

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

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

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January 18, 2019

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

Dear Secretary Azar:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee is examining the Trump Administration's Family Separation Policy and the U.S. Department of Health and Human Services' (HHS) care for unaccompanied children.

Last summer, the Trump Administration's inhumane Family Separation Policy resulted in separating more than 2,500 children from their parents or guardians. Yesterday, the HHS Office of Inspector General issued a report stating that thousands of more children may have been separated from their parents or guardians beginning in 2017, before the start of the Family Separation Policy.¹ Additionally, a purported Administration document released yesterday appears to suggest that, in 2017, the Administration was considering specifically targeting migrant family units for separation by placing any adults in detention and transferring any minors to HHS for care.²

This new information comes on the heels of a U.S. Government Accountability Office report last year that found Office of Refugee Resettlement (ORR) officials noted an increase in separated families in 2017 and were told by HHS leadership not to engage in planning for

¹ U.S. Department of Health and Human Services, Office of Inspector General, *Separated Children Placed in Office of Refugee Resettlement Care* (Jan. 2019) (OEI-BL-18-00511).

² *Trump admin weighed targeting migrant families, speeding up deportation of children*, NBC News (Jan. 17, 2019); see also www.documentcloud.org/documents/5688664-Merkleydocs2.html.

increased separations.³ These troubling reports raise new questions as to whether the Trump Administration was engaging in family separations earlier than it reported as well as HHS's role in creating and implementing the Family Separation Policy.

Furthermore, the Administration document released yesterday also appears to suggest that HHS's April 2018 Memorandum of Agreement with the U.S. Department of Homeland Security (DHS), which allows the sharing of information between the agencies, was adopted at least in part to allow HHS to share background check information on potential sponsors with DHS so that it could potentially place those sponsors into deportation proceedings.⁴

HHS's responsibility is to care for unaccompanied children and promptly release them to sponsors who can provide for their physical and mental well-being. Experts have noted that prolonged detention of migrant children can lead to negative physical and emotional symptoms.⁵ Concerns have been raised that the policy to share information between HHS and DHS regarding potential sponsors has led to family members being reluctant to come forward, thereby leading to children being in HHS custody longer, the exact consequence that was contemplated by Administration officials. We are concerned that instead of prioritizing what is in the best interest of the children in HHS's custody, you have allowed your agency to be turned into a mechanism for immigration enforcement.

To aid us in our inquiry, as well as to provide transparency to HHS's actions, please provide us with the following information no later than February 1, 2019:

1. All documents and communications among and/or between HHS, including the Immediate Office of the Secretary, the Administration for Children and Families, and ORR; DHS; the Department of Justice; and the Executive Office of the President, including the Office of Management and Budget; regarding family separations from May 1, 2017, through June 27, 2018;
2. All documents and communications from May 1, 2017, through April 14, 2018, regarding the Memorandum of Agreement among ORR and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection regarding consultation and information sharing in unaccompanied alien children matters that was signed on April 13, 2018;
3. All analyses regarding the decision in June 2018 to require all adults in potential sponsor households to submit fingerprints as well as the decision in December

³ Government Accountability Office, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border* (Oct. 2018) (GAO-19-163).

⁴ See note 2.

⁵ Julie M. Linton, Marsha Griffin, and Alan J. Shapiro, *Detention of Immigrant Children*, Pediatrics, American Academy of Pediatrics (May 2017).

2018 to no longer require all adults in potential sponsors to submit fingerprints;
and

4. The letter sent to HHS by the President and CEO of BCFS Health and Human Services on or about December 17, 2018.

We appreciate your attention to this matter, and if you have any questions, please contact Kevin Barstow or Kevin McAloon with the Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Chairman



Diana DeGette
Chair
Subcommittee on Oversight
and Investigations

Responding to Document Requests from the Committee on Energy and Commerce

In responding to the document request from the Committee on Energy and Commerce, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
5. Documents produced in electronic format should also be organized, identified, and indexed electronically. Documents produced in an electronic format should also be produced in a searchable format.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
8. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
9. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
10. It is not a proper basis to refuse to produce a document because another person or entity possesses a nonidentical or identical copy of the same document.
11. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (8) and (9) above.

12. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2017 to the present.
16. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
17. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
18. All documents should be bates-stamped sequentially and produced sequentially.
19. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 316 of the Ford House Office Building, and the minority set should be delivered to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, email (desktop or mobile device), text message, instant message, MMS or SMS message, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
8. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.