



UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE NW, WASHINGTON, DC 20425
www.usccr.gov

December 11, 2018

Secretary Alex M. Azar
U.S. Department of Health and Human Services
200 Independence Ave., S.W.
Washington, DC 20201

Dear Secretary Azar:

Congress has tasked the United States Commission on Civil Rights with investigating allegations of discrimination because of color, race, religion, sex, age, disability, or national origin. *See* 42 U.S.C. § 1975a(a)(2). In 2015, the Commission published a report on immigration detention facilities. The Commission recently reopened this investigation to examine the detention conditions of children and families, and the policies, practices, and procedures governing the detention and separation of families.

Per 42 U.S.C. § 1975a(e)(4), please find enclosed a set of Interrogatories and Document Requests being issued to your office by the U.S. Commission on Civil Rights (the “Commission”). Please respond to these Interrogatories and Document Requests within 30 days of service; *i.e.*, by January 11, 2019.

Please note that Congress has also given the Commission subpoena authority, *see* 42 U.S.C. § 1975a(e)(2), and directed that “[a]ll federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.” *See* 42 U.S.C. § 1975b(e).

Please also designate a member of your staff to coordinate and facilitate our research, meetings, and your responses to our interrogatories and document requests. Commissioner Michael Yaki, chair of the Commission’s discovery subcommittee on this matter, will be the Commission’s contact person on this project. Please have your representative contact Commissioner Yaki at (415) 601-4008 or myaki@usccr.gov.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen E. Rudolph".

Maureen E. Rudolph
General Counsel

Copy (with enclosures):
Roger Severino, Director of the Office of Civil Rights

DATE: December 11, 2018
TO: Alex M. Ajar, II, Secretary
U.S. Department of Health & Human Services

FROM: Mauro A. Morales, Staff Director
Maureen E. Rudolph, General Counsel
U.S. Commission on Civil Rights

SUBJECT: Interrogatories and Document Requests in Support of the U.S.
Commission on Civil Rights' Examination of Separation of Families

Congress has tasked the United States Commission on Civil Rights with investigating allegations of discrimination. The Commission is authorized to “study and collect information relating to,” and “make appraisals of the law and policies of the Federal Government with respect to,” ... “discrimination or denials of equal protections of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin[.]”¹ See 42 U.S.C. § 1975a(a)(2)(A)-(B). Under this mandate, the Commission is conducting a study to update earlier Commission reporting, from 2015, evaluating the conditions of detention of undocumented immigrant children and their families.¹ This study encompasses, but is not limited to, civil rights issues including whether relevant federal policies and/or practices operate on the basis of race and national origin.

Pursuant to 42 U.S.C. § 1975a(e)(4) and § 1975b(e), the United States Commission on Civil Rights (the “Commission”), through its General Counsel, Maureen E. Rudolph, requests that Alex M. Ajar, II, Secretary of the U.S. Department of Health and Human Services, answer fully, in writing and under oath, each of the following Interrogatories and respond to each of the following Document Requests.

We request that the Secretary serve a copy of the answers and objections, if any, along with the requested documents on the counsel for the Commission within thirty days after service, at the offices of the U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C., 20425.

¹ The Commission’s 2015 report is available here:
https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2015.pdf.

INSTRUCTIONS AND DEFINITIONS

1. These interrogatories request information available to the Secretary and his employees, agents, and representatives, including with respect to any information or persons within the Department of Health and Human Services.
2. The United States Commission on Civil Rights is referred to as the “U.S. Commission on Civil Rights,” or the “Commission.”
3. The Department of Health and Human Services is referred to as “HHS.” HHS includes not just the department proper, but all agencies under its supervision and management including, but not limited to, the Office of Refugee Resettlement (“ORR”), and any and all companies, corporations, Limited Liability Companies, or any other type of business entity HHS has under contract and does any work on its behalf, including, but not limited to housing adults and children, providing psychological services, medical services, language services, or any other services touching or concerning immigrants, migrants or other border crossers.
4. The Secretary should state the basis for any objection to answering any interrogatory. In the event that the Secretary objects to a part of an interrogatory, please provide information requested by the interrogatory that is not included within that partial objection. Please state with your objection any and all grounds you are relying on to lodge the objection including, but not limited to the specific statute, case law or constitutional section you are relying on for the objection.
5. These interrogatories are continuing in nature, and to the extent that the Secretary acquires new information on or before February 25, 2019, that is responsive to these interrogatories, please supplement the response.
6. The word “document” or “documents” or words of like or similar import mean, and include correspondence; memoranda; data; letters; books; charts; diagrams; empirical studies; graphs; handwritten notes; telegrams; studies; working papers; tabulations; data sheets; reports; typewritten notes; printed notes; contracts; memoranda of understanding; computer printouts; and electronic mail; photographs; video recordings and audio recordings of any thing and made by any method; and, any other method that creates a record kept by the government or business entity under contract to HHS.
7. The word “detain” or “detaining” includes receiving children from DHS and placing them in an environment with a parent, guardian, relative, or next friend.

