

Hearing Transcript

Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations Hearing on HHS Department Efforts to Protect Migrant Children from Human Trafficking

January 28, 2016

PORTMAN:

Come to order.

Six months ago, many of my constituents in Ohio opened their morning papers to read the shocking news that law enforcement had discovered a human trafficking ring operating in Marion, Ohio, a small town about 50 miles north of Columbus, Ohio.

Six defendants were charged with enslaving multiple victims, including more than six migrant children from Guatemala on egg farms in Marion County, Ohio. The details of the crime laid out by U.S. Attorney Steve Dettelbach were chilling. Traffickers lured the child victims to the United States with the promise of schooling and a better life. The parents of some of the victims even signed over deeds to their properties back home as collateral for debt incurred to pay for the journey.

But not long after their arrival, these children, some as young as 14 years old, were forced to work 12 hours a day, six to seven days a week. The work was grueling and the living conditions were squalid, with children packed into a dilapidated trailer. They said that some of the kids were living in mattresses underneath the trailer.

To compel them to work, the traffickers withheld their paychecks and threatened their families. As the indictment lays out, the defendants, and I quote, "used a combination of threats, humiliation, deprivation, financial coercion and debt manipulation to create a climate of fear and helplessness." Five of the six defendants have now plead guilty.

It's intolerable that human trafficking, really modern-day slavery, could occur in our own backyard in the 21st century, but it does. What makes this Marion case even more alarming is that a U.S. government agency was actually responsible for delivering some of the victims into the hands of the abusers.

In 2014, more than six of the children found on the Marion egg farms traveled without their parents across Central America to our southern border. When they arrived here, they were entrusted to the U.S. Department of Health & Human Services, like thousands of others -- thousands of other unaccompanied children who have been detained at the border.

Under federal law, it is HHS' job to find and vet a relative or trusted family friend to care for the child until their immigration court date, or else house them in safe shelters. Instead, HHS delivered

the Marion children into the hands of a human trafficking ring that forced them into these slave labor conditions we talked about.

How could this have happened in America? Well, after the release of the indictment last summer, Senator McCaskill and I launched an investigation to find out.

How did HHS hand over a group of children to human traffickers? Was it a tragic failure to follow agency procedures in each of these cases? Or was the problem that the agency's procedures don't work and need reform? These were very important questions not only because of the Marion cases, but because of the number of additional children who are at risk.

Over the past two years, HHS has placed about 90,000 migrant children, the vast majority from Central America with adult sponsors in the United States. That surge of migrant children coming in to the U.S. illegally is a topic of some debate. There is certainly evidence that this administration's executive actions on immigration encouraged the surge.

But whatever your views on immigration policy, everyone should be able to agree that the administration has a responsibility to ensure the safety of the migrant kids that have entered government custody until their immigration court date.

Unaccompanied children are uniquely vulnerable to human trafficking because many are in debt to the smugglers who arrange for their passage. The risk is that the smugglers may then force them to work off that debt once they arrive. That's why federal law specifically provides that HHS protect these kids from traffickers and others who seek to victimize them.

We investigated these protections as part of a thorough six-month bipartisan inquiry. The subcommittee requested and reviewed thousands of pages of child placement case files, internal e-mails and other documents from HHS. We interviewed several senior officials at HHS. We consulted with experts in child welfare and trafficking protections. That bipartisan staff report has issued today and it details the troubling findings from that inquiry.

Our conclusion is that the Department of Health & Human Services' process for placing unaccompanied children suffers from serious systemic defects. The horrible trafficking crime that occurred in Marion, Ohio could likely have been prevented if HHS had adopted common sense measures for screening sponsors and checking in on the well-being of at-risk children, protections that are standard, by the way, standard in foster-care systems run by all the states, including Ohio.

And unfortunately, the systemic defects that contributed to the Marion cases appear to have exposed unaccompanied minors to abuse in other cases reviewed by the subcommittee.

First, the victims of the Marion traffickers were placed with alleged family friends or distant relatives, which are known as category three sponsors. As it turned out, the sponsors weren't really family friends at all. Two of them were basically sponsors- for-hire, strangers hired by human smugglers just get the child out of HHS custody and then immediately pass them off to the traffickers.

HHS did not know that, though, because it does not insist on any real verification of the supposed relationship between the sponsor and the child, apart from the say-so of a relative. One Marion case file actually contains no explanation at all of the child's relationship with the sponsor or his family.

We learned that this kind of lax relationship verification standard practice in category three placements. A lost opportunity to protect these kids and others.

Second, HHS missed obvious indications that the sponsors in the Marion cases were accumulating multiple unrelated children, a sign that should have triggered greater scrutiny for the risk of trafficking. Our review of the Marion case files reveals an interconnected web of sponsors of multiple children sharing the same address. HHS failed to connect any of the dots.

Third, remarkably, HHS didn't visit a single sponsor's home to interview the sponsors and assess the proposed living conditions before placing them. We have learned that home studies are universally conducted in foster-care placements, a close analogy to this situation, but HHS has done them in only about four percent of these unaccompanied children placements over the past three years. Only about four percent. This policy of course places thousands of children at risk every day.

Fourth, HHS' procedures for what to do after a child is placed with a sponsor also failed. Only one victim of the Marion human trafficking ring was the subject of any kind of post-release home visit to check in on the child's well-being.

But shockingly, the adult sponsor was allowed to block the child- welfare worker on contract from HHS from visiting that child, even after the case worker discovered the child was not living at the home on file with HHS. As a result, the government missed another opportunity to uncover the crime being perpetrated.

Incredibly, this was not a mishap, it is official HHS policy. HHS allows sponsors to refuse post-release services offered to a migrant child, even to bar contact between the child and an HHS ORR care provider attempting to provide those services. Basically, when a sponsor says no, the case worker is instructed simply to write case closed.

Finally, and this is hard to believe, at the time of these cases, if a potential sponsor said on his application that he lived with three other adults, and that if anything happened to him, a back up sponsor could care for the child which is sometimes required, HHS policy was not to conduct background checks of any kind on any of the sponsor's roommates or the backup caregiver listed on the form, none.

Background checks were only run on the sponsor himself. And this is even more incredible to me. If that check turned up a criminal history, HHS policy was that no criminal conviction, no matter how serious, automatically disqualified a sponsor.

On these points, however, I can report that in response to our six-month investigation, just this week, HHS strengthened its criminal background check policy effective January 25, as outlined in our report. This is progress.

But I continue to be troubled by the fact that HHS told us that it is literally unable to figure out how many children it has placed with convicted felons, what crimes these individuals committed or how that class of children are doing, how they're faring today.

The bottom line is that this is unacceptable. HHS has placed children with non-relatives who have no verified relationship with the child, who receive no home visit or in-person interview, whose household members have unknown backgrounds or criminal records and who can freely cut off social worker's access to the child.

Worse, when senior HHS officials were alerted to trafficking risks due to the Marion cases and other evidence of children working in debt labor, they failed to adequately strengthen their policies, despite the fact that the Senate Appropriations Committee tells us that HHS has more than \$350 million in unspent funds for this very program over the past two years. That's for this program, \$350 million in unspent funds.

Perhaps the most troubling unanswered question is this, how many other cases are there like the Marion trafficking case? The answer is HHS doesn't know. The subcommittee has reviewed more than 30 cases involving serious indications of trafficking and abuse of unaccompanied children placed by HHS over the past three years.

But human trafficking occurs on a black market, and other forms of abuse occur in the shadows. The Department maintains no regular means of tracking, even known cases of trafficking or abuse, and it does little to monitor the status or well-being of the tens of thousands of children that it has placed. There are, in the words of one leading care provider, untold numbers of effectively lost migrant children living in the United States.

What I can say with confidence is that HHS' policies expose unaccompanied minors to an unreasonable risk of trafficking, debt bondage and other forms of abuse at the hands of their sponsors. That must change. Today, we will seek answers from the administration and discuss a path forward toward what I know is our shared goal of strengthening this system to protect every child in America.

Without objection, the joint staff report and the appendix to the report will be made part of the record.

With that, I'd like to turn to our ranking member, Senator McCaskill, for her opening statement. And I want to thank Senator McCaskill for being a good partner on this investigation, for working very hard on this issue and for her passion for these kids.

Senator McCaskill?

MCCASKILL:

Thank you, Chairman Portman. I would like to thank you for bringing the topic of this hearing and the subcommittee's investigation to our top priority at this moment. It's been a cooperative and bipartisan investigation, and I appreciate, as always, the opportunity to work with you to bring these issues to light.

If the Ohio cases that Senator Portman just described represented the total number of unaccompanied children exploited by their sponsors, we would be justified in holding this hearing. As the subcommittee has discovered, however, the unaccompanied children who were trafficked in Marion are only a few of those who have fallen prey to trafficking or abuse by their sponsors.

I find the situation in front of us today unacceptable and I am disgusted and angry. HHS placed one 16-year old with a sponsor who claimed to be her cousin. In fact, he was completely unrelated to her and had paid for her to come to the U.S. as a mail-order bride. The minor, who had endured a sexual assault in her home country, was forced to have sex with her sponsor. She appealed to a post-release services provider for help and was ultimately removed by Child Protective Services.

In another case, a 17-year old was released to an unrelated "family friend" who reported living with three additional unrelated adult men. HHS released this teen to the sponsor without conducting background checks on any of the unrelated adult men with whom he would be living, without conducting a home study of his sponsor's home and without providing any post-release services.

Last June, this minor contacted HHS to let the agency know that his sponsor was actually the son of a labor recruiter who had approached the teen in Guatemala about an opportunity to work in the U.S. Upon being placed by HHS with the sponsor, the minor was forced to work 12 hours a day in conditions that made him sick. Literally sick. The teen ultimately ended up living in a home belonging to his employer along with 14 other employees before running away.

Similar examples fill the case files reviewed by the subcommittee -- and keep in mind we only reviewed a fraction of these files and found so many objectionable situations. We only looked at a fraction.

Vulnerable and traumatized minors abused by their sponsors or forced to engage in backbreaking labor for little or no pay, while being housed in unsanitary and dangerous conditions. This is not just a failure of our moral obligation to protect the most vulnerable. It's a failure of a legal obligation as well.

Under the 1997 Flores Agreement, the Trafficking Victim Protection Reauthorization Act and other statutes, HHS has responsibility for ensuring that unaccompanied minors are released to sponsors capable of providing for their physical and emotional well-being.

At a minimum, HHS must make an independent finding that a child's sponsor "has not engaged in any activity that would indicate a potential risk to the child." For many children, HHS failed to fulfill this fundamental responsibility.

The subcommittee's investigation also revealed that HHS has failed to address systematic deficiencies in their placement processes, even after these deficiencies were highlighted by the Ohio case. In many cases reviewed by the Subcommittee, HHS failed to ensure that the relationship between a child and proposed sponsor was even properly verified, failed to detect individuals who attempted to sponsor multiple children, failed to ensure sponsors had adequate income to support the children under their care, failed to conduct background checks on all the adults living in a sponsor's home, as Senator Portman mentioned, and failed to employ home studies and post-release services to detect red flags for abuse and trafficking.

In addition, the subcommittee found that HHS does not even maintain regularized, transparent guidelines governing the placement process and has not established specific policies and programs to protect unaccompanied minors from traffickers, despite a clear mandate from Congress in 2008 to do so.

Further, HHS has failed to fulfill its obligation to clarify its role in the UAC placement process with respect to the other various federal agencies and this is really what really drives me crazy. HHS to this day is claiming once they put this child with his sponsor in category three, they have no more legal responsibility. Are you kidding me? And by the way, DHS kind of says the same thing. Well that's HHS because they're children.

Somebody is going to step up as a result of this hearing and take full and complete responsibility of these minor children that we have in our country. Nothing breaks my heart more than the notion that these parents and their children facing unspeakable problems in their home countries took a risk that every parent in this room can't even imagine taking.

