

Congress of the United States
Washington, DC 20515

April 22, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, D.C. 20528

Dear Secretary Azar and Acting Secretary Wolf,

We write to request that you take all reasonable steps to protect the health and safety of children in U.S. custody due to the risk of the spread of the novel coronavirus among detained children.

There are currently nearly 2,400 children in Office of Refugee Resettlement's (ORR) within the Department of Health and Human Services (HHS) custody, including licensed shelters.¹ According to public health experts, people in confined spaces "are at special risk of infection, given their living situations," and "may also be less able to participate in proactive measures to keep themselves safe, and infection control is challenging in these settings."² We are especially concerned that most ORR facilities require children to share bedrooms, bathrooms, and dining spaces, which make remaining at least six feet apart difficult to observe. Unsurprisingly, the virus has spread quickly and has now infected at least 40 children in ORR custody and 69 self-reported ORR contractor staff and foster parents.³ The ongoing crisis, inability to protect themselves, and mounting cases in ORR custody expose these children to significant stress.

ORR has a statutory duty to safely and promptly reunify every child in its care. As such, ORR must release these children safely and appropriately to sponsors so that they can better observe the recommended measures to protect themselves and caregiving adults from infection. Prolonged detention harms the physical and mental health of immigrant children. According to an HHS Inspector General report dated March 5, 2020, ORR's operational challenges in

¹ Ted Hesson, Mica Rosenberg, Reuters, *U.S. deports 400 migrant children under new coronavirus rules* (Apr. 7, 2020), available at <https://www.reuters.com/article/us-health-coronavirus-usa-deportations/u-s-deports-400-migrant-children-under-new-coronavirus-rules-idUSKBN21P354>.

² *Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States* (Mar. 2, 2020), available at https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf.

³ See Bill Hutchinson, ABC News, *Coronavirus outbreak sickens at least 37 children at Chicago shelter for undocumented immigrant youth* (Apr. 16, 2020), available at <https://abcnews.go.com/US/coronavirus-outbreak-sickens-37-children-chicago-shelter-undocumented/story?id=70181842>; Tom Jones and Melissa Adan, NBC San Diego, *Employees Fear Spread of Coronavirus in San Diego's Migrant Youth Shelters* (Apr. 1, 2020), available at <https://www.nbcsandiego.com/news/investigations/employees-fear-spread-of-coronavirus-in-san-diegos-migrant-youth-shelters/2297632/>; Hamed Aleaziz, BuzzFeed News, *Three Unaccompanied Immigrant Children In US Custody Have Tested Positive For The Coronavirus* (Mar. 26, 2020), available at <https://www.buzzfeednews.com/article/hamedaleaziz/positive-coronavirus-test-unaccompanied-immigrant-children>.

reunifying children caused additional stress to children in its custody.⁴ The Executive Office for Immigration Review's (EOIR) failure to suspend immigration court proceedings for children in ORR custody—thereby requiring them to sit in crowded buses and waiting areas to attend their court hearings—exacerbates the dangers and fears of these vulnerable children. It is imperative that ORR ensure that no child is subjected to unnecessarily protracted detention for reasons that do not protect their health and safety.

To be clear, ORR's responsibility to promptly reunify children when safe and consistent with medical guidance does not justify departure from applicable federal laws. Under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), U.S. Customs and Border Protection (CBP) has a statutory mandate to transfer unaccompanied children arriving at the southern border to HHS within 72 hours. Yet, CBP personnel have reportedly expelled unaccompanied children without conducting adequate screening and referring them to ORR.⁵ Moreover, administration officials are reportedly considering delaying the transfer of children to ORR altogether, leaving them in U.S. Border Patrol custody in violation of the TVPRA. This is especially concerning in light of CBP's documented failure to prioritize the health and safety of children, including its refusal to vaccinate children despite the Centers for Disease Control and Prevention's (CDC) recommendations, the DHS Inspector General's finding that CBP permitted dangerous overcrowding at facilities holding children,⁶ and the deaths of at least six migrant children in CBP custody in less than a year due to medical issues.

Upon transfer to HHS custody, ORR must take recommended measures to protect the health and safety of staff, children, and the general public. That includes the expeditious and safe release of children to sponsors. Although the vast majority of children in ORR custody have sponsors to which they can be released, ORR has reportedly unnecessarily delayed reunifying some of these children with their sponsors. We are also deeply troubled by reports that administration officials are considering policies—including the fingerprinting of adult household members of sponsors—that may delay the reunification process.⁷ In identifying appropriate sponsors for children, ORR must ensure its policies are narrowly tailored to protect the health and safety of children. During the ongoing, serious public health crisis, it is unjustifiable to needlessly protract unaccompanied children's detention for any reason not directly related their health and safety.

