

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
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June 14, 2018

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

Dear Secretary Azar:

I write to you today with grave concerns about the health and safety of children in the custody of the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR).

ORR is responsible for "the care and safety of children who are apprehended in the United States without a parent or legal guardian available to provide care and custody and without immigration status."¹ As you know, this Committee has investigated issues related to ORR in the past, including as recently as 2016.² Recent testimony suggests that the number of children in ORR custody has surged in recent weeks due to the Administration's newly-implemented "zero tolerance" policy which forcibly separates all minors, including very young children, from their parents and family members.³

I have serious questions about ORR's ability to care for these children. In particular, I am extremely troubled by reports that ORR is considering housing them in "tent cities" at

¹ U.S. Department of Health and Human Services, *Children Entering the United States Unaccompanied: Section 2.7 Recommendations and Decisions on Release* (June 12, 2017) (www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2).

² See Letter from Rep. Fred Upton, Chairman, House Committee on Energy and Commerce, Rep. Tim Murphy, Chairman, House Committee on Energy and Commerce Subcommittee on Oversight and Investigations, et al., to Secretary Burwell (Feb. 11, 2016).

³ *Trump's 'Zero Tolerance' At The Border Is Causing Child Shelters To Fill Up Fast*, Washington Post (May 29, 2018).

military bases in Texas.⁴ These children are exceptionally vulnerable, and may suffer irreparable harm, in addition to the trauma they have already suffered, if they are not cared for properly.

Between April and May of this year, the number of children in ORR custody apparently increased from 8,886 to 10,852,⁵ and may now be as high as 11,200.⁶ ORR is required to provide each child in its care with “suitable living accommodations, food, appropriate clothing” and “routine medical and dental care.”⁷ Reports have indicated that HHS shelters are now operating at 95 percent capacity, and it is not clear whether HHS has adequate staff and resources to provide these necessities to all children in its care.⁸

In addition to the broad concerns about caring for any children in ORR’s custody, I am particularly concerned about the welfare of very young children who have been separated from their parents. ORR child shelters have historically been designed to meet the needs of teenagers, who are able to live in dormitory-style settings.⁹ According to reports, however, ORR has recently taken custody of a substantial number of children under the age of 4, including some infants.¹⁰ I am concerned that ORR shelters are unequipped to care for the needs of these very young children, which may place them at serious risk. It is not clear, for example, whether ORR has cribs available in which these children can sleep, or adequate staff to feed and diaper these children.

Moreover, reports have indicated that children of all ages are being held in Customs and Border Patrol (CBP) holding stations for an extended amount of time due to a lack of capacity at ORR shelters.¹¹ These stations are meant to serve as temporary detention centers even when they hold only adults, and not children, and previous assessments have found that “[t]ime in CBP

⁴ *Exclusive: Trump looking to erect tent cities to house unaccompanied children*, McClatchy (June 12, 2018).

⁵ *Trump’s ‘Zero Tolerance’ At U.S.-Mexico Border Is Filling Child Shelters*, Los Angeles Times (May 30, 2018).

⁶ *Hundreds of Migrant Kids Separated From Parents Are Stuck At Border Stations*, NBC News (June 5, 2018).

⁷ Stipulated Settlement Agreement at Exh. 1, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997).

⁸ See note 2.

⁹ *How the Trump Administration Got Comfortable Separating Immigrant Children From Their Parents*, The New Yorker (May 30, 2018); American Civil Liberties Union, *ICE Separates 18-Month-Old From Mother for Months* (www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/ice-separates-18-month-old-mother-months).

¹⁰ *Outgoing ICE director says separating parents and children is ‘sad’ but part of the job*, PBS News Hour (May 31, 2018); *Detained immigrant children stay in shelters that are already full and aren’t equipped for babies*, the Independent (June 11, 2018).