They said yeah, take my child. I want this child out of this county because I love this child so much. And they believe America was some place that they would be safe and maybe have a future. And we have two federal agencies that have abdicated their responsibility for the welfare of these children.

Now, much of it was to try to get them out detention. And by the way, everybody needs to understand there's categories. And if it's a relative or someone that's easily verified as relative, that's category one and two, but keep in mind, if somebody can't prove category one or two, they put them all in category three when you didn't have to prove anything.

They reduce the time of home studies from 30 days to 10 days for one reason, get them out of detention, get them of detention. Understand these children, as we'll hear today in this hearing, are in care giving facilities where their visiting museums and they're playing soccer and they're getting three meals a day.

What is wrong with keeping these children in detention longer in order to make sure that we're not placing with someone who's going to illegally use them as child labor or in sex trafficking?

The priorities here are all out of whack. I'm not going to finish my formal prepared statement. I'll make it into the record because frankly I think it's important that all us today quit thinking what on paper and think about these children and how hopelessly lost they are.

When someone shows up knowing that nothings is going to happen and says, yes I'll sponsor that child. And then they stick them in a trailer and have them clean chicken coops 12 hours a day, seven days a week for no money. We can do better in the United States of America. And I know there are not people at HHS or DHS that wanted this outcome.

But because no one stepped up and took responsibility, that is the outcome we're dealing with. And we got to get fixed and we got to get it fixed now.

Thank you, Mr. Chairman.

PORTMAN:

Thank you Senator McCaskill. Thank you for your work and you staff's work on putting together a comprehensive report that I encourage everyone to read and for you passion for this issue.

We're now joined by the chair and ranking member of the full committee. I appreciate them being here. I'd like to offer them the opportunity to make some brief comments before we go to the witnesses.

Chairman Johnson?

JOHNSON:

Thank you, Mr. Chairman. I want commend you and the ranking member on invest -- your -- instigating this investigation, this oversight.

I share your outrage. This is shameful, what has happened. I think you all know I'm -- I'm kind of big into facts and figures in root cause. And, you know, Mr. Chairman yes, how this happened.

And again, your investigation shows the detail of what when wrong within the agencies. I guess I want to, in my opening comments here, kind of pulled back and talk about the larger cause or causes of this -- these tragedies, really.

And I would first say that, you know, the first approximate cause of this is how we've been handling the crisis of unaccompanied children. What's happened is we've become more -- it's being swept under the rug. Remember when this was a big issue a couple years ago?

And by the way let's -- we got the chart up here in 2014 where we hit over 50,000 unaccompanied children coming in from Central America. But what's happened in that intervening time period and why it's not in the news so much any more is we've got more efficient at apprehending, processing and dispersing. And unfortunately, we're processing and we're dispersing children into these horrific circumstances.

So there's one proximate cause. Our efficiency in sweeping this crisis under rug because we're also sweeping crisis under rug because we don't want to really recognize what I think is the root cause of the surge.

Now, I realize there's -- there are legitimate differences of opinion in terms of what is the proximate cause of that surge. But just take a look at that graph. You know, 2009, 2,300 unaccompanied children; 2010 4,400; 2011 3,900 and then 2012, President Obama issues executive memorandum Deferred Action on Childhood Arrivals, which regardless of what the memorandum actually says, sent a very strong signal to children and families in Central America. If you get into America, you'd be able to stay.

And the reality is, again, regardless what the memorandum says, if they get into America, they're able to stay. They are processed, they're dispersed into some of these horrific circumstances. I mean, take a look at the figures. Into -- the 28,000 that came in 2015, 3.6 have been returned. Of the 51,000 in 2014, 2.6 have been returned.

So these children and these families, they use social media, they communicate with people back in Central America. The reality is, they know, if they get into America, they're able to stay.

So again, we -- I guess we kind of all breathed a sigh of relief in 2015 that there were only 28,000 unaccompanied children. A lot of families are coming in here as well. But again, 28,000 versus a few thousand in 2009, '10, '11.

Now, let's put up the next chart, because this is what we've got to be concerned about. Again, we all -- good, the numbers actually came down in 2015. Look at where we are in just the first quarter of 2016 -- 2014, I mean, the massive surge, the crisis level. We have, again, total of 51,705 in the entire fiscal year, but in the first quarter they're about 8,600.

We're already up to 14,000 in the first quarter of 2016. Why isn't this big news? Again, it's because we've become more efficient at apprehending, processing and dispersing, and we see the horrific results of that efficiency.

So again, I just want to -- we have -- we have to recognize what our policies are doing. When -- when I -- we took a trip down to Central America, visited Guatemala and Honduras with Senator Heitkamp, Senator Carper, Senator Pierce. In meeting with the president of Honduras, one of his requests of our delegation was, "Would you please look at your laws and end the ambiguity in your laws that actually incentivize our children, their future for leaving their countries and coming to America?"

And again, the tragedy is, they come into some of these circumstances because, let me repeat it one more time, we have become efficient at processing and dispersing and sweeping this under the rug. We have to end that sweeping under the rug process, recognize the reality and change our laws.

Thank you, Mr. Chairman.

PORTMAN:

Thank you, Chairman Johnson.

Ranking Member Carper?

CARPER:

Thanks. Thank so much, Chair. My thanks to you and to Senator McCaskill for holding this hearing and to our witnesses for -- for being here.

There have been (inaudible). Certainly caught my eye, probably the eyes of some of as you well, that the report was -- the number of folks coming here illegally has actually begun to drop, which almost seems counterintuitive when you think about it, because we are mindful of the flow of immigrants from Honduras, Guatemala, Salvador, we're mindful of the president's proposal to bring in last year, 2000 Syrian refugees, this year, 10,000 refugees and yet, that number of illegal immigrants in this country appears to be dropping.

At first I didn't believe it, but now I'm convinced it's true. The question in my head is, why? Why is that happening? And as it turns out, if you add together the countries of Honduras, Guatemala and Salvador, compare them to Mexico, my recollection was that the combination of those three countries that make up the northern triangle nearly add up to 25 million people.

Let me see, how -- do we have the number of -- what's the population of Mexico, do you know? Anybody know? It's -- I think it's around 200 million, there's a lot of people.

MCCASKILL:

(Inaudible) just in Mexico City.

CARPER:

It's a lot. It's close -- probably close to 200 million. So, roughly eight times more people live in Mexico than these three countries combined. And there are more people going back into Mexico than more Mexicans now coming into the U.S. And that's why that flow is actually dropping and the number of (inaudible) is actually dropping.

Two weeks ago today, I was in Guatemala and with the vice president, with Secretary Jeh Johnson. We met with the presidents of those three countries to talk about their alliance for prosperity, their version of Plan Columbia, which they committed to -- to implement, to focus on governance, fixing governing institutions, the -- to focus on security, corruption, a lack of real law in community. And the last one is just to focus on economic development, how to create more nurturing environment for job creation, job preservation, which depends a lot on, frankly, the -- winning the war against corruption and criminal behavior.

They have -- that's their game plan. They developed that. What we've done in sort of a counter response (ph) is almost like Home Depot. You can do it, we can help. Alright? They can build this stuff, it's -- laid out in their alliance for prosperity.

And what we need to do is a number of things that are actually funded in the omnibus bill that we passed last night -- last year about \$750 million to support the -- not to give money to these countries, but the taxpayer dollars from these countries and that's how we (inaudible) to Honduras, Guatemala, El Salvador's governments. They will go to other entities that will actually focused on corruption, rule of law, courts, prosecutors, prisons, and focus on economic development and so forth. The -- I think it's a smart -- it think it's a smart approach.

So, as we focus here on a terrible situation, which violates from the golden rule, which violates from the Matthew 25 (inaudible). Obviously, we have to be concerned, care a hell of a lot about what's going on, it's shameful. But at the same time, we have to be able to walk and chew gum at the same time.

And part of what needs to go on is we need to help these countries in -- these three countries which make up about (inaudible) population of Mexico, get their act together and turn themselves around as Columbia has. They can do it and we can help.

Thank you very much, Mr. Chairman. Thank you, Claire.

PORTMAN:

Thank you, Senator Carper.

I'd now like to call the first panel. Mark Greenberg, who is here with us this morning, is the acting assistant secretary for Administration for Children and Families, which is part of the Department of Health and Human Services.

He was previously deputy assistant secretary for policy at the Administration for Children and Families. Before joining HHS, Mr. Greenberg was the director of the Georgetown University Center on Poverty, Inequality and Public Policy and was a senior fellow at the Center for America Progress.

Bob Carey is also with us this morning. He's the director of the Office of Refugee Resettlement at the Department of Health and Human Services. He previously served as vice president of Resettlement and Migration Policy at the Internation Rescue Committee.

I appreciate both of you for being here this morning and look forward to your testimony. It's the custom of the subcommittee, as you know, to swear in all of our witnesses. At this time, I'd ask you both to stand please and raise your right hands. Do you swear the testimony you will give before this committee will be the truth, the whole truth and nothing but the truth, so help you God?

Thank you. Let the record reflect that the witnesses answered in the affirmative. Gentlemen, all your written testimony will become part of the record in its entirety. We'd ask that you try to limit your oral testimony to five minutes.

Mr. Greenberg, I like you to go first.

GREENBERG:

Chairman Portman, Ranking Member Ms. McCaskill, members of the subcommittee, thank you for inviting us to testify today.

I'm Mark Greenberg, I'm the acting assistant secretary at the Administration for Children and Families and with me is Bob Carey, the director of the Office of Refugee Resettlement.

One of ORR's principle goals is to ensure that all unaccompanied children are released to sponsors who can care for their physical and mental well-being. The number of children that have been referred to ORR's care over the last number of years has grown significantly and HHS has worked hard to adapt to this rapid increase in the size of the program bringing on additional staff, expanding the network of providers and adjusting a number of policies to respond to the unexpected fluctuations in migration, the needs of the children and the challenges of managing a program that grew nearly 10 fold over a three-year period.

I want to be clear that we view the Marion, Ohio labor trafficking case as a deeply dismaying event. Child safety is a priority for us. We are committed to making -- continuing to make revisions, to strengthen our policies, to learn all that we can from this and our ongoing experiences and operating the program.

As I explained in my written testimony, I can't discuss the specific details of the children in Ohio case due to the ongoing criminal investigation, but we'll continue to assist the subcommittee and its work.

In the next few minutes, I do want to talk briefly about ORR's process for placing unaccompanied children with suitable sponsors and then describe a number of steps that ORR has taken over the last year to strengthen our policies relating to safety and well-being of children.

Unaccompanied children are referred to ORR by other federal agencies, usually the Department of Homeland Security. They're generally cared for when they arrive in one of the network of ORR-funded shelters while staff works to determine if they've got appropriate sponsors they could live with while waiting immigration proceedings.

Under the governing law, HHS releases children in our care to parents, guardians, relatives or other qualified adults. Most children are placed with a parent. Most of those who aren't placed with a parent are placed with other relatives. We only turn to family friends if there is no suitable parent or relative. And in all cases, when we make placements, we think to balance the importance of timely release with safeguards, which are designed to maximize safety.

ORR is continually working to strengthen its policies and procedures. Over the last year, it took a number of steps to do so. Let me quickly highlight five changes that did occur.

First, for a number of years, ORR has operated a help line that had (inaudible) been used by parents seeking to find out if the child was in ORR custody or responses that had questions with legal proceedings. Last May, ORR expanded that help line so that it's available to children calling with safety related concerns as well to sponsors calling with family problems and -- or child behavior issues or needing help connecting to community resources.

Second, the Trafficking Victims Protection Reauthorization Act, TVPRA, requires a home study before a child is released in four situations, when a child has been a victim of the severe form of trafficking, special needs child with a disability, child who's been a victim of physical or sexual abuse or a child who's proposed sponsor presents a risk of abuse, maltreatment, exploitation or trafficking.

