

# Congress of the United States

Washington, DC 20510

September 17, 2018

The Honorable Mitch McConnell, Jr.  
Majority Leader  
U.S. Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Paul D. Ryan  
Speaker  
U.S. House of Representatives  
H-232, The Capitol  
Washington, DC 20510

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

The Honorable Rodney Frelinghuysen  
Chairman  
U.S. House Committee on Appropriations  
H-305, The Capitol  
Washington, DC 20515

Dear Majority Leader McConnell, Speaker Ryan, Chairman Shelby, and Chairman Frelinghuysen:

We appreciate your efforts to negotiate a Continuing Resolution (CR) to fund the Department of Homeland Security (DHS) for the start of the 2019 fiscal year without providing for any increase in Department of Homeland Security (DHS) immigration detention beds.

As you begin to consider the DHS Appropriations Act of 2019 to provide funding for DHS beyond the expiration of the CR on December 7, 2018, we respectfully urge you to reject any amendment that would allow DHS to expand inhumane and costly family immigration detention or otherwise undermine legal protections for detained immigrant children. This is especially critical in light of DHS and Department of Health and Human Services (HHS) publication of proposed regulations on September 7, 2018 that would massively expand the indefinite detention of immigrant children and undermine detention standards that reflect the best interests of child welfare as well as new revelations that DHS reprogrammed \$93 million in funding this summer to add immigration detention beds.<sup>1</sup> Any efforts to further this controversial Trump Administration agenda through the DHS appropriations process could senselessly jeopardize or delay passage of funding that is integral to our nation's security.

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<sup>1</sup> Nick Miroff and Maria Sachetti, "Trump administration to circumvent court limits on detention of child migrants," WASHINGTON POST, September 6, 2018, available at: [https://www.washingtonpost.com/world/national-security/trump-administration-to-circumvent-court-limits-on-detention-of-child-migrants/2018/09/06/181d376c-b1bd-11e8-a810-4d6b627c3d5d\\_story.html?noredirect=on&utm\\_term=.bae120b09c0e](https://www.washingtonpost.com/world/national-security/trump-administration-to-circumvent-court-limits-on-detention-of-child-migrants/2018/09/06/181d376c-b1bd-11e8-a810-4d6b627c3d5d_story.html?noredirect=on&utm_term=.bae120b09c0e); Kal Toppan, "It's not just FEMA: ICE quietly got an extra \$200 million," CNN, September 12, 2018, available at: <https://www.cnn.com/2018/09/12/politics/ice-more-money-fema-dhs/index.html>

We respectfully ask you to reject the false policy choice between the separation of immigrant children from their parents and the incarceration of immigrant children with their parents that the Trump Administration has put forward. This false choice aims to bolster a misguided – and arguably ineffective – effort to deter families from pursuing lawful claims for humanitarian protection along the Southwest border.<sup>2</sup> Since administration officials announced a “zero tolerance” policy along the border this spring, over 2,600 immigrant children have been separated from their parents.<sup>3</sup> Amidst bipartisan outcry over the separations, the President issued an Executive Order on June 20, 2018 supporting prospective indefinite detention of parents with their minor children and urging judicial repeal of key legal protections limiting detention of immigrant children under the Flores Settlement Agreement.<sup>4</sup> This administration has already reportedly taken action to establish new family immigration detention facilities, including proposing to add 8,000 family detention beds at two new facilities on Texas military bases.<sup>5</sup>

On September 7, 2018, DHS and HHS published proposed regulations that attempt to obviate their court-ordered legal obligations under the decades-old Flores Settlement Agreement governing the treatment of immigrant children in federal custody. The proposed regulations would: strip children of current protections regarding limits on the length of their detention in Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and HHS facilities; undermine licensing practices and conditions standards for their detention, including potentially limiting their access to food and educational resources; and, restrict their ability to reunite with family members and other currently qualified sponsors within the United States, amongst other provisions. These regulations are antithetical to the Flores Settlement Agreement’s requirement that all children be treated with “dignity, respect, and special concern for their particular vulnerability as minors.”<sup>6</sup>

We respectfully ask you to reject Republican policy language that would increase family immigration detention as ICE has failed to accountably manage current detention resources. In their DHS Appropriations Act of 2019 report, the Senate Appropriations Committee noted “persistent and growing concerns about ICE’s lack of fiscal discipline, whether real or

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<sup>2</sup> Nick Miroff, “Border arrest data suggest Trump’s push to split migrant families had little effect,” WASHINGTON POST, August 8, 2018, available at: [https://www.washingtonpost.com/world/national-security/border-arrest-data-suggest-trumps-push-to-split-migrant-families-had-little-deterrent-effect/2018/08/08/0f452f0e-9a85-11e8-b55e-5002300ef004\\_story.html?utm\\_term=.b349acff156cd](https://www.washingtonpost.com/world/national-security/border-arrest-data-suggest-trumps-push-to-split-migrant-families-had-little-deterrent-effect/2018/08/08/0f452f0e-9a85-11e8-b55e-5002300ef004_story.html?utm_term=.b349acff156cd)

