

United States Senate

WASHINGTON, DC 20510

August 18th, 2020

The Honorable Chad Wolf
Acting Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary Wolf,

We write with deep concern about reports regarding the unlawful detention and expulsion of unaccompanied children and asylum-seeking families – who have not been given the protections and due process required by case and immigration law.

Under existing law, including the Trafficking Victims Protection Reauthorization Act (TVPRA), 8 USC § 1232, when a Customs and Border Patrol (CBP) officer encounters an unaccompanied child from a noncontiguous country at an entry point of the United States, they must process said child, keep them in Department of Homeland Security (DHS) custody no longer than 72 hours, screen them for trafficking and other protection concerns and then transfer them to the Office of Refugee Resettlement (ORR), an agency with trained professionals, specializing in the care of children, by providing them with mental health services, infectious disease control measures and facilitating the process of placing unaccompanied children with a sponsor. For many years, Congress has been unequivocal that these special protections must be provided for unaccompanied children who arrive at our border.

We understand that Customs and Border Protection (CBP), in coordination with Immigration and Customs Enforcement (ICE), other agencies under DHS, and contracted entities (such as MVM Inc.) argues that it is expelling individuals “in the interest of public health” under Title 42 of the U.S. Code 265¹, as stated in a Centers for Disease Control and Prevention (CDC) order in March 2020. While we recognize that the CDC order is intended to protect public health, we must also protect and adhere to due process, a principal our country was founded upon. We are concerned that the CDC order effectively circumvents asylum and specific protections for unaccompanied children.

It is important that we delineate the meaning of expulsion versus deportation. Deportation is a legal process, as outlined in the existing statutory scheme outlined by Congress. Expulsions are a new, extrajudicial process, executed completely outside of the legal framework set up by our laws. Expulsions are a process through which DHS is removing people from our country, with no paper trail and with no examination of whether they are returning to persecution or other danger.

People, including children who arrive at our borders alone are being expelled, without due process to the very countries they are fleeing from to escape violence, persecution and death. According to CBP’s reporting, at least 69,000 individuals have been expelled since March 2020

¹ U.S. Dep’t of Health and Human Services & Centers for Disease Control and Prevention, “Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists,” Mar. 20, 2020, https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf.

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(including at least 2000 unaccompanied children²). The Associated Press has obtained documents showing that ICE is overseeing the detention of immigrant children at Hampton Inn & Suite hotels in the cities of El Paso, McAllen and Phoenix, and that these hotels have been used nearly 200 times, including 123 times in McAllen during just two months.³ Not only is this practice illegal, but also it is an egregious violation of basic child welfare and child protection standards. Never should a child be held alone with unknown adults and no oversight.⁴ It is a situation ripe for abuse, putting both children and the adults caring for them at risk.

Under Title 42, asylum seekers are not being given an “Alien Registration Number,” the most basic documentation created by DHS upon apprehending an individual. They are also not afforded a credible fear interview or allowed to invoke any of the protections provided by law. In addition, unaccompanied children are not being placed in the custody of ORR and are being held by DHS for a period longer than 72 hours. On July 30, 2020, ORR reported that it was operating at 8% capacity – it is completely unacceptable that this essential government agency is being underutilized. To forego such an important protection is not only irresponsible, it places the lives and wellbeing of people in danger. The government’s actions violates children’s rights and its own legal obligations under the *Flores* Settlement Agreement⁵ and the TVPRA.

Reportedly, advocates on the ground are having to file law suits in order for DHS to acquiesce to their demands and agree to transfer children to ORR. However, it is the expectation of Congress that federal agencies and actors follow the law, grant all protections and due processes afforded by standing law without having to rely on outside entities compelling federal agencies to follow the law as established by Congress or outlined by the judicial court system.

Due to these events, we respectfully demand that:

1. Any child who meets the definition of an unaccompanied child as stated in 6 U.S.C. § 279(g) (2002), be transferred to ORR.
2. Any child who meets the definition of an unaccompanied child as stated in 6 U.S.C. § 279(g) (2002), not be held by CBP longer than 72 hours.
3. All asylum seekers are processed and given an “Alien Registration Number.”
4. Legal advocates be allowed to offer services to asylum seekers.
5. CBP provide a full and detailed report of people who have been expelled under title 42.

² Lauren Villagran, “Despite coronavirus, children are still arriving at the border. They’re being turned away” El Paso Times (10 June 2020); <https://www.elpasotimes.com/story/news/2020/06/10/border-patrol-rejects-migrant-children-cdc-authority-covid-19/5274691002/>

³ Merchant, Nomaan, “AP Exclusive: Migrant Kids Held in US Hotels, Then Expelled.” Associated Press, (22 July 2020); <https://apnews.com/c9b671b206060f2e9654f0a4eae6388>

⁴ *Prevention of Child Abuse in Early Childhood and the Responsibilities of Early Childhood Professionals to Prevent Child Abuse*, NAT’L ASSOC. FOR THE EDUCATION OF YOUNG CHILDREN [page #] (1996), <https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/resources/position-statements/PSCHAB98.PDF>.

⁵ Because the government erroneously argues that unaccompanied children subject to the Title 42 order are not covered by the *Flores* Settlement Agreement, migrant children have thus far been deprived of their rights and protections under this court-approved agreement; see Case No. CV 85-4544-DMG-AGR_x (CITE).

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Respond to or provide the following promptly so that the Congress can further assess and respond to the situation:

1. What are the whereabouts of the unaccompanied children who were held at the Hampton Inn Hotel in McAllen on Thursday, July 23, 2020?
2. Address DHS's gaps in reporting by providing:
 - a. The number of unaccompanied and accompanied children detained in hotels and expelled under Title 42, along with their demographic information and the length of stay in DHS custody (and hotels) before being expelled.
 - b. The number of unaccompanied and accompanied children detained in hotels and awaiting expulsion under Title 42.
 - i. When are they scheduled to be expelled?
 - c. The number of unaccompanied children detained in hotels after leaving ORR custody.
 - d. The number of unaccompanied children detained in hotels prior to entering ORR custody.
 - i. What hotels are being used?
 - ii. When are they scheduled to be transferred to ORR?
 - iii. Why are they held in hotels and not transferred directly from CBP to ORR?
3. Provide policy guidance and memoranda for:
 - a. The criteria DHS uses to determine who is classified a single minor, unaccompanied juvenile or unaccompanied child.
 - b. The implementation plan, policy guidance, and memoranda for Title 42.

Given the gravity of this concern, please provide answers to these questions and outline steps to meet our demands by August 31st, 2020. You are encouraged in your responses to be complete and provide any suitable or relevant references to law or policy.

Sincerely,



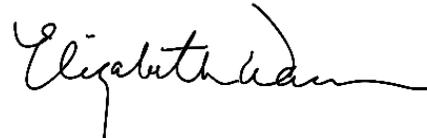
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United States Senator



Kirsten Gillibrand
United States Senator



Jacky Rosen
United States Senator



Elizabeth Warren
United States Senator

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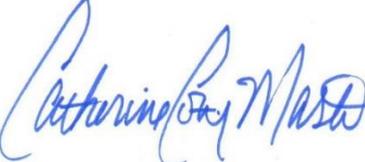
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