORR custody for various reasons, according to a joint status report filed in the *Ms. L. v. ICE* case (see table 2).⁶⁹ For example, about 64 percent of these children remain in ORR custody because their parent is presently outside the United States. According to ICE officials, in some circumstances, parents may have chosen to have their children remain in the United States, or some parents may have been excluded from class membership due to suitability determinations, criminal history, or parentage issues.

⁶⁹*Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Sept. 13, 2018) (joint status report). According to the September 13, 2018 status report, the data presented reflects approximate numbers maintained by ORR as of at least September 10, 2018.

Table 2: Number and Reasons Children Identified by the Government as Covered by the June 26, 2018 Court Order Remain in Office of Refugee Resettlement (ORR) Custody (as of September 10, 2018)

	Children age 0 to 4	Children age 5 to 17	Total children
Number of children that remain in ORR custody, as of September 10, 2018	19	418	437
Reasons children remain in ORR custody:			
<i>Parent in class</i>			
Parent presently outside the U.S.	5	160	165
Parent presently inside the U.S.	1	45	46
<i>Parent not in class</i>			
Children in care where further review shows they were not separated from parents by the Department of Homeland Security	5	50	55
Children in care where a final determination has been made that they cannot be reunified because the parent is unfit or presents a danger to the child	7	22	29
Children in care with parent presently departed from the United States whose intent not to reunify has been confirmed by the American Civil Liberties Union	1	113	114
Children in care with parent in the United States; parent has indicated an intent not to reunify	0	28	28

Source: *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Sept. 13, 2018) (joint status report). | GAO-19-163

Note: The "June 26, 2018 court order" refers to an order in the *Ms. L. v. ICE* class action lawsuit that required the government to reunite class member parents with their children under 5 years of age within 14 days of the order, and for children age 5 and over, within 30 days of the order, absent a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunified with the child. *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. June 26, 2018) (order granting preliminary injunction). We did not independently verify the accuracy of these data. According to the September 13, 2018 status report, the data presented reflects approximate numbers maintained by ORR as of at least September 10, 2018.

Procedures for Children and Parents Separated after the June 2018 Court Order. The reunification procedures described above only apply to *Ms. L. v. ICE* class members. According to HHS officials, for those children separated from parents at the border after the June 2018 court order, ORR would use its standard procedures for placing that child with a sponsor since those parents would not be class members. As noted previously, according to CBP officials, on June 27, 2018, CBP issued guidance that halted referrals of adults entering the United States illegally as part of a family unit to the Department of Justice for prosecutions for misdemeanor improper entry offenses and outlined the situations in which children and parents may be separated moving forward. CBP officials stated that a parent may still be separated from his or her child in certain circumstances, such as if the parent has a criminal history or

communicable disease, or the parent is unfit or presents a danger to the child.⁷⁰ In September 2018, HHS officials stated that they will continue to use their standard process to determine potential sponsors for unaccompanied children in their custody, including those who had been separated from their parents.

Agency Comments

We provided a draft of this report to DHS and HHS for review and comment. We received written comments from DHS, which are reproduced in Appendix I. In its comments, DHS said that, in recent months, the department has identified further areas for interagency process improvement and coordination and the department plans to continue efforts to improve processes. HHS did not provide written comments. DHS and HHS provided technical comments that we have incorporated in the report as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretaries of Homeland Security and Health and Human Services and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

⁷⁰As previously discussed, the Attorney General's April 2017 memorandum prioritized enforcement of a number of criminal immigration-related offenses, including offenses that would generally be felony offenses, such as illegal reentry of removed aliens (8 U.S.C. § 1326), unlawfully bringing in and harboring certain removable aliens (8 U.S.C. § 1324), and assaulting, resisting or impeding certain officers or employees (18 U.S.C. § 111).

If you or your staff have any questions about this report, please contact us at (202) 512-7215 or larink@gao.gov or (202) 512-8777 or gablerr@gao.gov. GAO staff who made key contributions to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink, reading "Kathryn A. Larin". The signature is fluid and cursive, with the first name "Kathryn" and last name "Larin" clearly legible.

Kathryn A. Larin, Director
Education, Workforce, and Income Security

A handwritten signature in black ink, reading "Rebecca Gambler". The signature is fluid and cursive, with the first name "Rebecca" and last name "Gambler" clearly legible.

Rebecca Gambler, Director
Homeland Security and Justice

Appendix I: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

October 2, 2018

Kathryn A. Larin
Director, Education, Workforce, and Income Security
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-19-163, "UNACCOMPANIED CHILDREN: Agency Efforts to Reunify Children Separated from Parents at the Border"

Dear Ms. Larin and Ms. Gambler:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS performs an essential role in securing our Nation's borders at and between ports of entry and enforcing U.S. immigration law in the interior of the country. In the course of securing our borders and enforcing immigration laws, DHS is committed to treating all people we encounter with dignity and respect. DHS officers and agents uphold the utmost professionalism while maintaining efficient operations.

In April 2018, the President directed several Federal agencies, including DHS, to report on their efforts to end a practice developed under prior administrations of releasing certain aliens who violated U.S. immigration law into the United States pending resolution of their immigration proceedings. On the same day, the Attorney General issued a memorandum on criminal prosecutions of immigration offenses that directed Department of Justice prosecutors to accept referrals of all aliens apprehended after

illegally crossing the border, including those accompanied by children, for criminal prosecution for improper entry offenses, to the extent practicable. As noted in the draft report, this resulted in an increase during May and June 2018 in the number of minor children who were separated from their parents or legal guardians after attempting to enter the United States illegally.

On June 20, 2018, President Trump issued Executive Order 13841, mandating family unity during any improper entry criminal prosecution or immigration proceedings involving their members, to the extent permitted by law. On June 26, 2018, a Federal court ordered the Government to reunify certain children and parents separated under the policy within 30 days. In partnership with the Department of Health and Human Services (HHS), DHS has made significant progress reunifying families. Additionally, U.S. Customs and Border Protection (CBP) continues to provide a safe, clean, and healthy temporary environment for arrived unaccompanied alien children who are in CBP's custody awaiting transfer to HHS. Furthermore, CBP complies with all requirements of the court-approved *Flores* Settlement Agreement, and takes many actions to document such compliance, including internal inspections and automated reporting via the electronic systems of record.

It is also important to highlight that during recent months we have identified further areas for interagency process improvement and coordination. For example, CBP has enhanced data fields within its own electronic systems of record to better account for separations of family units for child welfare and the time in custody of unaccompanied alien children, as well as transfer to U.S. Immigration and Customs Enforcement and HHS. We are pleased with GAO's recognition of DHS's comprehensive efforts to increase communication and standardized information sharing with HHS. DHS will continue efforts to improve its processes and maintain the high standards expected of our agency.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,



JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Appendix II: GAO Contacts and Staff Acknowledgments

GAO Contacts

Kathryn A. Larin, (202) 512-7215 or larink@gao.gov

Rebecca Gambler, (202) 512-8777 or gablerr@gao.gov

Staff Acknowledgments

In addition to the contacts named above, Kathryn Bernet (Assistant Director), Elizabeth Morrison (Assistant Director), Andrea Dawson (Analyst-in-Charge), David Barish, Jason Palmer, and Leslie Sarapu made key contributions to this report. In addition, key support was provided by James Bennett, Linda Collins, Sarah Cornetto, Joel Green, Marissa Jones, Michael Kniss, Sheila McCoy, Jean McSween, Jan Montgomery, Heidi Nielson, David Reed, Minette Richardson, Almeta Spencer, and Kathleen van Gelder.

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