8. The word “parent” or “parents” means parents (by blood or legal relationship), guardians, relatives (by blood or legal relationship), or next friend (as defined by law).
9. If any document responsive to this request was, but is no longer, in your possession, custody, or control, please furnish a description of each such document and indicate the manner and circumstances under which it left your possession, custody, and control and state its present or last known location and custodian, if known.
10. If for any request there are no responsive document(s) in your possession, custody, or control, state whether documents that would have been responsive were destroyed or mislaid, and if so, the circumstances under which they were destroyed or mislaid, and who was responsible for the destruction or loss of the document(s).
11. For any document response for production but withheld pursuant to a claim of privilege, identify:
 - a. The author’s name and title or position
 - b. The recipient’s name and title or position
 - c. All persons receiving copies of the document
 - d. The number of pages of the document
 - e. The state of the document
 - f. The subject matter of the document; and the basis for the claimed privilege.
12. In lieu of providing a written response to an interrogatory, you may produce a document that fully responds to the interrogatory. Should the document not fully respond to the interrogatory, please state so in your written response and also provide the additional information needed to fully respond or the grounds for withholding such information, as specified in these instructions.
13. When responding to these interrogatories please type the interrogatory as stated and then your responses hereto. At the end of each answer to the interrogatories below state the exhibit number or numbers that the documents produced per the request in the interrogatory and/or mentioned in response to that particular interrogatory as is applicable and upon which you rely as a basis for your answer.

INTERROGATORIES

- 1) Please state what HHS' role was in the policy decision to detain children at the border separated from their parents who were being prosecuted under the "zero-tolerance" policy put in place by Attorney General Sessions.
 - (a) Please list the names, positions held at the time and presently, business addresses, telephone numbers, email addresses of each and every person who took part in the discussions, either orally or in writing.
 - (b) Please list all dates of meetings (in person, telephonically and by video) where the policy was discussed and decisions were made.
 - (c) Please produce all notes, documents, memoranda and emails generated from the responses herein pursuant to Request for Documents number 2 hereinbelow.
 - (d) Please state how much time elapsed between the date you were notified of the need to develop a policy for the "zero-tolerance policy" and the time the policy was finalized. Please provide the date of notification of the need for a policy and the date the policy was finalized.
 - (e) Please provide a true and correct copy of the finalized policy that was completed on the finalization date provided in 1(d) pursuant to this request and the Request for Production of Documents made below.
 - (f) Please identify the person most knowledgeable in regard to the information requested in this interrogatory

- 2) Please describe what pre-implementation evidence supported a conclusion by HHS that family separation was justified under any policy interest of the United States?
 - (a) Please state if HHS reviewed any evidence, documents, email, scholarly articles, or any other items concerning the best interests of the children during the formation of the policy of family separation in coming to this conclusion, and, if so, please identify each and every such source.
 - (b) Please identify the person most knowledgeable in regard to the information requested in this interrogatory

3) Please describe the process or procedure by which HHS implemented or facilitated family separations in response to the “zero-tolerance” policy.

(a) Please list all the persons, including but not limited to government employees and private contractors, both for-profit and not-for-profit (collectively, “private entities”) hired by the government to effectuate the process and the positions these persons held at the time and hold now and all contact information for all people who were involved in developing the process that was used in separating children from their parents, adult guardians and/or next friend(s) and relatives.

