

Congress of the United States
Washington, D.C. 20515

October 30, 2020

Chad Wolf
Acting Secretary
Department of Homeland Security
1880 2nd Street SW
Washington, DC 20024

Robert R. Redfield, MD
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30333

Dear Acting Secretary Wolf and Director Redfield,

We strongly object to the Trump administration’s expulsions of unaccompanied children seeking protection at the U.S. southern border and demand they immediately cease. Children pursuing refuge in the United States are, above all else, children. Their developmental stage and dependence on adults render them uniquely vulnerable. Compounding that vulnerability, these children have often traveled to the United States to escape extreme violence, abuse, and even threats to their very survival; suffer continuing trauma; and in the case of unaccompanied children, arrive without primary caretakers. Yet in violation of virtually every recognized child welfare principle, the administration is summarily returning them to the same dangers they fled. These expulsions must end now.

On March 20, 2020, the Centers for Disease Control and Prevention (CDC) issued an order¹ that bars unaccompanied children along with the overwhelming majority of asylum seekers, including accompanied children, from entering the United States. Pursuant to that order, DHS has expelled over 8,800 unaccompanied children,² returning them without legally mandated protection screenings, immigration court hearings, or other due process safeguards.

The administration has maintained that the CDC order and associated expulsions comprise a necessary public health response to the COVID-19 pandemic. However, recent media reports reveal that CDC scientists themselves objected to the March 20 order, finding no “valid public health reason to issue it.”³ These reports suggest that the White House pushed CDC officials to issue the order anyway, over the objections of public health officials, using the pandemic as a

¹ “Order Suspending Introduction of Certain persons From Countries Where a Communicable Disease Exists,” 85 FR 17060.

² Camilo Montoya-Galvez, “Nearly 9,000 migrant children have been expelled under pandemic border policy, court documents say,” *CBS News* (Sep. 11, 2020); <https://www.cbsnews.com/news/8800-migrant-children-have-been-expelled-under-pandemic-border-policy-per-court-documents/>.

³ Jason Dearen and Garance Burke, “Pence ordered borders closed after CDC experts refused,” *Associated Press* (Oct. 3, 2020); <https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae>.

pretext to meet the administration's longstanding aim of closing the United States to protection seekers.⁴ In fact, hundreds of unaccompanied children have been placed with the Office of Refugee Resettlement (ORR) in recent months. Clearly, expulsions lack a public health rationale, and the U.S. government is fully capable of receiving and placing unaccompanied children and asylum seekers while also protecting public health.⁵

These actions also run counter to the law. For one, expulsions of unaccompanied children violate the bipartisan Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), which mandates that the U.S. government afford unaccompanied children a meaningful opportunity to seek humanitarian relief.⁶ The administration cannot evade this binding law by executive fiat, nor other binding standards, like the *Flores* Settlement Agreement (*Flores*), that are carefully crafted to ensure the humane treatment of children. Indeed, the U.S. District Court for the Central District of California has already ruled that the prolonged placement of children in hotels pursuant to the CDC order has violated *Flores*. The appellate court denied the government's request to stay that ruling, finding the government is "unlikely to prevail on the merits" of its pending appeal.

What expulsions fail to do, then, is uphold U.S. law or public health. What they do instead is flout consensus child welfare principles—ones that informed the TVPRA and *Flores* and have long shaped policy towards children across federal, state, and local government. While the principles broken are numerous, let us examine three.

First, instead of protecting the safety and well-being of children, expulsions endanger them. Under the CDC order, the administration is disregarding longstanding safeguards designed to identify risks facing unaccompanied children, such as human trafficking, and to prevent their return into harm's way. By bypassing these procedures, DHS is placing the well-being of these children—and in some cases, their lives—in jeopardy. A recent media report on an expelled 12-year-old brother and his 9-year-old sister appears to highlight such outcomes.⁷ Though these children fled to the United States from Honduras after their uncle was killed and their own lives were threatened, DHS expelled them to that threat's very source.

Second, rather than promote family unity, expulsions may frustrate or outright preclude it. Unaccompanied children who are permitted to enter the United States and who then qualify for humanitarian protection may be able to rejoin parents or other family members residing here. Expulsions eliminate that opportunity. Even in instances involving unaccompanied children whose family members remain in their home countries, expulsions may fail to ensure that those

⁴ Michelle Hackman, Andrew Restuccia, and Stephanie Armour, "CDC Officials Objected to Order Turning Away Migrants at Border" *Wall Street Journal* (Oct. 3, 2020); <https://www.wsj.com/articles/cdc-officials-objected-to-order-turning-away-migrants-at-border-11601733601>.