Children are some of the most vulnerable among us, and we must fulfill our moral and legal obligations to protect their health and safety. These conditions are dangerous for any individual in detention—let alone vulnerable children in our care. Keeping them in needlessly prolonged detention poses immeasurable risk to their lives and the lives of their loved ones. We ask that you urgently and safely pursue expedited release of all immigrant children from U.S. custody to

⁴ Christi A. Grimm, OEI-BL-18-00510, *Communication and Management Challenges Impeded HHS's Response to the Zero-Tolerance Policy* (Mar. 2020), available at <https://oig.hhs.gov/oei/reports/oei-BL-18-00510.pdf>.

⁵ See Hamed Aleaziz, BuzzFeed News, *The Trump Administration Is Now Deporting Unaccompanied Immigrant Kids Due To The Coronavirus* (Mar. 30, 2020), available at <https://www.buzzfeednews.com/article/hamedaleaziz/coronavirus-unaccompanied-minors-deported>.

⁶ U.S. Department of Homeland Security, *Office of Inspector General, Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley (Redacted)* (July 2, 2019), available at https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf.

⁷ Dan Diamond, Politico, *Stephen Miller's hard-line policies on refugee families make a comeback at HHS* (Apr. 16, 2020), available at <https://subscriber.politicopro.com/agriculture/article/2020/04/stephen-millers-hardline-policies-on-refugee-families-make-a-comeback-at-hhs-1916248>.

the care of sponsors and loved ones and take all reasonable steps to protect children in your custody.

Sincerely,



Kamala D. Harris
United States Senator

/s/ Tom Udall
United States Senator

/s/ Mazie K. Hirono
United States Senator

/s/ Jacky Rosen
United States Senator

/s/ Martin Heinrich
United States Senator

/s/ Cory A. Booker
United States Senator

/s/ Catherine Cortez Masto
United States Senator

/s/ Tina Smith
United States Senator

/s/ Tammy Duckworth
United States Senator

/s/ James P. McGovern
Member of Congress

/s/ Sylvia R. Garcia
Member of Congress

/s/ Nydia M. Velázquez
Member of Congress

/s/ Jamie Raskin
Member of Congress



Veronica Escobar
Member of Congress

/s/ Edward J. Markey
United States Senator

/s/ Robert P. Casey Jr.
United States Senator

/s/ Elizabeth Warren
United States Senator

/s/ Amy Klobuchar
United States Senator

/s/ Ron Wyden
United States Senator

/s/ Thomas R. Carper
United States Senator

/s/ Bernard Sanders
United States Senator

/s/ Karen Bass
Member of Congress

/s/ Ayanna Pressley
Member of Congress

/s/ Adriano Espaillat
Member of Congress

/s/ Bonnie Watson Coleman
Member of Congress

/s/ Joe Neguse
Member of Congress

/s/ Eleanor Holmes Norton
Member of Congress

/s/ Henry C. "Hank" Johnson, Jr.
Member of Congress

/s/ Michael F.Q. San Nicolas
Member of Congress

/s/ Grace F. Napolitano
Member of Congress

/s/ Gerald E. Connolly
Member of Congress

/s/ Darren Soto
Member of Congress

/s/ Ilhan Omar
Member of Congress

/s/ Jan Schakowsky
Member of Congress

/s/ Albio Sires
Member of Congress

/s/ Judy Chu
Member of Congress

/s/ Ann Kirkpatrick
Member of Congress

/s/ Lucille Roybal-Allard
Member of Congress

/s/ Danny K. Davis
Member of Congress

/s/ Deb Haaland
Member of Congress

/s/ Debbie Mucarsel-Powell
Member of Congress

/s/ Bill Foster
Member of Congress

/s/ Peter Welch
Member of Congress

/s/ Diana DeGette
Member of Congress

/s/ Frederica S. Wilson
Member of Congress

/s/ Joseph P. Kennedy, III
Member of Congress

/s/ Nanette Diaz Barragán
Member of Congress

/s/ Mark Pocan
Member of Congress

/s/ Raúl M. Grijalva
Member of Congress

/s/ David N. Cicilline
Member of Congress

/s/ Pramila Jayapal
Member of Congress