



CONGRESSIONAL HISPANIC CAUCUS

Joaquin Castro | *Chairman*

116TH CONGRESS

May 6, 2020

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
Mary E. Switzer Building
330 C Street, S.W. Room 5123

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
301 7th Street S.W.
Washington, DC 20528

Dear Secretary Azar and Acting Secretary Wolf,

We are writing to express our grave concerns over the treatment of unaccompanied migrant children during the ongoing health crisis of the COVID-19 pandemic. To date, there are nearly 2,000 unaccompanied children in the custody of the Office of Refugee Resettlement's (ORR) within the Department of Health and Human Services, and it is reported that dozens of these children have tested positive for COVID-19.¹ We object to ORR's practice of holding many of these children in congregate facilities for a period of time beyond that required by nationwide policy, increasing the risk of exposure, and delaying their release to appropriate sponsors. The Flores Settlement Agreement² and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) protect these vulnerable children by requiring the ORR and the U.S. Customs and Border Protection (CBP) to follow well-defined protocols for the temporary shelter and placement of these children as they are put into immigration removal proceedings. We call upon ORR and CBP to follow the federal legal and policy requirements to ensure the health and safety of unaccompanied migrant children during the COVID-19 crisis and to facilitate their immediate release to appropriate sponsor homes.

Unaccompanied migrant children are a vulnerable population due to their tender age and separation from family and may be particularly susceptible to illness and trauma under their precarious circumstances. To better protect migrant children, the Flores Settlement of 1997 set nationwide policy for the detention and treatment of minors in immigration custody. Under the settlement, children must be released from immigration detention without unnecessary delay to their parents or other adult relatives or licensed programs, and may not be detained for more than 20 days.³ The settlement also requires that the children be housed in "safe and sanitary" facilities that meet certain standards, including access to medical assistance.⁴

¹ Camilo Montoya-Galvez, "Judge Finds Government is Violating Protections for Migrant Children During Pandemic," CBS News, April 24, 2020.

² Many terms of the agreement have been codified at 8 C.F.R. §236.3, §1236.3.

³ See, *Reno v. Flores*, 507 U.S. 292 (1993); *Flores v. Lynch*, No. 2:85-CV-04544 (C.D. Cal. Aug. 21, 2015).

⁴ Abbie Gruwell, "Unaccompanied Minors and the Flores Settlement Agreement: What to Know," The National Conference of State Legislatures Blog, October 30 [].

In complement to the Flores Settlement, the TVPRA directs the CBP to screen unaccompanied migrant children in their custody and to promptly transfer those who qualify under statute as referable unaccompanied children within 72 hours to the care and custody of the ORR. The role of ORR is to then ensure that the children are provided with appropriate shelter and support and are swiftly reunited with family or safe sponsors who can tend to them throughout their immigration proceedings.

The ORR facilities that house unaccompanied migrant children consist of congregate spaces - living environments that heighten the risk of COVID-19 spread. Indeed, the Centers for Disease Control and Prevention (CDC) issued specific guidance on the management of detention and custody settings during the pandemic (See, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*). Unaccompanied children are at particular risk because ORR congregate facilities typically accommodate several children at one time, are centered around communal spaces such as bedrooms, dining rooms, and bathrooms, and maintain staff that enter and leave on a daily basis. These facilities often present obstacles to managing the COVID-19 risk pursuant to CDC guidance, including the capability to practice social distancing, adequately sanitize the premises, provide timely medical attention and, where necessary, to quarantine.⁵

Even before the COVID-19 crisis, health professionals and advocates warned of the health dangers of extended detention, particularly for migrant children.⁶ And since the advent of the COVID-19 pandemic, members of the medical community have issued opinions that prolonged detention in facilities can have dangerous consequences for mental health as well, and support the timely reunification of the children with appropriate sponsors.⁷

Despite the heightened risk of COVID-19 infection in the congregate care settings of the ORR facilities and the legal requirement for ORR to promptly reunify children with appropriate sponsors, the ORR continues to delay their release.⁸ While COVID-19-related concerns may justify a delay in release on a case-by-case basis, other reasons for delay are extremely concerning and have alarming consequences. It has been reported that some children who have not been placed with sponsors before they turn 18 “age out” of ORR care and are sent to ICE detention facilities, which are widely reported as posing a severe risk of spreading COVID-19.⁹ In addition, the ORR requirement for sponsors to provide fingerprints before the release of a child is permitted often delays release by weeks or months in certain instances.¹⁰ This practice is all the more concerning given fingerprinting policy changes responsive to the COVID-19 pandemic made by state child welfare agencies across the country. What is more, in a host of cases children otherwise amenable to release have been unnecessarily kept in ORR custody due to stayed removal orders previously issued in connection with the harmful Migrant Protection Protocols, under which DHS sent those children to life-threatening conditions in Mexico.¹¹

In order to prevent the unnecessary delay in the appropriate release of a child, ORR should expedite fingerprinting processing and facilitate and fund the referral of all children to post-release services and,

⁵ Melissa Sahchez, “At Least 19 Children at a Chicago Shelter for Immigrant Detainees Have Tested Positive for COVID-19,” ProPublica Illinois, April 13, 2020.

