

Congress of the United States
House of Representatives
Washington, D.C. 20515

May 8, 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 Wolf
Acting Secretary
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

Dear Secretary Azar and Acting Secretary Wolf:

We write with deep concern over recent reporting alleging that Administration officials are considering implementing policies that could unnecessarily delay the reunification of unaccompanied minors in the care of the Department of Health and Human Services (HHS) with their sponsors.¹ These concerns are heightened by the current COVID-19 epidemic, which poses significant risks for all individuals held in congregate settings.

We are particularly wary of expanded information sharing under the Memorandum of Agreement (MOA) between your Departments. As we wrote last summer, we continue to have strong concerns that the MOA, which has been used in the past to deport a child's family and loved ones,² will have a chilling effect on reunifications by forcing migrant families to choose between sponsoring children and risking arrest. The effect of that policy undermines the best interests of children in HHS care. This is particularly dangerous given the ongoing coronavirus pandemic, which has already resulted in 68 confirmed cases of COVID-19 among children in ORR care, including 38 children within just one facility in Illinois.

HHS previously fingerprinted all adults in a sponsor's household for a period of about six months in 2018. However, according to HHS Administration for Children and Families (ACF) Assistant Secretary Lynn Johnson, HHS found that the extra screening did not add to the protection or safety of the children.³ In addition, the HHS Office of the Inspector General (OIG) found that the MOA resulted in children spending a significantly increased length of time in HHS care, reaching an average length of stay of 93 days in November 2018. The OIG found that the length of stay

¹ Dan Diamond, *Stephen Miller's hard-line policies on refugee families make a comeback at HHS*, Politico (Apr. 16, 2020, 4:30AM), <https://www.politico.com/news/2020/04/16/stephen-miller-hhs-family-separation-189784>.

² *Immigration and Customs Enforcement Oversight Hearing Before the Subcomm. on Homeland Security of the H. Comm. On Appropriations*, 116th Cong. (2019).

³ John Burnett, *Several Thousand Migrant Children in U.S. Custody Could Be Released Before Christmas*, NPR, (Dec. 18, 2018, 4:22PM), <https://www.npr.org/2018/12/18/677894942/several-thousand-migrant-children-in-u-s-custody-could-be-released-before-christ>

declined as HHS reduced fingerprinting requirements.⁴ The Administration must not revisit a policy that has been found to be detrimental to the interests of the children in its care.

We find it extremely troubling that both the Department of Homeland Security (DHS) and HHS are reportedly considering ignoring Congressional directives and reimplementing policies that are expected to delay the placement of children in HHS care with sponsors.⁵ The law has been clear – the Administration is not to deter potential sponsors from coming forward by using information shared under the MOA for deportation purposes, except in very limited, specified circumstances.⁶ Yet DHS’ Immigration and Customs Enforcement (ICE) violated the law and utilized the information collected from adults deemed ineligible for sponsorship for deportation purposes.⁷ ICE’s continued use of data collected by HHS for the placement of children in safe homes also represents a violation of the law.

In addition, Congress directed HHS in the Fiscal Year 2020 Further Consolidated Appropriations Act not to reverse operational directives from 2018 and 2019 that reduced the length of time children spent in HHS care. Congress also directed HHS to “continue to work on efforts to reduce time in care and to consider additional policy changes that can be made to release children to suitable sponsors as safely and expeditiously as possible.”⁸

We urge you to prioritize the safety and wellbeing of children in your care and rescind the MOA. In the midst of the COVID-19 epidemic, this should also include taking all reasonable measures to release children in your care to sponsors as quickly as possible. Thank you in advance for your consideration of these requests.

Sincerely,



Bennie G. Thompson
Chairman
House Committee on Homeland Security



Frank Pallone, Jr.
Chairman
House Committee on Energy & Commerce

⁴ U.S. Department of Health and Human Services, Office of the Inspector General, Care Provider Facilities Described Challenges of Addressing Mental Health Needs of Children in HHS Custody, OEI-09-18-00431, 13 (Sept. 2019)

⁵ Dan Diamond, *Stephen Miller’s hard-line policies on refugee families make a comeback at HHS*, Politico (Apr. 16, 2020, 4:30AM), <https://www.politico.com/news/2020/04/16/stephen-miller-hhs-family-separation-189784>.

⁶ Section 224 of Division A of the Consolidated Appropriations Act, 2019, Public Law 116-6 and Section 402-403 of Title IV of the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019, Public Law 116-26.

⁷ Nick Miroff, *Under secret Stephen Miller plan, ICE to use data on migrant children to expand deportation efforts*, The Washington Post (Dec. 20, 2019, 6:30PM) https://www.washingtonpost.com/immigration/under-secret-stephen-miller-plan-ice-to-use-data-on-migrant-children-to-expand-deportation-efforts/2019/12/20/36975b34-22a8-11ea-bed5-880264cc91a9_story.html

⁸ Joint Explanatory Statement for Division A of the Further Consolidated Appropriations Act, 2020, Public Law 116-94.



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