



Testimony

Before the Subcommittee on Oversight
and Investigations, Committee on
Energy and Commerce, House of
Representatives

For Release on Delivery
Expected at 10:30 a.m. ET
Thursday, February 7, 2019

UNACCOMPANIED CHILDREN

Agency Efforts to Identify and Reunify Children Separated from Parents at the Border

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

Rebecca Gambler, Director, Homeland Security and
Justice

GAO Highlights

Highlights of [GAO-19-368T](#), a testimony before the Subcommittee on Oversight and Investigations, 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. According to HHS officials, this 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 and transfer of UAC to HHS. HHS is responsible for coordinating UAC placement and care.

This testimony 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. It is based on a report GAO issued in October 2018. This testimony also includes updated data reported by the government on the number children separated from their parents subject to the court's reunification order and the number of those children in ORR custody as of December 11, 2018.

What GAO Recommends

GAO recommended in 2015 that DHS and HHS improve their process for transferring UAC from DHS to HHS custody. DHS and HHS concurred and have taken action, but have not fully implemented the recommendation.

View [GAO-19-368T](#). 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.

February 7, 2019

UNACCOMPANIED CHILDREN

Agency Efforts to Identify and Reunify Children Separated from Parents at the Border

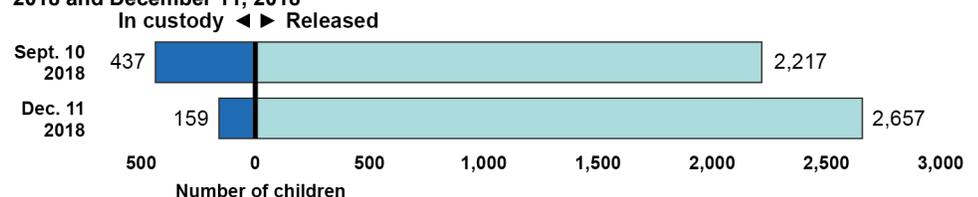
What GAO Found

Department of Homeland Security (DHS) and Department of Health and Human Services (HHS) officials GAO 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 because 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's Border Patrol and ORR updated their data systems 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. As of September 2018, the government identified 2,654 children in ORR custody who potentially met reunification criteria, which does not include separated children released to sponsors prior to the June 2018 court order. On July 10, 2018, the court approved reunification procedures for the parents covered by the June 2018 court order. This July 10, 2018 order noted that ORR's standard procedures used to release UAC from its care to sponsors were not meant to apply in this circumstance, in which parents and children who were apprehended together were separated by government officials. Since GAO's October 2018 report, the government identified additional children separated from parents subject to the court's reunification order and released additional children from its custody (see figure).

Number of Possible Children of Potential Class Members Who Were Released from Office of Refugee Resettlement (ORR) Custody and Remaining in ORR Custody as of September 10, 2018 and December 11, 2018



Source: Ms. L. v. ICE, No. 18-0428 (S.D. Cal. Sept. 13, 2018 and Dec. 12, 2018) (joint status reports). | GAO-19-368T

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

February 7, 2019

Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee:

Thank you for the opportunity to discuss the efforts of the Department of Homeland Security (DHS) and Department of Health and Human Services (HHS) to plan for and respond to family separations that occurred during the spring of 2018 at the southwest border. On April 6, 2018, the Attorney General issued a memorandum on criminal prosecutions of immigration offenses, which officials said resulted in a considerable increase in the number of minor children whom DHS separated from their parents or legal guardians after attempting to cross the U.S. border illegally.¹ On June 20, 2018, the President issued an executive order directing that alien families generally be detained together,² and on June 26, 2018, a federal judge ordered the government to reunify certain separated families.³

My statement today will focus on (1) DHS and HHS planning efforts related to the Attorney General's April 2018 memo, (2) DHS and HHS systems for indicating children were separated from parents, and (3) DHS and HHS actions to reunify families in response to the June 2018 court order. My statement is based on the findings from our October 2018 report, which provides a detailed description of our methodology.⁴ To obtain updated data on the number of children affected by the federal court order to reunify families, we reviewed the December 12, 2018 joint

¹Memorandum 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 testimony statement 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)." See GAO, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, [GAO-19-163](#) (Washington, D.C.: October 9, 2018) for more information on 8 U.S.C. § 1325(a).

²Exec. 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.

³*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).

⁴GAO, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, [GAO-19-163](#) (Washington, D.C.: October 9, 2018).

status update. The work upon which this statement is based was conducted 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.