In July, ORR broadened the circumstances where home studies would be used to include all children age 12 and under being released to non-relatives or distantly related relatives. And later in July, ORR further expanded that requirement to apply in all cases where non- relative has previously sponsored a child ORR proposes a sponsor more than one child to whom the sponsor isn't related.

Third, under the TVPRA, ORR must offer follow up services or post-release services in cases where there's been a home study and the law says may offer such services for children with mental health or other needs that could benefit from ongoing assistance from a social welfare agency.

In July, ORR began a pilot project to provide post-release services to all children released to a non-relative or a distant relative sponsor, as well as to children whose placement has been disrupted or is at risk of disruption within 180 days of release and they've contacted the help line.

Fourth, in August last year, ORR started conducting check-in phone calls with sponsors and the unaccompanied child in their care 30 days after the child's release. The calls intended to identify any issues concerning child safety and provide sponsors with resource assistance. If the child -- if the provider believes that the child is unsafe, the care provider needs to report this to local child protection agencies and/or local law enforcement.

And fifth, ORR's one standing policy had been to conduct background checks on other individuals living with a potential sponsor when a home study is conducted. And earlier this month, ORR enhanced its background check policy so that household members as well as back up care providers identified in a sponsor safety plan are subject to background checks in all cases.

So, in my oral comments, I've highlighted five areas where we've made significant changes. We discussed some additional ones in the written testimony. What I want to emphasize is that this is part of an over -- ongoing process for us of continuing to review our policies, to strengthen our safeguards as the program has expanded.

We welcome the work that the subcommittee has done. We look forward to continuing to work with the subcommittee to strengthen the program and we'll be happy to answer any questions. Thank you.

PORTMAN:

Thank you, Mr. Greenberg.

Mr. Carey?

CAREY:

Mr. Chairman, I do not have written testimony, but I am happy to answer any questions.

PORTMAN:

You don't wish to make a statement?

CAREY:

No, I do not have a prepared statement.

PORTMAN:

OK. Let's -- let's start where we finished with our own opening statements and we look forward to hearing from you, Mr. Carey, in response to our questions, at least.

Senator McCaskill and I started this investigation because of these public reports that HHS had placed a number of these unaccompanied children into the hands of human traffickers, specifically this case in Marion, Ohio.

When we learned the details of those cases, we were shocked by the fact that HHS had approved these placements. They had done so without really verifying the sponsors wherever they said they were, without noticing the applicants who were trying to accumulate multiple children, without even questioning, for instance, whether one sponsor had adequate financial means to report it on your form, that this person was making \$200 a week in income, without ever laying eyes on any of the homes the children would live in.

Here's one of those homes. This is a trailer you see behind Senator Lankford in Marion, Ohio, we talked about earlier. There were multiple children in that one trailer.

Worse, when a child welfare worker discovered that one child didn't really live where he was supposed to live, the sponsor refused to allow any follow-up services, just said, "No, you can't even check on this child." And HHS policy was to say, "Fine. You can block these child welfare workers who are on contract with HHS." Close the case. Don't do anything.

That was policy. I have to tell you that when I heard those details for the first time I thought, it sounds like everything that could go wrong did go wrong. But Mr. Carey, your deputy director in charge of the unaccompanied children program told our lawyers that one, she was unaware of any failure to follow HHS policy in the Marion cases and two, that she was unaware of any alternative practices that would have led to a different outcome.

So, I guess what I want to ask you both this morning, and I want an answer yes or no is whether you agree with those conclusions from your deputy? So first, do each of you believe that HHS policy was followed in the Marion cases? Yes or no, please. Do you agree that HHS policy was followed in the Marion cases?

GREENBERG:

I've been advised by staff that it was followed, the policy that was in effect at the time. And I do want to emphasize, as you heard in my remarks and it's in -- per my testimony that we've made a number of...

PORTMAN:

So your -- your answer is HHS policies were followed.

Mr. Carey, what's your answer?

CAREY:

I was not aware at the time, but I was informed that policies that were in place at the time were followed for these cases.

PORTMAN:

So, this was -- this was based on policy, these horrible situations we've talked about. It's HHS policy that if a child turns out not to live with their sponsors says they will and caregiver offering post-release services wants to contact the child and make sure he's OK, the sponsor can refuse those services and block access to a child. Does that offend you? It just doesn't seem like common sense.

So I would ask you, does anybody in the room think that that's offensive? Raise your -- raise your -- raise your hand if you think that's wrong, that you can't even check on a child.

GREENBERG:

Senator Portman, I do want to be clear that we're following the law that Congress enacted. Under that law, we are reading the laws but we do not have the authority to make these visits mandatory.

PORTMAN:

Well, I -- no. The laws of Congress and act of Congress (inaudible) enacted a specific law to avoid these kind of cases. In fact, you just talked about it and you said that if a kid's at risk of trafficking, you have to provide these additional services and you didn't do it.

So, that's just not accurate. Let me ask you the second question. Do each of you agree with your deputy that there aren't any alternative practices that would have led to a different outcome, yes or no?

GREENBERG:

Senator Portman, I can't speculate.

PORTMAN:

Just yes...

GREENBERG:

I can't speculate for any individual cases to whether that would have been the circumstances within the ...

PORTMAN:

But Mr. Greenberg...

GREENBERG:

... talk about...

PORTMAN:

... you're a guy who has a concern for these kids, you have a history of working in this area. You don't think that there could have been a better outcome with alternative practices?

GREENBERG:

What I can emphasize is that we're continually looking to how to strengthen our practices. As I've described, we've taken a number of steps over this last year to do so. I can't for any specific case say, if this practice had in place, would it have made a difference, but we absolutely want to ensure that we have the needed policies and practices in place and we welcome the committee's recommendations through us for additional ones that we should consider.

PORTMAN:

Mr. Carey, do you agree with your deputy that there aren't alternative practices that would have led to a different outcome?

CAREY:

You know, we are deeply concerned about the well-being of all of the children in the care of ORR and doing the utmost in our power...

PORTMAN:

But let me -- let me -- let me ask you if you can answer the question. Yes or no, please. You're under oath, we've asked you to come here to testify. You didn't give an opening statement. At least answer the question.

CAREY:

With regard to are there additional -- the procedure is place at the time were followed. There have (ph) additional places -- procedures that have been in place since that time. I would be reluctant to speculate what an impact on ongoing criminally...

PORTMAN:

Deputy says she's unaware of any alternative practices that would have led to a different outcome. Do you agree with that, yes or no?

CAREY:

I would be reluctant to speculate about what might happen in a case that's in a -- part of an ongoing investigation.

PORTMAN:

Wow.

Mr. Greenberg, I want to ask you about a particular policy you've heard a lot of about, the department's policy about home studies. As I think one of the other witnesses here today will tell us, state Foster Care systems, which are a pretty close analogy to what you do, never put a child in a temporary home without lying eyes on the living environment.

HHS performed home in reviews in only about four percent of the cases over the last three years. That's information you gave us, four percent. If you would turn to page 212 of the appendix of the staff report, you'll see an e-mail exchange. This is the appendix to the report, page 212. Do you recognize this e-mail exchange, page 212?

GREENBERG:

The report has not been shared with us, Senator.

PORTMAN:

Well, we gave you copies of this e-mail. Let's -- let's provide additional copies of the e-mail. Clerk, could you please provide those?

GREENBERG:

Yes, and I'm -- we're getting the e-mail now, Senator.

PORTMAN:

OK. You got the e-mail. OK. Good. My question is to you, do you recognize this e-mail chain? Yes, with you. Do you recognize it, just yes or no?

GREENBERG:

Yes, it certainly appears to be our e-mail.

PORTMAN:

OK. Let me put this in context. Last summer, ORR was considering expanding home studies. In other words, to actually go and look at these places, like this trailer and decided to require them when a child under age 13 is placed with a non-relative.

When that proposal came to you, as head of the Administration for Children and Families, you wrote an e-mail to ORR leadership raising concerns about it. Here's what you wrote. "I assume the reason for under 13 is that it's a smaller number for a pilot and that we'll have the greatest concern about young children less able to communicate about their need for help, right? But this is probably less likely to pick up the debt labor group."

That's what we're talking about here this morning, the debt labor group, these kids who were forced to work to pay off his debt. "Do you think that it would just go too far to extend to all children going to non-relatives?" Sensible question.

So Mr. Greenberg, I assume you meant here is that kids 13 and older are more likely to be expected to work and therefore more likely to be forced work off debt to Coyotes and to traffickers. Is that right?

GREENBERG:

Yes, it is, Senator.

PORTMAN:

And here, you're saying that ORR's policy change is not likely to help kids most vulnerable to labor trafficking. Is that right?

GREENBERG:

It is on that specific policy. I -- OK.

(CROSSTALK)

GREENBERG:

... additional policies.

PORTMAN:

You're onto something. Common sense. So, in light of the trafficking risk you identified, you sensibly asked ORR, "Shouldn't we be performing home studies on all non-relatives?" This is on page 211 of the appendix.

In response, ORR deputy director in charge of the Unaccompanied Minors Program wrote back to say this. "You are correct about why we chose the younger children and the risk associated with the older children not being included." In other words, she said, "Yeah, you're right. We're leaving out those kids who are most vulnerable to this debt bondage."

That's exactly what happened. HHS approved the policy change without expanding home study to kids older than 13, despite you all knowing what you were doing for these kids who were in the kind of situation we're talking about here today in Marion, Ohio.

So, my question to you is very simply. Do you think home studies might have prevented the tragedy in Marion? If you'd gone and seen multiple kids living in a trailer like this, do you think there would have been a different result?

GREENBERG:

Senator, as we've ...

PORTMAN:

Yes or no.

GREENBERG:

... indicated, I -- I simply can't speculate as to whether a particular policy would have resulted in a different result. What I can say and what you can see in my e-mail is that we were exploring circumstances under which we could expand the use of home studies. I expressly raised to staff the question as to whether we should be doing home studies for all cases involving...

PORTMAN:

And your staff purely disregarded that and you didn't -- they didn't follow that policy. And I guess, you know...

GREENBERG:

Senator...

PORTMAN:

... if you can't say this would have prevented the tragedy in Marion, then I think that justifies common sense. We need -- remember, a bunch of these sponsors were sponsors for hire by traffickers and a bunch of unscrupulous people were trying to accumulate multiple children, that was obvious from any review.

You didn't even have to have a home visit to see that if you looked at their files. The same address appeared on multiple applications. One of the sponsors appeared on other sponsors applications under an alias. I just can't believe you wouldn't think that home visits would have revealed what was going on, just defies commonsense.

GREENBERG:

Yeah. So...

PORTMAN:

I've gone over my time. I'm now going to ask my ranking member, Senator McCaskill, if she has questions for the panel.

MCCASKILL:

OK. Before I get into my questioning, I want to say, the DACA was not ambiguous. It was not ambiguous. Children here 2007 or earlier. This hearing is not about DACA. This hearing is about those children who appeared at our border, who came into our country and frankly, no matter how you feel about the border, no matter how unrealistic your ideas might be Mexico building us a wall, no matter how you feel about immigration, the bottom line is when a child is admitted into our country, the United States of America should be an example to the world about how we care for those children.

They (inaudible) not staying here forever, maybe they end up being deported eventually for some reason or other, but while they're here, we have an obligation that is in the foundation of what our country is to protect them.

Now, in 2008, Congress directed several federal agencies, including HHS, and you're a Harvard educated lawyer, Mr. Greenberg, so I know you've read this law. It says very clearly, "These federal agencies," Congress says this in the law, "must establish policies and programs to ensure

that unaccompanied alien children in the United States are being protected from traffickers." It's black letter Law, Mr. Greenberg.

My question for you, have you established that policy or program specifically in response to this mandate from Congress in 2008, yes or no?

GREENBERG:

We've established a whole set of policies and practices which are responsive to that mandate from Congress and that are intended to address the protection and the safety of children.

