

August 16, 2019

The Honorable Lynn Johnson
Assistant Secretary, Administration for Children and Families
Health and Human Services

**Re: ACLU Tour of the Temporary Emergency Influx Shelter in
Homestead, Florida**

Dear Assistant Secretary Johnson:



National Political
Advocacy Department

915 15th Street, 6th FL
aclu.org

Susan Herman
President

Anthony Romero
Executive Director

Ronald Newman
National Political
Director

On behalf of the American Civil Liberties Union (“ACLU”) and the ACLU of Florida, thank you for granting us a tour of the temporary emergency influx shelter in Homestead, Florida on August 6, 2019. We appreciate the opportunity to provide this list of follow-up questions, as suggested by Office of Refugee Resettlement (“ORR”) staff at the conclusion of our tour.

We welcome ORR’s recent efforts to expedite the release of children to appropriate sponsors, including the issuance of operational directives that have contributed to a significant decrease in the average length of time children spend in ORR custody.¹ We appreciate that your efforts to ensure adequate bed capacity are directly connected to the work of ensuring that no child remains in Customs and Border Protection custody beyond 72 hours. We also welcomed your statement at a recent hearing that you “would prefer small permanent shelters” to massive influx shelters that we believe pose serious risks to the well-being of children.² We urge ORR to continue its efforts to identify small state-licensed permanent shelters, particularly prioritizing non-profit organizations with established models of family-like foster care driven by the best interests of the child.

However, we have serious concerns about the recent and future operation of unlicensed emergency influx shelters at Homestead, Carrizo Springs, Texas and Fort Sill, Oklahoma, including keeping these shelters on indefinite “warm status”—in an apparent attempt to maintain a capacity to detain

¹ See Written Testimony of Jonathan H. Hayes, Director, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services, before the House Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, July 24, 2019, <https://docs.house.gov/meetings/AP/AP07/20190724/109832/HHRG-116-AP07-Wstate-HayesJ-20190724.pdf> (“Hayes Written Testimony”).

² Testimony of Lynn Johnson, Assistant Secretary, Administration for Children and Families, U.S. Department of Health and Human Services, before the House Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, July 24, 2019 (transcript of verbal testimony).

3,000 children at such influx facilities.³ In particular, we urge ORR to operate with greater transparency and accountability, as outlined in this letter, and abandon any plans to keep influx facilities on indefinite standby. We also urge ORR to take steps to safeguard the confidentiality of information that children provide to facility staff.

Sudden Relocation of Children

Most immediately, the public and Congress need to know more about the circumstances that led to the relocation of children from Homestead on and around August 3, 2019. While we welcome ORR's efforts to stop actively using Homestead, the manner of this relocation raises troubling questions. According to staff accompanying us on the tour and media reports, 175-177 children were relocated between 1 am and 7 am on Saturday, August 3, 2019.⁴ It appears this was done without any prior warning to the children and the clinical or day staff that had been working with the children since their arrival at Homestead. We do not know when their families, their intended sponsors or their attorneys of record were notified. We do not know what factors went into ORR's decisions regarding where each child would be transferred; while ORR policy requires that siblings be placed together,⁵ we do not know if attempts were made to otherwise keep children from Homestead together in their new placements in order to mitigate the destabilizing effects of relocation.

Waking children in the middle of the night—including those who have previously experienced severe trauma—to pack them into a van or bus and send them to an unknown location is likely to cause anxiety and fear. Separating children from newfound friends and counselors without warning or any sense of where they are going, especially when they are already alone and isolated, would be cruel. Forcing them to relocate in the middle of the night to an unknown place without allowing them to contact family or intended sponsors would be particularly traumatic to children who have recently been forcibly separated from family members at the border.

³ “By December 31st of 2020, we anticipate that we will have an increase in permanent, state-licensed shelters, including foster care up to a total of 20,000 beds, which almost doubles current permanent capacity. In the short term, HHS aims to have about 3,000 additional temporary beds available this fiscal year at influx care facilities in anticipation of continued high arrivals at the southern border, so that UAC do not remain in border patrol stations, which are not designed or equipped to care for children.” Testimony of Jonathan H. Hayes, Director, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services, before the House Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, July 24, 2019 (transcript of verbal testimony).

