

United States Senate

WASHINGTON, DC 20510

October 17, 2018

The Honorable Alex M. Azar, II
Secretary
US Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Azar,

We write regarding testimony you provided to the Senate Finance Committee as well as the accuracy of information contained in a Department of Health and Human Services (HHS) factsheet about the Trump Administration's child and family separation policy. Specifically, we wish to understand whether HHS misled Congress and the American public regarding implementation of its "zero tolerance" policy and the existence of a central database to track and match the parents and children separated by the Administration as part of this policy.

On September 27, 2018, the Department of Homeland Security (DHS) Office of Inspector General (OIG) released a report entitled, "Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy." The report concluded, among other troubling findings, that the Administration "was not fully prepared" to implement the "zero-tolerance" policy and struggled to deal with its aftermath, and that Administration officials potentially misled or provided inaccurate information regarding how DHS and HHS kept track of separated families and children.¹ We were, and continue to be, appalled by the Administration's cruel policy of family separation, and disturbed by the possibility that your agency provided inaccurate or misleading information to Congress and to the American public on the Administration's ability to locate and track these children.

On June 20, 2018, as you prepared to testify before Congress, President Trump signed Executive Order 13841, "Affording Congress an Opportunity To Address Family Separation,"² which directed DHS to detain families together, suspending the family separation policy. Three days later, amid a continuing uproar, your agency and DHS issued identical statements ("factsheet") claiming, "the United States government knows the location of all children in its custody and is working to reunite them with their families," and that to do so, "[t]here is a central database which HHS and DHS can access and update" containing information on the location of separated parents and their children.³

¹ Department of Homeland Security, Office of Inspector General, "Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy," September 27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

² Executive Office of the President, "Executive Order 13841: Affording Congress an Opportunity To Address Family Separation" *The Federal Register*, June 20, 2018, <https://www.federalregister.gov/documents/2018/06/25/2018-13696/affording-congress-an-opportunity-to-address-family-separation>.

³ Department of Health and Human Services, "Zero-Tolerance Prosecution and Family Reunification," press release, June 23, 2018, <https://www.hhs.gov/about/news/2018/06/23/zero-tolerance-prosecution-and-family-reunification.html>; Department of Homeland Security, "Fact Sheet: Zero-Tolerance Prosecution and Family

Three days after those announcements, on June 26, 2018, you testified before the Senate Finance Committee that HHS's Office of Refugee Resettlement (ORR) had a computer "portal" that could easily locate children, claiming, "[t]here is no reason why any parent would not know where their child is located. I could at the stroke of – at keystrokes, I sat on the ORR portal with just basic keystrokes and within seconds could find any child in our care for any parent available."⁴ In Sen. Wyden's Questions for the Record from that hearing, he asked a series of follow-up questions related to information from this system, but has received no response. Similarly, on July 2 and July 11, 2018, several members of Congress sent letters raising questions about the accuracy of your testimony and requesting information from this database, and have yet to receive a response.⁵

The new OIG report raises questions about your testimony and the claims in the DHS/HHS factsheet, revealing that "OIG found no evidence that such a database exists,"⁶ and that "DHS has since acknowledged to the OIG that there is no 'direct electronic interface' between DHS and HHS tracking systems."⁷ According to the DHS OIG report, officials suggested that the "central database" refers to a "manually-compiled spreadsheet maintained by HHS, CBP, and ICE personnel," which internally is called the "matching table."⁸ OIG reported, however, that this matching table was not created until after June 23, 2018.

This timeline provided by the DHS OIG appears to indicate that the "central database" referred to in the Department's June 23 press release did not exist on that date, and that – unless the database was created over the next few days – your testimony that "there is no reason why any parent would not know where their child is located" may have been inaccurate or misleading. To address this matter, please provide the following information by November 2, 2018.

1. The DHS IG was told that the "central database" referred to in the June 23 factsheet was a "manually-compiled spreadsheet maintained by HHS, CBP, and ICE personnel," known as the "matching table" and created sometime after this date.
 - a. Was this "matching table" the "central database" referenced in the June 23 HHS release/factsheet? If not, what was the database to which this factsheet referred to?
 - b. On what date was the matching table created?

Reunification," press release, June 23, 2018, <https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification>.

⁴ Senate Committee on Finance, "Prescription Drug Affordability and Innovation: Addressing Challenges in Today's Market," June 26, 2018, <https://www.c-span.org/video/?447466-1/hhs-secretary-alex-azar-pressed-migrant-family-reunification-efforts&start=1787>.

⁵ Letter from Senator Elizabeth Warren et al. to HHS Secretary Alex Azar and DHS Secretary Kirstjen Nielsen, July 2, 2018, <https://www.warren.senate.gov/imo/media/doc/2018.07.02%20Letter%20to%20DHS%20and%20HHS.pdf> and letter to HHS Secretary Alex Azar, July 11, 2018, https://www.wyden.senate.gov/imo/media/doc/Final_Azar%20Letter%20on%20Separated%20Children%20Finance%20Testimony.pdf.

⁶ Department of Homeland Security, Office of Inspector General, "Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy," September 27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

⁷ *ibid.*

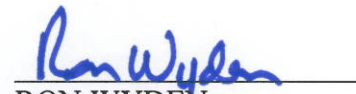
⁸ *ibid.*

- i. How did HHS officials decide to create the matching table, and which HHS officials were involved in making that determination? Was the matching table created in response to or in anticipation of litigation?
 - ii. Please identify the HHS officials who have the ability to view and/or edit the matching table.
 - iii. How did HHS obtain the matching information on parents and children for this “matching table” and how did HHS manage and coordinate “matching table” data entry and exchange with DHS?
2. In your testimony before the Finance Committee, you referred to an ORR computer “portal” that tracked children in “our care.”
 - a. Please describe the relationship between this portal and the “matching table” described in the DHS OIG report, including which children are tracked in each and which children, in federal government custody, are not tracked by HHS in either database.
 - b. When was this ORR portal created and was it created in response to or in anticipation of litigation?
 - c. How did HHS obtain the matching information on parents and children for this portal and did DHS staff from ICE or CBP have access to this portal?
3. What steps is HHS now taking to ensure that children in its custody can be matched promptly with their parents or other family members? Specifically, does HHS track and match children and their family members by any methods other than a manually-compiled spreadsheet? If so, please describe each of those methods.
4. Please explain why you have not provided responses to the Questions for the Record for the June 26, 2018 Finance Committee hearing nor the July 2 and July 11, 2018 letters on “zero tolerance” policy.

Sincerely,



ELIZABETH WARREN
U.S. Senator



RON WYDEN
U.S. Senator

cc: The Honorable Kirstjen Nielsen, Secretary of Homeland Security