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June 28, 2018

The Honorable Alex M. Azar, II
 Secretary
 U.S. Department of Health and Human
 Services
 330 C Street SW
 Washington, DC 20416

The Honorable Kirstjen Nielsen
 Secretary
 U.S. Department of Homeland Security
 300 7th Street SW
 Washington, DC 20024

The Honorable Betsy DeVos
 Secretary
 U.S. Department of Education
 400 Maryland Avenue SW
 Washington, DC 20202

The Honorable Jeff Sessions
 Attorney General of the United States
 U.S. Department of Justice
 Robert F. Kennedy Department of Justice
 Building
 Constitution Avenue NW
 Washington, DC 20530

Dear Secretary Azar, Secretary DeVos, Secretary Nielsen, and Attorney General Sessions:

We write seeking information on the oversight mechanisms and processes of the U.S. Departments of Health and Human Services (HHS), Education (ED), Homeland Security (DHS) and Justice (DOJ) to ensure the provision of educational, health, and other services to unaccompanied alien children (hereafter referred to as "unaccompanied minors"), as required by federal law, Supreme Court precedent, and the 1997 settlement Flores v. Sessions, CV 85-4544 ('Flores settlement').

The Trump Administration's "zero tolerance" immigration policy that separated children from their parents upon entry to the United States, including those seeking asylum, has resulted in thousands of children who are now "unaccompanied" by virtue of forced separation, including infants and toddlers. Mounting evidence and conflicting statements from administration officials raise serious concerns regarding the administration's capacity and willingness to ensure compliance with all applicable requirements regarding the rights, remedies, and services for these children while in the custody of care provider facilities (CPFs) under contract or cooperative agreement with HHS' Office of Refugee Resettlement (ORR). Unanswered questions remain about the health and safety of these separated children, including trauma caused by family separation, the provision of general and special education services, and the process for family reunification.

The President issued an Executive Order on June 20th purported to halt these practices. However, the Order is silent on reunification for children presently in ORR's custody; calls for the modification of the Flores settlement, which could result in the detention of holding children well beyond the 20-day limit; and, does not address the ongoing questions regarding the health and safety of detained children. As such, this Executive Order has the effect of replacing one avoidable and manufactured crisis with another.

To that end, we look forward to receipt of the administration's written responses by the close of business on Friday, July 6th. In the interim, we urge you to swiftly reunify unaccompanied children who are currently in the care of the U.S. government with their parents or family members.

Oversight of Tender-Age Facilities

Media reports have detailed that hundreds of very young children, including toddlers and infants, are being detained in CPFs, referred to as "tender age" facilities.¹ The Department of Defense has also reportedly agreed to house migrant children at military bases.²

1. Please list the specific guidance and/or regulations the federal government is following to ensure the health and safety of infants and toddlers detained in tender age facilities. Please indicate whether any aforementioned guidance and/or regulations were developed for or are approved for the long-term and indefinite care of toddlers and infants.
2. Please detail the training that is provided to tender age facility personnel, including the tools and skills provided to facility personnel in order to meet the health and safety needs of infants and toddlers.
3. What is the administration's process for ongoing evaluation, oversight, and monitoring of these facilities to ensure compliance with all relevant child welfare and health and safety standards?
4. Is HHS currently housing, or does it intend to house, infants and toddlers at military sites?

Trauma and Health Services for Unaccompanied Minors

Forced family separation causes additional trauma to unaccompanied minors. Studies show that the trauma of separation "interrupts the brain's architecture at a critical time of development, when neural circuits ... are forming rapidly ... in infants and toddlers."³ According to the American Academy of Pediatrics and other child welfare organizations, "forced separation disrupts the parent-child relationship and puts children at increased risk for both physical and mental illness" and is recognized to a "precursor of negative health outcomes later in life," including "psychological distress, anxiety, and depression" that impacts children even after

¹ MarketWatch, *Trump administration holding hundreds of babies, toddlers at 'tender age' migrant facilities*, (Jun. 19, 2018) <https://www.marketwatch.com/story/trump-administration-holding-hundreds-of-babies-toddlers-at-tender-age-migrant-facilities-2018-06-19>

² The Washington Post, *Pentagon will make room for up to 20,000 migrant children on military bases*, (June 21, 2018) https://www.washingtonpost.com/news/checkpoint/wp/2018/06/21/pentagon-asked-to-make-room-for-20000-migrant-children-on-military-bases/?noredirect=on&utm_term=.88d807ed75c2

³ PBS, *How the toxic stress of family separation can harm a child*, (Jun. 18, 2018)

<https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>

eventual reunification.⁴ As you know, the Flores settlement requires CPFs to assess for and address youth trauma.⁵ It further requires CPFs to provide “appropriate routine medical and dental care...including a complete medical examination (including screenings for infectious disease) within 48 hours of admission.”⁶

1. What services are available to children who have experienced or are experiencing trauma?
2. Please detail the training that is provided to facility personnel regarding youth trauma, including the tools and skills provided to personnel to address the psychological trauma resulting from forced family separation.
3. Please indicate any training or tools provided to specifically address trauma in infants and toddlers.
4. What is the process for assessing, evaluating, and meeting the health care needs of unaccompanied minors, including the provision of essential vaccinations and prescriptions, identification of chronic and acute conditions, and assessments of general well-being? How are the health care needs of unaccompanied minors being met at CPFs?