Background

Family Separations at the Southwest Border

According to DHS and HHS officials, DHS has historically separated a number of children from accompanying adults at the border and transferred them to HHS custody, but these separations occurred only in certain circumstances. For example, DHS might separate families if the parental relationship could not be confirmed, if 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. HHS has traditionally treated these children as unaccompanied alien children (UAC)—children who (1) have no lawful immigration status in the United States, (2) have not attained 18 years of age, and (3) have 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

The Attorney General’s April 2018 memorandum, also referred to as the “zero tolerance” policy, directed Department of Justice (DOJ) prosecutors to accept all referrals of all improper entry offenses from DHS for criminal prosecution, to the extent practicable. According to DHS officials, in implementing the April 2018 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.⁶ 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

⁵6 U.S.C. § 279(g)(2).

⁶When 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.

arrested on criminal charges and detained by U.S. Marshals Service.⁷ 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 UAC. 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 for UAC.

The President's executive order issued on June 20, 2018, directed, among other things, that the Secretary of Homeland Security maintain custody of alien families during any criminal improper entry or immigration proceedings involving their family members, to the extent possible. This order 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 testimony statement as the "June 2018 court order").⁸ 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

⁷While 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 (Pub. L. No. 107-296, tit. IV, subtit. D, § 441, 116 Stat. 2135, 2192) the Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. No. 110-457, 112 Stat. 5044), and the 1997 *Flores v. Reno* Settlement Agreement (*Flores Agreement*) (Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997)).

⁸For 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).

separated from their children.⁹ As of September, 10, 2018, the government had identified 2,654 children of potential class members in the *Ms. L. v. ICE* case, which we discuss in greater detail later in this statement. As of January 31, 2019, this litigation was ongoing.

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,¹⁰ and responsibility for coordinating and implementing the placement and care of UAC is delegated to HHS's ORR.¹¹ 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.¹² 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 determining that they are UAC, except in exceptional circumstances.¹³ In addition, the 1997 *Flores v. Reno* Settlement Agreement (*Flores* Agreement) sets standards of care for UAC while in DHS or ORR

⁹This 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].”

¹⁰Pub. 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.

¹¹Pub. L. No. 107-296, tit. IV, subtit. D, § 462, 116 Stat. 2135, 2202 (codified at 6 U.S.C. § 279).

¹²Border 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.

¹³8 U.S.C. § 1232(b)(3).

custody, including, among other things, providing drinking water, food, and proper physical care and shelter for children.¹⁴

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.¹⁵ ORR's UAC policy guide states that the agency requests certain information from DHS when DHS refers children to ORR, including, for example, how DHS determined the child was unaccompanied.¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹ Release to a sponsor does not grant UAC legal

¹⁴Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997).

¹⁵GAO, *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, *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care*, GAO-16-180 (Feb. 5, 2016: Washington, D.C.).

¹⁶Office 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>.

¹⁷As of August 2018, not all DHS offices were entering information directly into ORR's UAC Portal. CBP 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. In cases in which the information is sent via email, the ORR Intakes Team must manually enter it into the UAC Portal. The 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.

¹⁸ORR 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).

¹⁹Qualified 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 status. Children are scheduled for removal proceedings in immigration courts to determine whether they will be ordered removed from the United States or granted immigration relief.²⁰

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. According to ORR's UAC policy guide, shelter staff are responsible for meeting with the child to begin identifying potential sponsors, which can include parents. To 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.²¹ For example, the screening conducted of potential sponsors includes various background checks and in June 2018, ORR implemented increased background check requirements that were outlined in an April 2018 memorandum of agreement with DHS. These changes required ORR staff to collect fingerprints from all potential sponsors, including parents, and all adults in the potential sponsor's household and transmit the fingerprints to ICE to perform criminal and immigration status checks on ORR's behalf. ICE was to submit the results to ORR, and ORR used this information, along with information provided by, and interviews with, the potential sponsors, to assess their suitability.²² However, in December 2018, ORR revised its background check policy to limit criminal and immigration status checks conducted by ICE to the potential sponsor, unless concerns about other adult household members are raised via a public records check, there is a documented risk to the safety of the child, the child is particularly vulnerable, or the case is referred for a home study.

²⁰There 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-16-180](#).

²¹According 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. For more information on ORR's process for identifying and screening sponsors, see [GAO-19-163](#).

²²ORR conducts other additional background checks, such as the child abuse and neglect checks, as part of its screening process.

HHS and DHS Planning for Family Separations

According to HHS and DHS officials we interviewed, the departments did not take specific steps in advance of the April 2018 memo to plan for family separations or a potential increase in the number of children who would be referred to ORR because they did not have advance notice of the memo. Specifically, ORR, CBP, and ICE 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 memo. According to ORR officials, the percentage of children referred to ORR who were known to have been separated from their parents rose by more than tenfold from November 2016 to August 2017 (0.3 to 3.6 percent). 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 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 an Attorney General memo issued in April 2017.²³ This memo prioritized enforcement of a number of criminal immigration-related offenses, including misdemeanor improper entry. 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.²⁴

According to ORR officials, in November 2017, ORR officials asked DHS officials to provide information about the increase in separated children. 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 the 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

²³Memorandum for All Federal Prosecutors. *Renewed Commitment to Criminal Immigration Enforcement*. Office of the Attorney General. April 11, 2017.