<sup>3</sup> Joshua Barajas, “Nearly 500 migrant children remain separated from their parents. Here’s what we know,” PBS NEWSHOUR, August 31, 2018, available at: <https://www.pbs.org/newshour/nation/nearly-500-migrant-children-remain-separated-from-their-parents-heres-what-we-know>

<sup>4</sup> Donald J. Trump, the White House, *Executive Order: Affording Congress an Opportunity to Address Family Separation*, June 20, 2018, available at: <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>

<sup>5</sup> Michael D. Shear, Helene Cooper, Katie Benner, “U.S. Prepares to House Up to 20,000 Migrants on Military Bases,” NY TIMES June 21, 2018, available at: <https://www.nytimes.com/2018/06/21/us/politics/trump-immigration-border-family-separation.html>; Jolie McCulloch and Chris Essig, “The Trump administration is making plans to detain more immigrants in Texas. Here’s where they would be held,” TEXAS TRIBUNE, August 2, 2018, available at: <https://www.texastribune.org/2018/08/02/trump-administration-texas-migrant-detention-facilities-map/>

<sup>6</sup> Miroff and Sachetti; 83 FR 45496, available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-09-07/pdf/2018-19052.pdf>

manufactured, and its inability to manage detention resources within the appropriations made by law without the threat of anti-deficiency.”<sup>7</sup> The DHS Office of Inspector General further has criticized ICE detention facility contracting policies and procedures.<sup>8</sup>

This administration also has discontinued or woefully underfunded humane, effective, and less costly alternatives to detention programming. Most significantly, in 2017, ICE discontinued the successful Family Case Management Program pilot, which released qualified asylum-seeking families into the community while ensuring they understood their legal paperwork, were aware of the need to check in with ICE, and appeared in immigration court. This program yielded 99% participant compliance with ICE appointments and court hearings and only cost \$36 dollars per family per day compared to the roughly \$319 cost of family detention.<sup>9</sup>

Leading medical experts and DHS’ own advisors have warned that holding minor children in any immigration detention facility for an extended period – even with their parents – poses grave risks to these children’s health, wellbeing, and safety. The American Medical Association and thirteen other national medical organizations recently urged members of Congress to reject any expansion of family detention, highlighting that “studies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression and post-traumatic stress disorder.”<sup>10</sup> In 2016, DHS’ Advisory Committee on Family Residential Centers recommended discontinuation of family detention for general use on finding that it was “neither appropriate nor necessary for families” and “never in the best interest of children.”<sup>11</sup> Two medical investigators from the DHS Office of Civil Rights and Civil Liberties family facility also recently concluded that, “there is no amount of programming that can ameliorate the harms created by the very act of confining children to detention centers.”<sup>12</sup>

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<sup>7</sup> Senate Committee on Appropriations, *S. Rept. 115-283, Report to Accompany S. 3109, Department of Homeland Security Appropriations Bill, 2019*, June 21, 2018, available at: <https://www.congress.gov/congressional-report/115th-congress/senate-report/283/1>

<sup>8</sup> DHS Office of Inspector General, *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services*, February 21, 2018, available at: <https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf>

<sup>9</sup> Jaden Urbi, “This is how much it costs to detain an immigrant in the US,” CNBC, June 20, 2018, available at: <https://www.cnbc.com/2018/06/20/cost-us-immigrant-detention-trump-zero-tolerance-tents-ca>; Jane C. Timm, “This Obama-era pilot program kept asylum seeking migrant families together. Trump canceled it,” NBC NEWS, June 24, 2018, available at: <https://www.nbcnews.com/storyline/immigration-border-crisis/obama-era-pilot-program-kept-asylum-seeking-migrant-families-together-n885896>

<sup>10</sup> American Pediatric Association, et al, to the Honorable Charles E. Grassley, et al, July 24, 2018, available at: [https://drive.google.com/file/d/1Qf8OalQFN5Ldu-DkbjWI\\_nQuD3uZpczQ/view](https://drive.google.com/file/d/1Qf8OalQFN5Ldu-DkbjWI_nQuD3uZpczQ/view)

<sup>11</sup> DHS Advisory Committee on Family Residential Centers, *Report of the DHS Advisory Committee on Family Residential Centers*, Sept. 30, 2016, available at: <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>

<sup>12</sup> Scott Allen, MD, and Pamela McPherson, MD, to the Honorable Charles E. Grassley and Honorable Ron Wyden, July 17, 2018, available at: <https://www.wyden.senate.gov/imo/media/doc/Doctors%20Congressional%20Disclosure%20SWC.pdf>

As you know, family immigration detention facilities have failed to maintain acceptable conditions to ensure children's safety. Far from addressing these issues and improving conditions, this administration seeks to expand facilities with reduced protections, meaning that any new facilities are likely to exhibit the same or worse problems. The American Academy of Pediatrics concluded last year that, "[DHS] facilities do not meet the basic standards for the care of children in residential settings."<sup>13</sup> Non-governmental organizations and attorneys have alleged poor medical care and mistreatment of detainees at family facilities – including, for example, failure to provide appropriate medical care that resulted in the hospitalization of a baby for severe dehydration and contributed to the death of a toddler for a respiratory infection and use of medical observation rooms to isolate mothers and children.<sup>14</sup> There also have been several allegations of sexual assaults by facility staff.<sup>15</sup> Additionally, as facilities are located in remote areas, detained children face major challenges in access to legal counsel to pursue their lawful humanitarian protection claims.

