

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

June 22, 2018

CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

Scott Lloyd
Director
Office of Refugee Resettlement
U.S. Department of Health and Human Services
330 C Street, SW
Washington, DC 20201

Dear Mr. Lloyd:

On May 7, 2018, Attorney General Jeff Sessions introduced a new policy that will require the prosecution of every adult who crosses the border illegally.¹ When families were apprehended crossing the border, this policy, commonly referred to as the “zero tolerance” policy, resulted in the widespread, forcible separation of children from their parents.

After an outcry from Congress and the American people, President Donald Trump signed an Executive Order on June 20, 2018, that temporarily ended separations.² However, the order did not end the zero tolerance policy.³ Under the order, the Department of Homeland Security is instructed to “maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings involving their members.”⁴ As the order acknowledges, the prolonged detention of families with children quickly runs into legal limitations, including the

¹ Department of Justice, *Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration* (May 7, 2018).

² Exec. Order, “Affording Congress an Opportunity to Address Family Separation” (June 20, 2018).

³ Since order was issued, at least one report suggested the Border Patrol will stop referring for prosecution migrant parents who illegally cross into the U.S. However, the same report indicates this is only a temporary measure until Immigration and Customs Enforcement secures sufficient facilities to detain families. Regardless, this report has not been confirmed by DHS and the decision for prosecution still rests with the Department of Justice, whose zero tolerance policy is unchanged. *Border Patrol will stop referring migrant parents who cross into the U.S. illegally with children for prosecution, official says*, Washington Post (June 21, 2018) (https://www.washingtonpost.com/world/national-security/us-will-stop-prosecuting-parents-who-cross-the-border-illegally-with-children-official-says/2018/06/21/4902b194-7564-11e8-805c-4b67019fcfe4_story.html?utm_term=.ec5ba0ce2240).

⁴ Exec. Order, “Affording Congress an Opportunity to Address Family Separation” (June 20, 2018).

1997 *Flores* settlement.⁵ While the President instructed the Department of Justice (DOJ) to seek relief from these restrictions, this leeway is not assured.⁶ The order allows for the renewed separation of children from families should the courts prohibit extended family detentions.⁷

The order did not address the hundreds of separated families prior to June 20, 2018. After the zero tolerance policy began, the Department of Homeland Security (DHS) separated thousands of children from their families and turned them over to the Department of Health and Human Services (HHS) for custody and placement. According to DHS, between May 5, 2018, and June 9, 2018, DHS separated 2,342 children from their parents.⁸ The average daily number of children placed into the custody of HHS jumped from approximately three to 70.⁹

Since 2015, I have conducted oversight into how the federal government cares for unaccompanied alien children (UACs). Despite multiple hearings, letters, a bipartisan report, and briefings, HHS has failed to take adequate measures to ensure that the children in its care are safe. For example, HHS has limited to no interaction with them after they are placed in the care of a sponsor unless that child is receiving post-release services. This leaves children vulnerable to trafficking, neglect, or even abuse at the hands of sponsors or other individuals in the sponsor's household, both of whom may not be related to the child.¹⁰ The failure to acknowledge responsibility for children after they are released into the custody of a sponsor, has also meant that there are some children that HHS simply loses track of. In April, HHS reported that there were 1,475 children who had been released to sponsors whose whereabouts were unknown to HHS.¹¹

⁵ *Flores v. Meese—Stipulated Settlement Agreement* (C. D. Cal. 1997).

⁶ *Top DOJ official: Government can only detain families together for up to 20 days*. The Hill (June 20, 2018).

⁷ Exec. Order, "Affording Congress an Opportunity to Address Family Separation" (June 20, 2018).

⁸ Department of Homeland Security, Department of Health and Human Services, Department of Justice, Briefing with Congressional Staff (June 18, 2018).

⁹ Between October 2017 and April 2018. *Complaint targets separation of immigrant families at border*, Washington Post (May 31, 2018) (https://www.washingtonpost.com/national/complaint-targets-separation-of-immigrant-families-at-border/2018/05/31/58bc031e-6534-11e8-81ca-bb14593acaa6_story.html?noredirect=on&utm_term=.337a6902c86e).

¹⁰ Senate Permanent Subcommittee on Investigations, *Hearing on Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse* (Apr. 26, 2018); Senate Permanent Subcommittee on Investigations, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement* (Jan. 25, 2016).

