

April 15, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, D.C. 20016

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

RE: Opposition to Detention of Unaccompanied Children in Influx Facilities

Dear Secretary Becerra and Secretary Mayorkas:

We write in firm opposition to the use of influx facilities, especially on military bases, to detain unaccompanied migrant children arriving at the border. We urge you to consider the best interests of children which includes being with their parents, trusted caregivers or family members, ensuring their health and safety is a top priority especially amidst COVID-19, and only as a last resort to be housed in small-scale, nonrestrictive, licensed facilities. Large scale detention facilities are wholly inappropriate for children of all ages, and inherently harmful for any amount of time, as has been well documented by health professionals and child welfare advocates.¹ In order to truly address the humanitarian needs of migrant children arriving at our borders, the administration must address the underlying policies that separate families and force parents to make difficult decisions. We call on the administration to:

- 1) End the practice of holding children in large scale influx facilities, including military bases.**
- 2) Rescind the Title 42 border closure and fully restore access to asylum at our borders, including at ports of entry and ensuring unaccompanied children have immediate and consistent access to legal counsel, child advocates and interpretation services.**
- 3) In situations where children arrive without a parent or legal guardian, establish a process with the Department of Health and Human Services at the border to more quickly identify and vet family or sponsors to whom children can be released without the use of influx facilities.**
- 4) In cases where a sponsor cannot be quickly identified within 72 hours, prioritize small scale, non-restrictive settings for unaccompanied children in facilities licensed for childcare and run by trusted community based non-profits.**

Each of these recommendations is discussed in more detail below.

¹ Young Center for Immigrant Children's Rights, *Reimagining Children's Immigration Proceedings: A Roadmap for an Entirely New System Centered Around Children* (October 2020), available at <https://www.theyoungcenter.org/reimagining-childrens-immigration-proceedings>

1) End the practice of holding children in large scale influx facilities, including military bases.

Large scale facilities, including on military bases, have historically been used in the U.S. as places of forced removal, detention, mass incarceration, and violence against communities of color, including indigenous peoples and Japanese Americans. This administration should not repeat mistakes of the past, especially when the lack of transparency and abuse at influx facilities, including military bases, has been well documented.² While the administration has promised that current influx sites will be temporary, we have now witnessed these sites used repeatedly. The normalization of influx sites represents an unacceptable expansion of detention with potential unforeseen dire consequences in the future, including serious long-term medical and psychological issues for children.

Placing children in influx facilities, including on military bases, is wholly inappropriate for any length of time and a move towards further militarization of our immigration system. The Trafficking Victims Protection Reauthorization Act (TVPRA) requires that children be placed in the “least restrictive setting that is in the best interest of the child,” the best setting being placement with a parent, guardian, or sponsor.³ When that is not possible, the U.S. Department of Health & Human Services (HHS) and the Office of Refugee Resettlement (ORR) are required to provide the appropriate care to the child until a sponsor or other long-term placement can be found. These childcare providers must be state-licensed, compliant with all state child welfare laws, and meet ORR’s highest requirements in order to provide services to unaccompanied minors.⁴

Detention is never in the best interest of children, but particularly devastating in large scale settings that are not properly licensed or outfitted to care for children. Children and youth experiencing stressful or traumatic conditions need care and support from trusted adults, something that is simply not possible in an influx facility. Further, because influx facilities are not subject to the same requirements or oversight mechanisms, the potential for abuse is great, as evidenced by the lack of proper background checks for workers at the Homestead facility in Florida, resulting in allegations of sexual abuse of children detained there in 2017 and 2018.⁵

We are deeply concerned about the effects that confinement to influx facilities, especially those located on military bases, will have on the mental health of unaccompanied children. Any type of detention has devastating effects on the health and wellbeing of children, often leading to hypervigilance, sleep-issues and low self-esteem. Even licensed ORR facilities face challenges providing for the specialized needs of unaccompanied children, especially regarding mental health support for children who have faced significant trauma in their home country and on their journey to the United States.⁶ Confinement to large scale influx facilities, including on military

² For example, see Monique O. Madan, *Sex abuse claims revealed at Homestead shelter, where staff was not vetted for child abuse*, Miami Herald (July 2020),

<https://www.miamiherald.com/news/local/immigration/article244244402.html> and Matt Smith and Aura Bogado, *Immigrant children forcibly injected with drugs at Texas shelter, lawsuit claims*, The Texas Tribune (June 2018) <https://www.texastribune.org/2018/06/20/immigrant-children-forcibly-injected-drugs-lawsuit-claims/>

³ 8 U.S.C. § 1232(c)(2)(A)

⁴ Office of Refugee Resettlement, U.S. Department of Health and Human Services, *Children Entering the United States Unaccompanied: Placement in ORR Care Provider Facilities*, last updated January 30, 2015,

<https://www.acf.hhs.gov/orr/report/children-entering-united-states-unaccompanied-section-1>.