¹¹ See note 4.

holding cells was ‘the most difficult and traumatic’ period of detention for ... children apprehended by US immigration authorities.”¹² These stations often lack even basic necessities, such as bedding and separate sleeping rooms for children, but reports suggest that CBP and ORR are keeping children in them for more than 72 hours at a time.¹³ Given that these children have often just been separated from their parents, this practice is extraordinarily alarming.

Finally, ORR is required to hold all children in “the least restrictive setting that is in the best interest of the child.”¹⁴ In the past, this has meant that ORR held a child only until he or she could be released to the care of a sponsor, typically a parent or other relative.¹⁵ In June 2017, however, ORR instituted a new policy requiring the director of ORR, Scott Lloyd, to personally review and issue a determination on the status of each child who had previously been held in a more secure detention facility.¹⁶ This policy reportedly has led to children being held in detention by ORR for a prolonged length of time, instead of being released to the less restrictive environment offered by sponsors.¹⁷

Congress needs to better understand how ORR is prioritizing the care and well-being of all children in its custody. I therefore request that you provide this Committee with an initial staff briefing no later than June 21, 2018 to explain how your Department is addressing the multitude of custody issues arising from ORR’s involvement in this matter. In addition, I ask that you respond to the following questions by July 5, 2018.

1. Did the Department of Justice or the Department of Homeland Security consult with ORR or perform any analysis of ORR’s ability to absorb additional child migrants prior to implementation of the “zero-tolerance” policy? If so, please provide copies of this analysis.
2. How does ORR track the minors in its care?
 - a. Please identify how many minors currently in ORR custody are under the age of 4, under the age of 12, and under the age of 18. Does ORR segregate minors in its care by age and/or gender? If so, how?
 - b. Please provide the number of beds that ORR maintains for each category of minor, and the number of beds currently available in each category.

¹² *In the Freezer: Abusive Conditions for Women and Children in US Immigration Cells*, Human Rights Watch (Feb. 28, 2018).

¹³ See note 4.

¹⁴ 8 U.S.C. § 1232 (c)(2)(A).

¹⁵ See note 2.

¹⁶ *Hundreds Of Children Detained for Months Due to New Rule Requiring Scott Lloyd’s ‘Personal Approval’ For Release*, Newsweek (May 2, 2018).

¹⁷ *Id.*

- c. Does ORR track the number of minors placed in its custody who were unaccompanied when they crossed the border, and the number who were rendered unaccompanied when they were separated from the family members who accompanied them to the border? If so, please provide the number of children who fall into each category who were placed under ORR custody in April 2018, in May 2018, and in June 2018.
3. Does ORR currently have sufficient supplies and employees or contractors available to care for the physical needs of all very young children in its custody?
 - a. For example, does ORR have adequate cribs in which infants and babies can sleep, or are these babies sleeping in beds designed for older children? How many staff does ORR have available to tend to the need of each infant or baby in its care?
4. How does ORR track children in its care, particularly those who have been released to sponsors, to ensure that children may be reunited with their parents or guardians when those parents or guardians are released from custody?
5. Has ORR delayed accepting children into its custody from CBP for any reason, including the availability of shelter beds or capacity? If so, how many children have been impacted?
6. According to reports, a substantial number of children who were previously held in secure custody have been transferred to regular ORR shelters, but have not been released to sponsors because the current director of ORR, Scott Lloyd, has not personally cleared them for such release.¹⁸
 - a. Please identify the number of children in this category, and explain the process by which Director Lloyd determines whether each child may be released.
 - i. Does Director Lloyd personally meet with each child in this category?
 - ii. How long does it take for the it takes for Director Lloyd to issue a decision on whether the child may or may not be released?
 - iii. Is this decision issued in written form?

¹⁸ *Hundreds Of Children Detained for Months Due to New Rule Requiring Scott Lloyd's 'Personal Approval' For Release*, Newsweek (May 2, 2018).

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Thank you for your prompt attention to this matter. If you have any questions, please contact Christina Calce or Jacquelyn Bolen of the Democratic Committee staff at (202) 225-3641.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." with a stylized flourish at the end.

Frank Pallone, Jr.
Ranking Member