MCCASKILL:

Well, Mr. Greenberg, I mean, first of all, does Mr. Carey work for you? Mr. Carey, do you report to Mr. Greenberg?

CAREY:

Yes, I do.

MCCASKILL:

You do. So, you're in -- he's under you in terms of the organizational chart?

GREENBERG:

That's correct.

MCCASKILL:

I was under the impression he was under the other assistant secretary who has not been confirmed.

CAREY:

No, I report to Mr. Greenberg.

MCCASKILL:

OK. Well, that was not clear. By the way, and this is from staff that's been pouring through your records and your org charts. So now we know. Can you fire Mr. Carey?

GREENBERG:

I ...

MCCASKILL:

I'm not asking you're going to. I'm asking if you can.

GREENBERG:

Well, I frankly don't know. I would need to talk with Congress and the department and I certainly have no reason that I would wish to.

MCCASKILL:

Well, I don't want to disagree with you, but I have to say on the record that you have not established a direct policy or program in relationship to that. You've had drafts for years. How many years have there been drafts going around? You all haven't been there that long, but you have to know, right? There's not been a draft or there's not ever been a regulation posted for even comment on this subject. Has there, Mr. Greenberg?

GREENBERG:

Senator McCaskill, I'd hope that you would both recognize the number of changes and improvements we've made in the last year...

MCCASKILL:

I -- you made a great improvement three days ago. I'm not sure it would have happened if it weren't for this hearing, but you did. So, let's -- I mean, no question in the last six months, you guys have gotten busy. My question is, what's been going on since 2008? And why would you sit here and say the law doesn't give you any ability to protect these children when we specifically, in the law in 2008, mandated that you do so?

GREENBERG:

Senator McCaskill, I want to be clear that our efforts to improve safety and do more to address well-being for the children in the program began well before July. In fact, when I testified before this committee last July, I described a number of these efforts at that time. So, it has been an ongoing process. It will continue to be. We look forward to reviewing the committee's report and the committee's recommendations for what else we can be doing to strengthen our efforts.

MCCASKILL:

Well, let me ask you a hypothetical. And Mr. Carey, I would appreciate if you would weigh on this hypothetical. A 15- year-old Guatemalan girl is released to "a family friend" as a sponsor under category three. She doesn't show up for her hearing. What happens? Mr. Carey?

CAREY:

I can't speak to the specifics of the -- speculate to the specifics of a case with which I'm not familiar. What I...

MCCASKILL:

This is a hypothetical case, Mr. Carey. This isn't a real case. You can speak to the specifics of this. You're not going to be able to avoid every question here. Let's try again. Let's try again.

CAREY:

Senator...

MCCASKILL:

A hypothetical. A 15-year-old Guatemalan girl is given to a category three sponsor, "family friend." Doesn't show up for her hearing. What happens? What responsibility do you have?

CAREY:

ORR's responsibility does not extend to the legal services that are -- the legal representation or the legal presence at a hearing.

MCCASKILL:

Would it make you think -- isn't she -- the Congress said in 2008, you guys are supposed to be having policies and programs to protect these kids? Would common sense tell you that maybe if this child didn't show up for the hearing, their sponsor is maybe not being responsible?

CAREY:

Senator, our responsibilities with regard to anti- trafficking are put in force from the day a child arrives into our care. They are screened for trafficking, they are met with -- by clinicians in individual and group settings over the many times over the course of their stay. Additional information is -- is sought from every source available.

MCCASKILL:

So the answer is no, you have no responsibilities, you do nothing if she doesn't show up for her hearing? That's -- you're trying to say all these things happen ahead of time. I'm asking you what happens when she doesn't show up for her hearing? Does anybody call -- does anybody call the sponsor? Does anybody decide that's time for home visit? Does that occur, Mr. Greenberg?

GREENBERG:

So, in a hypothetical situation, if there are post release services being provided, then there would be ongoing follow up with the child...

MCCASKILL:

I'm asking specifically. The fact -- we know that the majority of children who show up to their hearings are allowed to stay in this country. We know that a much higher percentage of children are not showing up for these hearings if they're in category three, we know that. You know that, right? Don't you, guys? If you don't know that and I know that, we're really in trouble. You know that, right? Mr. Carey, you know that, right?

CAREY:

We have limited information on the number...

MCCASKILL:

No, you've got to be kidding me. You're telling me you don't know that? You have limited information, all you do is pick up the phone and ask somebody, that's what we did.

Mr. Greenberg, are you aware that category three don't show up for their hearings as often?

GREENBERG:

I have not seen information to that effect.

MCCASKILL:

OK.

GREENBERG:

I can...

MCCASKILL:

Well, we -- this is just -- I'm -- I could go on for way too long and I'm -- I don't mean to be so hard on the two of you. You have good hearts, I'm sure. But you've got to step back from this. You've got to step back from this and look. What is -- everybody's doing is doing this. Out the door, we're done.

And DH -- and you know what, Department of Homeland Security says. They say well, they're children, its HHS. And you guys say, "Well, we put them with a sponsor. It's not us." So no one is using the failure to show at a hearing as a moment of realization that somebody is watching this child that's not being responsible for their welfare.

And you know what happens when a child is finally picked up? They get deported no matter what. So of course they're not going to come up later because chances are, if it's a bad guy sponsor, he's worried about a whole lot of other potential consequences in his life.

So I just -- it's just when I read all of this information, I -- I mean, I would expect you guys to read this stuff and have it all memorized before this hearing, but we have learned from you. And the fact that you're not aware that the chances of a category three sponsor showing up is much diminished from other kinds of sponsors and that that should be a warning sign.

And I want to know this, when in fact -- and this is -- I know neither one of you will answer this question, but I want it on the record. Here's the bottom line, she doesn't show up for a hearing, there haven't been a blanket of home visits or the sponsor says, "You know, we don't want you anymore to look at us. We don't have to look at you anymore," and she ends up being trafficked on Back Page, another investigation we're doing for sex.

Whose fault is that? And if you guys think it's not your fault, if you think you bear no responsibility for that, I think you're wrong. I think you're flat wrong. And I would like to see a turn here at this hearing and all of a sudden say, "You know, we should take responsibility," because somebody is going to take responsibility.

If you need black letter law, I guarantee we can get it. But I think the black letter law is pretty clear. I didn't go to Harvard, I went to one of those public schools. I went to the University of Missouri. And I will tell you, when I read that law, I don't think I would have the nerve to say that Congress hasn't given us the authority to watch these kids. Thank you.

GREENBERG:

OK. Senator McCaskill, may I respond, please?

MCCASKILL:

You may.

GREENBERG:

Senator, our -- as I've emphasized throughout, we -- our overall concern is absolutely with the safety and the well-being of the children. We're implementing a law that Congress has enacted. Under this law, it is a law that simply didn't envision that there were going to be home studies in every case, that didn't envision that there was going to be post-release services in every case. Congress can choose to change the law to make it be that way...

MCCASKILL:

Wait a minute, wait a minute, wait a minute, wait a minute, wait a minute, wait a minute. Establish policies and programs to ensure that unaccompanied alien children in the United States are

protected from traffickers. What in the law is keeping you from establishing, right now, putting (ph) it up today?

By the way, your -- your program manual, we can't even see it, what you're supposed to do. It's not even available to the public. But why don't you put up on a website today that you're going to have home visits every case when someone doesn't show up for a hearing? What keeps you from doing it as part of this policy and program? Why can't you go back today and do that?

GREENBERG:

Senator McCaskill, I would be happy to go back and talk with our lawyers as to whether they believe...

MCCASKILL:

I would love to talk to your lawyers.

GREENBERG:

... we can do it.

MCCASKILL:

You're a lawyer, you know better. You know you can do that under this law.

GREENBERG:

Well, I can tell you, Senator McCaskill, that I've had multiple conversations about trying to identify what our authority is and what else we can be doing. And what we're talking about today is our understanding of our authority under the law. If the committee or other members of the Congress want to work to change the law or to clarify or...

MCCASKILL:

Well, I need your lawyers to get me in writing and I would like it within a week what it is in the law that prevents you from doing a home visit when a category three unaccompanied minor does not show up for their hearing. What keeps you from doing a home visit? I want to know in the law what keeps you from doing that.

GREENBERG:

We will follow up and ask that question to our lawyers.

PORTMAN:

Thanks, Senator McCaskill.

Of course it's much worse than that because you have kids who actually told you -- told HHS that this sponsor was not a family friend, it was someone to get me out of HHS custody. We have that information now from you all. We even have a situation where somebody said, "As soon as I got to the airport, HHS bought my plane ticket, the so-called sponsor took off and put me in the hands of other people." They've told you that.

So the situation Senator McCaskill talks about, of course, but it's even plainer than that and obviously you have a responsibility here. I mean, it's -- you're not going to be able to say that there's not adequate legal basis for you to keep these kids out of the hands of traffickers when it's so obvious when there is no check done. So you know, I -- I -- I must say, I'm very discouraged what I'm hearing today because you continue to try to evade responsibility when it's so obvious.

Senator Heitkamp?

HEITKAMP:

I just sit here and I wonder how we can possibly be having this conversation? How can we possibly not take in all seriousness the tragic situation of these children who are fleeing conditions that are unimaginable to us, coming to this country, believing this country has the ability to somehow protect them but yet we sit here, important as what we are, senators and people -- high ranking officials saying, "We don't have the ability to protect kids, there's no law?"

Have you ever -- and Mr. Greenberg, when you looked at this gap in so-called authority, which I agree with Senator McCaskill, doesn't exist. But when you believed it exists, did you say, "My goodness, we don't have the ability to do background checks, we don't have the ability to do home visits on a sponsor, we need to go to congress and get an emergency bill passed to protect children?" Did anyone in the administration have that conversation?

GREENBERG:

Senator Heitkamp, what I can say is that we have had very active conversation...

HEITKAMP:

Do you understand why we're angry? Because every time we ask you a question you go, "How am I going to answer that?" Answer it by telling us what conversations you had. This was your obligation to protect these children. What conversations did you have, you know, beyond what we see here in these e-mails that would suggest to us that you put the safety and well-being of these children in a bill that was passed to prevent trafficking, you put the safety and well-being of these children first?

What conversation did you have when you saw this obstacle that you've been telling Senator McCaskill that it exists in the law to -- to change the law so that you would actually have access? Because I can tell you, as a former state official, if the state ran a foster care program under 4E

like this without home visits, they wouldn't be getting 4E dollars very long. There's no state agency that runs a foster care program like this.

And I -- I think we can completely appreciate the extent to which DHS was overrun, but going back again to Senator McCaskill's point, this was 2008. This wasn't the big surge. This was -- this is a long going -- a long standing problem.

So what conversations -- or let's -- let's ask you this from your opinion. Did you ever once think, "I need to get the law fixed because these children aren't getting protected?" You have a strong background and a strong history in protecting children. Were you ever personally troubled by your inability to protect children?

GREENBERG:

Yes, and let me say more to answer that directly. There was some discussion before about this shouldn't just be a paper process and for me, this has never been a paper process. I can tell you that I have visited down in the Rio Grande Valley four times over the last two years. And when I go, I talk with children and I talk with providers and I talk with their staff and I talk with advocates and I...

HEITKAMP:

And we all do. We've all been at the border...

GREENBERG:

Right.

HEITKAMP:

... and I've spent time. So...

GREENBERG:

But -- but...

HEITKAMP:

... tell me what -- what you came back from that -- Senator Carper does a wait (ph) job, you know...

GREENBERG:

Yeah.

HEITKAMP:

... we're here to learn. So, when you came back listening to those children, what policy change recommendations did you make at DHS to prevent this from happening?

GREENBERG:

What I emphasize is that it's very cold (ph) the way the law currently works that we've got limited authority around home studies, limited authority around post-release services and I have made that -- Senator Heitkamp, if I can explain. I have conveyed that very directly to this committee in my prior testimony. When I do public talk about the program, I make very clear the limited role that HHS plays.