⁵ Madan, <https://www.miamiherald.com/news/local/immigration/article244244402.html>

⁶ Acting Inspector General Joanne M. Chiedi, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, U.S. Department of Health and Human Services, Office of Inspector General, OEI-09-18-00431 (September 2019), available at <https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf>.

bases, may retraumatize these children in addition to placing them further from necessary child-appropriate care and support.

We are aware that HHS has opened several “emergency intake facilities” across the country, including in San Antonio and San Diego, in an attempt to immediately minimize the time children are currently spending in Customs and Border Protection (CBP) custody. It is our understanding that children should only be spending a few days at these intake facilities before being reunified with a family member or being sent to a longer term ORR facility. While we agree that children should never be in CBP custody and are monitoring developments with these new facilities, it is imperative that ORR ensure that these facilities meet their highest standards and regulations. Additionally, child and legal advocates should be granted immediate access to all sites. Finally, the administration must ensure that these facilities remain temporary and not transition into long-term large-scale facilities, including influx facilities.

2) Rescind the Title 42 border closure and fully restore access to asylum at our borders, including at ports of entry and ensuring unaccompanied children have immediate and consistent access to legal counsel, child advocates and interpretation services.

Rather than continuing the failed and dangerous approach of using large scale influx facilities for children, the administration must address immigration policies which have led to the current situation and which go against the administration’s goal of ending family separation. Several of these policies must urgently be addressed, including fully undoing the racist web of policies implemented by the Trump administration that effectively closed the Southern Border to migrants and eviscerated the U.S. asylum system. These policies include the implementation of Title 42 in March of last year as a response to the COVID-19 pandemic, which public health experts have said has no public health basis.⁷

Under the previous administration, the Title 42 order meant that anyone arriving at the border, including unaccompanied children, was immediately “expelled” or deported without any chance to seek asylum or any other form of relief. Despite no public health justification, this policy has remained in effect for adults and families arriving together, but not for unaccompanied children arriving at the border. This practice creates an impossible decision for families seeking safety in the United States. Families should be permitted to exercise their legal right to apply for asylum together.⁸ Other policies such as metering, expedited removal, and criminal prosecution for entry and reentry have similar impact. To address these underlying factors, we call on you to end Title 42, end the criminalization of migration, end all metering policies that turn people away at the border and end all fast-track removal policies.

3) In situations where children arrive without a parent or legal guardian, establish a process with the Department of Health and Human Services at the border to more quickly identify and vet family or sponsors to whom children can be released without the use of influx facilities.

⁷ For example, see Camilo Montoya-Galvez, How Trump officials used COVID-19 to shut U.S. borders to migrant children, CBS News (November 2020), <https://www.cbsnews.com/news/trump-administration-closed-borders-migrant-children-covid-19/>, Letter to HHS Secretary Azar and CDC Director Redfield signed by leaders of public health schools, medical schools, hospitals, and other U.S. institutions (May 2020) <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>, and Letter to Acting HHS Secretary Cochran and CDC Director Walensky (January 2021), <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky>

⁸ *Biden brings back family separation—this time in Mexico*, Politico (March 2021)

<https://www.politico.com/news/magazine/2021/03/20/border-family-separation-mexico-biden-477309>

As Secretary Mayorkas has noted, in more than 80 percent of cases, children have a family member in the United States and in more than 40 percent of cases, that family member is a parent or legal guardian.⁹ Many arrive with trusted caretakers with whom they can safely remain. The United States should be uniting children with their family members and sponsors as quickly as possible without the use of influx facilities. We recommend an increase in HHS staff at the border to begin the process of identifying and vetting sponsors as early as possible, negating the need for longer term housing for children with family in the United States. This administration could also reduce the need for longer term detention and the subsequent damaging impact on children by revisiting current processing practices. Currently, children arriving at the border with only a non-parental family member or caretaker, for example, are separated from that person, without consideration of who the child is traveling with, how long the child has known the caretaker, and other relevant factors and considerations. Often these caretakers include older siblings, grandparents, aunts, uncles and other extended family members. Although appropriate vetting should be conducted for their safety, children arriving with trusted extended family or caretakers could be designated as unaccompanied but released into the custody of the family member or trusted caretaker with whom they arrived and connected to legal and social services in the communities where they will reside during immigration proceedings.