⁴ See Monique O. Madan, “All children have been moved from Homestead detention center. They’re not coming back,” Miami Herald, Aug. 5, 2019, <https://www.miamiherald.com/news/local/immigration/article233488172.html>.

⁵ ORR Policy Guide, sec. 1.2.7, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.4.5>.

In sum, from the limited information we have, it appears that the manner of this relocation was unnecessary. It raises troubling questions about who ordered the sudden removal—within the agency or outside of it—and whether an assessment was made about whether it was in the best interests of these children. These questions are even more concerning in light of the mission of and expertise within your department. Instead of a middle-of-the-night operation, ORR could have worked with Homestead staff, including case managers and counselors, to prepare and transfer these children in a manner less likely to cause trauma. Such preparation could have also included efforts to mitigate the interruption of counseling, medical services and case management by the staff of Homestead’s primary private operator, Comprehensive Health Services (“CHS”).

Although this relocation occurred less than 72 hours before our visit, ORR and CHS staff were unable or unwilling to disclose where these children were relocated to—whether they all went to one large-scale shelter or were sent to several different small shelters, whether they were transported to another facility within Florida or were transported to other states, and whether any were sent to another unlicensed influx facility. Media have also reported the agency’s failure to provide this basic information.⁶ The lack of transparency undermines public confidence in the work of ORR, and is a detriment to the agency.

Unlicensed Influx Facilities on Indefinite Standby

We are also seriously concerned about the continuing operation of Homestead and other influx facilities on “warm” status—apparently on indefinite standby. While we appreciate ORR’s expressed need to manage the uncertain circumstances of migrant flows,⁷ to date these emergency influx shelters have operated with little accountability to the public, Congress or the law.

Instead of operating according to state licensing standards, the facilities operate according to contract terms that are not disclosed to the public—completely stymying the public’s and Congress’ ability to assess both the adequacy of the standards and whether private operators are complying with them. For example, on our tour we were introduced to a leading educational worker employed by CHS, and told to direct questions on educational standards to her. She said that of 130 teachers, only 8-10 were certified; when asked about why CHS does not require teacher certification, she replied that CHS complies with ORR contract terms regarding the qualifications for teachers. However, it is impossible to assess the adequacy of this response

⁶ See, e.g., Monique O. Madan, “There are no kids left at the Homestead detention center, but has it truly shut down,” Miami Herald, Aug. 6, 2019, <https://www.miamiherald.com/news/local/immigration/article233546697.html>.

⁷ “HHS has a bed capacity framework with grant and contract mechanisms that provide standard permanent bed capacity, with the ability to add temporary beds. That arrangement helps HHS to accommodate changing flows in the number of referred UAC.” Hayes Written Testimony, *supra* note 1.

since neither we nor Congress know the contract's terms even when it comes to basic questions of the care and treatment of children at Homestead.

In lieu of state licensing standards that would apply to permanent shelters, Homestead appears to operate singularly at the direction of ORR. However, ORR has published little information about mandated improvements or safeguards at Homestead, despite mounting public and congressional concern. For example, when asked, the CHS educator at Homestead with whom we met expressed no concern about the adequacy of classroom facilities, teacher qualifications or curriculum. Although she described an “update” to curriculum, when asked she confirmed that no overhauls were underway—despite repeated concern expressed by members of Congress and Director Hayes’ own admission that the “noise level” was “a bit of a problem.”⁸ It is unclear whether CHS’s failure to make improvements in this and other regards reflects a lack of direction from ORR, since we do not know what if, any changes ORR has sought. It is likewise impossible to assess whether and how CHS is complying with ORR’s policy guide in regard to sexual abuse, since ORR has failed to provide basic information to us or Congress such as the informational/orientation packet that children receive on entry to the facility.

The public has no information about how federal and state taxpayer money—hundreds of millions of dollars via federal contracts with multiple vendors, in addition to state and local tax incentives and any other state funding or contracts—is being spent to keep Homestead and other facilities on indefinite standby. ORR has provided no information to the public regarding the circumstances under which contracts with CHS and other Homestead vendors would be modified, or these facilities shutdown. By media estimates, Homestead has cost taxpayers \$17 million every month, or \$500,000 per day, to operate.⁹ CHS staff informed us that on the day of our visit more than 4,000 workers remained active at Homestead—while zero children were there. It is unclear whether CHS and other Homestead contractors are required by contract to keep local workers employed during “warm status,” or provide notice prior to their termination.

