

United States Senate
WASHINGTON, DC 20510

March 26, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, D.C. 20528

The Honorable Xavier Becerra
Secretary of Health and Human Services
Washington, D.C. 20201

Dear Secretary Mayorkas and Secretary Becerra:

Each day brings new reports of a surge of arrivals at the U.S. southern border, which we know will increase the risk of trafficking in persons, especially for unaccompanied alien children (UAC) arriving in greater numbers.

Working together on the Permanent Subcommittee on Investigations (PSI), we conducted an investigation of how the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) failed to properly care for UACs after it came to light that some of these children ended up in servitude on an egg farm in Marion, Ohio. We issued three reports and held three hearings to highlight our findings about DHS and HHS failures to coordinate the care of UACs appropriately and HHS failures to ensure the safety of—or even keep track of—these vulnerable children once handed off to their sponsors, many of whom did not have legal custody of the children.

We also learned that the flawed process for managing this vulnerable group of children stemmed from a fundamental refusal by agencies to accept that they were responsible for their welfare. Unsurprisingly, what flowed from this basic problem were poorly managed communications and handoff processes as the children moved from agency to agency. Likewise, it resulted in weak follow-up protocols from DHS and HHS to ensure their continued well-being. In fact, follow-up welfare checks and proactive efforts to ensure that these UACs remained in the formal immigration system might have protected them from traffickers but often did not take place.

The Subcommittee also identified failures in HHS's shelter grant processes and highlighted significant gaps in our immigration system's ability to provide basic care for unaccompanied children. Specifically, HHS awarded shelter grants to two companies with a documented history of failing to provide adequate care for children. These gaps resulted in HHS disbursing over \$32 million in funds for shelter facilities that will never open.

In the midst of this current surge of UACs at the southern border, we urge the Administration to affirm our understanding that the law gives the Administration authority over all UACs – including those placed with sponsors who are not their legal guardians – until the completion of removal proceedings or placement with their parent or legal guardian.¹ It is also our strong view that the Administration must ensure that the UACs it places with sponsors who are not their legal parent or guardians are not subject to abuse or human trafficking.

In addition, we want to call your attention to recommendations for best practices generated by PSI's oversight investigations, which include:

- Reviewing and improving information sharing arrangements between DHS and HHS to avoid mistakes as children pass through your custody and to make the system dissuasive to would-be traffickers;
- Carrying out background checks on sponsors and other adults in sponsors' households;
- Maintaining a persistent practice of follow-up welfare checks to ensure that UACs are safe;
- Enforcing a requirement that sponsors ensure that UACs appear for their immigration proceedings;
- HHS working to secure pro bono legal services for children living with sponsors;
- DOJ investing in a full complement of immigration judges;
- HHS identifying the appropriate point of contact in all 50 state governments and notifying them regarding the placement of UACs with sponsors in those states;
- HHS offering training to state and local government officials to educate them on their role, responsibilities, and authorities concerning UACs;
- HHS submitting required post-placement plans to DHS for UACs who turn age 18 while in HHS's care;
- HHS permanently requiring ORR grant applicants to disclose prior and current adverse governmental action taken against them regarding the care of children in their grant applications;
- HHS permanently requiring ORR grant applicants to be licensed at the time of application; and
- HHS reviewers proactively checking state databases for information on previous adverse governmental actions regarding the care of children taken against applicants for ORR funding.

¹ The term "unaccompanied alien child" means a child who "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2). The Trafficking Victims Protection Reauthorization Act provides: "[T]he care and custody of all unaccompanied alien children . . . shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1).

We would like to request a staff-level briefing on this matter, identifying the specific steps your agencies are taking to ensure that these children do not fall victim to human trafficking, abuse, or other harm.

Sincerely,

Handwritten signature of Rob Portman in blue ink, written over a horizontal line.

Rob Portman
U.S. Senator

Handwritten signature of Tom Carper in blue ink, written over a horizontal line.

Thomas R. Carper
U.S. Senator

CC: The Honorable Jon Ossoff
Chairman
Permanent Subcommittee on Investigations

The Honorable Ron Johnson
Ranking Member
Permanent Subcommittee on Investigations