HEITKAMP:

Yeah. Well...

GREENBERG:

And...

HEITKAMP:

You know, and I don't need to belabor at this but, you know, when I was a trained general, we have a -- we have a boarding school, an Indian boarding school that we were hearing rumors about behaviors and no one wanted to take jurisdiction. No one -- you know, everybody said, "No, that's somebody else." And I just thought, "Somebody has got to take responsibility for this."

And so we just stepped into the void, and so, occasionally, don't you think it's smart, even when you see something, when you see something involving the welfare of children, to step into the void, to challenge the legal ramifications and say, "Let's do the right thing and sort it out later."

And -- and the problem that we have here is that, there are bad people in this country, there's bad people all over the world and you know, I would be remiss if I didn't ask the question for Senator Tester who had to leave. So I just want to say, OK. Now, we've got this horrible situation which has been revealed, that's the subject of this hearing. What -- and if -- if -- Senator Tester and my understanding that the egg-farm is still in business. Is that true? The egg-farm is still operating?

(UNKNOWN)

I have no knowledge (inaudible).

HEITKAMP:

OK. What -- what do you think happens when this all gets swept under the rug when we're trying to really get at the bad guys, get at the people who do this, who think that they can continue because these kids are invisible, continue to operate with impunity to -- to operate business that are nothing

short of modern day slavery when we don't report it, when we don't have testimony from these kids. Because the kids are in the wind, they're gone.

So, my point I guess, is that, not only did we put kids at risk, but getting to prosecutions for people who do very bad things become impossible when we don't have the children protected.

And so, I would just say that I hope that what good comes out of this hearing, which has been, I think, more contentious than any of us thought it would get, that you guys really take this back and say, "What's the perfect system?"

Maybe we can't always have the perfect system, but at least the worst state foster care system can do as good as the worst case foster care system in the federal government when we're protecting children. And I think that is -- I look forward to your recommendations on what we can do not only from a law change, but also from a resource management change.

Thank you, Mr. Chairman.

PORTMAN:

Thank you, Senator Heitkamp. Senator Carper would like to make a brief comment about an early...

CARPER:

Yes, I just want to question something for the record. Thanks so much, Mr. Chairman. I did an audible (ph) here when I spoke briefly over in the hearing and trying to explain why the numbers of really old (ph) folks in this country is going down. And one of the reason is because more people are going from U.S. into Mexico than the other way around.

And I mentioned I that I thought that Mexico had somewhere between 115 million, 200 million people, we got 122 million people. If you add up the peak of the populations of 100 square miles (ph) several adds to about just under 30 million people. So, that's -- the difference between population is not eight to one, it is four to one, but that would obviously would explain the changes in the migration numbers. Thank you.

PORTMAN:

Thank you.

Senator Johnson.

JOHNSON:

Thank you, Mr. Chairman.

Mr. Greenberg, according to your bio here, you joined the Administration for Children and Families in 2009. Is that correct?

GREENBERG:

Yes, it is, sir.

JOHNSON:

And so, I want to kind of direct my question to you because it coincides neatly with my chart. Where I date back to 2009. Again, we're -- just to remind people, about 3,300 unaccompanied children came in, the next year, 4,400 then about 4,000. And then it started ramping up.

I really want to just have you tell me what was happening within the agency during that time period. I mean, how -- I want to understand the history of your manpower, how you grappled with this, kind of what started happening in 2012, 2013, 2014, where it really exploded?

GREENBERG:

Senator Johnson, though I joined ACF in 2009, I didn't begin to work closely with the program until I became acting assistant secretary, which was late in 2013. So, I can certainly speak to what's happened since that time.

JOHNSON:

OK. So again, I want to hear to the extent that this just overwhelms your management capacity.

GREENBERG:

As I made in one review comments, the challenge for us was that the program did grow by nearly 10 times over a three-year period for about 6,000 kids to nearly 60,000 kids.

And there is no question that in the summer of 2014, which was when I first testified before this committee, we were facing a whole set of capacity issues about how to address the number of children that arrived and to ensure that we were able to provide adequate shelter for them.

It's also the case that after that situation got under controlled, the number of kids went down. We did look broadly to say, this is a program that's grown 10 times in three years, what are the things that we need to do to strengthen it? And part of that involved significantly expanding the staff for the Office of Refugee Resettlement.

(CROSSTALK)

JOHNSON:

So give me some numbers on that in terms of staff increases.

GREENBERG:

We -- and I'll ask Bob if he can say precisely, but approximately authorizing something in the range of about 70 additional staff.

JOHNSON:

From what level? There was a baseline level to what? It went from where to where?

GREENBERG:

And again, I wanted the precise numbers it is front of me. It was roughly 50 something full-time staff, some contractors. But it was roughly 50 something, and adding another 70. But I could ask Bob if he can respond to...

CAREY:

That is accurate. Approximately 70 or at an -- over the course of the surge.

GREENBERG:

So, one thing that we did was greatly strengthen their -- our staffing. A second thing was that...

JOHNSON:

So, when -- let me just go. So 2009, we basically had about 50 people in this capacity. I mean, you know, roughly because nothing really changed much. And, you know, that was to handle about 3,300 kids, 4,000, somewhere in that level. And it started ramping up to 10,000, 21,000, 51,000 and we took the options from 50 people to 70 people.

GREENBERG:

No, we added 70 more.

JOHNSON:

That's what I'm saying. Yes. I mean...

GREENBERG:

Right.

JOHNSON:

... so 50 to 120?

GREENBERG:

Yes, that's right.

JOHNSON:

So another 70 people, manpower to handle readily, 50,000, 51,000 more.

GREENBERG:

Well, in addition to maritime (ph), we were greatly expanding the number of grantees who are providing shelter for the children. So, to just to highlight the other things that happened, we increased staffing, but when the prior director of ORR left, we made the determination to have both an ORR director and to create a deputy director for children's programs.

And to create a chief of staff to strengthen the overall efforts, we created a policy division within our ORR. Senator McCaskill mentioned before, the issue of policy. And we were concerned in 2014 that our policy wasn't transparent and that it wasn't readily available.

And so, we created a policy division. They've been working to post our policies on the website, there was also a reference to the need for rurals and we are actively working on a notice of proposed rule making that it is our full intent we'll be out this year.

So, all of those things happened. In addition to that, I do want to emphasize that the set of things that we put in place around strengthening attention to child safety were things that we started doing later in 2014 and early in 2015. In addition to the ones that I've talked about in my testimony, we strengthened the conditions under which we would do child abuse and neglect checks, we have put in place clear policies for when criminal convictions will matter for purposes of disqualifying...

JOHNSON:

OK. I'm running out of time. OK. Good.

GREENBERG:

OK.

JOHNSON:

As I've said, again, just from the outside looking in, we've obviously got more efficient at handling the surge. I do want you to address the -- what's currently happening down this first quarter. I mean, the fact that we went -- from 2014, to about 8,600 in the first quarter. And again, 2014, a reminder to everybody, that's when - that, was the biggest year, close to 52,000 unaccompanied children.

So, that year started out about 8,600 kids. This year started up to 14,000. Not quite double. What is happening? What's been your reaction to that? I mean, again, we're not hearing the alarm bells sounding here.

But I would think based on this committee's report, the investigation, alarm bells should be sounding. So, what's happening here? I mean, describe the efficiency of how we're moving these kids and what is being, obviously, lost in the cracks in our efficiency?

GREENBERG:

So, between 2014 and 2015, the number of children fell and fell from about 58,000 to 34,000. And when I testified before the committee in July, I talked at that time about how the numbers had fallen. The numbers then began rising and normally, there is a spring, summer increase and then falling after that.

The pattern that we saw this year didn't correspond to that. So, the numbers did continue to rise through the fall and through December. Our January numbers are looking lower than the December numbers, but there's no question that these were higher. So, we have actively kept appropriators aware of those circumstances.

JOHNSON:

Well, again...

GREENBERG:

We've been looking for additional funding.

JOHNSON:

So, my time is done. Again, my final comment is the true solution here is let's reduce and stop the flow. And that we have to really take a look at the policies in our own immigration laws that incentives this behavior.

And listen to president of Honduras who said, please, end the ambiguity in our laws that is creating that." So again, I'd like to take the pressure off, but in order to do that, we've got to really look to the real root cause of what's driving this that can create these kind of tragedies. So thank you, Mr. Chairman.

PORTMAN:

Senator Lankford.

LANKFORD:

Gentlemen, let me we bring up a couple of things for you. Trafficking Victims Protection Reauthorization Act 2008. Here's the statute, "The care and custody of all unaccompanied alien children, including responsibility for their detention where appropriate, shall be the responsibility of the Secretary of Health and Human Services. The care and custody of all unaccompanied alien children is the responsibility of Health and Human Services, including their detention if needed."

Of the 90,000 plus children that are out there, that have been put into care since 2008, if I were to ask you, how many of those could you find right now, that we know where they are. How many of those do you think you could find? Give me a percentage guess of the 90,000 plus that are out there.

They were placed into a sponsor's home, either saying, this is a parent or a relative, or a non-relative sponsor of theirs, of the 90,000 plus, how many of them do you think you would know where they are if I asked you to give me a phone number and address you could tell me?

GREENBERG:

So, Senator, I couldn't guess in that. I can tell you that we have the information at the time of release. If the child is receiving post-release services, we'll have continued information...

LANKFORD:

But you have no idea how many of them you could still contact today?

GREENBERG:

We do not. And again, this is based upon our core understanding of the law and what our -- what we are authorized to do under the law.

LANKFORD:

"The care and custody of all unaccompanied alien children, including responsibility for their detention where appropriate, shall be the responsibility to Health and Human Services." So, I'm trying to figure out the ambiguity in that, would seem to be not just when they crossed the border in that detention moment, but it is the care and custody.

It is the -- once you've transitioned them to a sponsor, is it your assumption that's no longer the care and custody? Now, the law says, once you give it to a sponsor, it's the sponsor.

GREENBERG:

So that has been HHS's long standing interpretation of the law. And what I want to make clear is that, in the majority of cases when children are released, they are released to their parents.

LANKFORD:

OK. So, let me ask you about that. Well, how do you know it's their parents? What verification are you using that this is a parent and how are you selecting where they go and when it's non- relative, where they're placed, who that is? Who chooses?

GREENBERG:

So, under the law that governs us, our first preference has to be for their parents and...

LANKFORD:

Right. So, how do you know it's the parent? That's what I'm asking.

GREENBERG:

The process for verifying the relationship between parent and child, they -- it will involve the use of birth certificates, other forms of identification.

LANKFORD:

OK. So, let me back up because I've done the same thing you have. I've been down to the detention as early as which -- by the way, before I came here to congress, I was the director of the largest youth camp in the country. We had 51,000 guests this summer, we're a very large operation.

So, when I would visit a facility where there were 1,000 teenagers that were there, I'm very aware of what it takes to do all the work around that. As I went and visited and talked to the kids and talked to the staff and interacted with the contractors that were there, I had individuals ask me later, "What did you think?" I left and said, "That facility is exactly how I would have run my camp if money was no object."

Because there were a tremendous number of staff and a buffer and all kind of things wrapped around those kids. And what's astounding to me is how it runs the first 30 days that they're in the United States, versus every other day after that for these kids.

And so many of them never show up at their Notice to Appear and we have no idea where they are, how they're being cared for, what has happened, how they've integrated in the society. And we're aware that when we're put into a home that is not a near-relative often, they never show up for a Notice of Appear and we're aware they just disappear.

Now, the struggle that I have is, if you're aware a high percentage is going to disappear, or you're aware they were putting people at risk at trafficking, why we wouldn't hold them at their initial facilities where they're being well taken care of, until court proceedings and we know they're not going to be at risk in other locations and they can go through their court proceedings.

