

**Congress of the United States**  
Washington, DC 20515

April 2, 2020

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

The Honorable Chad F. Wolf  
Acting Secretary  
U.S. Department of Homeland Security  
301 7<sup>th</sup> St. SW  
Washington, D.C. 20528

James McHenry  
Director  
Executive Office for Immigration Review  
U.S. Department of Justice  
5107 Leesburg Pike  
Falls Church, VA 22041

Mr. Mark A. Morgan  
Acting Commissioner  
Customs and Border Protection  
1300 Pennsylvania Ave., NW  
Washington, DC 20229

Dear Secretary Azar, Director McHenry, Acting Secretary Wolf, and Acting Commissioner Morgan,

Thousands of immigrant children are currently held in the care and custody of the Office of Refugee Resettlement (ORR). Most of these children are held in facilities that far exceed the ten-person limit recommended by this administration during the COVID-19 pandemic, per the guidance of public health experts. Unsurprisingly, the virus continues to spread quickly and has now infected ORR staff and children. Meanwhile, ORR has slowed down its reunification of children with their loved ones and halted visitation, putting at risk their mental and physical health as this virus continues to spread aggressively.

Keeping any group of individuals—let alone children—in custody for prolonged, unnecessary periods of time may have lethal consequences during this pandemic. The highly contagious character of this disease paired with the inevitable close contact in ORR-funded shelters will intensify the public health crisis we face today. Public health experts are unanimous as to the necessity to implement social distancing to save lives and avoid further straining our health care system. We can—and must—do better on behalf of immigrant children who are in our care and responsibility. In light of this public health crisis, we vehemently urge you to take the following actions:

- **Expedited reunifications.** We must heed the advice of public health professionals and immediately and safely expedite the reunification of children with their families, halting

their prolonged custody in coordination with medical professionals and consistent with medical guidance and child welfare best practice. The vast majority of children have parents or relatives who are ready to welcome them into their homes and can offer a smaller setting to protect children from the spread of this virus. ORR is statutorily responsible for the safe and prompt reunification of every child in its care. This obligation is magnified during a pandemic where continuing to hold a large number of individuals creates a greater risk that this virus will spread among them. Additionally, on March 29, a federal judge ordered the federal government to “make continuous efforts” to release children from ORR custody.<sup>i</sup>

- **Halt Unnecessary Transfers to ICE.** Many children are facing the prospect of unnecessary transfers into the custody of the Immigration and Customs Enforcement (ICE) because of frozen or delayed reunification while others are rushed into court hearings designed to deport them at the fastest pace possible. Children who do not present a danger to themselves or others should not be transferred into ICE custody, which harbors larger populations and provides substandard medical care,<sup>ii</sup> because they aged out of ORR care during this public health crisis. ORR is obligated under Section 232 of the FY2019 Labor-HHS Appropriations Bill to create post-18 plans for each child who risks transfer into ICE custody. ORR must continue to comply with the law and create safety plans to avert unnecessary transfers into ICE custody. Correspondingly, ICE must consider the least restrictive setting available and not take children into its custody absent a statutory threshold of dangerousness or flight risk.<sup>iii</sup> Unnecessarily increasing the population of ICE detainees with vulnerable youth only increases the imminent risks to the health and safety of all.
- **Admission and prompt transfer of border-apprehended children to ORR.** Under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Customs and Border Protection has a statutory mandate to transfer nonneighboring unaccompanied children to HHS within 72 hours.<sup>iv</sup> DHS has announced they will not be admitting children arriving at the southern border, as part of their broader policies to remove asylum seekers to other countries without reviewing their claims of persecution. We call on CBP to guarantee compliance with the TVPRA for every unaccompanied child it encounters or apprehends.
- **Protect the Due Process Rights of Children.** The Department of Justice’s Executive Office for Immigration Review continues to process children through detained dockets aimed at deporting them as quickly as possible. These proceedings have frequently left detained children alone, without the assistance of an attorney, facing an ICE attorney who vehemently argues for their removal and a judge who is hundreds of miles away on a video screen. These conditions would cause confusion and distress in adults, let alone children, and the backdrop of a global pandemic only heightens these stressors. ORR and ICE should work with DOJ to halt hearings for all unaccompanied children during the

course of this public health crisis, when children's fears and vulnerability are at an all-time high and when alternatives (telephonic or video appearances, or waving children's presence) further undermine children's meaningful participation in their hearings.

- **Increased Mental Health Services.** This pandemic takes a toll on all, especially children. Immigrant children in custody are more prone to suffer mental harm due to their isolation from their relatives. In addition to increasing preventive and hygienic measures mandated by the Centers for Disease Control and Prevention, we bear a responsibility to these children to ensure they continue to receive the mental health care they need with the full array of confidential protections under our laws.
- **Communicating new policies and procedures.** We understand that ORR is working with both federal and state health authorities. ORR should promptly communicate all changes in policies and procedures for the care, transfer and release of children in its custody with all of its contractors and grantees including legal services providers (LSPs), child advocates, and post-release and home study service providers.

We fully expect your offices to care for and treat any person who is exposed to COVID-19 while in your custody. But providing testing and treatment is not enough to comply with our moral and legal obligations towards these children and youth. We cannot forget about how this crisis impacts those most vulnerable among us. This includes unaccompanied immigrant children under your care.

Sincerely,



Rosa DeLauro  
Chair  
House Appropriations Committee  
Subcommittee on Labor, Health and  
Human Services, Education,  
and Related Agencies



Patty Murray  
Ranking Member  
Senate Appropriations Committee  
Subcommittee on Labor, Health and  
Human Services, Education  
and Related Agencies

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<sup>i</sup> See Miriam Jordan, *Judge Urges Release of Migrant Children After 4 Test Positive for Coronavirus in Detention*, New York Times (Mar. 29, 2020), available at <https://www.nytimes.com/2020/03/29/us/coronavirus-migrant-children-detention-flores.html>.

<sup>ii</sup> See Hamed Aleaziz, *A Child's Forehead Partially Removed, Four Deaths, The Wrong Medicine — A Secret Report Exposes Health Care For Jailed Immigrants*, BuzzFeed (Dec. 12, 2019), available at <https://www.buzzfeednews.com/article/hamedaleaziz/ice-immigrant-surgeries-deaths-jails-whistleblower-secret>.

<sup>iii</sup> 8 U.S.C. § 1232(c)(2)(B).

<sup>iv</sup> 8 U.S.C. § 1232(b)(3).