



MEMORANDUM

February 4, 2019

To: Subcommittee on Oversight and Investigations Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “Examining the Failures of the Trump Administration’s Inhumane Family Separation Policy”

On **Thursday, February 7, 2019, at 10:30 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Oversight and Investigations will hold a hearing entitled, “Examining the Failures of the Trump Administration’s Inhumane Family Separation Policy.” The hearing will examine how the U.S. Department of Health and Human Services (HHS) planned for and responded to the Administration’s “Zero Tolerance” policy, HHS’s efforts to reunify children separated from their parents as a result of this policy, and the potential impact of this policy on the health and well-being of the affected children.

I. BACKGROUND AND ROLE OF HHS

The HHS Office of Refugee Resettlement (ORR), within the Administration for Children and Families (ACF), is responsible for coordinating the placement and care of unaccompanied children.¹ Unaccompanied children are usually those who present themselves at the border without a parent or guardian, but can also be children who are separated from a parent or guardian.² Barring extraordinary circumstances, any unaccompanied child in the custody of a federal agency or department, such as U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), must be transferred to ORR within 72 hours.³

Upon receiving custody of an unaccompanied child, ORR places the child with residential care providers, who are to provide housing and care in the least restrictive

¹ 6 U.S.C. § 279. An unaccompanied child is defined by law as a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody. *See* 6 U.S.C. § 279(g)(2).

² 6 U.S.C. § 279. *See also* Government Accountability Office, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border* (Oct. 2018) (GAO-19-163).

³ 8 U.S.C § 1232(b)(3).

environment possible given the child’s safety, emotional, and physical needs.⁴ These care providers are also responsible for finding and assessing the suitability of a potential sponsor, typically either a parent or some other relative already living in the United States, to care for the child once they leave ORR’s custody.

II. POLICY OF FORCED FAMILY SEPARATIONS

Family separations at the border have occurred previously under certain circumstances; however, those cases have historically been rare and their common, primary objective has been to protect the safety of the child.⁵ Yet, in April 2018, Attorney General Jeff Sessions announced a new “Zero Tolerance” policy that directed federal prosecutors to charge and prosecute all immigration offenses relating to improper entry occurring along the Southwestern border.⁶ Because federal law requires that detained children be placed in the least restrictive setting, when adult migrants were detained for prosecution under “Zero Tolerance,” their children were then separated from them and placed in the care of ORR.⁷ This policy resulted in over 2,500 migrant children being forcibly separated from their parents.

A large body of research has established the negative effects of family separation on children, including psychological trauma and long-term mental health risks.⁸ These effects are not only experienced and felt by the children, but they can also apply and extend to the parents.⁹

⁴ 8 U.S.C. § 1232(c)(2)(A).

⁵ Government Accountability Office, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border* (Oct. 2018) (GAO-19-163); Office of Inspector General, U.S. Department of Health and Human Services, *Issue Brief: Separated Children Placed in Office of Refugee Resettlement Care* (Jan. 2019) (OEI-BL-18-00511); *Jeh Johnson On Immigration And Trump*, NPR (June 9, 2018); *Fact-Checking the Trump Administration’s Case for Child Separation at the Border*, New York Times (June 19, 2018).

⁶ Department of Justice, *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry* (Apr. 6, 2018) (press release).

⁷ 6 U.S.C. § 251; 8 U.S.C. § 1232; *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997) (stipulated settlement agreement).

⁸ *See, e.g.*, Carola Suárez-Orozco et al, *I Felt Like My Heart Was Staying Behind: Psychological Implications of Family Separations & Reunifications for Immigrant Youth*, Journal of Adolescent Research (2011); Luis H. Zayas et al., *The Distress of Citizen-Children with Detained and Deported Parents*, Journal of Child and Family Studies (Nov. 2015); Vivek S. Sankaran and Christopher Church, *Easy Come, Easy Go: The Plight of Children who Spend Less than Thirty Days in Foster Care*, Univ. of Penn. Journal of Law and Social Change (Nov. 17, 2016).

⁹ *Id.* *See generally infra* note 13 at p. 18 (after stating in his preliminary injunctive order that “The injury in this case, however, deserves special mention. That injury is the separation a parent from his or her child, which the Ninth Circuit has repeatedly found constitutes irreparable harm”, J. Sabraw recounts instances of asylum-seeking parents who, upon being separated from

Once the Administration’s Family Separation policy was implemented, multiple advocacy groups and professional organizations expressed alarm for the health dangers to the children affected. These groups and associations included, among others, the Academic Pediatric Association; American Academy of Child and Adolescent Psychiatry; American Academy of Pediatrics; American Civil Liberties Union; American College of Physicians; American Medical Association; American Psychiatric Association; American Psychological Association; Amnesty International USA; Catholic Legal Immigration Network, Inc.; Harvard University’s Center on the Developing Child; Kids in Need of Defense; Migrant Center for Human Rights; NAACP; Oxfam America; and Southern Poverty Law Center.¹⁰

