

United States Senate

WASHINGTON, DC 20510

June 26, 2019

Acting Secretary Kevin McAleenan
U.S. Department of Homeland Security
Washington D.C. 20528

Re: Dangerous Conditions Requiring Immediate Action

Dear Acting Secretary McAleenan,

I am writing to supplement the letter I sent you on June 21, 2019, where I expressed my ongoing concern regarding the conditions and practices in Department of Homeland Security (DHS) detention facilities hurting migrant children. The specific focus of that letter was the appalling conditions affecting hundreds of children detained for prolonged periods in the Clint Border Station near El Paso, TX.

The added outrage I express here is due to two additional distinctly wrongful acts discovered since my last letter: first, DHS' movement of over 300 children out of one unsuitable facility into another where they are at best marginally better off – a move that occurred only when the bad conditions at the first facility were exposed; second, DHS' return of 100 of these children to the first unsuitable facility once the movement of the 300 was publicized.

From Clint to Other Facilities and then Back to Clint: An Outrageous Abuse of Authority

Last week, the Clint facility held more than 300 children; earlier this week just 30. In the intervening period, as detailed in my June 21 letter to you and media reports, the gross mistreatment of the Clint children was exposed. Incredibly, and following media reports exposing last week's movement of the 300,¹ 100 were returned to Clint yesterday (June 25) – supposedly, according to a DHS official, because other facilities are “stretched past capacity.”²

I state the obvious: Border Patrol and likely other DHS staff have acted arbitrarily and capriciously in their handling of these migrant children. Beyond the obviously appalling conditions at Clint, the notion that Clint children would be bussed out of Clint to another, overcrowded facility stretched beyond capacity, and then *back* to Clint – all within a handful of days – would be beyond belief had it not happened. I do not see how these children could avoid irreparable harm given their prolonged exposure to unsuitable detention conditions, from what

¹ Associated Press, *Government moves migrant kids after AP exposes bad treatment* (June 24, 2019) (quoting attorney who interviewed children at Station 1), available at <https://apnews.com/a7a9acc4c6a546829a258e008d10d705>; New York Times, *Hundreds of Migrant Children Are Moved Out of an Overcrowded Border Station* (June 24, 2019), available at <https://www.nytimes.com/2019/06/24/us/border-migrant-children-detention-soap.html>.

² NBC, *Border Patrol moves 100 children to 'appalling' Texas facility* (June 25, 2019), available at https://www.nbcnews.com/politics/immigration/border-patrol-moves-100-children-appalling-texas-facility-n1021481?cid=sm_npd_nn_tw_ma; New York Times, *Acting Border Chief Will Step Down as Migrant Children Are Returned to Texas Facility* (June 25, 2019), available at <https://www.nytimes.com/2019/06/25/us/migrant-children-border.html>.

are likely long-duration transfers to other unsuitable facilities, and then their return (via more long-duration transfers) to the same unsuitable conditions.

These acts necessarily required decisions and actions by Border Patrol and DHS staff that I cannot believe amount to negligence or any other lesser standard of culpability.

From Clint to Other Facilities: Not Necessarily Better

The treatment of the children not returned to Clint is also distressing. It appears that approximately 200 are now detained in another DHS facility in El Paso, Border Patrol Station 1, and in unnamed facilities overseen by the HHS Office of Refugee Resettlement (ORR). But conditions are not necessarily better there. One report cites a child who was interviewed by an attorney at Station 1 saying that “his family didn’t get mattresses or blankets for the first two nights and he and his mom came down with a fever ... there were no toothbrushes, and it was very, very cold.”³

Some of the alternative facilities may be an improvement on Clint. Station 1 reportedly has “roll-out mattresses, showers, medical facilities and air conditioning,” according to an Associated Press report. However, that is not sufficient to create a suitable environment for the detention of children.

Last week, the Clint facility detained 59 tender-age children under the age of five; earlier this week virtually all have been moved out. In the hope that they are not among the 100 returned to Clint, there is no indication that Station 1 or the ORR facilities have the necessary resources or trained staff to care for such children.

Requests for Information

As recent events demonstrate, DHS has failed to disclose the facts about the status of the children in its custody. To provide the public and the Congress with this important information, I now request that commencing immediately, and continuing on a weekly basis thereafter, DHS produce the following information:

1. Daily census data showing the number of children in custody at each CBP facility where children are detained for any period of time, broken out by children under 5, from 5 to 12, and from 13 to 18;
2. The average length of stay of children at each CBP facility, broken out by the three age groups described above;
3. The number of children at each CBP facility each day who are transferred in due to: (i) apprehension; (ii) self-surrender; (iii) transfer in from another CBP facility (to be specified); (iv) transfer in from another federal agency (to be specified); and (v) other (to be specified).

³ Associated Press, *Government moves migrant kids after AP exposes bad treatment* (June 24, 2019), available at <https://apnews.com/a7a9acc4c6a546829a258e008d10d705>.

4. The number of children at each CBP facility each day who are transferred out to: (i) ORR; (ii) another CBP facility (to be specified); (iii) another federal agency (to be specified); and (iv) other (to be specified).

For these added reasons, I reiterate my request that you publish, by July 12, 2019, a remediation plan, which explains how DHS intends to immediately end these abuses. DHS must immediately draft and implement a plan that actually fixes conditions for children -- not one that simply attempts to hide this abuse from the public.

In addition and now based on the totality of conduct revealed to date, I will be referring this matter to the DHS Office of Inspector General to investigate responsible Border Patrol and DHS officials for potential violations of law, regulations and policies.

I look forward to hearing from you.

Sincerely,



Jeffrey A. Merkley
United States Senator