

Congress of the United States
Washington, DC 20515

April 13, 2021

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
1880 2nd Street SW
Washington, DC 20024

Cindy Huang
Director
Office of Refugee Resettlement
Administration for Children and Families
Department of Health and Human Services
Mary E. Switzer Building
330 C St., SW, Washington, DC 20201

Troy Miller
Senior Official Performing the
Duties of the Commissioner
Customs and Border Protection
Department of Homeland Security
Washington, DC 20528

Dear Secretary Becerra, Secretary Mayorkas, Director Huang, and Mr. Miller:

For the last four years, the previous Administration enacted cruel policies that endangered the lives of children by turning them away in contravention of U.S. law and treaty obligations; enacting policies to chill reunification with sponsors; and cutting off aid to the top sending countries, exacerbating conditions on the ground. The previous Administration also gutted crucial humanitarian infrastructure that is essential for processing, placement and post-placement services for children, and failed to coordinate through the transition process.

We appreciate the Biden Administration's commitment to ensuring protections for unaccompanied children that uphold our nation's laws and values, and the extensive efforts you have already been making to turn the tide from the cruelty of the last Administration. As you know, these children are among the world's most vulnerable groups. In many cases, they have fled to the United States in search of humanitarian relief from extreme violence, sexual abuse, and other dangers in their countries of origin. Unaccompanied children's well-being—and often their lives—depend on their treatment by the U.S. government.

As you consider the many necessary changes that must be made to rebuild our nation's system to welcome unaccompanied children, we ask that you continue to prioritize long-overdue changes to the border reception and shelter system for unaccompanied children, with a goal of eliminating any future need for influx facilities.

Amid pandemic-based occupancy restrictions at permanent ORR shelters, and a rising number of unaccompanied children referred into ORR custody, we recognize that influx facilities are temporarily needed to ensure children's shelter and care. In the immediate term, we agree that the only alternatives to influx facilities—lengthier detention in Customs and Border Protection (CBP)

facilities that are wholly unfit for children and already severely overcrowded, or turnbacks of unaccompanied children at the border—are neither humane nor legal. Indeed, we strongly oppose any resumption of Trump-era Title 42 expulsions of unaccompanied children, including 16- and 17-year-olds,¹ which would expose those children to grave danger and violate the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). Yet we also underscore that influx facilities are not state-licensed, not appropriate for prolonged operation, and in the past have been plagued by violations and abuses. This time must be different. We ask that you continue to ensure that any activated influx facilities remain open for the briefest duration possible, observe stringent safeguards ensuring children’s safety, appropriate care and services and access to protection, and safely expedite children’s release from government custody and reunification with sponsors, including pursuing innovative measures to facilitate the quick and safe release of children.

We applaud key actions the Administration has already taken towards those ends, including the rescission of the unnecessary and harmful May 2018 information-sharing agreement between HHS and DHS, adopting numerous measures to expedite the screening and release of unaccompanied children to sponsors, prioritizing safe and humanitarian conditions in compliance with the *Flores* Settlement at influx facilities, placement of on-site pediatric health specialists and other essential care staff at influx facilities, conducting inspections, and more.² More broadly, now is the moment for the Administration to take up long-overdue systemic reform of the border reception and shelter system for unaccompanied children—reform that would eliminate any need for influx facilities in the future.

Specifically, we urge that influx facilities adhere to the below policies, some of which we understand have been adopted or are already underway:

1. Overview

- ORR should ensure influx facilities’ full adherence to the monitoring requirements set forth in section 5.5 of its Policies and Procedures Guide as of May 15, 2019.
- The size of such facilities should be limited to the greatest extent possible to minimize the institutional setting and maximize staff to child ratios.
- Children who are sent to influx facilities should be screened prior to arrival to ensure they have a likely sponsor and do not have any vulnerabilities prior to arriving at an influx facility, including children who:
 - Have a temporary or permanent disability or any serious medical or mental health concern;
 - Are pregnant or nursing;
 - Speak an indigenous language;
 - Are younger than 13 years old; and/or
 - Are identified as Category 3 or Category 4 for sponsorship.