Safety of Unaccompanied Minors at CPFs

According to federal court filings, Shiloh Treatment Center, a CPF south of Houston, Texas, is alleged to have forcibly injected unaccompanied children with medications that CPF personnel described as “vitamins.”⁷ Shiloh Treatment Center is one of more than seventy companies that receive federal funds to operate as a CPF to house and supervise children deemed unaccompanied. According to an investigation by the Center for Investigative Reporting, roughly half of the nearly \$3.5 billion federal dollars paid to such companies in the last four years went to CPFs facing “serious allegations of mistreating children.”⁸

1. What is ORR’s process for reviewing contracts and cooperative agreements with companies operating CPFs that have been accused of mistreatment?
2. Is DOJ presently investigating any allegations of child abuse or mistreatment in facilities operated by companies under contract or cooperative agreement with ORR?
3. What specific policies or guidelines has ORR established regarding the provision of health care services to unaccompanied minors? Please list and detail the oversight processes ORR has in place to ensure that contracted companies operating CPFs are providing high quality health care services for each unaccompanied minor.

Educational Needs of Unaccompanied Minors

The Flores settlement requires CPFs to conduct an educational assessment of each unaccompanied minor within 72 hours of the child’s admission. CPFs are then required to provide “educational services based on the individual academic development, literacy level, and

⁴ Letter to Secretary Nielsen (Jan. 16, 2018)

https://static1.squarespace.com/static/597ab5f3beba0a625aaf45/t/5a5e55cf0d9297a44bbb8d3e/1516131791958/2018_01_16+Child+Welfare+Juvenile+Justice+Opposition+to+Parent+Child+Separation+Plan.pdf

⁵ Office of Refugee Resettlement, *Children Entering the United States Unaccompanied: Section 3*, (Published Apr. 20, 2015) <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3>

⁶ *id.*

⁷ Federal Court Filings; Shiloh Treatment Center <https://www.documentcloud.org/documents/4525292-420-2-Exhibit-Vol-2-Exs-21-30-Pages-109-73.html>

⁸ The Center for Investigative Reporting, *Migrant children sent to shelters with histories of abuse allegations*, (Jun. 20, 2018) <https://www.revealnews.org/article/migrant-children-sent-to-shelters-with-histories-of-abuse-allegations/>

linguistic ability” of each unaccompanied minor.⁹ Current ORR policy specifies that each unaccompanied minor must (1) receive “a minimum of six hours of structured education, Monday through Friday, throughout the entire year in basic academic areas (Science, Social Studies, Math, Reading, Writing, Physical Education, and English as a Second Language (ESL), if applicable);” and, (2) receive educational services using learning materials that “reflect cultural diversity and sensitivity,” among other requirements.¹⁰

1. What is the administration’s process to ensure that every unaccompanied minor at a CPF receives –
 - a. an educational assessment within 72 hours of admission to a CPF; and
 - b. the required educational services, including provision of the required learning materials, while detained in ORR custody?
2. What is ORR’s process for evaluation, monitoring, and oversight of required educational services, including curriculum, content, and instruction, provided to unaccompanied minors while in custody to ensure equality of services and appropriateness of services for each unaccompanied minors’ individualized needs, including his or her native language?
3. What are the credentials and educational experience of the individuals providing educational services to unaccompanied minors in CPFs or in DHS custody? Please detail the recruitment and selection of these educators and the educational experience required.
4. In the event of indefinite family detention in DHS custody, what are the processes in place to ensure timely assessment and delivery of educational services for each unaccompanied minor? What is DHS’s oversight process to ensure quality of assessments and related services?

Unaccompanied Minors with Disabilities

Media reports have also found that unaccompanied minors with disabilities have been forcibly separated from their families. One report includes a grandparent who was separated from her grandson, a child with disabilities, after making an asylum claim made at an official Port of Entry.¹¹ This presents new challenges for CPFs, which, even prior to this policy, often failed to identify unaccompanied minors with disabilities, such as Down syndrome or autism spectrum disorders. These incidences also raise new concerns about CPFs’ compliance with applicable federal law and regulations governing the rights, remedies, and special education services for children with disabilities.