(b) Please state the policy used to determine the location the children were sent to after the decision to separate them from their parents, adult guardians and/or next friend(s) and relatives.

(c) Please describe, in detail, how the process was implemented when separating the children from their parents, adult guardians and/or next friend(s) and relatives.

(d) Please state if no regular process was used in the separations, and if not, state why not.

(e) Please state how much time it took to develop the written process used in separating children from their families.

(f) Please state how much time elapsed between the date you were notified of the need to develop a written process for detaining children under the “zero-tolerance policy” and the time the written policy was finalized.

(g) Please provide the date of notification of the need for a process or procedure and the date they were finalized. Please identify any aspect of the process policy or procedure established to provide for reunification of separated children.

(h) Please provide a true and correct copy of the finalized process or procedure that was completed on the finalization date provided in (g) pursuant to this request and the Request For Production of Documents made below.

(i) Please identify the person most knowledgeable in regard to the information requested in this interrogatory.

4) Please detail the operator, name, and locations of every office or facility, whether governmental or private, where HHS detained children determined to be within the ambit of the “zero tolerance” policy.

(a) Please state if any HHS offices on the Eastern Seaboard (defined as extending from Maine to Florida) were working with DHS on detaining children under the “zero tolerance” policy.

If so, please provide the number, broken down by age, race, ethnicity, national origin, and religion, of children either detained under the “zero tolerance” policy or detained and released between April 1, 2018 and July 31, 2018.

b) Please state if any HHS offices on the border with Canada were working with DHS on detaining and separating any children under the “zero tolerance” policy.

If so, please provide the number, broken down by age, race, ethnicity, national origin, and religion of children either detained under the “zero tolerance” policy or detained and released between April 1, 2018 and July 31, 2018.

5) Please state what HHS’s written criteria were for detaining a child separate from his parents, guardian(s), next friend(s) or relative(s).

(a) Please describe in detail the process by which individual determinations to separate children from their parents were made.

(b) Please provide a true and correct copy of the written criteria used by you, your agents, or any private entities to effectuate the separating of the children contemplated by this interrogatory pursuant to Request for Production of Document made below.

(c) If there were no written criteria for this action or conduct, please state so.

(d) Absent any written criteria, please state to the best of your knowledge what the criteria that was used to choose which children were to be taken from their parents, guardians, next friend(s) or relatives and which children were allowed to remain unseparated.

(e) Please identify the person most knowledgeable regarding the information requested in this interrogatory.

6) Please describe how children and parents were notified that they were to be separated.

(a) Please state if the notification, if any, was provided in English, Spanish, or another language spoken by the parents and children.

(b) Please state if the notification was provided orally or in written form?

(c) Please state if the parents, guardians, next friend(s), or relatives were required to sign any paperwork acknowledging the separation and/or any aspect of the separation, including but not limited to where the children were being sent, whose legal custody they would be in, and whose physical custody they would be in.

(d) Please state if the parents, guardians, next friend(s), or relatives were given any information, in writing, informing them as to where the children were being sent, and were they given any information, in writing, as to whose legal custody they would be in and whose physical custody that would be in.

(e) Please describe what, if any, efforts were made to ascertain whether people to whom any notice was provided could read and understand said notice.

(f) Please provide any supporting evidence documenting your response.

(g) Please provide a true and correct copy of any writings used to inform parents, guardians, next friend(s), or relatives as part of the Request for Production of Documents.

(h) Please state if, at the time of separation, had any government, HHS, and/or private entities have any Court order authorizing a change in custody from the parents, guardians, next friend(s), or relative(s) to the government, HHS, or private entities.

(i) Please state, if there was no Court order, under what legal authority HHS proceeded.

(j) Please identify the person most knowledgeable in regard to the information requested in this interrogatory

7) Please describe what policies and procedures, prior to April 2018, did HHS have in place to track children after separation from their parents.

(a) Please state if any government, HHS or any private entities petition and seek a Court order transferring custody of children to HHS or any private entities/

(b) If so, please state if any petition contained any clauses about the rights of the parents to have visitation, be informed of their children's whereabouts, and be informed of who had custody.