²⁴In 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.

officials told them that DHS did not have an official policy of separating families.

From July to November 2017, the Border Patrol sector in El Paso, Texas conducted an initiative to address an increase in apprehensions of families that sector officials had noted in early fiscal year 2017.²⁵ Specifically, Border Patrol officials in the 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.²⁶ 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.²⁷ 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 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.

²⁵Border Patrol divides responsibility for border security operations geographically among sectors.

²⁶According 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.

²⁷According 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) and 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.

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

When the April 2018 memo was released, there was no single database with easily extractable, reliable information on family separations. DHS and HHS subsequently updated their data systems in the spring and summer of 2018, but it is too soon to know the extent to which these changes, if fully implemented, will consistently indicate when children have been separated from the parents or will help reunify families, if appropriate. 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, and ORR officials stated that such information was not always provided when children were transferred from DHS to HHS custody. 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.

Regarding DHS, CBP's 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 told us in September 2018, that they had been unaware that DHS had made these systems changes.

- 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).²⁸ 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. 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. Prior to this system modification, Border Patrol agents typically categorized a separated child as an unaccompanied child in its system and did not include information to indicate the child had been separated from a parent.

²⁸Border 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.

-
- CBP's OFO, which encounters families presenting themselves at ports of entry, also modified its data system²⁹ and issued guidance to its officers on June 29, 2018, to track children separated from their parents.³⁰ OFO officials have access to the UAC Portal but typically email this information to ORR as part of the referral request.³¹ According to OFO officials, prior to that time, OFO designated children separated from their parents as unaccompanied.

ORR updated the UAC Portal to include a check box for indicating that a child was separated from his or her parents. 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, and 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, 2018.³² However, ORR officials also said that DHS components with access to the UAC Portal are not yet utilizing the new check box consistently.

Staff at three of the four shelters we visited in Arizona and Texas in July and August of 2018 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. Staff at one shelter 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

²⁹OFO uses the Secure Integrated Government Mainframe Access system to collect information about individuals in its custody.

³⁰Families presenting themselves at ports of entry would typically not be in violation of 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.

³¹As of August 2018, OFO officials stated they had taken a phased approach to training OFO officers on the UAC Portal, and that they had ongoing efforts to ensure OFO officers make referrals to ORR directly in the UAC Portal.

³²DHS 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.

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.

While the updates that OFO and ORR have made to their data systems are a positive step, they do not fully address the broader coordination issues we identified in our previous work. Specifically, we identified weaknesses in DHS and HHS's process for the referral of UAC. In 2015, we reported that the interagency process to refer and transfer UAC 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.³³ To increase the efficiency and improve the accuracy of the interagency UAC 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 UAC in HHS shelters. In response, DHS officials told us 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 UAC 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.

³³[GAO-15-521](#).

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. 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.³⁴ 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 procedures, developed to comply with the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (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.

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. 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, as 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.

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

³⁴Ms. 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].”

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.

Because there was no single database with 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.³⁵

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 and information provided by DHS and HHS to identify the locations of separated children and parents, according to HHS officials.³⁶
2. **Case File Review.** HHS reported that more than 100 HHS staff reviewed about 12,000 electronic case files of all children in its care as of June 26, 2018 for indications of separation in specific sections of each child's case file, such as the phrases "zero tolerance," "separated from [parent/mother/father/legal guardian]," and "family separation."
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.

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.³⁷ Of the 2,654 children, 103 were age 0 to 4 and 2,551 were age 5 to 17. As previously discussed, the number of children of potential class members does not include those who were separated from parents but released to sponsors prior to the June 2018 court order or the more

³⁵For additional information on the three methods used by HHS to determine which children had been separated from parents, see [GAO-19-163](#).

³⁶HHS 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.

³⁷*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.

than 500 children who were reunified with parents by CBP in late June 2018, because these children were never transferred to ORR custody.³⁸

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.³⁹ 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. Children released under other circumstances could include those released to another sponsor such as a parent already in the United States, another relative, or an unrelated adult, or children who turned 18. Staff at one ORR facility we visited told us they planned to release some children under these circumstances. As of December 11, 2018, the government had identified additional possible separated children of potential class members for a total of 2,816. It had released 2,657 and 159 remained in ORR custody.⁴⁰ However, the government has also reported that 79 of the children it initially identified as separated had not been separated from

³⁸Parents 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. Additionally, according to CBP, following issuance of the June 2018 executive order, 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.

