

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Fifteenth Congress

November 29, 2018

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Azar:

We write to express our profound concern at the recently released Health and Human Services (HHS) Inspector General Report.¹ This report found that the largest migrant children facility in the country is not conducting the required checks for staff and does not have a “sufficient” number of staff to provide adequate mental healthcare for unaccompanied kids. These issues must be addressed and remedied without delay. We ask that a briefing be held for members no later than December 11 and would expect that Scott Lloyd, the former head of the Office of Refugee Resettlement, will be made available to testify in the new Congress.

As a temporary emergency shelter, the Tornillo facility is uncertified and unregulated (aside from guidelines created by HHS), and it is not subjected to the same oversight as permanent Office of Refugee Resettlement (ORR) facilities for children. However, ORR regulations and policies require that all care provider facilities complete background checks for all staff and contractors before they are hired.² These checks—which apply to all facilities, including Tornillo—include a Federal Bureau of Investigation (FBI) fingerprint background check and a child abuse and neglect background check.³

According to the HHS Inspector General, the Tornillo facility “is not conducting” either of these “required” background checks.⁴ Specifically, on June 12, 2018, ORR Director Lloyd, in a memo, granted the Tornillo facility a waiver for the child abuse and neglect background check.⁵ Even worse, according to the Inspector General, ORR was “unaware” that FBI

¹ Office of Inspector General, “The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff,” Department of Health and Human Services (November 27, 2018), [hereinafter “HHS Inspector General Report”] available at, <https://oig.hhs.gov/oas/reports/region12/121920000.pdf>.

² 45 CFR § 411.16(c).

³ Section 4.3.2 of the Guide to Children Entering the United States Unaccompanied, Employee Background Investigations and Hiring Decisions identifies ORR minimum standards for the scope of background checks.

⁴ HHS Inspector General Report, 1.

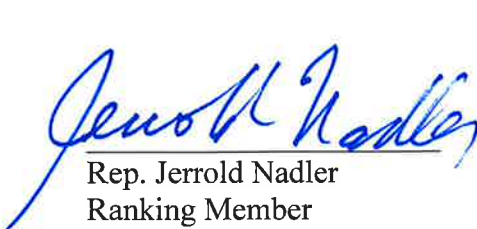
⁵ HHS Inspector General Report, 5.

fingerprint background checks were not being conducted as late as September 25, 2018.⁶ As noted in the report, it is only in recent weeks has HHS worked to ensure the FBI background checks are occurring.

These revelations are particularly disturbing in light of a letter sent by Representatives Nadler, Lofgren, and Jayapal on October 11, 2018, that specifically asked, “What type of background checks are conducted on staff at emergency shelters?”⁷ This letter resulted in a phone call with these offices where HHS officials misled staff by stating that HHS was acting in compliance with state requirements, conducting criminal background checks, and child abuse and neglect checks.

We expect HHS and ORR to ensure that the strongest protections are in place to protect the children in your custody. The Inspector General’s findings are unacceptable. In the next Congress, we will examine the Administration’s immigration and detention policies and the longstanding damage these policies may have on families and children. To this end, we look forward to the briefing in the coming days and to speaking with former Director Lloyd in the new Congress.


Sincerely,



Rep. Jerrold Nadler
Ranking Member
House Judiciary Committee



Rep. Zoe Lofgren
Ranking Member
Subcommittee on Immigration
and Border Security



Rep. Pramila Jayapal
Member of Congress



Rep. Elijah E. Cummings
Ranking Member
House Committee on Oversight
and Government Reform



Rep. Bennie G. Thompson
Ranking Member
House Committee on Homeland Security

⁶ Id.

⁷ Letter Dated October 11, 2018, to Secretary Azar from Representatives Nadler, Lofgren, and Jayapal requesting a briefing on the emergency HHS shelter in Tornillo, Texas.