And many of those are returning to their home country. They do not have a relative here and so they're being returned to their home country. But instead, they're being released into the United

States to people. We don't know who they are, we're not checking up on them. There's not been adequate fingerprints, there's not been home visits.

There's no acknowledgment that we're -- that we know where they are months later. But we're not detaining them as the law requires. We're releasing them knowing full well we'll probably never see them again and they're illegally entering our country. Help me understand that.

GREENBERG:

Senator, I'll first say that I agree that these services are very good in the shelters.

LANKFORD:

They are. It's very great.

GREENBERG:

And we're very proud of them and we would encourage any members of the committee that haven't visited, we would encourage you to visit the shelters. Our -- we have a legal responsibility to release the children, both under the Flores Consent Degree that governs us and under the TVPRA, which says that children need to be in the least restricted setting in the best interest of the child.

LANKFORD:

So take me -- you're back. Go a year ago, last January. We have a child that didn't come with a letter and a phone number which mean these children are coming across the border with a picture of someone, with a letter, with a phone number, some sort of identification and what you didn't say before is what I know to be true.

You're selecting these sponsors because the child has a piece of paperwork in their hand, saying, this is where I want to stay with when I get to the United States, correct? Most often, the child is walking in and saying, this is the person I want to stay with.

GREENBERG:

That will often be the case.

LANKFORD:

OK.

GREENBERG:

Not always, but often.

LANKFORD:

So, but even parent and non-parent, then you're trying to guess then, is this really the parents? And if it's a non- relative, you're still trying to guess, is this really a good non- relative. Was this given to them by the Coyote or was this given to them by some parent in the past? They arrive then, they're placed in that.

A year ago, did that person that they're being placed with, was there a fingerprint done for that individual that they're being placed with? Go back a year ago. So, the sponsor, non-relative, when they said, this is the phone number and the location I'm told to go to, was there a fingerprint done for that sponsor? Yes or no?

GREENBERG:

So Senator, you're asking about a particular case or about policy?

LANKFORD:

Just a yes or no. Do we do fingerprints on the sponsors on a category three non-relative, that this child walked in and had a phone number for, not knowing really all the history of all that phone number whether it came from that address. Did we do a fingerprint on that person?

GREENBERG:

Yes, there should have been a fingerprinting done.

LANKFORD:

Did we do a home visit for that person?

GREENBERG:

We -- a year ago, we would have only done a home visit if it's under a court category...

LANKFORD:

If a few -- or if it's specialties, we though that...

GREENBERG:

... under the law.

LANKFORD:

-- correct. So then let me ask a question, did we verify that person was a legal citizen of the United States?

GREENBERG:

We would not do that.

LANKFORD:

Why?

GREENBERG:

Because under the law, under the Flores Decree, we've got an order of release, you know, first through parents, then to close relatives, then the...

(CROSSTALK)

LANKFORD:

Even if there's not -- there's no foster care in the country is going to place a child in a home of someone that is illegally in the United States, that we've not done a full background visit, we've not done all the process, because there's this sense that if we're going to have long-term custody or care, if it's the parents, that's a different issue.

We're talking about a non-parent in here, to be able to place someone in a non-parents home, that is not a legal citizen in the United States or that there were people in the facility that were not legal.

GREENBERG:

So Senator, both you and other senators have made a number of references to foster care and yes, I want to emphasize, the foster care system is different in a lot of ways .

LANKFORD:

Oh, I understand it is. I was just thinking for the question.

GREENBERG:

And if I can just say a word about that. I mean, the foster care system does involve, you know, licensed and training of foster care, the parents and facilities. It involves paying foster care maintenance payments to them. It involves a structure of states having case workers who are doing monthly visits to the home.

LANKFORD:

We all get that. That's not the question.

GREENBERG:

So what I do want to emphasize is, that's a different structure than this one. If Congress wants this structure to look more like the foster care system, that's absolutely a choice that Congress can make.

LANKFORD:

Well, I think it's the decision on placement. I think it's not about long-term care and training and all those things. I get that. It's the decision on placement to say a person's fingerprint, background check, we know this person has or doesn't have criminal records. We know that that person doesn't have a Notice to Appear that they have skipped.

And then that's obviously going to increase the chances that a child is placed in a house that's also going to skip a Notice to Appear or the most basic thing that Senator McCaskill brought up over and over again, is this issue of, if a child skips a Notice to Appear, that's clearly negligence.

They're not following the law. That's a clear issue that they were negligent and not delivering the child to that appropriate time. That should set off an alarm of this clear statute that says that custody and care of alien children falls on HHS. So I guess, all we're trying to figure out is, what are we missing at this point?

GREENBERG:

Sure. So, on the specific question Senator McCaskill raised, we will follow up and we'll go back to our lawyers and talk about that one. What I do want to emphasize for sponsors themselves, and again, it's important to appreciate how different it is then than foster care.

I mean, we're not paying these people anything, they're not receiving, you know, they don't -- the children are typically not qualifying for public benefits. This is, who should the child live with while they are waiting to immigration proceedings. In most cases, that's going to be the child's parent. If it can't be the parent, we look for a relative. Then, only if we can't find appropriate parent or relative, would we ever go to the family friend.

LANKFORD:

Right. Thank you.

PORTMAN:

Senator McCain.

MCCAIN:

Right. Well, I thank you, Mr. Chairman, for holding this hearing on this very important issue and especially the issues that are inflicted on these young children once -- that they get here. According

to this, we now have 2016 just in the first quarter, 14,206. Then, of course, this keeps up this would be a record breaking a year. Is that true?

GREENBERG:

Yes. If it does keep up, yes.

MCCAIN:

OK. Now, let's talk for a minute about how they get here. They get here in the hands -- 99% of them, at the hand of Coyotes, right?

GREENBERG:

I didn't say often. I can't say specifically ...

MCCAIN:

I am asking you a straight forward questions. You and I know that it is the majority of them in the hands of Coyotes, right?

GREENBERG:

Yes, but I can't talk to a specific percentage. I can say when I talk to kids, I hear range of stories that haven't been...

MCCAIN:

It is a well-known fact though...

GREENBERG:

It is often that...

MCCAIN:

... that the majority of children are -- that Coyotes are paid thousands of dollars and they are transported to the -- to our borders. I mean, Mr. Greenberg, we're talking about facts that are well-known.

GREENBERG:

Right and Senator McCain, I absolutely agree that it's a very common thing. I just couldn't say that it was 99%.

MCCAIN:

Excuse me. OK. So they're in hands of Coyotes, right? The majority of them, right?

GREENBERG:

Often.

MCCAIN:

Mr. Greenberg, you're a very interesting witness. You and I know that the overwhelming majority of them were paid -- the Coyotes are paid to bring them to the United States. They ride on the top of trains and they often fall off and are killed. More importantly than that, young women who are brought by Coyotes are invariably sexually abused on the way. We know that, right?

GREENBERG:

We know that happens often, I asked them, Senator. What I am saying is that when...

MCCAIN:

OK. We also that the same Coyotes that are bringing the children are also bringing drugs, right? Same cartels. Do you know that? You don't know that?

GREENBERG:

Often. Often.

MCCAIN:

It's more than often, Mr. Greenberg. It is invariably the case and if you don't know that, then you are not doing your job. It is well-known that the majority of children who come here are brought by Coyotes and it is well-known that the Coyotes are part of the drug cartels. Are you denying that? Are you denying that? Yes or no.

GREENBERG:

Senator, I'm saying that I don't know that.

MCCAIN:

You don't know that?

GREENBERG:

I -- in...

MCCAIN:

You know that, Mr. Greenberg? With your experience in the -- that -- I mean, this is crazy. Everybody knows that. Talk to any border patrol agent. Come with me down in Nogales and they'll tell you how they got there and they'll tell you who brought them and they'll tell you what happen to the children along the way. And for you to sit there, feigning a lack of knowledge over the facts is really insulting.

GREENBERG:

So Senator, I can tell you first that I have talked to border patrol agents and have done so regularly when I'm down there. What I am told -- and I don't want to speak for them, but what I am told is that, often the Coyotes are independent with the drug cartels. But I don't have a personal knowledge on this.

MCCAIN:

Why don't you have firsthand knowledge? Everybody -- every other law enforcement agent does, all the border patrol people do. Everybody knows what the facts are. Mr. Greenberg, this is very frustrating. OK. Well, let me tell you what's going on, Mr. Greenberg, let me tell you.

These are Coyotes, they are part of the drug cartels, they're overwhelming the majority of children have their parents to pay thousands of dollars to have them transported and many of the young women are sexually abused on the way. Those are well known facts, Mr. Greenberg, and I don't know where you've been living., but you ought to know that, because those are facts.

So then the question is, and the question is, if those are facts and they are, then why don't we do more in the country of origin, Guatemala, El Salvador, Honduras, where we can have these young people come to our consulate or our embassies and there apply for this asylum so they're not subjected to this terrible experience of being transported by Coyotes and -- who are drug dealers as well, to our border.

And yet, the information that I have is that the state department receive 4,000 applications for that program and conducted 90 interviews. What are you doing down there at this embassies and consulates to -- when young people come to you for shelter from the abusers and threats to their lives that are posed by the chaos within their countries? Which are, by the way, mainly bred by drug cartels.

GREENBERG:

Senator, the administration does believe that having the in-country processing is an important thing to do. The specifics of it are under the responsibility of the State Department.

MCCAIN:

Despite the fact that of 400,000 applications, 90 interviews were held. They may believe that but they're not doing it.

MCCAIN (?):

Is there been any increase in consulate personnel or embassy personnel to handle these cases in these three countries?

GREENBERG:

I'm sorry. I can't speak to that. Senator, it's best directed to the State Department.

MCCAIN:

So you wouldn't have any idea even though your responsibilities are on this issue.

I -- Mr. Chairman, I can't ask anymore questions of this witness. This is a definition of a non-cooperative.

PORTMAN:

Thank you Senator McCain. We are now into our second round and I'm going to start. And, I guess, I'm going to focus on the issue there I think Senator McCain has just touched on and Senator Lankford, which is HHS unbelievably taking this position that some how you're not responsible for these kids once they leave the detention facilities. You release them to the sponsor. Basically you're saying, we have no more responsibility.

You're taking that position even though federal law, as we just quoted, say that responsibility for current custody of all of these unaccompanied minor kids arrest with HHS. And even though, Congress has mandated that HHS has to provide post-release monitoring in some cases, specifically.

And even though there's a judicial decree that governs this program, also known as the Flores Agreement. In response to Senator Lankford's questions, Mr. Greenberg and Mr. Carey, your response was, well, the Flores Agreement requires us to get these kids out the door. That's basically what your response was.

Let me just make it absolutely clear. The Flores Agreement does not authorize you to cut corners, period. It clearly states that HHS should place children with a family member or a family friend who is quote, "Capable and willing to care for the minor's well-being." That's in the Flores Agreement. That's a quote.

It also say, of course, that under the Trafficking Victims Protection Act, that you are forbidden from releasing any unaccompanied alien child, quote, "Unless the secretary of the HHS makes a determination that the proposed custodian is capable providing for the child's physical and mental well-being."

So this notion that you're going to hide behind the Flores Agreement or federal law, to me, is you shirking your responsibilities. It's clear that HHS is not committed to skip reasonable precautions that are necessary to make the determination that is provided for under law, specifically, and under the Flores Agreement.

To me, I guess, that's the biggest concern that I have after today's hearing, is that despite our work, the work of others, the A.P. investigation, the back and forth we've had with you for six months on this that you continue to think that somehow your legal responsibilities don't continue after you place a child.

Let me ask you this question. Has HHS ever terminated a sponsorship agreement for failure to properly care for a child and resume custody of that child? Have you ever terminated a sponsorship agreement?

GREENBERG:

Not that I'm aware of.

PORTMAN:

Mr. Carey?

CAREY:

Not that I'm aware of.