(c) Please state if the custodians of the children were required to communicate to the parents about the well-being and life progress of the children.

(d) If your answer is no to any part of interrogatory 7 (a-c) above please state why HHS did not require a petition for change of custody to be filed and/or why it did not inform parents of their rights to visitation, their children's whereabouts, or the well-being and life progress of the children.

(e) Please identify the person most knowledgeable in regard to the information requested in this interrogatory.

8) During the period from April 1, 2018 to July 31, 2018, please describe what policies and procedures HHS had in place governing the physical transfer and transport of children from one location to another.

(a) Please provide copies of any policies and procedures.

(b) Please state if HHS required that any private entity involved in the physical transfer and transport of children from one location to another be in compliance with these policies and procedures. If not, please describe why not.

(c) Please identify the person most knowledgeable in regard to the information requested in this interrogatory.

9) Subsequent to July 31, 2018, please describe what policies and procedures HHS instituted to track children and parents after separation.

(a) Please identify the person most knowledgeable in regard to the information requested in this interrogatory

10) Prior to April 1, 2018, please describe HHS's role in tracking whether parents who were deported had children being detained separately.

(a) Please state if HHS notified the government or any private entity with physical custody of children that parents of children within their custody were being deported.

(b) Please state if HHS provided the parents who were deported with any information, in writing, regarding the status, custody, and location of their children.

(c) Please describe what policies and procedures, if any, were in place to ensure that parents who were deported could be reunited with children being detained separately.

11) Subsequent to July 31, 2018, please describe what HHS has done to track whether parents who were deported had children being detained separately.

(a) Please describe what policies and procedures did HHS institute to reunite children being detained separately with their detained parent.

12) Prior to April 1, 2018, please describe how HHS tracked children and their parents after separation. Please describe what information was collected and which procedures, if any, did HHS use to track children and their parents after separation, including but not limited to:

1. who each child's parents are;
2. where each child was placed;
3. where each child's parents were placed; and
4. whether the child had sponsors in the United States with whom the child could be placed.

(a) If procedures were in writing, please provide a true and correct copy of such as part of the Request for Production of Documents.

13) Please describe HHS's role in determining where to place children separated from their parents, and in determining where to place the parents after separation. Please list every entity or institution where children separated from their parents were placed.

14) Prior to April 1, 2018, please state if HHS let, obligated, or executed any contract or executed a supplement, addendum, or modification to an existing contract with any private entity for the detention of children separated or to be separated from their parents.

(a) If the answer to this question is “yes” please provide true and correct copies of such contracts as part of the Request for Production of Documents.

15) Please describe how HHS determined where to place children separated from their parents? Please describe the procedures and criteria used to determine in which facility the children would be placed after separation.

16) Please describe how HHS coordinated with the Department of Homeland Security and the Department of Justice, and any agencies reporting to or under the supervision of those Departments, on policies, decisions, actions, etc., relevant to separation, placement, and tracking of children and parents.

(a) Please detail all the tools used to coordinate HHS action with other government agencies or government contractors, including but not limited to, memorandums of understanding, transmittal forms from custody of one entity to another, other relevant policy documents, letters, agreements, etc.

17) Please describe HHS’s case management statistics as of the dates April 30, 2018, May 30, 2018, June 30, 2018, and November 30, 2018 on issues including, but not limited to:

1. the number of families who were separated;
2. the number of children who were separated;
3. the age, gender, race, ethnicity, and national origin of these separated children;
4. the facilities, including name, address, and operator at which children were placed; and
5. the age, gender, race, ethnicity, and national origin of these children at each of these facilities.

18) Prior to April 1, 2018, please state what HHS’s policy was for reunifying separated children and parents.

(a) Please describe all policy details, including but not limited to, who was eligible for reunification with their children or parents, who was ineligible for reunification, and what determined eligibility.

19) Please state if there are any instances of HHS personnel coercing or attempting to coerce parents to give up their right to apply for asylum/refugee status in order to be unified with their children

(a) If the answer is yes, please describe each of those instances.

(b) Please provide any policies or procedures regarding prohibitions on coercion that existed prior to April 1, 2018, and after July 31, 2018.

20) Please state if there are any instances of parents being told that as a condition of reunification with their children, or as a means of reunifying with their children faster, they could give up their right to apply for asylum/refugee status.

(a) If the answer is yes, please describe each of those instances.

21) Please state how many parents were told that as a condition of reunification with their children they had to give up their right to apply for asylum/refugee status.

22) Please state if the conditioning of reunification with children applicable to all asylum/refugee applicants or was any such condition applied on a case by case basis.

23) Please state how many cases or instances of coercion or attempted coercion of parents to give up their right of asylum in order to be reunified with their children currently exist.

24) Please describe what HHS's current procedures are for reunifying children and parents.

(a) Please detail all procedures regarding reunifying children and parents, including but not limited to, when the process would begin, where reunification would take place, and how long children have been separated before being reunified.

25) Please state HHS criteria for making eligibility determinations on which children would be reunited with their parents.

(a) Please state HHS criteria for continuing the detention of children who have been determined to be eligible for release.

(b) Please detail all considerations that determined which children would be eligible for reunification, and all considerations that determined which children would not be eligible for reunification.

26) Please describe HHS policies and procedures for placement of children once their parents are deemed ineligible for reunification.

(a) Please describe the steps HHS takes to monitor these procedures are being carried out fairly and effectively?

27) Please state if HHS plans to reunify all children and parents who were separated and if so, please state what HHS' timeline for the reunification of all children and parents who were separated.

(a) Please describe the steps HHS takes to monitor whether children were reunified with their parents.

28) Please describe HHS' policies for informing counsel, legal services providers, or other representatives of families regarding information regarding reunification, including final release destinations.

29) Please describe HHS' plan for finding deported parents and reunifying them with their children who still remain in the United States.

(a) Please detail the procedure that will be followed to facilitate the reunification of children with parents who have already been deported.

30) Please state how many families, between April 1, 2018 and July 31, 2018, after separation and reunification, were deported.

31) Please provide HHS' statistics for the reunification of all children and parents, including but not limited to data on:

1. how many families were separated;
2. how many children were separated from their parents and the age, race, ethnicity, and national origin of each child;
3. how many children were reunited with their parents and the age, race, ethnicity, and national origin of each child;

4. how many children remain separated from their parents and the age, race, ethnicity, religion and national origin of each such child;
5. where children still separated from their parents are located; and
6. of these children still separated, their age, race, ethnicity, religion, and national origin.

32) Please detail, for children separated between April 1, 2018 and July 30, 2018 the conditions of:

1. Confinement;
2. habitability standards;
3. access to education, and availability of physical activity at each stage of detention and/or placement for children;
4. the availability of interpreters and other materials for language accessibility;
5. the availability of medical and mental health care personnel;
6. the qualification of medical and mental health care personnel to treat children;
7. how are treatment decisions made regarding the accessibility of available medical and mental health care personnel;
8. access to communication with separated parents; and
9. any other information regarding the medical and mental health care of children.

33) Please state the background check requirements for any personnel employed, hired, or contracted by HHS that has contact with or custodial care and treatment of children detained by HHS pursuant to action by the Department of Homeland Security.

34) Please state what role, if any, HHS has in monitoring the welfare of children who are being detained by the Department of Homeland Security?

35) Please state what role, if any, HHS has in ensuring that persons hired by HHS or any other federal agency or contractor or subcontractor have background checks for personnel who have contact with or custodial care and treatment of children detained by the Department of Homeland Security?

36) Please state what, if any, are HHS' policies for preventing the sexual abuse of children in detention.

(a) Please detail what protections are in place to prevent sexual abuse of children in holding facilities and what were the procedures to report assault and protect victims of sexual abuse occurred in detention.

(b) Please detail what policies govern how HHS responds to notice that sexual abuse of children may have occurred for children HHS detains.

(c) Please provide statistics regarding:

1. number of children alleged to have been subject to sexual abuse in HHS detention;
2. where the abuse took place; and
3. in how many instances HHS has taken disciplinary action of any type regarding allegations that children have been subject to sexual abuse in HHS detention, disaggregated by the age, race, ethnicity, religion, and national origin of each such child.

(d) Please describe measures HHS takes to ensure the safety and rehabilitation of any child subject to sexual abuse while in HHS detention.