2. Standards and Licensing

¹ Hamed Aleaziz, “Homeland Security Officials Considered Using A Trump-Era Policy To Turn Back Unaccompanied Teens At The Border” [Buzzfeed](https://www.buzzfeednews.com/article/hamedaleaziz/unaccompanied-teen-immigrants-border-policy-options) (Mar. 11, 2020); <https://www.buzzfeednews.com/article/hamedaleaziz/unaccompanied-teen-immigrants-border-policy-options>.

² HHS, DHS, “HHS and DHS Joint Statement on Termination of 2018 Agreement” (Mar. 12, 2021); <https://www.dhs.gov/news/2021/03/12/hhs-and-dhs-joint-statement-termination-2018-agreement>.

- *Flores* standards—From their first day of operation, all such facilities must be guided by the standards set forth in Exhibit 1 of the *Flores* Settlement Agreement and move towards full compliance with those standards.
- Licensing standards—HHS must predicate the operational duration of all such facilities on their achievement of compliance with relevant state licensing requirements and permit waiver of such compliance only upon demonstration and certification of: (a) substantial progress towards such compliance; (b) the necessity of continued operationality; and (c) substantial progress, in partnership with other federal agencies as appropriate, towards reforms that will eliminate reliance on influx facilities.

3. Duration

- No child should be held at an influx facility for more than 20 days. If a child cannot be reunified by that time, they should be transferred to a standard shelter or foster care program, unless such transfer would delay a child’s release by more than 24 hours.

4. Staffing

- Facilities must ensure appropriate staff to child ratios for youth care workers, clinicians, and pediatric health specialists including pediatricians, pediatric-focused advanced practice registered nurses, and supervising child/adolescent mental health professionals.
- The hiring of Spanish speaking staff, staff that speak any other language deemed a priority due to changing flows, and staff with a child welfare background must be prioritized.
- Each staff member of an influx care facility who has contact with children should complete a background check conducted by the Federal Bureau of Investigation and, if situated in a State that allows for it, a Child Abuse/Neglect records check and be approved to work with children prior to starting work at the influx care facility.

5. Visitation and Legal Access

- All unaccompanied children should have access to in-person visitation or, as restricted by public health needs, telephonic and video visitation. Video visitation should be facilitated at no cost to the child or caller.
- All unaccompanied children should have access to legal service providers either in person or via video.
- Legal visits should allow for conversations between the child and legal service provider with auditory privacy.
- Facilities should ensure that children with siblings or other minor relatives in ORR custody are not separated from their minor relatives and have unlimited visitation with each other.

6. Oversight and Transparency

- HHS should establish an Office of the Ombudsperson to act as an advocate, subject-matter expert, and independent authority responsible for ensuring that the rights of immigrant children are protected while in custody.
- ORR should conduct a comprehensive, on-site monitoring visit of each influx facility during each of the first three months of operation, with quarterly monitoring visits thereafter. These visits should include confidential interviews with children to ensure that children's experiences comport with documentation of activities and other services provided.
- The HHS Office of Inspector General should conduct random and unscheduled visits of influx facilities, within the first 90 days of operation. These visits should include confidential interviews with children to ensure that children's experiences comport with documentation of activities and other services provided.
- If PREA/prevention of sexual abuse audits are being conducted while the influx facility is in operation, the influx facility should be included in the audits.
- Facilities should establish clear procedures for children at influx shelters to directly and confidentially report incidents of abuse or neglect at influx shelters to consulates and state authorities and allow state child protective services immediate access to any influx facility to investigate any report of abuse or neglect. At a minimum of once every 30 days, such facilities will provide a tour of the physical facility for approved stakeholders.

