



Lutheran Immigration and Refugee Service

House Appropriations Subcommittee on
Labor, Health and Human Services, Education, and Related Agencies

**“Oversight of the Unaccompanied Children Program:
Ensuring the Safety of Children in HHS Care”**

Written Testimony of
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Good morning. Thank you Chairwoman DeLauro, Ranking Member Cole, and distinguished members of the Committee for the opportunity to testify.

Today's hearing comes at a pivotal moment in immigration history, at a time when daily we are seeing images of the heartbreaking suffering of vulnerable migrant children. But this is not a problem without solutions. My testimony today concerns the moral and legal imperative we face as Americans, and as people of faith, to put the best interests of these children first.

My testimony focuses on recommendations that will ensure the physical and psychological health and well-being of these children while they are in our custody. LIRS has decades of experience in policy and programming with children who come into the immigration enforcement system in the United States. We are a solutions-oriented organization that works closely with our Federal partners and a national network of local affiliates to ensure every child who enters the United States is treated with the dignity and care that we would wish for our own children.

We recognize that all children are children of God and through our services and advocacy, we stand committed to protecting the children's best interests as enshrined in domestic and international law – and as dictated by common human decency.

First, all places where children are in the care of the government - whether temporary influx facilities, group homes, or processing centers along the border – must adhere to strict child welfare standards, including ensuring appropriate child welfare staff who are vetted and licensed, and whose fundamental aim is to ensure timely, safe family reunification.

Second, because it is in the best interests of a child to be placed in the least restrictive setting, LIRS strongly urges that the default placement for children be in small group homes or with foster families as soon as practicable, until they can be reunited with family or other sponsor.

Third, it is imperative that we decrease the time it takes to safely reunify children with their families or other sponsor. If a child has no family or contact here, we must ensure these children are cared for in appropriate long-term foster care settings.

LIRS's Decades-long Role in Providing Care for Vulnerable Migrant Children

LIRS is a faith-based, national non-profit organization with over 100 partners in 39 states across the country. For 80 years we have supported refugees from around the globe. For over half this time, LIRS has provided child welfare services to migrant and refugee children who are unaccompanied or separated from their families. We are one of nine refugee resettlement agencies and one of only two agencies approved to work with unaccompanied refugee minors in America. We were also one of only two organizations asked by the government to help reunify families after the “zero-tolerance” family separation crisis last summer¹. LIRS and our partners serve migrant children and their families and refugees by offering transitional and long-term foster care, family reunification services, border support services for asylum seekers, and share best practice experience and technical knowledge.

¹ LIRS and United States Conference of Catholic Bishops/Migration and Refugee Services. (October 2018). “Serving Separated and Reunited Families: Lessons Learned and the Way Forward to Promote Family Unity.” Available at: https://www.lirs.org/wp-content/uploads/2018/10/Serving-Separated-and-Reunited-Families_Final-Report-10.16.18-updated.pdf

The Effects of Family Separation and Inappropriate Conditions at the Border

Protections such as the Flores Settlement Agreement (FSA) exist to ensure that the “best interests of the child” are upheld while children are in government custody. The harmful chaos created during the zero-tolerance policy that led to separating thousands of children from their families without any plan for reunification is anathema to this nation’s values and an abdication of modern-day child welfare protections. Numerous studies have demonstrated the long-term effects of adverse childhood experiences (ACEs) on children’s developing neural networks and their physical health. Although the zero-tolerance policy was officially rescinded on June 20, 2018, we are deeply troubled by the fact that we continue to encounter such cases.²

While recognizing the jurisdiction of this Committee, we also believe there are a set of commonsense solutions that could help end unnecessary family separations, avoid placing children in influx shelters, and improve the overall conditions of confinement, so that children are not unduly traumatized prior to children entering ORR custody.³

Small, Safe, and Family-Centric Transitional Foster Care is the Gold Standard for Unaccompanied Children

LIRS and our partners are dedicated to making decisions based on the best-interests of the child: preserving family unity, ensuring children are cared for in the least restrictive setting, and prioritizing the safety and well-being of these children.