PORTMAN:

So out of tens and thousands of kids, you have never, clearly in this case, in Marion, Ohio, when those kids were living in that trailer, with a bunch of adults. That neighbor -- you have never terminated an agreement.

GREENBERG:

Senator Portman, if I can respond more thoroughly. The -- our view that we don't have continuing custody after we release the child, is a long standing HHS view. It was the view before I got there. I'm happy to take it back to the lawyers and ask them about it again. But it's also -- if this is an area where Congress wants the law to be different. Congress should change the law.

PORTMAN:

That law already says that and the Flores Agreement already says. Here, have you read the inspector general's report on this, it dates back to 2008. Have you read that report?

GREENBERG:

I have to go back and check.

PORTMAN:

Well, the inspector general of HHS recommended that if there's was any doubt about this, that HHS and the Department of Homeland Security should in enter into memorandum of understanding to clarify quote, "Which department is responsible for insuring the safety of children once they are released to sponsors and which department is responsible from ensuring sponsors continue compliance with sponsor's agreements."

Have you read that? Have you read that report?

GREENBERG:

I don't recall reading that, Senator.

PORTMAN:

I would encourage you to read it. HHS has quite a longtime to think about it. It dates back eight years. So after these eight years have passed without a final action on your part to clear up this basic question about HHS versus DHS, these kinds of conditions are present. This is the result. Never having terminated a sponsorship, despite some of these horrific conditions that we're talking about today.

I would tell you, you've missed opportunities, one after another. I talked about that in my opening statement, but this is certainly the biggest one. It's just not taking responsibility and not doing any kind of appropriate oversight.

You talked earlier about the fact that you have these home visits. We look into this and we heard that home visits are something that you did. You gave us some numbers on it, we looked at your own numbers. And we found out that it was only 4 percent of the cases, 4 percent of the case. Is that your understanding?

GREENBERG:

That is my understanding, yes.

PORTMAN:

Four percent home visits. It's no wonder you have these kinds of problems. Senator McCaskill

MCCASKILL:

What's the most important thing you're going to do after this hearing?

GREENBERG:

After the hearing, I'm going to read the committee's report. I'm going to ensure that we share it with staff and all other interested parties in the department and that we actively discuss the findings from the report and what the implications are for our existing policies and what we can do to strengthen our policies.

MCCASKILL:

And would you put an asterisk on the to-do-list, to ask the lawyers to put in writing why they think that you all have no responsibility after you place these children and in particularly category three homes?

GREENBERG:

Yes, I have that on my list from our earlier exchange, and we will absolutely follow-up on that.

MCCASKILL:

Yes. Because it used to be the heart of the matter here. I mean, let me just give you this actual recitation. In July 1, 2015, a federal grand jury indicted for defendants in Marion. In October 2015, three months later, HHS officials met with the subcommittee staff of this committee.

The staff of this committee met with HHS. At that meeting, three months after the indictment, the HHS officials knew little or nothing about the children involved in the case or of the details of the placements with their sponsors.

I mean, this lack of urgency is cultural, Mr. Greenberg. I mean, if I were sitting in your job and I picked up the morning paper and said, four people have been indicted for trafficking children that your agency had place in their care.

I mean, red lights with flash, siren would go off, there would immediately be a team of people to look and see what children were placed there, were there other children place there, what is -- what were we told, did they look at the documents.

And none of that had occurred. It was like, well, yeah. So when were you first notified that unaccompanied children placed by HHS had been trafficked in the Marion case? When was your first notification?

GREENBERG:

To the best of my recollection, I became aware when the indictment came out and there was press that time. I can tell you that at that time, we did -- I did talk with ORR about our existing policies and what else we needed to do to strengthen them.

As you can see and as you saw in my testimony, we broadened the home study requirements to later that month, in the month of July, to extend to circumstances where a sponsor was trying to sponsor more than one child or had previously sponsored a child.

We built in, in September our requirement for the chapters to look to see has the sponsor been trying to sponsor more than one child or are children going -- is more of those (ph) children going to the same address.

MCCASKILL:

Had your documents not been subpoenaed by the federal authorities at that point, the information about the sponsors? Was that not -- had they not come to you in the investigation about what information you had about these sponsors?

GREENBERG:

I can't speak to the specific ...

MCCASKILL:

Mr. Carey. Did they come to ORR asking for documents during the investigation?

CAREY:

I was not at ORR at that time.

MCCASKILL:

Would somebody find out the answer to that question?

CAREY:

Certainly. We can find out.

MCCASKILL:

Because I'm just thinking as a law enforcement, if I'm the prosecutor, presenting that case to the grand jury, I'm going to want all those documents in hand as I prepare that case.

So I would be interested to know if in fact they ask for the documents because you all have documents that were signed and executed giving those children sponsors. And some of the sponsors into that being silenced.

Now, my last question because I'm out of time and I know we have to get to the second panel. You've struggled with trying to come up with a written policy for this program since, well, since

2008. There have been drafts of operational manuals. There have been drafts of policies, floating around for years under consideration.

You have these indictments in the middle last year. I've been told three days ago, it was the policy of HHS that it was OK if other adults in the house had been convicted of sex crimes with children.

Now, can you relate to why I have a lack of confidence in your ability to drop policies and procedures? How did that get in to this? How did not looking at criminal backgrounds, even of the sponsor who takes over if the original sponsor disappears?

How is that something in all these drafts and policies that are floating? And, you know, while the -- and you know, and we've got e-mails, comments on them. This has been around for years. How is that missed that you're going to place a child in a household with convicted felons of -- with children and then the victims?

GREENBERG:

I agree that the change needed to be made and I'm glad we made it.

MCCASKILL:

Now it doesn't give me a lot of confidence.

CAREY:

May I clarify? the policy as it existed did not provide an absolute bar based on criminal history, but it does not mean that the criminal history was assessed and if it was seen as a threat to the child, the reunification did not take place.

MCCASKILL:

I understand that it was possible for them to turn them down if they did the check, but they weren't doing the checks on other adults living in the households. And secondly, if it came back, it was up to that individual to decide whether or not that particular conviction for child abuse was OK or wasn't OK.

You know, I -- somebody said in the process of this investigation well sometimes people get accused of child abuse in a domestic situation like that with somehow. I mean, we're talking about felony convictions for child abuse. Hello?

You know, I just -- I understand that they could have disqualified him if they run the criminal background check but they weren't being run on many of the people that would have been in these children's lives. And even if they found the conviction they were not required to bar that person.

That's the point I'm trying to make, Mr. Carey and I don't think that there's much excuse for that. Thank you, Mr. Chairman.

PORTMAN:

Thanks Senator McCaskill. I would add as you know, that there no criminal conviction that was this serious.

MCCASKILL:

Right.

PORTMAN:

You know, even if they did the background check out that someone was an habitual sex offender. It was HHS policy was there was no ...

MCCASKILL:

Automatic bar.

PORTMAN:

... criminal background that was too serious. But I know we need to get on the next panel. We've got some witnesses we really want to hear from. I would just end with two thoughts.

One, this notion that there is not enough resources. Just so you know in 2014, Congress appropriated \$912 million dollars. At the end of 2014, this is the period of time we're talking about, \$200 million were left unobligated, not spent, not committed. That's about 25 percent of the budget wasn't even spent.

In 2015, Congress appropriated \$948 million, an increase. How much was not spent, about \$278 million. So this notion of an adequate resources, just so you know, is not an excuse.

And then, finally, just to say, we have laid out here today, five or six specific issues that we'd like you to take back. And I appreciate the fact, Mr. Greenberg, that you said that you will read the report and that you will work with us to make some of these changes. Some were made this week. For instance, this criminal conviction issue was made on the 25th of January.

As I said earlier, that's progress. I'm glad we had this opportunity to have the back and forth with you over the last six months. There's more to do, including clarifying this policy.

I encourage you to read the inspector general's report from eight years ago. These are, as Senator McCaskill has said, issues that have languished for too long without being addressed. And Unfortunately, we see that during this first quarter, we have another surge.

And we want to be sure that those kids who were abused, who were in servitude in Marion, Ohio, that their case can be an example of not just to talk about at a hearing, but to insure that other kids don't fall into that same trap.

And that requires you to do a better job of deciding where these kids ought to go and monitoring their situation. And you have every authority to do that under current law.

And we insist that you do it. So thank you for being here this morning, Mr. Carey and Mr. Greenberg. We appreciate your coming to testify and we now have to call the next panel.

(OFF-MIC)

PORTMAN:

Thank you all for being here. We are privileged to have some experts before us to talk about some of the issues that we have just talked to HHS about.

Our first witness is Tiffany Nelms. Tiffany Nelms is the Associate Director of Children's Services at the U.S. Committee for Refugees and Immigrants, which oversees the organization's national Home Study and Post-Release Service Program for Unaccompanied Children. She has a background in case management, has worked on behalf of immigrant children and families for 15 years, and she's a licensed social worker.

Jennifer Justice, in the middle of the panel, we're pleased to have you. Jennifer Justice is the Deputy Director of the Office of Families and Children in the Ohio Department of Job and Family Services. Among other duties, her office oversees Ohio's Child and Adult Protective Services, foster care adoption and child abuse prevention programs. Thank you for being here.

Now, finally, last but not least, we had Kimberly Haynes. Kimberly is the Director of Children's Services at the Lutheran Immigration and Refugee Services. One of the great resettlement groups, which serves unaccompanied children among others.

She has over 20 years of experience in child protection in social work, including a consultant supporting a variety of refugee assistance programs within the Office of Refugee Assistance. We just heard from them. She has a master's degree in Social Work and Management Administration and Community Organization with a specialty in children and youth. Thank you for being here.

Again, it's a custom of the subcommittee to sworn our witnesses. So I'd ask you please to stand and raise your right hand.

Do you swear that the testimony you'll give before this committee will be the truth, the whole truth and nothing but the truth? So help you God.

NELMS:

Yes.

JUSTICE:

Yes.

HAYNES:

Yes.

PORTMAN:

Thank you.

Let the record reflect that he witnesses answered all in the affirmative and your written testimony will be printed in the record in its entirety. We'd ask you if you could try to limit your oral testimony to five minutes and we'll have a chance for a little give and take when we have some votes that come up and we want to be sure and have the opportunity to have some dialogue with you.

Ms. Nelms we'll hear for you first.

NELMS:

Great. Thank you so much. Good morning. Thank you to the Chairman -- to Chairman Portman, Ranking Member McCaskill and Members of the Subcommittee for the opportunity to amplify the voices of the thousands of children seeking safety and protection in United States and to share their stories.

My name is Tiffany Nelms. I'm a social worker and the Associate Director of Unaccompanied Children's Services of the U.S. Committee for Refugees and Immigrants. And for nearly a decade, I've worked with these children and their perseverance and many successes motivates me to continue this work, but our failures to protect and adequately support them keeps me up at night.

So for a hundred years, the U.S. Committee for Refugees and Immigrants has protected the rights and addressed the needs of persons in forced or voluntary migration worldwide and supported their transition to a dignified life.

We help the uprooted by facilitating and providing direct professional services and promoting the full participation of migrants and community lines. We understand the situation because we work with refugees and immigrants everyday.

Let me tell you about the girl who I will call Karen. Her family eeked out a meager living by selling bottled water and candy to tourists in a popular beach town in Honduras. After completing only a few years of school, Karen was forced to work and help support her family.

For many years, Karen's extended family was targeted by gangs because they refused to pay a tax or rent. This tactic is commonly used by gangs to extort money from regular people. In exchange, those who pay the tax can live and work and or transit a community the gang has claimed.

When she was 10 year old, Karen's uncle was murdered by the gang, a punishment for his refusal to pay this tax. The murder served as a warning and Karen's parents fled, hoping to fall off the gang's radar. Their house was subsequently burned to the ground.