Camilo Montoya-Galvez, "U.S. Stops Holding Migrant Children in Hotels but Says They Can Still Be Expelled," *CBS News* (October 2, 2020); <https://www.cbsnews.com/news/u-s-stops-holding-migrant-children-in-hotels-but-says-they-can-still-be-expelled/>

⁶ William Wilberforce Trafficking Victim Protection Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008) ("TVPRA").

⁷ Nomaan Merchant, "Seeking Safety in US, children fleeing danger are expelled" (Aug. 6, 2020);

<https://apnews.com/article/ap-top-news-honduras-mexico-health-immigration-1144b498194cd6b6818acd04d7880e05>.

children are safely reunited with those loved ones upon return. Cases that prompt such fears include a 10-year-old boy whom DHS expelled to his home country “without notifying any of his family members.”⁸

Third, eschewing rigorous, transparent data collection and independent monitoring, DHS has implemented expulsions in the shadows. The Department has provided minimal information to the public on expulsion procedures, criteria for exceptions to the underlying CDC order, and even the number of unaccompanied and accompanied children expelled. In fact, rather than furnish a clear total of unaccompanied child expulsions, DHS has disclosed only that, as of September 9, it had expelled 8,800 “single minors”—a construction that lacks a statutory basis and that raises the possibility that a significantly higher number of unaccompanied children have been returned to danger.⁹ In addition, the Department has expelled approximately 7,600 “members of family units or family groups,” but has not identified how many of those family unit or group members were children.¹⁰

In addition, since March 20, 2020, DHS has detained at least 660 children for various lengths of time in unlicensed hotels—some for up to 38 days.¹¹ One unaccompanied 17-year-old girl, held for over 15 nights at a hotel pursuant to the order, told her attorney that she was “rarely allowed outside of her room,” felt “isolated and anxious while she was detained in a hotel room” by unknown adults who “watched her at all times,” and was warned by DHS officials that if she informed her mother of her location, she would no longer be allowed to call her.¹² Though a court order currently prohibits placement of children subject to the CDC order in hotel rooms for prolonged periods of time, the government has appealed and continues to litigate its ability to use hotel rooms when carrying out expulsions.”

In a troubling parallel to the 2018 family separation crisis, we are concerned that the administration is not properly tracking information relating to the detention or expulsion of unaccompanied children. This concern has been echoed by U.S. District Court Judge Dolly Gee, who stated that “[t]he fact that the government cannot seem to consistently keep track of how

⁸ Caitlin Dickerson, “10 Years Old, Tearful and Confused After a Sudden Deportation,” *New York Times* (May 20, 2020); <https://www.nytimes.com/2020/05/20/us/coronavirus-migrant-children-unaccompanied-minors.html>.

⁹ Declaration of Raul L. Ortiz, September 11, 2020, at ¶ 6, Defendants’ Exhibit 1, Defendants’ *Ex Parte* Application to Stay Order, ECF No. 976, https://youthlaw.org/wp-content/uploads/2020/07/985_Govt-Ex-Parte-App-to-Stay-with-Exhibits.pdf.

¹⁰ *Id.*

¹¹ *Flores v. Barr*, Case No. 2:28-cv-04544-DMG, Order re Plaintiffs’ Motion to Enforce Settlement as to “Title 42” Class Members, ECF No. 976, at 3, September 4, 2020, <https://youthlaw.org/wp-content/uploads/2020/07/976-Flores-Order-re-Hotel-MTE.pdf>; *Flores v. Barr*, No. 20-55951, Plaintiffs-Appellees’ Opposition to Renewed Emergency Motion for Administrative Stay and Stay Pending Appeal, ECF No. 16-1, at 16, September 25, 2020, <https://youthlaw.org/wp-content/uploads/2020/07/16-1-Plaintiffs-Appellees-Opp.-to-Renewed-Emergency-Mot.-for-Admin.-Stay-and-Stay-Pending-Appeal.pdf>.

¹² Declaration of Taylor Levy, September 18, 2020, at ¶ 9, Exhibit 1, Plaintiffs’ Opposition to Ex Parte Application to Stay Order, ECF No. 988, https://youthlaw.org/wp-content/uploads/2020/07/985_Govt-Ex-Parte-App-to-Stay-with-Exhibits.pdf.

many children it has held in its custody is disturbing, to put it mildly. It is emblematic of the problem with such an opaque, unregulated, *ad hoc* program.”¹³

These violations of child welfare principles have no place in the United States of America. We therefore call upon the administration to immediately cease expulsions of children and to fully comply with the TVPRA and all other relevant laws and standards governing their screening, care, and placement. We also request that you provide written responses to the below questions no later than November 13, 2020.