¹¹ *Federal agency says it lost track of 1,475 migrant children*, Washington Post (Apr. 27, 2018) (<https://www.washingtonpost.com/national/federal-agency-says-it-lost-track-of-1475->

In order to ensure proper Congressional oversight regarding the zero tolerance policy and the Executive Order, including the reunification of families under the order and the potential for family separations to resume in the future, I ask that you provide the following information:

1. What steps, if any, has HHS taken since June 20 to reunite separated families? If none, please identify any provisions in the Executive Order or the law that prohibit HHS from reuniting families.
2. Since May 7, what is the average length of time that separated children have remained separated from their parents? Since May 7, how many separated families have been reunited? Since June 20?
3. Should the courts determine that the prolonged detention of families is prohibited, will HHS resume detaining separated children? Please describe HHS's plans in the event that the administration is unable to secure an amendment to the *Flores* settlement.
4. Please provide the number of children DHS referred to the HHS each month since January 1, 2018. How many of these children were unaccompanied when they were apprehended? How many were accompanied by a parent, guardian, or family member? Of those accompanied, how many were under the age of 14, under the age of 5, and under the age of 1?
5. How many UACs were in HHS custody on May 1, 2018? How many children were in HHS custody on June 20, 2018?
6. Please provide all policies or guidance regarding the sharing information between HHS and DHS about the custody, immigration case status, and care of children and the detention, immigration, and deportation proceedings of their parents. Do any of these policies ensure that parents are not deported from the United States without reunification with their children or with the knowledge of where their child is being held and how to contact them?
7. Please provide all guidance, if any, given to HHS officials on providing information about the health and welfare of children in Department custody to their parents or guardians in DOJ custody.
8. Please provide the policy, if any, detailing the circumstances under which children in HHS custody may communicate with or visit their parents in DOJ custody. If such a policy does not exist, please explain why it is unnecessary.

9. Please provide a list of all Office of Refugee Resettlement (ORR) facilities, their locations, the number of beds available, and their current capacity. Since May 7, has HHS ever exceeded maximum capacity at its facilities? What steps does HHS take when its facilities do so?
10. HHS was conducting assessments of Fort Bliss, Texas, Dyess Air Force Base, Texas (AFB), and Goodfellow AFB, Texas as potential sites for temporary facilities to house separated children. Are those assessments continuing given the Executive Order? If so, please provide those assessments when complete. Would the construction of these facilities be paid for by HHS or the Department of Defense? What other facilities, if any, is HHS considering opening in order to house children or detained families?
11. What are the minimum standards of care and housing required for a temporary HHS facility? When were those standards created? Has HHS requested a departure from those standards of care in constructing new temporary facilities?
12. How, if at all, is HHS evaluating the effect of family separation on the children in its custody? What is the ORR Chief Medical Officer's assessment of the impact of family separation on their mental well-being? Has HHS taken any steps to provide counseling or therapy to them?
13. Please provide any policies or guidance related to physical contact between HHS or HHS-contracted facility caregivers and children. Under what circumstances may facilities prohibit caregivers from holding or touching children in need of comfort or prohibit visiting family members from holding or touching their own children?
14. Since May 7, how many complaints has HHS received regarding its care of children? How are such complaints investigated? How many, if any, have been substantiated? What consequences have culpable employees, if any, faced?
15. Since May 7, have any separated children been placed with sponsors? How many? How many of these placed children is HHS currently able to account for? Does HHS anticipate being able to identify sponsors for each incoming child that was separated as a result of the zero tolerance policy? If HHS cannot identify a sponsor, how does HHS plan to care for these children?
16. Does the proposed Fiscal Year 2018 budget include adequate resources for the expansions that HHS has had to make to its capacity in response to the zero tolerance policy? Has HHS had to identify additional funding for expansion or increased services? If so, where is HHS finding this funding?

I ask that you respond to this letter as soon as possible, but in no event later than July 13, 2018. In addition, I also ask that you provide a briefing to my staff no later than June 28, 2018 on the zero tolerance policy and the implementation of the Executive Order. Finally, I ask that

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you provide Committee staff access to requested HHS facilities holding separated children no later than July 13, 2018. If you are unable to meet this deadline, or should you have any questions, please contact Caitlin Warner at (202) 224-2627 or Caitlin_Warner@hsgac.senate.gov. Please send any official correspondence related to this request to Rina Patel at Rina_Patel@hsgac.senate.gov. Thank you for your attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman