

United States Senate
WASHINGTON, DC 20510

July 18, 2019

The Honorable Donald Trump
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President,

On July 1, 2019, H.R. 3401, the Emergency Supplemental for Humanitarian Assistance at the Southern Border, was signed into law. This bill contained critical, targeted assistance to help alleviate and improve the increasingly inhumane conditions faced by many migrant children and families seeking refuge at our southern border, and to provide the resources needed to ensure those in U.S. custody are treated humanely and cared for with dignity and compassion, as our American values require.

The images over the last few months have shocked a nation – women and children in cages, sleeping in over-crowded facilities on cement floors, lacking even the most basic of services or medical care – this is not who we are as a nation. That is why Congress passed this important piece of legislation. We could not allow this situation to continue. Inaction was simply not an option. But the humanitarian assistance provided in this bill is not a blank check. Congress included explicit restrictions and new requirements to ensure the money effectively addresses the situation on our southern border and improves conditions for those in our custody; it cannot be diverted for other purposes, and its restrictions and new requirements must be followed. In the past, this Administration has diverted funds for unintended purposes and, at times, refused to spend money as directed by Congress. This is unacceptable.

Congress intends to scrutinize the expenditure of these funds and will use all methods of oversight to ensure that the requirements of the law are faithfully executed. This letter sets forth our expectations as this important bill is implemented, and asks for critical information about the Administration's plans for this humanitarian assistance going forward.

Department of Health and Human Services

The humanitarian border assistance supplemental provides \$2.88 billion to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), which has custody of some of the most vulnerable group of migrants: unaccompanied children. HHS has a responsibility to ensure the welfare of children in its custody, many of whom have experienced

significant trauma in their home country and in traveling to the United States. By law, unaccompanied children must be transferred to HHS within 72 hours. ORR is then charged with caring for those children while working to place them with a sponsor, generally a parent or relative. The supplemental includes requirements to make sure unaccompanied children are appropriately cared for and that ORR is living up to its federally-mandated mission: prompt placement in the least restrictive setting that is in the best interest of the child.

The best place for a child is in a safe and loving home. The supplemental includes several provisions that help ensure HHS places children safely and expeditiously with sponsors. In May of 2018, HHS implemented policies on information-sharing with the Department of Homeland Security (DHS) that led to children lingering in ORR care for far too long. Section 403 of the supplemental directs HHS in law to restrict the amount of information shared with DHS in order to place children with sponsors more quickly. Section 409 states that information obtained from potential sponsors of unaccompanied alien children cannot be used for immigration enforcement, except in certain circumstances. Section 402 requires HHS to ensure that potential sponsors are aware of the ways in which their information obtained through the sponsorship process can be used under current law.

The law also provides additional funding for case management and case coordination services, staff dedicated to strategic improvements, and development of a discharge rate improvement plan, all of which will reduce the average length of stay in ORR custody. It expands funding for legal, post-release and child advocate services, providing critical resources for the most vulnerable children. We expect HHS to provide to Congress its plans to increase those staff and services, including reports on amounts spent and services provided.

The *Flores* Settlement Agreement established that migrant children should be at state-licensed shelters while in government custody. While exceptions are allowed during an “influx” of children, the Administration has overused this authority. The supplemental requires HHS to expand its state-licensed capacity and prioritize small-scale, community-based placements. Section 404 sets standards for unlicensed or “influx” facilities, including child-to-staff ratios and monitoring requirements. At a minimum, children at influx facilities must receive the basic services for licensed facilities under *Flores*, such as routine medical care, individualized needs assessments, educational services, activities, individual and group counseling, and legal services information. HHS must also work to meet state child welfare laws at influx facilities, and Section 404 requires that HHS brief Congress on any requirements that the Secretary determines are not applicable to unlicensed facilities no later than August 30, 2019.

The law includes numerous provisions to increase transparency of the program and how funds are spent. Section 405 requires monthly reporting on children in influx facilities, including their average length of stay and reasons for any delays in release. Section 407 establishes that Members of Congress can access any Department-funded facility housing an unaccompanied alien child provided they have given advance notice of two business days. Section 408 requires monthly public reporting on the number of children separated from their parents by DHS, including the reasons for such separations, to help ensure that the Administration does not return to its morally abhorrent family separation policy. We expect these provisions to be fully

complied with as required by law. Finally, as required by Section 410, HHS must provide a detailed bimonthly spend plan to Congress.

It is critical that HHS executes this law, and all federal law, in good faith in order to meet the needs of the vulnerable children in its care. We ask that HHS provide a briefing no later than July 22, 2019, that outlines its plan for meeting the requirements in the supplemental, and addressing the concerns laid out in this letter.

Department of Homeland Security

The supplemental includes significant funds for the Department of Homeland Security (DHS), to improve conditions for processing and temporarily housing migrants in safe, clean, and humane facilities. Many of these families are fleeing violence in their home countries and legally seeking asylum in the United States. They should not be subjected to overcrowded, inadequate facilities, without even the most basic services. We can and must do better.

The supplemental funds are specifically provided to address the humanitarian needs at the southern border, not to further the Administration's immigration agenda, and the bill includes a number of restrictions limiting the Administration's ability to use these funds for any other purpose. For instance, it does not provide any funding for a border wall or Immigration and Customs Enforcement (ICE) detention beds, and Sec. 301 specifically prohibits funds from being used or otherwise transferred for those purposes. We expect this prohibition to be complied with, as the law requires.

The supplemental includes \$1.1 billion to Customs and Border Protection (CBP) for migrant care, processing facilities, food, medical services, safe transportation, and temporary duty and overtime. Section 303 of the supplemental withholds funds until CBP establishes policies (via directive, procedures, guidance, and/or memorandum) to ensure facilities established with supplemental funding adhere to the National Standards on Transport, Escort, Detention, and Search. We look forward to receiving a report on the establishment and implementation of such policies and training programs as required by the supplemental.