It is likewise unclear whether ORR intends to continue paying out these contracts, without demanding improvements to Homestead, let alone making any effort to require this facility meet Florida state licensing or other child welfare standards. We believe the warehouse-scale of Homestead will always make it an inappropriate setting for the care of the children; however, ORR’s apparent failure to require improvements at Homestead, while keeping it on “warm status” indefinitely, is likewise untenable.

⁸ See *generally* House Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Hearing on Oversight of the Unaccompanied Children Program,” July 24, 2019.

⁹ Jerry Iannelli, “U.S. Spends \$500,000 a Day on Homestead Child-Migrant Camp,” Miami New Times, Nov. 2, 2018, <https://www.miaminewtimes.com/news/homestead-miami-migrant-camp-for-children-costs-500000-per-day-10877669>.

Confidentiality of Information

We urge ORR to take steps to safeguard the confidentiality of information that children provide to case managers, psychological care and medical providers, and other staff employed by shelter operators. The Consolidated Appropriations Act 2019 prohibits DHS from using funds to detain or remove a sponsor or potential sponsor on the basis of information shared by Health and Human Services (“HHS”).¹⁰ However, it does not explicitly extend to information provided by a child that could be used to detain or remove other individuals, such as a non-sponsoring family member. Nor does it prevent the sharing of confidential information provided by a child who, having turned 18, is no longer in ORR custody and may be subject to bond determinations and enforcement actions by ICE.

Transparency and Accountability

It is in the interest of the agency to meet public concern about its operations with transparency. A failure to provide basic information feeds public concern—especially when the welfare of young children is at stake. It may also imply the agency has something to hide; in contrast, sharing information about ORR practices may address some concerns and will lead to more informed recommendations from civil society.

We urge you, in particular, to issue a directive governing access for NGO visits to permanent and temporary shelters, setting clear parameters for the granting of such access and requiring visits be conducted in a manner that promotes dialogue and transparency. We also urge you to provide greater information to the public regarding sponsor processing, contracts for the operation of temporary shelters and confidentiality, as described in our requests for information below.

We were advised that ORR staff on our tour did not have authority to provide answers to our questions or concerns, but that we could follow up in writing and answers would be provided. Accordingly, we request you provide answers to these requests by September 23, 2019.

1) *Relocation of children from Homestead*

- a) Of the children at Homestead as of July 1, 2019, 12:01 am please provide the following breakdown:
 - i) What was the total number of children at Homestead at this time; how many were released directly to sponsors, transferred to a licensed permanent shelter, transferred to another influx facility, transferred to ICE custody, or directly repatriated?
 - ii) Of those transferred to a licensed permanent shelter: How many were transferred to a shelter with a capacity of more than 50

¹⁰ H.J.Res.31, Consolidated Appropriations Act 2019 § 224 (Feb. 25, 2019), <https://www.congress.gov/116/bills/hjres31/BILLS-116hjres31enr.pdf>.

children? What categories (1-4) were these children in? Notwithstanding ORR policy on sibling placement, how many children had siblings in ORR custody and of these, how many were transferred to a shelter with their sibling?

- b) Of the children at Homestead as of August 1, at 12:01 am please provide the following breakdown:
 - i) What was the total number of children at Homestead at this time; how many were released directly to sponsors, transferred to a licensed permanent shelter, transferred to another influx facility, transferred to ICE custody, or directly repatriated?
 - ii) What categories (1-4) were these children in? Were any in the process of being unified with sponsors?
 - iii) For children transferred to a new shelter, what steps are being taken to ensure case managers employed by CHS promptly transfer information to new case managers?

2) *Influx Facilities*

- a) Please describe all existing influx facilities on “warm status” at this time, including their location, capacity, current contract periods and monthly operation costs.
- b) As of August 16, 2019, are there any children at an influx facility? If so, which facilities and how many children?
- c) For each of the existing influx facilities, will a license be sought or will operators otherwise use the “warm status” period to make improvements necessary to meet state licensing requirements?
- d) Is ORR currently considering contracts for any new influx facilities?
- e) Under what circumstances would ORR close influx facilities rather than keep them on “warm status”?

