

KIRSTEN E. GILLIBRAND
NEW YORK
SENATOR

RUSSELL SENATE OFFICE BUILDING
SUITE 478
WASHINGTON, DC 20510-3205
202-224-4451

COMMITTEES:
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS
AGRICULTURE
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-3205

June 17, 2019

The Honorable Richard Shelby
Chairman
Senate Committee on Appropriations
S-128 U.S. Capitol
Washington D.C. 20510

The Honorable Patrick Leahy
Vice Chairman
Senate Committee on Appropriations
S-128 U.S. Capitol
Washington D.C. 20510

The Honorable Roy Blunt
Chairman
Senate Committee on Appropriations
Subcommittee on Labor, Health
and Human Services, Education,
and Related Agencies
131 Dirksen Senate Office Building
Washington D.C. 20510

The Honorable Patty Murray
Ranking Member
Senate Committee on Appropriations
Subcommittee on Labor, Health
and Human Services, Education,
and Related Agencies
131 Dirksen Senate Office Building
Washington D.C. 20510

Dear Chairmen Shelby and Blunt, Vice Chairman Leahy, and Ranking Member Murray,

As you negotiate the Department of Homeland Security (DHS) Humanitarian Supplemental Bill (DHS Supplemental), I urge you to include the provisions included in the House FY20 Labor-HHS Appropriations bill concerning the Office of Refugee Resettlement (ORR) Unaccompanied Alien Children (UACs) Program to restrict funding to ORR facilities that are not licensed by the state to care for children or meet the standards set by the *Flores Settlement (Flores)*. I also urge you to include provisions that restrict the use of any funds for implementation of the Memorandum of Agreement (MOA) between ICE, CBP, and ORR in which information obtained from children, such as citizenship status of potential sponsors, is being shared amongst these agencies. As arrivals at the border continue and the ORR Sponsors and Placement backlog grows, it is essential that we protect the health and safety for children in government custody by implementing policies that improve the expeditious placement of UACs with vetted sponsors and ensure compliance with *Flores*. It is imperative that we provide robust funding for ORR, but not at the expense of the wellbeing of children the government is responsible for.

ORR has a responsibility to properly shelter and care for unaccompanied children and to place them safely and expeditiously with sponsors. It is unacceptable that ORR has contracted with organizations that do not provide proper facilities and that cannot meet the minimum state requirements for holding children nor the federal requirements under *Flores*. The exemptions to staffing and safety requirements provided to these organizations through waivers approved by

HHS has led to thousands of migrant children allegedly suffering sexual abuse while in U.S. government custody over the past four years, according to HHS documents¹. In FY 2018 the overall average length of care for a UAC in the program was 60 days². This means that the average child is being detained in sub-par facilities with caregivers that, in many instances, have been exempted from background checks or adequate training to care for children. This is unacceptable and the DHS Supplemental should prohibit funds from being used to establish or expand influx facilities that are not state licensed or *Flores* compliant.

Moreover, the capacity problems at ORR facilities are in large part due to continued mismanagement of their policies for the timely placement of UACs with sponsors. The reports, from various media sources and oversight bodies including the HHS Office of the Inspector General, have detailed a deeply unsettling reality for innocent children that deserve to be placed with sponsors and the families that long to be reunited³. Among so many transgressions, the Memorandum of Agreement (MOA) signed by HHS and DHS in April 2018 that allows for the sharing of sponsor information between ORR and Immigration and Customs Enforcement (ICE) is complicating and delaying already-challenging UAC sponsor placement efforts. ORR should be prioritizing reunification of every child as soon as possible, but instead it appears to be responsible for policies that are forcing longer stays in government custody for children.

These capacity problems, largely due to the MOA, have forced ORR to waive safety requirements at their facilities which puts children in their custody at risk of harm. According to a lawsuit filed by the Southern Poverty Law Center, “[the information sharing MOA] is a part of the same strategy as the infamous family separation policy, and that the government knew it would result in fewer sponsors coming forward and children remaining in custody for longer periods of time⁴.” Capacity problems continue to be cited as justification for the HHS’s expansion of temporary, unlicensed facilities, including the recent announcement of another new mass facility to hold as many as 1,600 migrant children in Carrizo Spring, Texas and the Administration’s consideration of detaining hundreds more youths on three military bases around the country, adding up to 3,000 new beds to the already overtaxed system⁵. Considering this dire situation for children in government custody, I urge you to include provisions in the DHS Supplemental that restrict the use of any funds for implementation of the MOA between ICE, CBP, and ORR in which information, such as citizenship status of potential sponsors, is being

¹ *Sexual Abuse Allegations Reported to ORR and DOJ for FY15-FY18* made public by the Office of Rep. Ted Deutch on February 26, 2019. https://teddeutch.house.gov/uploadedfiles/naduac1214_sexual_assaults_fy2015-18.pdf

² *Fact and Data* made public by the Office of Refugee Resettlement on Feb. 13, 2019. <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

³ *“Family Separation Blasted By Both Parties At Oversight Hearing”* by Camila DeChalus. Published by Roll Call on February 7, 2019. <https://www.rollcall.com/news/congress/family-separation-blasted-parties-oversight-hearing>

⁴ *“Trump Administration Using Children ‘As Bait’ To Catch Undocumented Immigrants, Lawsuit Says”* by Chantal Da Silva. Published by Newsweek on January 24, 2019. <https://www.newsweek.com/trump-administration-using-migrant-children-bait-catch-undocumented-1303638>

⁵ *“US Opens New Mass Facility In Texas For Migrant Children”* by Garance Burke. Published by the Associated Press on June 7, 2019. <https://apnews.com/259d11069cbd4a34be9b4e7a187352da>

shared amongst these agencies in order to advance the Trump Administration's relentless targeting of immigrant communities.

Congress must ensure that the custody and processing of UACs by the US government is meeting the minimum standards required by domestic and international law. We need to fund ORR so that it can fulfill its mission to safely place UACs with sponsors, but we need to do it in way that is consistent with humanitarian principles and American values. We urge you to reject any funding agreement that does not include these important provisions for children.

Thank you,



Kirsten Gillibrand
United States Senator