We also ask that DHS provide a deployment and construction schedule for new shelters and migrant processing facilities along the southwest border to eliminate overcrowding of families in Border Patrol stations. We expect these structures to be equipped with appropriate beds and shower facilities and that CBP will ensure that migrants have access to age-appropriate food, clean clothing, toilets, and personal hygiene products, such as soap and toothbrushes.

DHS should provide a plan for improved medical care for migrants from their initial encounter with border officials until their release to the Office of Refugee Resettlement or their onward destination. This plan should include efforts to expand training of agents and officers for providing basic, immediate medical assessments and care. Medical equipment and supplies for pediatric services should be provided as well as access to medical professionals and appropriate care, supplies, and transport to hospitals or other medical facilities as required.

The supplemental also provides \$20 million to expand Alternatives to Detention by an estimated 13,500 people and invest in programs that have the potential to reduce costs, prioritize resources, and strengthen security. The Administration shall provide Congress with a plan, with specific

dates and locations, on how it will expand enrollment in the program of individuals that do not pose a security risk to our communities.

Finally, the bill includes \$30 million in grants for local recipient organizations that have assisted jurisdictions impacted by the significant influx of migrants released from DHS custody. It is our expectation that the Federal Emergency Management Agency (FEMA) will award funds to the Emergency Food and Shelter Program National Board in an expedited fashion and subsequent disbursements to local recipient organizations will be made within 30 days, as required by the supplemental. FEMA and the National Board should provide clear guidelines about eligibility and funding criteria to ensure a fair process without delay.

We ask that DHS provide a briefing no later than July 22, 2019, that outlines its plan for meeting the requirements in the supplemental, and addressing the concerns laid out in this letter.

Department of Justice

Congress provided a total of \$220 million to the Department of Justice (DOJ) to meet the emergency needs at the border. Of this amount, \$155 million was designated for the U.S. Marshals Service's Federal Prisoner Detention account and \$65 million for the Executive Office for Immigration Review (EOIR).

The law is clear that \$55 million in funding for EOIR is to hire 30 immigration judge teams, including courtroom space and equipment to accompany them, and \$10 million in funding was for the expansion of programming offered by EOIR's Legal Orientation Program (LOP). We expect the Administration to ensure that EOIR swiftly hire these teams and immediately disburse the LOP funding via the existing contract. We ask that DOJ provide a briefing no later than July 22, 2019, that outlines its plan for meeting these requirements.

Department of Defense

The supplemental includes funding for the cost of Department of Defense (DOD) operations along the border. DOD has deployed thousands of active duty troops to the border, plus thousands more members of the National Guard deployed under state status in response to DHS requests for assistance, on a non-reimbursable basis. These deployments have incurred significant costs and have potentially impacted military readiness.

While members of the National Guard have been deployed to the border for more than a year, and DOD has been deploying members of the active component since late last year, the Pentagon's budget proposal for next year does not contain any request for these costs. Additionally, the Administration has already reprogrammed \$2.5 billion in military funding for the border wall, in violation of Section 8005, of Public Law 115-245.

These actions show a clear failure by this Administration to adequately and transparently budget and plan for the ongoing situation on the southern border. Diverting hundreds of millions of dollars of funds intended for necessary training and readiness to non-essential activities along the border is unacceptable.

We request that the Department of Defense provide Congress with estimates for the substantial costs it expects to pay for continuing the active duty and National Guard deployments in the next

deployments of military personnel to the border. We request that the Department of Defense provide details on the composition of this planning cell, and monthly updates on its activities, to include a strategy to cease the deployment of active component troops to the border.

Finally, former Defense Secretary James Mattis directed that military personnel deployed in support of other Federal agencies should have no direct contact with migrants. We believe that this policy has been diluted through a series of ad hoc exceptions, to the point that the policy is nearly meaningless, while never having been formally revoked. We ask that the Department of Defense issue a clear and definitive policy on tasks that military personnel shall not be allowed to undertake, especially in relation to the Posse Comitatus Act that prohibits the use of troops for law enforcement operations.

We ask that the Department of Defense provide a briefing no later than July 22, 2019, that outlines its plan for meeting the requirements in the supplemental, and addressing the concerns laid out in this letter.

Sincerely,



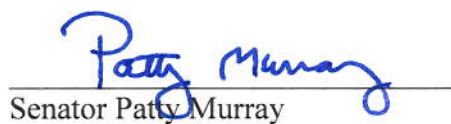
Senator Charles Schumer



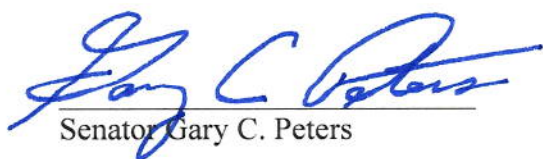
Senator Patrick Leahy



Senator Dianne Feinstein



Senator Patty Murray



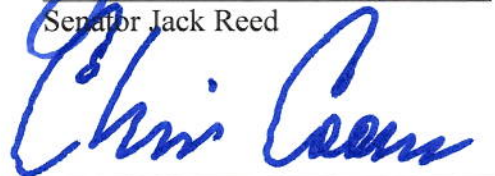
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Senator Robert P. Casey, Jr.

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Jack Rosen

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Richard Blumenthal

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Senator Tammy Baldwin



Senator Tom Udall



Senator Sheldon Whitehouse



Senator Thomas R. Carper

cc. Attorney General
Secretary of Health and Human Services
Acting Secretary of Defense
Acting Secretary of Homeland Security