We also urge the following immediate and longer-term actions, some of which have already been adopted or are underway, for limiting reliance on influx facilities and for reforming the federal government's border reception and shelter framework for unaccompanied children to preclude any future need for influx facilities:

1. Fully utilize existing transitional foster care (TFC) beds and long-term foster care (LTFC) beds and expand available TFC, LTFC, and small-scale shelter capacity.

- Require ORR to fully utilize available foster care beds and expand eligibility for foster care placement so that more children can be placed in foster care rather than congregate care facilities.
- ORR should also evaluate whether there are additional placements among the TFC and LTFC service providers in its network that could be funded and brought online quickly, and also seek new foster care providers to expand this capacity.
- In addition to expanding TFC and LTFC placement options, ORR should immediately begin efforts to expand placement capacity for small-scale shelters containing under 25 beds.

2. Fully adopt co-location of HHS personnel at CBP facilities to initiate the release of children arriving with trusted caregivers at the border.

- For children arriving with trusted caregivers that are not their parents or legal guardian, HHS personnel located at CBP facilities should initiate an evaluation of

these caregivers as potential sponsors while they are in CBP custody and release the child and caregiver together when possible. This would avoid the need to separate children from their caregivers, transfer them to ORR custody, and only then begin the sponsorship process. It would also expedite release and family reunification for unaccompanied children who nonprofit service providers or international organizations have identified as particularly vulnerable and assisted through accompaniment. Importantly, children who arrive and are released with trusted caregivers meet the legal definition of unaccompanied child. It is critical that they be afforded all protections for unaccompanied children provided by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).

- For children arriving alone, HHS personnel located at CBP facilities should separately interview these children to identify any special needs the child may have as well as any potential sponsor(s). This information will help ORR make the best possible placement decisions and, if shared immediately with the child's case manager, help to speed up the sponsor vetting process.
- All unaccompanied children whose family reunifications are expedited, whether through direct release at co-located CBP facilities or other means, should be ensured legal counsel and post-release services.

3. Increase the number of available licensed beds in shelter and foster care placements

- ORR should meet directly and routinely with the Centers for Disease Control and Prevention and other public health experts to make sure that any reductions in available bedspace that are made on account of COVID-19 precautions are grounded in science and in line with the latest public health recommendations.
- ORR should place more children in these available beds if appropriate and consistent with public health guidelines.

4. Implement intensive case management.

- Authorize overtime for Case Managers, Federal Field Specialists (FFS) and General Dynamics Information Technology (GDIT) contractors such that, at any given moment, seven days a week, there is a team of staff actively working on recommending (case managers) and approving (FFS and GDIT) children's releases.
- We applaud HHS's recent authorization of this practice and urge that it become standard practice at all times.

5. Expand access to counsel for children


- Guarantee all children in government custody legal counsel to conduct "Know Your Rights" presentations, interview children, conduct legal assessments, and establish contact with representation in the community where the child will be released.
- Establish a right to counsel for children and ensure children are guaranteed legal counsel in all immigration court proceedings.

6. Once a child has been approved for release, continue paying for the child's flight/transportation cost to be united with their sponsor. If the ORR care provider needs to escort the child to their sponsor, pay for the care provider staff member's flight/transportation costs.

- Children of sponsors who cannot quickly or easily pay for the cost of flights remain in custody for longer than necessary.
- We appreciate ORR's recent approval of funds for this purpose and urge that it become standard practice.

We appreciate the challenges of the current situation you have been put in by the previous Administration, the round-the-clock attention you are giving to this critically important situation, and the changes that you have already undertaken or are undertaking. Taken together, these recommendations would help ensure the safety, well-being, and access to protection of vulnerable children and end reliance on influx facilities once and for all. We stand ready to work with you in implementing the remainder of these and other recommendations, and respectfully ask that you regularly update us on the progress made towards our mutual goals. Thank you for your attention to these critical matters.

Sincerely,


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Member of Congress

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JAKE AUCHINCLOSS
Member of Congress

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KAREN BASS
Member of Congress

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DONALD S. BEYER JR.
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