³⁹*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 September 10, 2018.

⁴⁰*Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Dec. 12, 2018) (joint status report). The government determined that eight of these 159 children were children of *Ms. L.* class members.

a parent.⁴¹ Excluding those 79 children from the 2,816 total would bring the total number of children separated to 2,737.⁴²

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.⁴³ 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 they 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.⁴⁴ In the July 10, 2018 order that outlined these procedures, the court noted that the

⁴¹*Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Nov. 29, 2018) (joint status report).

⁴²See also HHS Office of Inspector General (OIG) Issue Brief, *Separated Children Placed in Office of Refugee Resettlement Care* (January 2019, OEI-BL-18-00511) (reporting a total of 2,737 separated children). A motion was filed on December 14, 2018 to clarify the scope of the *Ms. L.* class to include parents who were separated from children who were released from ORR custody prior to June 26, 2018. *Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Dec. 14, 2018) (notice of motion and motion to clarify scope of the *Ms. L.* class). In its recent report, the OIG found that thousands of children may have been separated prior to the zero-tolerance policy during an influx that began in 2017, before the accounting required by the court, and HHS has faced challenges in identifying separated children. HHS OIG Issue Brief, *Separated Children Placed in Office of Refugee Resettlement Care* (January 2019, OEI-BL-18-00511).

⁴³For more information on reunifying children and parents separated after the June 2018 court order, see [GAO-19-163](#).

⁴⁴See *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).

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 the Ms. L. v. ICE case, which involves parents and children who were apprehended together and then separated by government officials.⁴⁵ The reunification procedures approved in the Ms. L. v. ICE case apply only to reunification of class members with their children and included determining (1) parentage and (2) whether the parent is fit to take care of the child or presents any danger to the child.⁴⁶ 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. On 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.” 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 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

⁴⁵See 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).

⁴⁶The specific reunification procedures varied depending on whether the parents were inside or outside of ICE custody. For more information on DHS and HHS reunification procedures for class members, see [GAO-19-163](#).

parent and other adults living in the household to submit fingerprints to ORR, as potential sponsors were typically required to do for unaccompanied children.⁴⁷ According to HHS officials, ORR personnel also 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 fingerprints of other adults living in the household where the parent and child will live. HHS also did not require parents to complete an ORR family reunification application as potential sponsors are typically required to do for unaccompanied children.

The specific procedures for physical reunification varied depending on whether the parents were inside or outside of ICE custody. DHS and HHS took steps to coordinate their efforts to reunify children with parents who were in ICE custody, but experienced challenges. Generally, for parents in ICE custody, DHS transported parents to a detention facility close to their child and HHS transported the child to the same facility. At the facility HHS transferred custody of the child to ICE for final reunification. HHS officials said that in some instances children had to wait for parents for unreasonably long amounts of time and parents were transported to the wrong facilities. 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 HHS officials, for families in which the parent was released into the interior of the United States, the reunification process involves ORR officials and shelter staff attempting to establish contact with the parent and determining whether the parent has "red flags" for parentage or child safety. These determinations are based on DHS-provided criminal background check summary information and case review of the child's UAC Portal records. In cases where no red flags are found, HHS transports the child to the parent or the parent picks the child up at the ORR shelter. For more information on DHS and HHS reunification procedures for class member parents inside and outside ICE custody, see [GAO-19-163](#).

⁴⁷As noted, in December 2018, ORR revised its background check policy to conduct criminal and immigration status checks of adults in the potential sponsor's home only in certain circumstances.

Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee, this concludes our prepared remarks. We would be happy to answer any questions that you may have.

GAO Contacts and Staff Acknowledgments

For further information regarding this testimony, please contact Kathryn A. Larin at (202) 512-7215 or larink@gao.gov or Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

Individuals who made key contributions to this testimony include Kathryn Bernet (Assistant Director), Elizabeth Morrison (Assistant Director), David Barish (Analyst-in-Charge), Andrea Dawson, Jason Palmer, and Leslie Sarapu. In addition, key support was provided by Susan Aschoff, James Bennett, Sarah Cornetto, Michael Kniss, Sheila R. McCoy, Jean McSween, Jan Montgomery, Heidi Nielson, and Almeta Spencer.

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<https://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <https://www.gao.gov> and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <https://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#).
Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#).
Visit GAO on the web at <https://www.gao.gov>.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <https://www.gao.gov/fraudnet/fraudnet.htm>

Automated answering system: (800) 424-5454 or (202) 512-7700

Congressional Relations

Orice Williams Brown, Managing Director, WilliamsO@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707 U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548



Please Print on Recycled Paper.