4) In cases where a sponsor cannot be quickly identified within 72 hours, prioritize small scale, non-restrictive settings for unaccompanied children in facilities licensed for childcare and run by trusted community based non-profits.

While the pandemic imparts particular pressure on the process of safely housing unaccompanied children arriving at the border, there are alternatives to expanding into unlicensed influx facilities. In cases where a sponsor cannot be quickly identified, we urge you to prioritize small, homelike, non-restrictive settings for unaccompanied children in facilities licensed for childcare and run by trusted community non-profits that specialize in caring for immigrant youth. When short-term custody is necessary, children should be housed under environmentally safe conditions. Groups like Earthjustice, for example, have noted that military bases like Fort Bliss may be polluted with toxic hazards due to past military operations, spills and storage of toxic chemicals, and other activities which could still pose serious threats to the long-term health and well-being of children.¹⁰ When the wellbeing of children is at stake, urgent efforts must be made to expand safe and appropriate shelter expeditiously without relying on settings that are harmful to children.

Finally, while the recommendations above represent immediate steps the administration can and should take, this moment points to larger systemic issues regarding the reception and care of children arriving at our borders without a parent or legal guardian. In order to ensure the well-being of all children, HHS must secure enough permanent licensed small scale capacity (under 25 beds) to meet variations in demand, improve access to quality family-based placements, ensure access to counsel, and improve the release rate to sponsors to limit the overall time in government custody.

Thank you for your time and consideration. Please feel free to contact Setareh Ghandehari at sghandehari@detentionwatchnetwork.org with any questions.

⁹ Statement by Homeland Security Secretary Alejandro N. Mayorkas regarding the situation at the Southwest border (March 2021) <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>

¹⁰ Kenny Stancil, *Biden administration has detained migrant minors in "toxic military sites,"* Truthout (April 2021) <https://truthout.org/articles/biden-administration-has-detained-migrant-minors-in-toxic-military-sites/>

Sincerely,

American Friends Service Committee
CASA
Detention Watch Network
Immigrant Legal Resource Center
Tsuru for Solidarity
United We Dream
18 Million Rising
Accompaniment and Sanctuary Coalition Colorado Springs
Action Potluck & Sanctuary Neighborhoods
Advancing Justice - Asian Law Caucus
Advocate Visitors with Immigrants in Detention
Al Otro Lado
Alianza Americas
American Friends Service Committee, Colorado
American Gateways
Amos Project~ First Church of Lombard, UCC
Asians 4 Black Lives
Asylum Seeker Advocacy Project (ASAP)
Austin Border Relief
Bend the Arc: Jewish Action
Beyond Violence Alliance
Border Crit Institute
Border Network for Human Rights
Bridges Faith Initiative
Brooklyn Community Bail Fund (BCBF)
Buen Vecino
California Alliance for Youth and Community Justice
California Collaborative for Immigrant Justice
California Immigrant Youth Justice Alliance
Casa Ruby
Center for Community Action and Environmental Justice
Center for Empowering Refugees and Immigrants
Central Pacific Conference United Church of Christ
Centro Legal de la Raza
Chicago Religious Leadership Network on Latin America - CRLN
Cleveland Jobs with Justice
Coalition for Juvenile Justice
Colorado Immigrant Rights Coalition
Colorado Organization for Latina Opportunity and Reproductive Rights
Columbine Unitarian Universalist Church
Communities United for Restorative Youth Justice (CURYJ)
Community Healers
Community Justice Exchange
Community Legal Services in East Palo Alto
Comunidades Unidas en una Voz (CUUV)
Courage California
Desert Support for Asylum Seekers
Detained Immigrant Spiritual Care Team
Detention Resistance
Disciples Refugee & Immigration Ministries