3) *Permanent Shelters* Director Hayes testified that ORR is currently attempting to increase permanent, state-licensed shelter capacity up to 20,000 (doubling current capacity).¹¹

- a) Are any grant awards made or under consideration in 2019 for shelters that would maintain a capacity of more than 200 children?
- b) For grant awards made or under consideration in 2019, please list the states in which shelters are or would be located, and the anticipated capacity for each shelter.

¹¹ Testimony of Jonathan H. Hayes, Director, Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services, before the House Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, July 24, 2019 (transcript of verbal testimony).

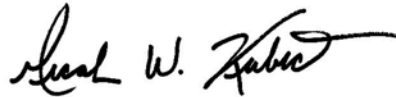
- 4) *Homestead Status and Operations*
- a) Is ORR planning to keep Homestead open on “warm status” until the end of the contract term of Nov. 30, 2019?
 - b) If so, are there plans to seek a license for Homestead or make improvement necessary to meet state licensing requirements?
 - c) What, if any, plans exist to improve the classroom environment, increase hiring of certified teachers and align the curriculum with state of Florida standards?
 - d) What, if any, plans exist to address concerns of child welfare experts regarding restrictive and overly securitized treatment of children at Homestead?
 - e) Please provide a copy of materials related to sexual abuse and other forms of child abuse reporting at Homestead, including the orientation packet and other information on reporting that is provided to children; and staff protocols and training manuals.
 - f) How many complaints of sexual abuse or other forms of child abuse have CHS staff at Homestead received? How many were referred to the Florida Department of Child and Families or other state or local agencies?
 - g) Has the contract with CHS for Homestead operations been modified since the last child left Homestead on Aug. 3, 2019; or are there provisions of the contract now in force that were previously inapplicable? If so, please describe these modifications or newly applicable provisions.
 - h) Under what circumstances will the contract with CHS for Homestead operations be extended beyond the current expiration date of Nov. 30, 2019?
 - i) As of August 16, what are the current daily operating costs of Homestead?
 - j) Please make publicly available the current ORR contract with CHS for Homestead operations; and any other ORR contracts with private, state, or local entities for Homestead facility maintenance, construction or operation.
 - k) Will ORR provide notice to the public if additional children are brought to Homestead?
- 5) *Operational Directives on Sponsor Processing* Director Hayes recently testified regarding four policy directives issued in spring and summer 2019,¹² including those issued in June 2019 regarding fingerprinting of potential sponsors, fingerprinting and categories 1-4. During our visit, we were also informed of a change in policy regarding separating category 2 into 2a and 2b. While ORR’s factsheet was updated on Aug. 6, 2019 to reflect these changes in general terms, we are not able to locate the policy directives on the ORR website.

¹² *Id.*

- a) Please make publicly available all four operational directives referred to by Director Hayes.
 - b) Were the Operational Directives prompted by emergency circumstances? If the number of children in ORR custody decreases, will the directives be rescinded?
 - c) Will you provide notice to the public before the directives are rescinded?
- 6) *Information-Sharing with ICE*
- a) What does HHS do to ensure confidentiality of communications between children in ORR custody and youth care workers, counselors, psychiatrists, medical workers (on- and off-site)?
 - b) Is ORR's position that it is legally required to share sponsor information with ICE, and if so, what is the basis for this position?¹³

Thank you for your time and assistance. Please do not hesitate to contact ACLU policy counsel Naureen Shah (nshah@aclu.org; 202-658-8235) with any questions regarding our request.

Sincerely,



Micah W. Kubic, Ph.D.
ACLU of Florida, Executive Director



Naureen Shah
ACLU National Political Advocacy Department
Senior Advocacy and Policy Counsel

Cc:

Ms. Joanne Chiedi, Acting Inspector General, U.S. Department of Health and Human Services

¹³ In response to Rep. Nita Lowey's question, "does HHS currently share information about potential sponsors with the Department of Homeland Security?" Director Hayes responded, "Yes, ma'am, we do. At the time of discharge, once a child has been through the sponsorship process, when a child is discharged to a sponsor, we do send..." Rep. Lowey interrupted and stated, "Excuse me, this is just shocking" and Director Hayes replied: "Once a child is discharged from our care to go to the family, to the sponsor as they await their hearing, they are under the jurisdiction of the Department of Homeland Security..." *Id.*