² We also continue to be troubled today by disruptive border policies such as “metering,” Migrant Protection Protocols and the July 16, 2019, asylum Interim Final Rule (IFR) that authorizes asylum officers to deny asylum to asylum seekers--*including unaccompanied children*-- if they transit through a third country.

³ Please see Recommendations, Appendix A.

LIRS is a grantee of ORR and through our national network we provide group homes, transitional foster care (TFC) as well as long-term foster care – many of our children are in the care of over 400 loving foster care parents. I am proud to say that LIRS transitional and short-term foster care service providers serve unaccompanied children as if they were their own.

I will focus on our group homes and TFC program and how it is associated with our family reunification services. LIRS partners operate both group homes and TFC for vulnerable unaccompanied children. Per ORR requirements, our group homes meet state licensing requirements, are small in scale, with an average size of 12 or fewer children, and are staffed 24/7. Prior to placing an unaccompanied child in a foster home, we ensure that all foster parents are state-licensed, and trained per state law, and with additional training in cultural orientation, trauma-informed care, and an overview of U.S. immigration proceedings. Our aim is simple-- provide a home-like environment to children until they can be reunified with their families in the United States.

To streamline the reunification process, LIRS offers ORR-funded Safe Release support services, which includes working with family members of unaccompanied children and sponsors to obtain: background checks, fingerprinting, document assistance, and community service referrals to ensure the family gets the social services the child and parent or sponsor need.

The Effects of Temporary Influx Shelters

LIRS understands the federal government is reacting to an unprecedented number of unaccompanied youth seeking refuge in the U.S. But we must ensure that children in U.S. custody are not just in our custody, but in our care, and that the conditions are conducive for their safety and well-being.

I was part of a faith-based delegation a few months ago, touring Homestead, the largest children's "temporary" influx shelter. I was instantaneously struck by the stark contrast between our LIRS model of small, safe, and family-centric care compared to what I saw at Homestead. Our tour guides instructed us not to speak or touch children, claiming that it was in their best interests. At the time of my visit, we were told there were 1,694 children in Homestead. I observed cramped quarters of 144 children sleeping in one room, small rooms with bunk beds tightly packed in, to which our tour guide informed us that children preferred this because it was "like a sleep-over."

Homestead is problematic for many reasons. First, Homestead is run by Caliburn and its subsidiary Comprehensive Health Services (CHS); neither are experts in child welfare. According to HHS, CHS provides "medical management service" and, yet it has been placed in charge of "operating the child care and wrap-around support services at Homestead Shelter."⁴

Second, by virtue of its location--on federal land--and designation by the Department of Health and Human Services as a temporary influx shelter, Homestead

⁴ AFC. July 17, 2019. "Fact Sheet: Unaccompanied Alien Child Shelter at Homestead Job Corps Site, Homestead, Florida." Administration for Children and Families. Available online at: <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Sheltered-at-Homestead.pdf>

does not have to comply with the Flores Settlement Agreement and is exempt from state licensing requirements.

Third, children are quite obviously suffering psychologically and physically while inside Homestead. According to the findings in *Flores et al, v. Barr Case CV 85-4544 (July 12, 2019)*⁵, children expressed to Plaintiff attorney’s “feeling hopeless, crying themselves to sleep, and self-harming” while in Homestead. LIRS recognizes that migration patterns ebb and flow and that when ORR is overcapacity and cannot offer children shelter due to lack of bed space, temporary overflow facilities are required. Homestead is not the solution. Moreover, it was opened in February 2018 and has been operating for nearly a year and a half, hardly temporary.

LIRS and our dedicated partners work hard to expeditiously reunify children with their families. The same cannot be said of Homestead. “In January, Flores co-counsel reported that 140 children had spent 100 days or more at Homestead, 26 children had spent 200 days or more there—more than 6 months.”⁶

It is for all these reasons that LIRS will continue to grow our foster-care network to ensure temporary influx facilities are not needed.