Doctors for Camp Closure
Dolores Street Community Services
Don't Separate Families
Ella Baker Center for Human Rights
Equal Justice Under Law
FIRE (Fight for Im/migrant & Refugees Everywhere)
First Focus on Children
Florence Immigrant & Refugee Rights Project
Franciscan Action Network
Free Migration Project
Free Them All San Diego
Freedom for Immigrants
Hartford Deportation Defense
Heartland Resistance Coalition
Holy Spirit Missionary Sisters, USA-JPIC
Human Impact Partners (HIP)
ICE Fuera de Austin
ICNA RELIEF CHICAGO
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Action Alliance
Immigrant Defense Advocates
Immigrant Legal Advocacy Project
Immigrant Legal Services of the Central Coast Inc.
Immigrant Solidarity DuPage
Immigration Center for Women and Children
Indivisible Front Range Resistance
Indivisible Sacramento
Inland Coalition for Immigrant Justice
Inland Empire Immigrant Youth Collective
Interfaith Community for Detained Immigrants
Interfaith Movement for Human Integrity
Iowa Coalition Against Domestic Violence
Iowa Migrant Movement for Justice
Japanese American Citizens League
Jewish Activists for Immigration Justice of Western MA
Jewish Voice for Peace/Austin
Juntos
Just Neighbors
Justice & Diversity Center of the Bar Association of San Francisco
Justice For Families
Kehilla Community Synagogue
Kern Welcoming and Extending Solidarity to Immigrants
La Raza Centro Legal San Francisco
La Resistencia
La Union Del Pueblo Entero
Laredo Immigrant Alliance
LATIN ADVOCACY NETWORK (LATINAN)
Latino Health Access
LatinoJustice PRLDEF
Law Practice Group, PLLC
Long Beach Immigrant Rights Coalition
Louisiana Advocates for Immigrants in Detention

Make the Road PA
Massachusetts Immigrant and Refugee Advocacy Coalition
Mississippi Center for Justice
National Association of Pediatric Nurse Practitioners
National Compadres Network
National Council of Jewish Women
National Immigration Project (NIP-NLG)
National Justice for Our Neighbors
National Juvenile Defender Center
National Juvenile Justice Network
Neighbors Link
NETWORK Lobby for Catholic Social Justice
New Hampshire Legal Assistance
New York Day of Remembrance Committee
No Detention Centers in Michigan
NorCal Resist
Northeastern University Immigrant Justice Clinic
Orange County Equality Coalition
Orange County Rapid Response Network
Pacific Juvenile Defender Center
Pangea Legal Services
Pax Christi Illinois
Pax Christi New Jersey
Pax Christi Seed Planters/IL/USA
Peaceful Communities
Peninsula Progressive Action Group
People's Collective for Environmental Justice (PC4EJ)
Physicians for Human Rights
Priests of the Sacred Heart, US Province
Project Blueprint
Project Lifeline
Project South
Provincial Council Clerics of St. Viator
Public Counsel
Quixote Center
RAICES
Re:Store Justice
Revolutionary Love Project
Rocky Mountain Immigrant Advocacy Network (RMIAN)
Rural Organizing Project
San Antonio Alliance of Teachers and Support Personnel
San Antonio Jewish Voice For Peace
San Antonio Region Justice For Our Neighbors
San Bernardino Community Service Center, Inc.
Sanctuary DMV
Santa Cruz County Public Defender
Shut Down Etowah
Sikh American Legal Defense and Education Fund (SALDEF)
Silicon Valley De-Bug
Sin Huellas Artist Collective
SIREN (Services, Immigrant Rights and Education Network)
Sisters of Mercy of the Americas Justice Team

Social Justice group of Yorkfield Presbyterian Church
Sojourners
South Asian Americans Leading Together (SAALT)
SPLC Action Fund
Spring Institute for Intercultural Learning
St. Agatha Catholic Church
St. Andrew Lutheran Church
St. Andrew's Presbyterian Church in Austin, TX
St. Louis Inter-Faith Committee on Latin America
Sueños Sin Fronteras de Tejas
T'ruah: The Rabbinic Call for Human Rights
Taos Immigrant Allies
Texas Organizing Project
The Birmingham Free Store
The Sentencing Project
The United Methodist Church- General Board of Church and Society
UCSF Health and Human Rights Initiative
Union for Reform Judaism
Unitarian Universalists for Social Justice
UNITED SIKHS
University of California Davis School of Law, Immigration Law Clinic
US Campaign for Palestinian Rights (USCPR)
Vecindarios901
Wellington Avenue UCC
Western Mass Jewish Activists for Immigration justice
Wheaton Franciscan Justice, Peace and Integrity of Creation Office
Win Without War
Witness at the Border
Youth First Initiative