

ONE HUNDRED SEVENTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 24, 2021

The Honorable Alex M. Azar II
200 Independence Ave. SW
Washington, DC 20201

Dear Secretary Azar:

We write to follow-up on our letter of September 17, 2020,¹ as new information has emerged that calls into question the extent of your role in the formation of the Trump Administration's family separation policy.

As part of the Committee's nearly three-year-long investigation into the creation and implementation of this cruel and inhumane policy, one of our primary goals has been to bring accountability regarding who was responsible for this policy. As we noted in our previous letter to you, documents obtained by the Committee demonstrated that career officials within the Department of Health and Human Services (HHS) were raising moral objections and logistical concerns about the reported family separation policy to senior HHS leaders before the policy was enacted.² In testimony before the Committee in 2019, you maintained that those concerns did not reach you.³

However, according to an August 2020 *NBC News* article, you were invited to a meeting in early May 2018 at the White House, where the decision to separate families was debated and

¹ Letter from Rep. Frank Pallone, Jr., Chairman, Rep. Anna G. Eshoo, Chairwoman, Subcommittee on Health, and Rep. Diana DeGette, Chair, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, to Secretary Alex M. Azar II, U.S. Department of Health and Human Services (Sept. 17, 2020).

² *Id.*; House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Protecting Unaccompanied Children: The Ongoing Impact of the Trump Administration's Cruel Policies*, 116th Cong. (Sept. 19, 2019).

³ House Committee on Energy and Commerce, Subcommittee on Health, Testimony of the Honorable Alex M. Azar II, Secretary, U.S. Department of Health and Human Services, *The Fiscal Year 2020 HHS Budget*, 116th Cong. (Mar. 12, 2019).

voted on.⁴ *NBC News* further reported that “[n]o one in the meeting made the case that separating families would be inhumane or immoral[.]”⁵

We wrote to you on September 17, 2020, asking whether you attended that meeting and whether you voted to proceed with family separations.⁶ On January 15, 2021, the HHS Assistant Secretary for Legislation replied to the Committee on your behalf, with a short letter that failed to answer our basic question of whether you attended that meeting, stating only, “Secretary Azar stands by his testimony before the Committee and disputes any implication that he may have been anything other than completely truthful in his testimony,” (enclosed).⁷

Now, a recent report from the independent Department of Justice (DOJ) Office of the Inspector General (OIG) appears to again suggest your involvement in the May 2018 White House meeting. In a comprehensive report on the formation of the family separation policy, DOJ-OIG reported on a meeting at the White House on May 3, 2018, “that included the [Department of Homeland Security (DHS)] and HHS Secretaries[.]”⁸ The DOJ-OIG report describes talking points prepared ahead of the meeting for former Attorney General Jeff Sessions, which describe “a discussion on family unit prosecutions[.]” The talking points further demonstrate that potential family separations would be a topic of discussion at the May 3rd White House meeting:

An illegal alien should not get a free pass just because he or she crosses the border illegally with a child. We are prepared to accept for prosecution referrals of adult members of “family units” [...] The prosecution of an adult member of a family unit will necessarily result in their transfer to the U.S. Marshals Service. Any minors in the family unit will remain in DHS custody, and likely eventually transferred to the [HHS] Office of Refugee Resettlement. DHS should consider—separately—whether the requirements of the *Flores* consent decree and the general inability to detain entire family units for the duration of immigration court proceedings justifies *administrative* separation of family units.⁹

⁴ *Trump Cabinet officials voted in 2018 White House meeting to separate migrant children, say officials*, *NBC News* (Aug. 20, 2020).

⁵ *Id.*

⁶ *See* note 1.

⁷ Letter from Sarah Arbes, Assistant Secretary for Legislation, U.S. Department of Health and Human Services, to Rep. Frank Pallone, Jr., Chairman, House Committee on Energy and Commerce, (Jan. 15, 2021).

⁸ U.S. Department of Justice, Office of the Inspector General, *Review of the Department of Justice’s Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services* (Jan. 2021) (21-028), pg. 30.

⁹ *Id.*, at 30-31.

