

Congress of the United States
Washington, DC 20515

November 24, 2020

The Honorable Chad Wolf
U.S. Department of Homeland Security
1880 2nd Street SW
Washington, DC 20024

Dear Mr. Wolf:

We write out of grave concern for the children the Trump Administration continues to neglect and treat with disregard at the southwest border. Under your leadership, DHS has continuously exploited a public health emergency as a pretext to circumvent immigration law, decimating our country's asylum system and placing children in harm's way through policies such as expulsions under the Title 42 order and detentions in hotels (which have not been certified for child welfare standards). While federal courts recently enjoined the expulsions of unaccompanied children under Title 42 and the prolonged detention of children in hotels, thousands of children and families continue to be expelled to unknown dangers and harms under the Title 42 order.¹

In addition to these expulsions and detentions in hotels, it has also come to our attention that DHS continues to disregard federal law, agency standards, and the *Flores* Settlement Agreement by holding children in CBP custody for extended periods. The 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act generally requires CBP to transfer unaccompanied children to ORR within 72 hours of determining that the child is unaccompanied.² Similarly, the CBP National Standards on Transport, Escort, Detention, and Search state that all detainees should generally not be held for longer than 72 hours in CBP custody and requires CBP to expend "every effort" to hold individuals for the least amount of time possible.³ With limited exceptions, the *Flores* Settlement generally requires that all children – both unaccompanied and children arriving with parents or legal guardians – must be transferred to a licensed placement within three days of their apprehension.⁴

In the last two months alone, CBP has detained 14 children under the age of five for longer than five days, including a *one-month-old baby* who was detained for over 16 days in September 2020. We demand an immediate explanation for these prolonged detentions and that DHS comply with the law and swiftly place unaccompanied children in the care of the Office of Refugee Resettlement ("ORR") or parole accompanied children and families into the interior.

¹ See *PJES v. Wolf*, Case No. 1:20-cv-02245, Memorandum Opinion, ECF 80, (D.D.C Nov. 18, 2020) (enjoining the expulsion of unaccompanied minors pursuant to the Title 42 CDC Order); see also *Flores v. Barr*, Case No. 2:28-cv-04544-DMG, Order re Plaintiffs' Motion to Enforce Settlement as to "Title 42" Class Members, ECF No. 976 (C.D. Cal. Sept. 4, 2020) (enjoining the prolonged placement of class members in unlicensed hotels).

² 8 U.S.C. § 1232 (b)(3).

³ See U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention and Search*, § 4.1 Duration of Detention, October 2015, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

⁴ *Flores* Settlement Agreement ¶ 12; see National Center for Youth Law, *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody*, at 4, Feb. 2019, <https://youthlaw.org/wp-content/uploads/2019/02/Flores-Congressional-Briefing.pdf>.

CBP data shows that a total of 71 children were held in CBP custody for over 72 hours in September and October 2020.⁵ Below, please find the children held in detention longer than five days in October 2020:

- An 8-year-old held for approximately 5.3 days (127.52 hours)
- A 5-year-old held for approximately 5.3 days (127.52 hours)
- A 2-year-old held for approximately 5.7 days (136.40 hours)
- A 5-year-old held for approximately 6.1 days (145.55 hours)
- A 12-year-old held for approximately 6.5 days (156.08 hours)
- A 4-year-old held for approximately 6.5 days (156.08 hours)
- A 4-year-old held for approximately 7.1 days (170.03 hours)
- A 13-year-old held for approximately 7.2 days (171.88 hours)
- An 8-month-old held for approximately 7.2 days (171.90 hours)
- A 9-month-old held for approximately 7.4 days (177.50 hours)
- A 16-year-old held for approximately 8 days (193.00 hours)
- A 2-year-old held for approximately 11 days (264.87 hours)
- A 12-year-old child for approximately 11.4 days (272.95 hours)
- A 6-year-old child for approximately 11.4 days (272.95 hours)
- A 17-year-old child for approximately 18.3 days (438.87 hours)

In September 2020, 36 children were held for over 72 hours. Of those children, 16 were held for five days or longer. Below, please find the children held in detention longer than five days in September 2020:

- A 5-month-old held for approximately 5.2 days (124.83 hours)
- A 4-month-old held for approximately 5.2 days (124.83 hours)
- A 2-year-old held for approximately 5.4 days (129.77 hours)
- A 17-year-old held for approximately 5.4 days (130.37 hours)
- A 15-year-old held for approximately 5.9 days (142.62 hours)
- A 17-year-old held for approximately 6.3 days (151.73 hours)
- A 3-month-old held for approximately 6.4 days (152.98 hours)
- A 6-year-old held for approximately 6.7 days (155.23 hours)
- A 2-year-old held for approximately 6.7 days (160.27 hours)
- A 7-year-old held for approximately 7 days (167.90 hours)
- A 15-year-old held for approximately 12.9 days (308.97 hours)
- A 4-month-old held for approximately 13 days (311.65 hours)
- A 15-year-old held for approximately 14 days (336.45 hours)
- A 12-year-old held for approximately 14 days (336.47 hours)
- A 3-month-old held for approximately 14.38 days (345.12 hours)
- A 1-month-old held for approximately 16.4 days (394.47 hours)

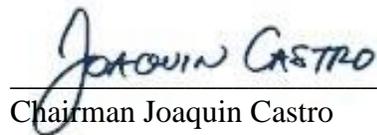
⁵ This information is drawn from a de-identified summary of the September and October 2020 *Flores* data reports shared by *Flores* counsel. Ages of infants are approximated to the nearest month.

In accordance with the law and its own agency standards, CBP should generally transfer unaccompanied children to a licensed ORR placement within 72 hours. While DHS has argued in court that the intake process can take longer than 72 hours to place children in an ORR shelter, the Court has ordered that DHS continue to place children out of CBP custody within 72 hours.⁶ During the month of September, ORR's facilities were substantially under capacity and could have easily accommodated these children before the 72 hours ended.⁷ Failing to lawfully transfer these children in time is simply negligent. DHS's continued pattern of violating the law, is egregious, disturbing, and unacceptable.

We implore you to ensure migrant children are kept safe and either immediately transferred out of DHS's jurisdiction into ORR's custody or released together with their families. We await an explanation for these children's prolonged CBP detention, including the 14 children under the age of five who were detained for more than five days. These children deserve and are legally entitled to care and humane treatment after the treacherous journey from their countries of origin.

We anticipate your response within 30 days, and we thank you for your attention and prompt response. If you have any questions regarding this request, please contact Kaitlyn Montan in my office at Kaitlyn.Montan@mail.house.gov.

Sincerely,



Chairman Joaquin Castro
Congressional Hispanic Caucus

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Committee on Homeland Security

Chairman Jerrold Nadler
Committee on the Judiciary

Chairwoman Kathleen Rice
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Education, and Related Agencies

Chair Lucille Roybal-Allard
Appropriations Subcommittee
Homeland Security

⁶ <https://www.courthousenews.com/wp-content/uploads/2020/09/FloresMotelStayOrder09212020.pdf>

⁷ Based off data shared with House and Senate Congressional offices during their biweekly calls.

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