On June 20, 2018, President Trump issued an Executive Order that ended Family Separation and ordered that families shall be detained together¹¹ but left the “Zero Tolerance” policy intact.¹² On June 26, 2018, a federal judge issued a classwide preliminary injunction in the *Ms. L. v. U.S. Immigration and Customs Enforcement* case, ordering the federal government to reunite the separated children with their parents.¹³

As of February 1, 2019, ORR reported that there were still 83 children separated as a result of the “Zero Tolerance” policy. These children are either still waiting to be reunified with a parent, or they are going through the standard ORR sponsorship process.¹⁴

III. RECENT GAO AND OIG REPORTS

In June 2018, then-Ranking Member Pallone requested that the Government Accountability Office (GAO) examine the Trump Administration’s ability to track and reunite children separated from their families during the Administration’s “Zero Tolerance” policy.¹⁵ In

their children, suffered severe physical, emotional, and psychological harms and distress, including one father who committed suicide during his detention).

¹⁰ See, e.g., Letter from Academic Pediatric Association, et al., to Members of Congress (July 24, 2018); Letter from 18MillionRising.org, et al., to Secretary Kirstjen M. Nielsen and Secretary Alex Azar (Nov. 28, 2018).

¹¹ Exec. Order No. 13841, 83 Fed. Reg. 29435 (June 20, 2018).

¹² *Trump Signs Executive Order on Family Separation but Says ‘Zero Tolerance’ to Stay*, CBS News (updated Oct. 19, 2018).

¹³ Order Granting Plaintiffs’ Motion For Classwide Preliminary Injunction (June 26, 2018), *Ms. L, et al. vs. U.S. Immigration and Customs Enforcement, et al.*, S.D. Cal. (No. 3:18 CV 00428).

¹⁴ Briefing by Commander Jonathan White, United States Public Health Service Commissioned Corps, U.S. Department of Health and Human Services, to Congressional Staff (Feb. 1, 2019).

¹⁵ Letter from Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, to Gene L. Dodaro, Comptroller General, U.S. Government Accountability Office (June 21, 2018).

October 2018, GAO released a report that found that HHS was unaware of the “Zero Tolerance” policy before it was publicly announced, and did not plan for the policy and the resulting increase in children separated from their parents at the border and placed with ORR.¹⁶ GAO further found that HHS did not have a consistent method of identifying separated children and their parents, which presented difficulties in reunifying families.¹⁷ For example, staff at one of the shelters reported that for some children, shelter staff only learned the child was separated when the child told them.¹⁸

In June 2018, Democratic Committee leaders also requested three Inspectors General to examine various aspects of the Administration’s implementation of the “Zero Tolerance” policy.¹⁹ The HHS Office of Inspector General (HHS-OIG) released a report in January 2019, finding that thousands of additional children may have been separated beginning in 2017, significantly before the official start of the “Zero Tolerance” policy.²⁰ HHS-OIG also reported that HHS did not have a centralized system to identify, track, and reunify families.²¹

IV. WITNESSES

The following witnesses have been invited to testify:

Panel I

Kathryn A. Larin

Director
Education, Workforce, and Income Security
U.S. Government Accountability Office

Rebecca Gambler

Director
Homeland Security and Justice
U.S. Government Accountability Office

¹⁶ Government Accountability Office, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border* (Oct. 2018) (GAO-19-163).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Letter from Ranking Members of the House Committees on Oversight and Government Reform, the Judiciary, Homeland Security, Education and the Workforce, and Energy and Commerce, to Inspectors General of the Departments of Justice, Homeland Security, and Health and Human Services (June 29, 2018).

²⁰ Office of Inspector General, U.S. Department of Health and Human Services, *Issue Brief: Separated Children Placed in Office of Refugee Resettlement Care* (Jan. 2019) (OEI-BL-18-00511).

²¹ *Id.*

Ann Maxwell

Assistant Inspector General for Evaluation and Inspections
Office of Evaluation and Inspections
Office of Inspector General
U.S. Department of Health and Human Services

Commander Jonathan White

United States Public Health Service Commissioned Corps
U.S. Department of Health and Human Services

Panel II

Lee Gelernt

Deputy Director, Immigrants' Rights Project
American Civil Liberties Union

Jennifer Podkul

Senior Director of Policy and Advocacy
Kids in Need of Defense

Julie Linton, MD, FAAP

Co-chair, Immigrant Health Special Interest Group
American Academy of Pediatrics

Cristina Muñiz de la Peña, PhD

Terra Firma Mental Health Director
Center for Child Health and Resiliency
On behalf of the American Psychological Association

Jack P. Shonkoff, MD

Professor of Child Health and Development and Professor of Pediatrics
Harvard Medical School, School of Public Health, and Graduate School of Education
Director, Center on the Developing Child at Harvard University

Dona Abbott

Vice President of Refugee and Immigrant Services
Bethany Christian Services