1. Please provide copies of all CDC research relating to the March 20 order and its extensions and amendments, as well as copies of all correspondence between CDC, DHS, and the White House relating to the order, its extensions and amendments, and implementation thereof.
2. Please provides copies of all guidance, policies, procedures, training materials, and other documentation, including information about exceptions, if any, relating to the CDC order and expulsions implemented pursuant to it.
3. What criteria is DHS using to determine which children to exempt from the CDC order and process under Title 8 in accordance with the TVPRA? How are those implementing this process trained on these criteria?
4. Since March 20, how many minors has DHS expelled pursuant to the CDC order who were under the age of 18, encountered without a parent or legal guardian, and lacked lawful immigration status? Please identify this figure in total and as broken down based on the minors’ age, sex, country of origin, and country of return. Please also identify the mean, median, minimum, and maximum length of detention for this population of children.
5. Are all children being tested for COVID-19 before being expelled? And if not, why are some children tested and some are not? Has DHS knowingly or unknowingly expelled any children that have tested positive for COVID-19? What type of information on the child, including COVID screening/testing results, is being provided to government authorities in the country of return prior to a child being expelled? In what timeframe and with which authorities is this information shared? How does DHS ensure that receiving authorities get adequate information early enough to make proper preparations to mitigate child protection risks?
6. Please provide specific details about protection screenings performed, if any, of minors under the age of 18, encountered without a parent or legal guardian, and who lack lawful immigration status, including those minors deemed subject to the CDC order. Please

¹³ *Flores v. Barr*, Case No. 2:28-cv-04544-DMG, Order re Defendants’ Ex Parte Application to Stay, ECF No. 990, at 3 n2, September 21, 2020, https://youthlaw.org/wp-content/uploads/2020/07/990_Order-Denying-Govt-Ex-Parte-Application-to-Stay.pdf.

include details about who, if anyone, is performing the screenings and what protocols, if any, are in place to assure developmentally appropriate, trauma-informed and child-friendly interviews.

7. Prior to issuance of the CDC order, did CDC and DHS consult with nongovernmental experts in child welfare and protection to assess whether the order and associated expulsions would conform to established child welfare principles and practices?

Thank you for your prompt attention to this matter.

Sincerely,



Judy Chu
Member of Congress



Karen Bass
Member of Congress



Jim Langevin
Member of Congress

/s/Sheila Jackson Lee
Member of Congress

/s/Frederica S. Wilson
Member of Congress

/s/Eleanor Holmes Norton
Member of Congress

/s/Nanette Diaz Barragán
Member of Congress

/s/Jim Cooper
Member of Congress

/s/James P. McGovern
Member of Congress

/s/Filemon Vela
Member of Congress

/s/Gwen Moore
Member of Congress

/s/David Trone
Member of Congress

/s/Raúl Grijalva
Member of Congress

/s/Sylvia R. Garcia
Member of Congress

/s/Tony Cárdenas
Member of Congress

/s/Albio Sires
Member of Congress

/s/Juan Vargas
Member of Congress

/s/Nydia M. Velázquez
Member of Congress

/s/Bill Foster
Member of Congress

/s/Debbie Dingell
Member of Congress

/s/Betty McCollum
Member of Congress

/s/Jahana Hayes
Member of Congress

/s/Chellie Pingree
Member of Congress

/s/Yvette D. Clarke
Member of Congress

/s/Terri A. Sewell
Member of Congress

/s/Veronica Escobar
Member of Congress

/s/Mark Pocan
Member of Congress

/s/Lloyd Doggett
Member of Congress

/s/Mark DeSaulnier
Member of Congress

/s/Susan A. Davis
Member of Congress

/s/Suzan K. DelBene
Member of Congress

/s/Adriano Espaillat
Member of Congress

/s/Jamie Raskin
Member of Congress

/s/Dina Titus
Member of Congress

/s/Mark Takano
Member of Congress

/s/Joe Neguse
Member of Congress

/s/Jan Schakowsky
Member of Congress

/s/Linda T. Sánchez
Member of Congress

/s/Jackie Speier
Member of Congress

/s/Rosa L. DeLauro
Member of Congress

/s/Grace Meng
Member of Congress

/s/Joaquin Castro
Member of Congress

/s/Brenda L. Lawrence
Member of Congress

/s/Adam Smith
Member of Congress

/s/Grace F. Napolitano
Member of Congress

/s/ Ayanna Pressley
Member of Congress

/s/Mike Quigley
Member of Congress

/s/Pramila Jayapal
Member of Congress

/s/Andy Levin
Member of Congress

/s/Jimmy Panetta
Member of Congress

/s/Kim Schrier, M.D.
Member of Congress

/s/Peter Welch
Member of Congress

/s/Alan Lowenthal
Member of Congress

/s/Jason Crow
Member of Congress

/s/Lucille Roybal-Allard
Member of Congress

/s/Earl Blumenauer
Member of Congress

/s/Suzanne Bonamici
Member of Congress

/s/Lois Frankel
Member of Congress