At 14, Karen's parents allowed her to marry a man in another town to protect and provide for her. Karen became pregnant and after the child was born, the physical, emotional and sexual abuse started. She did not seek help from the authorities because crimes against women and girls are rarely prosecuted in her country.

Karen eventually left her husband and she and her child sought safety with her parents who were living with Karen's cousin. However, this cousin was kidnapped, tortured and murdered by members of the local gang as punishment for their -- for resisting their sexual advances and attempts to recruit her.

The gang left her body in pieces on her doorstep as another warning of what could happen to Karen and her family. The murders of Karen's uncle and cousin were never investigated. This deepened the family's distrust of the local authorities. And fearing she might be next, Karen fled to the U.S. border, seeking protection, where she was detained and transferred to the care of the Office of Refugee Resettlement.

In the past two years, we've seen rapid increases in the number of children, most of whom qualify for refugee status, who are fleeing -- seeking basic protection from violence, abuse and neglect in their communities. These children's needs are not being met in their countries of origin.

Approximately 10 percent of Central American children who are extremely vulnerable qualify for post-release services after reunification with a sponsor. This means they received three home visits in six months.

Many of these especially vulnerable children end up on a wait list and some must wait up to six months after release before a provider is available to serve them due to capacity restrictions. There is no other system that places children, some that have no prior relationship or recollection of their sponsor and provides no follow up or monitoring of the child's well being after the placement.

Children who speak some English and at least have access to informal helpers, such as teachers, pediatricians and police officers, connections within their communities who are trustworthy and we'll notice any irregularities, or at worst, abuse or neglect.

These are connections that are not guaranteed for unaccompanied children with limited English proficiency. Often with no connections to their communities beyond their sponsors. These children are especially vulnerable to being abused, neglected, exploited or trafficked. Post-release services are critical.

They connect unaccompanied children to medical and mental health care, ensure that children are enrolled in school in compliance with compulsory school attendance laws and provide children with the access to legal representation, something that is not guaranteed for unaccompanied children and which significantly increases their likelihood of attending their immigration hearings.

In addition to ensuring access to resources, post-release service providers monitor the children's well-being and integration to their new homes and communities. These social workers detect situations in which children are abuses, neglected, exploited or trafficked.

For example, our staff has identified victims of labor and sex trafficking among this vulnerable 10 percent of the children that qualify for post-release services.

Presently, in post-release services are stretched thin and the quality of these services are in jeopardy as we're asked to do more with less, increased case loads and not enough time to meet the needs of the children in our care.

Here some recommendations about how to remedy this. We suggest that post-release services become available to every unaccompanied child. Post-release services work. The children served through USCRI's program have a 95 attendance -- 95 percent attendance rate at their immigration hearings and similar outcomes for school attendance.

We recommend that ORR expands capacity within the national post-release service network so children are served in more efficient and expeditious manner, reunited with family in a timely and safe way and able to access the education and medical and mental health care that they deserve. And we recommend that they streamline reunification processes and consultation with national post-release service providers.

And whether you're wondering what happened to Karen, the girl I described in the beginning, delays and lack of adequate representation resulted in Karen being deported just after her 18th birthday. Despite our best efforts, we are currently unable to locate her in country to confirm her safety. We do not know her whereabouts.

We recognize that these children have fled to the U.S. seeking protection and we take seriously our role as guardians while their immigration case -- claims are reviewed and evaluated.

When a child receives due process resulting in a deportation order, he or she must return to his or her country of origin. However, while these children are in our care, we can do more to welcome and protect them as vulnerable among us.

Thank you.

PORTMAN:

Ms. Justice.

JUSTICE:

Thank you Chairman Portman, Ranking Member McCaskill and members of the subcommittee. Thank you for the opportunity to provide testimony to explain the foster care licensing process in the state of Ohio.

I oversee Ohio's child welfare system at the Ohio Department of Job and Family Services and have held this position since 2011. I am -- have worked in the child protection system for over 19 years. And in my current position, I'm in charge of supervising Ohio's child protection programs, including protective services, foster care, kinship, adoption, the Interstate Compact for the Placement of Children and independent living services.

Today, I want to highlight some of the important licensing requirements for prospective foster applicants. Ohio's foster parent applicants must be at least 21 years of age and must have enough income to meet the basic needs of the household. They must be free of any physical, emotional or mental condition that could endanger a child or impair their ability to care for a child.

Everyone over the age of 18 living in the house must submit to state and federal criminal background checks, as well as an Ohio Alleged Perpetrator Search through the Statewide Automated Child Welfare Information System or SACWIS. A SACWIS search is done to see if the applicant have substantiated or indicated a report of child abuse or neglect.

A foster parent applicant must disclose if a person between the ages of 12 and 18 years of age, residing in the household has been convicted of or pled guilty to certain criminal offenses or adjudicated delinquent.

A fire inspection must be completed and training must be completed. The required background screens must be completed, no late -- no less than every four years if foster parents are to continue to be licensed. Criminal background checks are required to be conducted all Title IV-E agencies per the Code of Federal Regulations.

If an applicant fails to provide the information necessary to complete a background check, the person will be denied certification as a foster care giver. If an applicant has a felony conviction of spousal abuse, rape, homicide or sexual assault, he or she would be prohibited from becoming a license foster parent. This also applies to all adult household members.

Ohio has a comprehensive list of misdemeanors and felonies that it prohibit applicants from becoming licensed under certain -- unless certain rehabilitation standards are evident.

When you look at financial stability, we look to see that applicants have enough income to meet the basic needs of every child. A foster applicant must provide proof of income for the household for the most recent tax year period and proof of income for the most recent two months, as well as their utility bills.

Along with these requirements, a foster care home study must be completed. This evaluation of the residents is completed by a licensed agency's assessor and takes place physically inside the residence with the foster parent applicant present.

Not all foster applicants end up being licensed. Some voluntarily withdraw and some are denied a license. Applicants maybe disqualified for offenses in their background check or their living conditions may be unsafe.

Although foster care applicants are often -- although foster placements are often necessary, Ohio works hard to identify relatives and non-relatives who are familiar to the family as placement options to reduce the trauma that comes with removing children from their parents.

Relatives and non-relatives over 18 years of age living in the home must undergo all the same criminal background checks as foster parent applicants. Their homes also are evaluated and an assessment is conducted of their ability to provide a safe placement.

Once children are placed with licensed foster families or approved relatives and non-relative, monthly home visits occur until the child is reunified or another permanent placement is found. Monthly home visits are conducted by a caseworker employed by the agency that holds custody of that child.

State policy reinforces this federal requirement to provide for the well-being of all children that are -- have open child welfare cases. Visitation data is required to be reported to the federal government and all states are required to meet or exceed 95 percent of all required visits.

The approval process for children who are placed across state lines is defined in the Interstate Compact for the Placement of Children. This is also called ICPC. This is a statutory law in all 50 states and is designed to protect children placed across state lines so that they will be placed in a safe, suitable environment. In accordance with Ohio laws and policies, all home study and criminal background check requirements that I described a minute ago, apply to this placement as well.

Ohio appreciates the ongoing technical assistance provided by the Administration of Children and Families' Regional office. And I appreciate this opportunity to provide testimony here today and I'm happy to answer any questions the subcommittee may have.

PORTMAN:

Thank you Ms. Justice. We'll now go to Ms. Haynes, and I will say, before you start you start your testimony Ms. Haynes a vote has been called, in that two votes. And Senator McCaskill and I had decided the state through your testimony.

Then we're going to ask if you would please be patient while we run over and vote the end of the first one, beginning to the next one. And we will adjourn the hearing during that period to come back to reconvene. So with that, don't be offended if we run out after your testimony, literally run out. Ms. Haynes.

HAYNES:

Chairman Portman, Ranking Member McCaskill and Members of the Subcommittee, thank you for this opportunity to provide the testimony all and about the efforts to protect children from trafficking.

My name is Kimberly Haynes. I'm a social worker for the last five years. I've been the director of Children Services or at Lutheran Immigration Refugee Service, where I oversee our ORR programs for unaccompanied migrant children, which includes federal foster care, safe release support sites, home studies and post-release service case management services. I have worked with unaccompanied refugee and migrant children both here and the United States and in international context for over a decade.

LIRS is faith-based organization which has been serving refugees and migrants for over 75 years. Unaccompanied children from all over the world for over 40 years. LIRS believes all children have the right to protection and family unity. As the only service provider that serves unaccompanied children throughout all stages of care, LIRS is uniquely situated to identify the gaps in protection, make recommendations to improve the system and U.S. policies and practices ensuring the safety and well-being of the children.

While I submit a more detailed written testimony, all I wish to express is that the U.S. has a strong domestic child welfare system which contains many best practices that we can use to enhance and strengthen the current system used for unaccompanied children. I will focus my remarks two -- in two areas.

First, on protection gaps in the current system, and second, provide recommendations to improve the family reunification practices so that incidences of trafficking or harm may be more readily identified, prevented and mitigated.

It is LIRS' position that ORR is in the best position to provide the care and protection for unaccompanied migrant children. However, it is imperative that adequate protection practices are in place to ensure the child's safety and well-being during and after release from ORR custody to sufficiently support the child and families' ability to protect, care for, and integrate into communities.

Over the years, ORR has continuously revised and expanded its depth of knowledge and practice in serving this unique population. As I detailed in my written testimony one excellent practice is the provision of post-release services for certain vulnerable children.

In recent years however, with higher number of unaccompanied children arrivals, ORR has revised certain policies in order to expedite family reunification and limit the amount of time a child would remain in ORR custody.

ORR's budgetary limitations meant that its capacity to provide its full range of services was limited and children were spending weeks in overcrowded, unsafe customs and border patrol cells before being transferred to ORR. This situation was detrimental to the health and well-being. LIRS does not wish to see this happen again.

LIRS has been serving unaccompanied children and their families for over three decades. We believe that our country can do better than releasing children to unsafe conditions due to the lack of resources. We need to treat this children's -- children first and foremost and provide the protection we afford all children, while safeguarding their rights to family unity.

LIRS makes the following recommendations. First, ORR should prioritize child protection and safety in reunification decisions over reunification timelines and fiscal concerns. We need to see these as children whom are needing our safety and our protection and deserving family unity.

Second, ORR should ensure that all children had access to some post-release services, at least at minimum, one home-visit after family reunification. These services should be trauma-informed, individualized, community-based and case management services. Congress should also appropriate the necessary funds so that ORR can provide these services.

Third, ORR should revise the sponsors -- excuse me, the sponsor assessment tool and sponsor reunification packet, to ensure gathering of relevant information. This should be an in-person risk assessment of the sponsor. A sponsor need assessment and a sponsor orientation that promotes child safety, stability, and well-being.

Fourth, ORR should monitor the impact that changes the fingerprint background check requirements and revise policy accordingly. The safety of children and screening of sponsors, including parents, must be more consistent and appropriately balanced.

Fifth, ORR should enhance their engagement with NGO's and stake holders in order to help improve their policies. ORR partners such as LIRS, will continue to work with ORR in improving policies that utilize best practices in child-welfare services. However, if ORR is to fully implement these best practices, they need the resources to do so.

Sixth, Congress and HHS should provide resources for a nationalized child abuse and neglect database system. For child-abuse and neglect checks so long, that wait lists for multiple checks mean that children are waiting for reunification at an extended period of time in facilities.

Finally, Congress should provide ORR with the contingency funds so that -- in times of high arrivals, unaccompanied children or refugees, ORR can adequately provide these services required.

Thank you for the opportunity to share reunification recommendations and best interests for unaccompanied children.

PORTMAN:

OK, thank you Ms. Haynes. And we appreciate the three of you, if you can, showing the patience to stay around while we recess subject to the call of the chair, before to talk about those budgetary short falls since they aren't spending 20 percent to 25 percent of the money that they are being appropriated. And what they're telling you , as a service provider, but I don't like that can be the reason but we'll talk more about that.

Senator McCaskill and I will return and we are now recessed, subject to call of the chair.