

United States Senate

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COMMITTEES:
APPROPRIATIONS
BUDGET
ENVIRONMENT AND
PUBLIC WORKS
FOREIGN RELATIONS

September 4, 2019

Assistant Secretary Lynn A. Johnson
Administration for Children and Families
U.S. Department of Health and Human Services
330 C Street, S.W.
Washington, D.C. 20201

Subject: Slowdown in Home Placements of Unaccompanied Migrant Children Due to Shortage of ORR Sponsors – Answers Demanded

Dear Assistant Secretary Johnson,

There is now an apparent shortage of sponsors willing to open up their homes to care for unaccompanied migrant children who are the responsibility of the Office of Refugee Resettlement (ORR). That has seemingly caused ORR to keep children in locked-down group settings for unacceptably long periods – likely to their life-long detriment.

The shortage appears to be due to Trump Administration policies that have deterred potential sponsors from submitting applications to ORR out of fear that the information they provide will be handed over to the Department of Homeland Security (DHS). This letter demands answers.

ORR's Role. Unaccompanied children apprehended by DHS are transferred to and become the responsibility of ORR. By law and regulation, ORR is supposed to promptly place these children in least restrictive settings. That should mean that ORR works to find a “sponsor” (an immediate family member, a relative, a close family friend) to serve as caregiver in a residential home environment while the child’s immigration status is adjudicated.

Children without sponsors remain in ORR custody, usually in groups in locked-down facilities like Casa Padre -- the former Walmart in Brownsville, Texas which turned me away when I attempted to visit in June of last year. It houses well over 1,000 children.¹

Unacceptable Time Spent in ORR Custody. ORR has held, now holds, and is projected to hold unaccompanied migrant children without sponsors in custody for unimaginably long periods of time. According to a recent Congressional report, of 1,063 children separated from their families by the Trump Administration’s “zero tolerance policy between April and late-June 2018, 597 were in ORR custody for more than 61 days – including more than 25 for *more than*

¹ NBC News, *Surge in Children Separated at Border Floods Facility for Undocumented Immigrants* (June 14, 2018), available at <https://www.nbcnews.com/news/us-news/surge-children-separated-border-floods-facility-undocumented-immigrants-n883001>.

one year.² 700 additional children have been separated between late-June 2018 and May 2019; at least 153 were still in ORR custody when limited data was produced by ORR at the end of March 2019.³

Going forward, ORR expects the situation to worsen. There are now 8,700 unaccompanied children in ORR custody.⁴ According to the head of ORR, “conceivably someone could come into our care at 15 years old and not have an identifiable sponsor in the United States and *remain with us for a few years*.”⁵ (Emphasis added.) ORR classifies over 4,000 of these children as having no identifiable sponsor willing to care for them.⁶

Holding innocent, unaccompanied children for months or years in prison-like conditions causes indelible harm. That is beyond question.

Cause of Sponsor Shortage. It appears that the sponsor shortage is the consequence of Trump Administration policies requiring ORR to share personal information from sponsors with ICE and CBP. On April 13, 2018, HHS and DHS entered into Memorandum of Agreement (MOA) to share sponsor information.⁷ Under the MOA and contrary to prior practice, background information sponsors supply to HHS to qualify for sponsorship is to be sent DHS -- which can use the information to apprehend and deport sponsors who may be subject to deportation orders.

Congressional action that is now law currently bars DHS from using information shared by HHS to apprehend, detain or remove sponsors.⁸ However, the MOA has had and is apparently having

² House Oversight and Reform Committee, *Child Separations by the Trump Administration* at 18 (July 2019), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-2019.%20Immigrant%20Child%20Separations-%20Staff%20Report.pdf>. According to report, the Trump Administration asserts that between April and June 2018, the “zero tolerance” policy separated 2,648 children from their families. 1,063 children represent only 40% of this figure. *Id.* at 7.

³ *Id.* at 13, citing American Immigration Council, *Family Separation FOIA Response from HHS Key Documents: Instances of Family Separation* (April 2019), available at https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/family_separation_foia_request_hhs_production_instances_of_family_separation.pdf.

⁴ ORR Fact Sheet (Aug. 6, 2019), available at <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Program-Fact-Sheet.pdf>.

⁵ CBS News, *Thousands of Unaccompanied Migrant Children Could Be Detained Indefinitely* (July 23, 2019), available at <https://www.cbsnews.com/news/thousands-of-unaccompanied-migrant-children-could-be-detained-indefinitely>.

⁶ Category 1 children have immediate family sponsors; Category 2 children have close relatives as sponsors; Category 3 children have potential sponsors who identify as distant family or close family friends. Category 4 children have no sponsors.

⁷ A copy of the MOA is publicly available at <https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf>.

⁸ H.J.Res.31, Consolidated Appropriations Act 2019 § 224 (Feb. 25, 2019), available at <https://www.congress.gov/116/bills/hjres/31/BILLS-116hjre-s31enr.pdf>.

a chilling effect – deterring potential sponsors from stepping forward to apply out of fear that they will be apprehended by DHS. In a survey conducted at the end of 2018, 75% of service providers who work with unaccompanied children said that fewer potential sponsors have come forward out of fear that their information would be sent to CBP or ICE for immigration enforcement purposes.⁹

Answers Demanded. The current situation remains a disaster. Please promptly respond to the following so that the Congress can further assess the issue.

1. How many children are in ORR custody, by age, month, facility, and sponsor classification (Category 1 through Category 4), from January 1, 2016 to the present?
2. What is the average length of stay of children in ORR custody, by age, month, facility, and sponsor classification (Category 1 through Category 4), from January 1, 2016 to the present?
3. What are the lengths of stay of all children in ORR custody, from January 1, 2016 to the present? Include data by dates of stage, age of child, facility names and locations, and sponsor classification (Category 1 through Category 4).
4. How many sponsor applications has ORR received, by month and state, from January 1, 2016 to the present?
5. How many sponsor applications have been completed, by month and state, from January 1, 2016 to the present?
6. How many sponsor applications has ORR received and how many non-family sponsor placements have there been in the last twelve months?
7. What steps, if any, is ORR taking to identify or recruit potential sponsors, including non-family sponsors?
8. By law, specifically the 2019 Consolidated Appropriations Act enacted on February 29, 2019, DHS is barred from using information shared by HHS, including sponsor information, to conduct deportation or removal proceedings. Notwithstanding this prohibition affecting DHS, has HHS shared any sponsor information with ICE or DHS before or after the date of enactment? If so, provide details.
9. Presumably, HHS and its component agencies have examined issues related to removing children in ORR custody from institutional facilities like Casa Padre. Please produce any reports or assessments created between April 1, 2018 and the present.

⁹ National Immigrant Justice Center and Women’s Refugee Commission, *Children as Bait: Impacts of the ORR-DHS Information-Sharing Agreement* (Mar. 26, 2019), available at <https://wrc.ms/bait>.

The foregoing should be treated as a request pursuant to the Freedom of Information Act. It should also be accorded expedited treatment. The subject matter of the request concerns "an urgent need to inform the public about an actual or alleged Federal Government activity (this criterion applies only to those requests made by a person primarily engaged in disseminating information to the public)." 45 CFR § 5.27(b)(2). Please respond within 10 calendar days. See 45 CFR § 5.27(c).

Sincerely yours,

A handwritten signature in blue ink that reads "Jeffrey A. Merkley". The signature is written in a cursive style with a horizontal line underneath the name.

Jeffrey A. Merkley
United States Senator