37) Please detail what HHS' policies are for preventing the physical and/or mental abuse of children in detention?

(a) Please detail what protections are in place to prevent physical and/or mental abuse of children in holding facilities and

(b) Please detail what the procedures to report assault and protect victims are if physical abuse occurred in detention.

(c) Please detail what policies govern how HHS responds to notice that physical and/or mental abuse of children may have occurred for children HHS detains.

(d) Please provide statistics regarding:

1. number of children alleged to have been subject to physical and/or mental abuse in HHS detention;
2. where the abuse took place; and
3. in how many instances HHS has taken disciplinary action of any type regarding allegations that children have been subject to physical and/or mental abuse in HHS detention, disaggregated by the age, race, ethnicity, religion, and national origin of each such child.

(e) Please describe measures HHS takes to ensure the safety and rehabilitation of any child subject to physical and/or mental abuse while in HHS detention.

38) Please detail what HHS' policies are regarding the use of psychotropic drugs on children in detention, including policies regarding securing parental or other guardian approval for administration of psychotropic medication on children in detention.

(a) Please state who was authorized to make a decision to administer psychotropic drugs to a child in detention.

(b) Please state who was authorized to administer psychotropic drugs to a child in detention.

(c) Please state when HHS was informed that psychotropic drugs were being administered to children?

(d) Please provide statistics regarding the number of children in HHS detention to whom psychotropic medications have been administered, disaggregated by the age, race, ethnicity, religion, and national origin of each such child and including whether a parent or guardian authorized the administration of psychotropic medications.

39) Please detail all information regarding the national origin, ethnicity, race, and religion of all families affected by the aforementioned policies and procedures of separation of children and parents.

40) Please describe how HHS responds to reports that the federal government has destroyed records related to family separations.

41) Since the June 20, 2018 decision by the Administration not to separate children from families, please state where families are currently being detained.

(a) Please detail the conditions of confinement at each stage of detention and/or placement for families, including but not limited to:

1. habitability standards;
2. access to education;
3. availability of physical activity;
4. the availability of interpreters and other materials for language accessibility, as well as medical and mental health care personnel;
5. the qualification of medical and mental health care personnel to treat children; treatment decisions regarding the accessibility of available medical and mental health care personnel; and
6. any other information regarding the medical and mental health care of families.

42) Since the June 20, 2018 decision by the Administration not to separate children from families, please state:

(a) how many families are being detained;

(b) where are they being detained;

(c) the ages, race, ethnicity, religion, and national origin of each family in detention; and

(d) what criteria determines whether a family is detained. Please provide any studies, data, and other supporting evidence documenting policies that underlie a decision to detain a family.

43) Please list the locations, agency or entity of jurisdiction, and number of beds for any facility that HHS is considering using to detain families after the June 20, 2018 decision by the Administration not to separate children from families.

(a) Please list the criteria by which families will be detained.

(b) Please list the criteria by which families will be assigned to facilities.

(c) Please list the cost of each facilities, and the additional cost to HHS' budget to establish or expand these facilities.

(d) For these facilities, please list how families may access legal counsel, while being detained.

44) Please state how many families at the southern border who were detained, together or separately since April 1, 2018, have been deported because they gave up their right to apply for asylum/refugee status.

(a) Please provide the ages, race, ethnicity, religion and national origin of each family.

45) Please describe under what circumstances families can be released from detention.

46) Please provide any studies, data, and other supporting evidence documenting policies that underlie a decision to release a family into the United States.

(a) Please state how many families have been released from detention since July 31, 2018.

(b) Please state the ages, race, ethnicity, religion and national origin of each family released.

DOCUMENT REQUESTS

1. Please provide any and all historical and current policy guidance, written instructions, or directives, which have been developed or disseminated to local, state, and federal detention centers, advocacy partners, and internally within the U.S. Department of Health and Human Services regarding the separation of families and the “zero-tolerance” policy.
2. Please provide any memoranda, documents, or analyses discussing the implementation of the policy of separating children from their parents as part of the Administration’s “zero-tolerance” policy.
3. To the extent not covered by the document requests above, please provide any and all documents relied on to prepare responses to the above interrogatories.