

Congress of the United States

Washington, DC 20510

April 23, 2020

The Honorable Alex Azar
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

We write with great concern regarding reports the Office of Refugee Resettlement (ORR) is considering implementing aggressive immigration policies that are not in the best interests of the children in its care. Further, we strongly oppose the Trump Administration using the cover of the global COVID-19 pandemic as an opportunity to undermine protections for children and enact President Trump’s anti-immigrant agenda. The actions of the Administration during this global pandemic should be guided by public health expertise and rooted in humanity and understanding—not opportunistic cruelty. We call on you, as Secretary, to ensure the Department of Health and Human Services (HHS) upholds the letter and the spirit of the laws that protect children and that ORR’s top priority remains children’s wellbeing.

According to recent reporting, ORR is “seeking to delay placing migrant children in shelters operated by the health department, which would instead leave those children in the custody of the border patrol for an extended length of time.”¹ The office is also reportedly exploring policies that would prohibit children from being placed with sponsors who are undocumented immigrants. Finally, ORR is examining whether to fingerprint all adults in the homes of potential sponsors. These policies are all the more concerning in the context of reports that Jonathan Hayes, ORR Director from February 2019 to March 2020, was removed from his position because he “valued keeping families together.”²

These measures not only will undermine ORR’s mission of ensuring a safe environment, while finding appropriate placements for children, but they likely violate the laws and policies that govern the operation of the unaccompanied alien children (UAC) program. The 1997 *Flores* settlement agreement and the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 dictate the conditions for treatment of UACs in the United States.³ These mechanisms mandate that, once a child is deemed a UAC, they must be moved out of Customs and Border Patrol (CBP) and into ORR custody within 72 hours. The laws also emphasize release to sponsors as one of the core missions of the UAC program and place numerous conditions on the sponsor identification process to ensure the child and sponsor’s safety – not immigration status –

¹ <https://www.politico.com/news/2020/04/16/stephen-miller-hhs-family-separation-189784>

² <https://www.salon.com/2020/04/17/millers-hardline-refugee-policies-revived-only-a-matter-of-time-before-the-situation-blows-up/>

³ *Flores v. Reno*, U.S. District Court, Central District of California Stipulated Settlement Agreement (Jan. 17, 1997); *William Wilberforce Trafficking Victims Protection Reauthorization of 2008*, Public Law 110-457 (Dec. 23, 2008).

are central to the sponsorship determination. In the last two years, ORR additionally has issued operational directives that restrict the use of fingerprinting as part of sponsor background checks.⁴ Directives issued in December 2018 and March 2019 significantly narrowed the circumstances under which potential sponsors and members of their household are required to undergo fingerprint background checks.

Moreover, Congress required no changes could be made to the December 2018 and March 2019 operational directives, including the existing fingerprinting policy, unless the Secretary determines such changes are necessary to prevent unaccompanied alien children from being placed in danger. The Secretary must provide written notifications of such determinations to both Congress and the Inspector General of the Department of Health and Human Services.⁵ You have not provided Congress with any such justification, nor is it likely the reported policy changes being considered by ORR leadership could be justified as necessary to prevent danger to the children in their care.

It is absolutely unacceptable for the Trump Administration again to consider adopting policies that appear cruelly designed to keep children from their parents and guardians and would prioritize the pursuit of an anti-immigrant agenda over children's safety and wellbeing. On a bipartisan basis, Congress rejected the Trump Administration's cruel zero tolerance and family separation efforts. HHS must not seek to use the cover of a global crisis to travel back down that dark path. We are watching – and we will ensure every effort is made to maintain children's health and safety. We expect you to do the same.

Sincerely,


Senator Patty Murray


Representative Rosa DeLauro

cc: The Honorable Lynn Johnson
Assistant Secretary, Administration for Children and Families
Department of Health and Human Services

⁴ <https://www.hhs.gov/about/agencies/asl/testimony/2019-05/the-humanitarian-and-security-crisis-at-our-southern-border.html>

⁵ H.R. 1865, Further Consolidated Appropriations Act of 2020, § 231.