Children in the Crosswire of Immigration Enforcement: Memorandum of Agreement (MOA) between DHS-HHS

On April 13, 2018, DHS and HHS entered into a Memorandum of Agreement (MOA), “*Consultation and Information Sharing in Unaccompanied Alien Children*

⁵ *Flores et al, v. Barr Case CV 85-4544 (July 12, 2019)* Available at <https://files.constantcontact.com/baccf499301/46b3af89-44e7-4084-8c11-9108879bec20.pdf>

⁶ Tanvi Misra, (July 22,2019) “Inside Homestead: A Tour of the Florida Camp for Migrant Children, available at: [https://plus.cq.com/alertmatch/417555078?0&deliveryId=50280890&uid=weeklyreport-5599998&utm_med\(ium=alertemail&utm_source=alert&openinplus=true](https://plus.cq.com/alertmatch/417555078?0&deliveryId=50280890&uid=weeklyreport-5599998&utm_med(ium=alertemail&utm_source=alert&openinplus=true)

Matters,” that went into effect on May 13, 2019⁷. Since it was introduced, the MOA has been attributed to the following chain of events: increasing the length of time children spent languishing in government custody, which has led to overcrowding and capacity issues at ORR shelters, which has then prompted ORR to open emergency influx shelters to address its bed capacity shortage. In short, since the MOA policy was introduced, children have had to stay longer in ORR care, prolonging family separation and in some instances, removing the option of family unification if a child’s only sponsor withdraws their sponsor application⁸. The MOA is another example of how a deterrence approach to immigration that fails to consider the best interests of the child harms children.

Prior to the MOA, ORR had the authority to share personal data collected during the family reunification process if requested by another government agency. Under the terms of the agreement, once CBP or Immigrant and Customs Enforcement (ICE) transfers a child to ORR, the agency is required to share with DHS all information with respect to “the vetting of potential sponsors and adult members of potential sponsors’ households; and upon release from ORR care and custody.”⁹

Through our Safe Release program, LIRS runs the majority of fingerprint sites across the nation. We have been monitoring the impact of the MOA at our fingerprint

⁷ ORR-DHS Memorandum of Agreement, available at: <https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf>

⁸ LIRS, Women’s Refugee Commission, et al. Backgrounder: “The ORR and DHS Information-Sharing Agreement and its Consequences” available at: www.lirs.org

⁹ MOA, *Supra* note 6.

sites prior to and in the aftermath of when the MOA went into effect. Our results are as follows:

- **LIRS Data on Sponsor’s Cancelling and/or Not showing up for Fingerprints:** For the period prior to the MOA (2/1/18-6/7/18) only 6 percent of sponsors cancelled or failed to show for their fingerprint appointments. After the MOA went into effect (6/8/18-9/30/18) the rate of cancelled appointments increased to 33 percent.
- **LIRS Data on Sponsors Declining to be Fingerprinted:** Prior to the MOA (2/1/18-6/7/18) 0 percent of our sponsors declined to be fingerprinted. In contrast, after the MOA went into effect (6/8/2018-9/30/18) 9 percent of sponsors declined to be fingerprinted.

LIRS’s data suggests that the MOA has had a chilling effect on sponsors coming forward. As care providers, the “best interests of the child” and family reunification guide all of our policies. We oppose the MOA and similar deterrence policies that disadvantage children and inflict unnecessary physical and psychological harm.

On September 18, 2018, former ICE Executive Associate Director Matthew T. Albence testified to Congress that the MOA was the basis for arresting 41 sponsors. As of today, there have been 170 sponsors arrested as a result of the MOA¹⁰. So long as the MOA exists, it will continue to frighten away sponsors and leave children to languish for longer periods of time in ORR custody, in influx detention facilities like

¹⁰ House Committee on Energy & Commerce. “House Chairs Urge Trump Administration to Rescind Child Migrant Information-Sharing Memo. (July 3, 2019) Press Release. Available at: <https://energycommerce.house.gov/newsroom/press-releases/house-chairs-urge-trump-administration-to-rescind-child-migrant-information>

Tornillo and Homestead. Using children as “bait” for immigration enforcement purposes is an alarming and cruel practice and under no circumstances is it justified. Children deserve better from our government and deserve to be with their loved ones.