On March 12, 2019, you testified before the Subcommittee on Health that you were not aware of the impact of the “Zero Tolerance” policy on HHS programs until after the policy was enacted and family separations had begun.¹⁰ Specifically, you stated, “I did not connect the dots that Zero Tolerance and 100 percent referral [of separated children] meant implications for our program, nor was there any indication from discussions with me” until “the days and weeks following the announcement on May 7th [2018]”¹¹ of the implementation of the Zero Tolerance policy, which led to family separations.

In addition, you testified that you were “disappointed” that you were not told about potential family separations, and when asked whether you could have stopped the policy, you testified, “[i]f I had been alerted to it, I could have raised objections and concerns, absolutely. And I wish we had had more knowledge flow, and I wish more people had been engaged in these issues, absolutely. Of course.”¹²

It still remains unclear if you attended the May 3, 2018, meeting at the White House and if a vote took place as reported. But if you did attend the meeting, it would suggest you had the opportunity to “raise objections and concerns” that you testified you wished you could have done, and yet it appears you failed to do so. Given this new information, and your failure to answer the questions outlined in our September 17th letter, we have additional concerns about your role in the family separation crisis.

Nearly three years later, there are still unresolved issues and long-term consequences as a result of the Trump Administration’s family separation policy. Recent court filings indicate that the parents of 611 separated children have still not been located,¹³ and every child who was separated will be subject to potential long-term traumatic harm.¹⁴ That is why President Biden issued an Executive Order on February 2, 2021, to establish the Interagency Task Force on the Reunification of Families to work to rectify these issues.¹⁵ But just as important as those ongoing efforts, all of the facts from this period must be brought to light to bring accountability and ensure this inhumane chapter in our nation’s history is never repeated. As such, please clarify your January 15th response to the Committee, and provide a written response to the following requests by March 10, 2021:

¹⁰ See note 3.

¹¹ *Id.*

¹² *Id.*

¹³ Joint Status Report (Jan. 13, 2021), *Ms. L, et al. vs. U.S. Immigration and Customs Enforcement, et al.*, S.D. Cal. (No. 3:18 CV 00428).

¹⁴ House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Examining the Failures of the Trump Administration’s Inhumane Family Separation Policy*, 116th Cong. (Feb. 7, 2019).

¹⁵ Exec. Order No. 14011, 86 Fed. Reg. 8273 (Feb. 5, 2021).

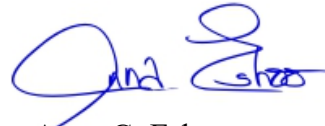
1. Please confirm whether you attended the meeting on May 3, 2018, at the White House during which potential family separations were discussed, as reported by *NBC News* and confirmed by DOJ-OIG.
2. *NBC News* reported that the attendees at the May 3rd meeting were asked “by a show-of-hands vote” whether to recommend implementing family separations.¹⁶ Did some form of voting occur at that meeting as the *NBC News* report indicates? If voting did occur on the issue of separating families, please indicate whether you voted or provided input on this question at that meeting, and if so, how you voted or what input you provided. Further, please identify what concerns, if any, you raised about family separations.

Thank you for your assistance. If you have any questions about this request, please contact Kevin McAloon of the Majority staff at (202) 225-2927.

Sincerely,



Frank Pallone, Jr.
Chairman



Anna G. Eshoo
Chairwoman
Subcommittee on Health



Diana DeGette
Chair
Subcommittee on Oversight
and Investigations

Enclosure

¹⁶ See note 4.



January 15, 2021

The Honorable Frank Pallone
Chairman
House Committee on Energy and Commerce
Washington, D.C. 20515

Dear Chairman Pallone:

I write to provide a response to your September 17, 2020, letter to Department of Health and Human Services (HHS) Secretary Alex M. Azar II regarding the Zero Tolerance policy. Secretary Azar stands by his testimony before the Committee and disputes any implication that he may have been anything other than completely truthful in his testimony.

If you or your staff have additional questions or concerns, please contact the HHS Office of the Assistant Secretary for Legislation at (202) 690-7627.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Arbes", is written over the word "Sincerely,".

Sarah Arbes
Assistant Secretary for Legislation