1. Are you aware that each state in receipt of funds under the Individuals with Disabilities Education Act (IDEA) must comply with statutory requirements to locate, identify, and evaluate all children with disabilities located within the state, including unaccompanied minors? As such, what is the coordination between ORR, IDEA Part C Lead Agencies, IDEA primary referral sources, and state and local educational agencies to ensure compliance with the IDEA Child Find mandate¹² to identify, locate, and evaluate all

⁹ Office of Refugee Resettlement, *Children Entering the United States Unaccompanied: Section 3*, (Published Apr. 20, 2015) <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3>

¹⁰ *id.*

¹¹ Texas Tribune, *A grandmother seeking asylum was separated from her disabled grandson at the border. It’s been 10 months*, (Jun. 13, 2018) <https://www.texastribune.org/2018/06/13/immigrant-child-asylum-disabilities-separated-grandmother-border/>

¹² 20 U.S.C. § 1412(a)(1)(3)

- children with disabilities (including unaccompanied minors) who need early intervention or special education services under the IDEA?
2. Federal law requires parental consent prior to a child's disability evaluation¹³ and parental involvement in development of each child's individualized educational plan (IEP)¹⁴ to determine the special education services provided. What is the process by which ORR obtains parental consent prior to evaluations for IDEA services?
 3. What training is provided to CPF personnel, including personnel working with infants and toddlers, regarding –
 - a. assessment and placement of unaccompanied minors with disabilities in the appropriate setting; and
 - b. the provision of special education services aligned to the individualized educational needs of each unaccompanied child requiring provision of such services?
 4. If families are detained in DHS custody as a result of the Executive Order, what processes are in place to ensure compliance with all IDEA requirements for identification, evaluation, and provision of special education services for unaccompanied minors with disabilities?

Family Reunification

Forced family separation raises questions about the government's capacity to reunify all parents and children. Because adults are processed through detention and deportation proceedings at a faster rate than children, there is great concern for the possible permanent familial separation in instances where a parent is deported while the child remains in the United States.¹⁵ While the Flores settlement calls for the placement of unaccompanied minors with foster families or licensed child-care facilities after a short time, the Executive Order directs the Attorney General to "file a request with the U.S. District Court for the Central District of California to modify the Settlement Agreement in the Flores settlement in a manner that would permit the Secretary, under present resource constraints, to detain alien families together throughout the pendency of criminal proceedings for improper entry or any removal or other immigration proceedings." According to news reports, on June 22, 2018, HHS formed a family reunification task force to include the HHS Assistant Secretary of Preparedness and Response and HHS' Emergency Management Group.¹⁶ Additionally, a June 26th preliminary injunction requires nearly all children under five to be returned to their parents within 14 days and older children to be returned within 30 days.¹⁷ In light of these developments, a clear and comprehensive unification plan must be developed and promptly implemented.

1. Please list the membership of this task force including agencies, offices, and officials; task force objectives; and the resources available for use by the task force.

¹³ 20 U.S.C. § 1414(a)(1)(D); 20 U.S.C. § 1436(e)

¹⁴ 20 U.S.C. § 1414(d)(1)(B)(i)

¹⁵ NBC, *Former ICE Director: Some migrant family separations are permanent*, (Jun. 19, 2018) <https://www.nbcnews.com/storyline/immigration-border-crisis/former-ice-director-some-migrant-family-separations-are-permanent-n884391>

¹⁶ Politico, *HHS creates task force to reunify migrant families*, (Jun. 22, 2018)

<https://www.politico.com/story/2018/06/22/separated-families-migrants-reunite-667172>

¹⁷ CNN, *Federal judge orders reunification of parents and children, end to most family separations at border*, (June 27, 2018) <https://www.cnn.com/2018/06/26/politics/federal-court-order-family-separations/index.html>

2. How will this task force achieve family reunification of parents and their children, particularly within the timeframe required by the preliminary injunction? Specifically, how will the task force address family separations where a parent has been deported, but the child has remained in the U.S.?
3. With the announcement of the Executive Order and June 26th Court Order, what is the administration's plan for unaccompanied minors who are in ORR custody beyond 20 days, in violation of the Flores settlement?
4. What process will the administration employ to determine "fitness" as the term is used in the June 26th Court Order to ensure that such reading is congruent with child welfare best practices and not used as a loophole to continue detention of unaccompanied minors separate from their parents?
5. According to ORR's case processing and placement guidelines,¹⁸ children under age 13 and sibling groups with one sibling under age 13 are given priority for transitional foster care placements. What is ORR's process to ensure all young children (including children who are not yet verbal and children too young to know identifying details, such as a parent's name or address) who are placed into foster care receive sufficient documentation to allow for successful family reunification?

We thank you for your immediate attention to these questions and look forward to your prompt and detailed response by close of business on Friday, July 6th.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Ranking Member



SUZANNE BONAMICI
Vice Ranking Member



SUSAN A. DAVIS
Member of Congress



RAUL M. GRIJALVA
Member of Congress



JOE COURTNEY
Member of Congress

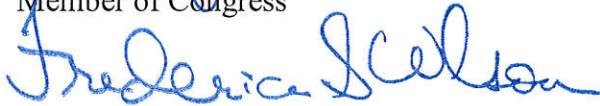


MARCIA L. FUDGE
Member of Congress

¹⁸ Office of Refugee Resettlement, *Children Entering the United States Unaccompanied: Section 1*, (Published Jan. 30, 2015) <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1>



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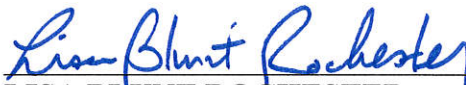
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cc: Virginia Foxx, Chairwoman
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