LIRS appreciates the measures ORR and Congress have taken to temper the MOA to make it less of an immigration enforcement tool. Collectively, ORR’s decision to remove the requirement for fingerprinting all household members, parents and immediate relatives and Congress’ FY 2019 Appropriations language that restricts DHS from using the information it receives from ORR to arrest sponsors, have had an impact. For instance, these changes have led to a reduction in the length of stay for children in ORR’s care. That being the case, LIRS has two concerns. First, the forms that sponsors are required to complete offer inefficient data protections, ergo, there is no way to guarantee that the sponsor’s information will not be transferred to ICE. Second, until the MOA is officially terminated, children will continue to be affected because their sponsors will not feel safe coming forward.

Thank you for this opportunity to address the Committee and I look forward to working together.

Appendix A: Recommendations

Lutheran Immigration and Refugee Service (LIRS) offer the following recommendations for the consideration of both the U.S. Department of Homeland Security (DHS), and the U.S. Department of Health and Human Services (HHS).

DHS

First, CBP should not separate families unless the following conditions are met: a qualified child welfare expert has identified a risk of trafficking by the parent or legal guardian; there is evidence of serious and imminent physical harm to the child; or parentage or legal guardianship issues arise that require additional investigation. In addition, we implore the government to put data systems in place to ensure rigorous documentation, tracking, and follow up on separations, including informing separated parents of how to contact their children, how to rebut the reason(s) for the separation, and how to seek reunification with their children.

Second, state-licensed professionals specially trained in the screening and care of children—not CBP officers—should evaluate children’s needs and conduct all relevant screenings that occur before a child is released or sent to HHS via the Office of Refugee Resettlement or ORR. These child welfare professionals can coordinate with state authorities if there are allegations of abuse or mistreatment. Any allegation or instance of abuse needs to involve local child welfare authorities, so the appropriate procedures and protocols are followed. Moreover, screenings should occur as soon as possible and CBP facilities without child-trained professionals on site should at least have on-call professionals available. These professionals could also conduct screenings for trafficking, fear of return, and flag or screen for any issues of safety or parentage -- including determining whether a suspicion of non-parentage requires follow-up or additional investigations.

Third, it is imperative that all children in CBP custody receive prompt medical screenings by qualified medical professionals who have expertise and experience working with children, including nurses and pediatricians. These specifically trained medical professionals can work alongside child welfare professionals to identify any additional medical needs requiring additional follow-up or care. This would include ensuring access to adequate food, hydration, and hygiene, dry clothing, regular showers, and other appropriate care. Further, the documentation of their medical care needs to occur regularly and be sent to ORR and eventually their in-country providers, like LIRS. These documents are often left with CBP, and not sent along. It is critical that ORR and its partners understand the medical issues and history of the children they are encountering—for the health and safety of all concerned.

In sum, LIRS' recommends that DHS:

1. Immediately cease unnecessary family separations;
2. Immediately improve the conditions of confinement for the care of children and ensure intentent oversight in their facilities;
3. Immediately place licensed child-welfare experts into their facilities; and
4. Drastically improve the quality and timely delivery of medical care in their facilities.

HHS

LIRS recommends HHS:

1. Ensure that protocols and mechanisms are immediately put into place to ensure children placed in temporary influx shelters are there for the least of amount of time as possible;
2. Work with LIRS, and other similarly situated child-welfare and immigration experts, to create viable and practical child-centric standards for these facilities; and
3. Immediately rescind the MOU with DHS so the community chilling effects of this devastating document are stopped.