⁶ Nicole Acevedo, “Migrant Children Face More Serious Health Risks with Longer Detentions, Groups Warn,” NBC News, August 21, 2019.

⁷ Alexa Tomassi, “Children Are at High Risk for COVID-19 Infection in Border Detention Facilities,” Yale School of Medicine, April 16, 2020.

⁸ Camilo Montoya-Galvez, “Judge Finds Government is Violating Protections for Migrant Children During Pandemic,” CBS News, April 24, 2020.

⁹ Zolan Kanno-Youngs, “As Coronavirus Threatens Teenage Migrants ‘Age Out’ into ICE Jails,” New York Times, April 23, 2020; Naureen Shah, Andrea Flores, “Living with COVID - In An Immigration Jail,” ACLU, March 25, 2020.

¹⁰ “Trump Administration Using Fingerprint Checks to Delay Release of Immigrant Children,” The National Center for Youth Law, November 6, 2018.

¹¹ Camilo Montoya-Galvez, “Judge Finds Government is Violating Protections for Migrant Children During Pandemic,” CBS News, April 24, 2020.

if necessary, a home study. These services, including medical, health, and education services administered by a network of child support organizations, provide the follow-on care that is necessary to attend to each child's particular needs. These services are particularly critical during the COVID-19 pandemic to ensure a child's health is properly monitored, any necessary medical attention is provided, and the household is properly safeguarded. Expanded post-release services not only facilitate the best interest of the child, but also serve the public health interest by facilitating medical and health resources to the sponsor households.

With these concerns in mind, we ask that you answer the following questions:

1. Exactly how many unaccompanied children are currently held in ORR facilities? How many of those children have tested positive for the COVID-19 virus?
2. Exactly how many staff are employed at all ORR facilities? How many have tested positive for the COVID-19 virus?
3. What steps is ORR taking to implement the CDC guidance on congregate settings, including enforcing social distancing (particularly in sleeping quarters, dining areas, and bathrooms), isolation, and quarantine and disinfecting the premises continuously, providing adequate soap and water and sanitizer, and distributing Personal Protective Equipment (PPE)? How do these steps differ according to the kind of placement (e.g., secure, staff-secure, etc), if at all?
4. What proportion of staff are provided with the necessary PPE supplies?
5. What medical care is the ORR providing in all of its facilities in order to monitor the children's condition as needed? What efforts does ORR make to identify and protect unaccompanied children at heightened risk of serious illness or death from a COVID-19 infection? On what basis are children being tested for COVID-19, and how many have been tested to date?
6. What steps are taken when a child tests positive for COVID-19 to ensure proper treatment? What manner of quarantine is established in facilities where a child or staff member has tested positive?
7. How many children have been released to sponsors per month since January, 2020? What is the current average length of stay for children in ORR facilities?
8. How many children have experienced a delay in release to an approved sponsor for COVID-19 related reasons since January 2020? How many of those children remain in ORR custody? How many of these children turned 18 and were transferred to ICE custody?
9. In the case of any unaccompanied children who are repatriated and have been tested for or potentially exposed to COVID-19, what medical records from their time in ORR custody are provided to them upon release for purposes of repatriation? If records are not affirmatively provided, what policies or procedures has ORR implemented to facilitate the release of medical records to children who have been repatriated? Do these policies or procedures take into account the stringent quarantine and stay-at-home orders currently in effect in countries such as Guatemala, Honduras, and El Salvador?
10. Of all the ORR fingerprinting facilities, how many are closed or have reduced capacity? What resources are being utilized to make up for the decline of capacity? What is being done to address closed facilities that are in geographically remote areas? What is the current amount of time that ORR is taking to complete fingerprinting? What was the time frame in January 2020?
11. Is ORR considering an increase in referrals for post-release services as a mechanism to hasten the release of children to appropriate sponsors? If so, what specific services will be extended and will they be funded by ORR?

While we are all joined in our effort to contain and overcome the unprecedented threat COVID-19 presents, we cannot forswear our commitment to uphold the basic principles of humanity - the most consequential of which is the care for children. Since the health and safety of unaccompanied migrant children are at stake, we ask that you provide answers to the above questions by May 15, 2020.

Sincerely,

Joaquin Castro
CHC Chair

Ruben Gallego
CHC First Vice Chair

Adriano Espaillat
CHC Whip

Juan Vargas
Member of Congress

Jesus "Chuy" Garcia
Member of Congress

Nydia M. Velazquez
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Tony Cárdenas
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