In conclusion, when you evaluate Republican amendments or policy riders for DHS appropriations for the 2019 fiscal year that affect minor children in families seeking asylum, we respectfully ask that you weigh the clear risks of harm that would result from extended incarceration of these children with their parents, as the Trump Administration seeks to broadly implement. This demands rejection of any proposals that would expand use of family immigration detention or otherwise undermine the legal rights of detained immigrant children.

We thank you for your consideration of our request to ensure timely DHS appropriations.

Very Sincerely Yours,



KAMALA D. HARRIS  
United States Senator  
California



ADRIANO ESPAILLAT  
United States Representative  
New York 13<sup>th</sup> Congressional District

<sup>13</sup> Julie M. Linton, et al, American Academy of Pediatrics, Policy Statement: Detention of Immigrant Children, March 2017, available at: <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>

<sup>14</sup> AILA, "CRCL Complaint Details How Family Detention Facility Endangers Incarcerated Mothers and Children," October 6, 2015, available at: <https://www.aila.org/advo-media/press-releases/2015/crcl-complaint-family-detention>; Joel Rose, "A Toddler's Death Adds to Concerns About Migrant Detention," NPR, August 28, 2018, available at: <https://www.npr.org/2018/08/28/642738732/a-toddlers-death-adds-to-concerns-about-migrant-detention>; Emily Kassie and Eli Hagar, The Marshall Project, "Inside Family Detention, Trump's Big Solution," June 22, 2018, available at: <https://www.themarshallproject.org/2018/06/22/inside-family-detention-trump-s-big-solution>; Francisco Ordinez, 'Family detention centers described as 'frightening' 'abusive,' SAC BEE, July 29, 2015, available at: <https://www.sacbee.com/news/politics-government/article29235463.html>

<sup>15</sup> Renee Feltz, "Immigration facility guard given jail time for sexual assault of detainee," THE GUARDIAN, April 23, 2016, available at: <https://www.theguardian.com/us-news/2016/apr/23/immigration-detention-center-guard-sexual-assault-prison>; Marisa Bono, MALDEF, et al, to Jeh Johnson, et al, Re: Complaints Regarding Sexual Abuse of Women in DHS Custody at Karnes County Residential Center, Sept. 30, 2014, available at: [https://www.maldef.org/assets/pdf/2014-09-30\\_Karnes\\_PREA\\_Letter\\_Complaint.pdf](https://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf)



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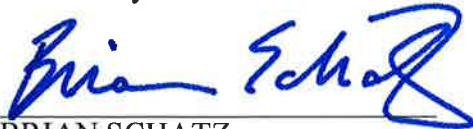
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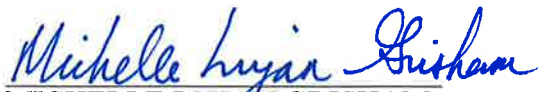
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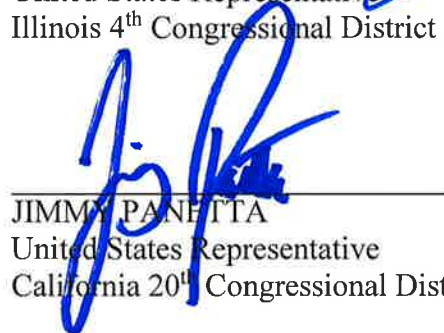
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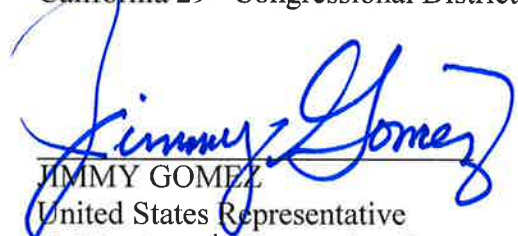
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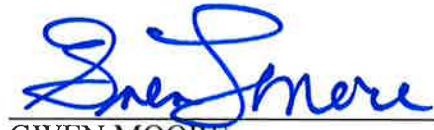
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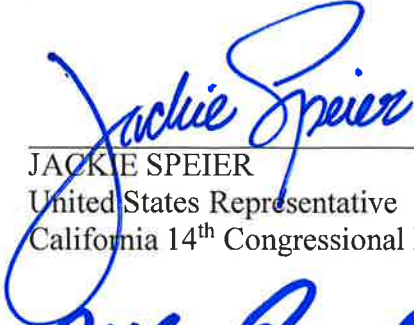
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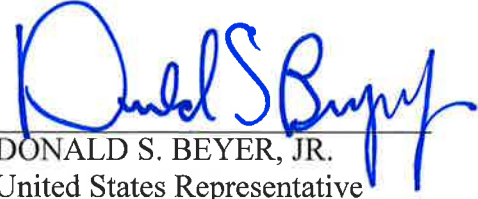
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