

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

September 17, 2020

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

Dear Secretary Azar:

As the Democratic leaders of the Energy and Commerce Committee, we have been raising concerns about the Trump Administration's inhumane family separation policy for over two years now. Our oversight has focused on the origins of the family separation policy, what role the Department of Health and Human Services (HHS) played in its formation, and what impact it has had on the health of the children in HHS's care. Despite multiple letters and repeated requests, you have still failed to provide all requested documents, in an attempt to continually shroud the evidentiary record of that shameful chapter in American history.

However, the documents we have received thus far clearly demonstrate that career officials within HHS were raising moral objections and logistical concerns about the reported family separation policy months before the extent of the policy was known to the public, yet HHS leadership did not act on these concerns nor stop the indiscriminate separation of families that resulted from the implementation of the Administration's "Zero Tolerance" policy.<sup>1</sup> Moreover, reports continue to emerge about the involvement of top Trump Administration officials in the creation of this policy, renewing the importance of our oversight. These reports also raise questions about your previous statements and testimony before the Committee.

In March 2019, you testified before the Subcommittee on Health, stating, "I was not aware that [the Zero Tolerance] policy was under consideration before the Attorney General

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<sup>1</sup> House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Protecting Unaccompanied Children: The Ongoing Impact of the Trump Administration's Cruel Policies*, 116th Cong. (Sept. 19, 2019).

announced it” on April 6, 2018.<sup>2</sup> You further testified, “I did not connect the dots that Zero Tolerance and 100 percent referral [of separated children] meant implications for our program, nor was there any indication from discussions with me” until “the days and weeks following the announcement on May 7<sup>th</sup> [2018]”<sup>3</sup> of the implementation of the Zero Tolerance policy, which led to family separations.

In addition, you testified that you were “disappointed” that you were not told about potential family separations, and when asked whether you would have stopped the policy, you testified, “[i]f I had been alerted to it, I could have raised objections and concerns, absolutely. And I wish we had had more knowledge flow, and I wish more people had been engaged in these issues, absolutely. Of course.”<sup>4</sup>

Despite these comments, a recent press report indicates that the decision to separate migrant families upon entry into the United States was debated at the highest levels of government at a meeting in early May 2018 at the White House.<sup>5</sup> This report indicates that you were invited to this meeting, along with other Cabinet secretaries and senior Administration officials.<sup>6</sup> According to *NBC News*, White House senior adviser Stephen Miller led the meeting in the Situation Room, and the meeting attendees “were asked, by a show-of-hands vote, to decide the fate of thousands of migrant parents and their children[.]”<sup>7</sup>

The press report indicates that Department of Homeland Security (DHS) Secretary Kirstjen Nielsen raised objections to the proposed policy at the White House meeting. It is reported that Nielsen cited logistical complications for both DHS and HHS and their inability to handle the expected influx of unaccompanied children under the policy<sup>8</sup> – the same concerns that were raised by HHS career staff and which you testified you wish had been raised with you.<sup>9</sup> But according to the report, “[n]o one in the meeting made the case that separating families

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<sup>2</sup> House Committee on Energy and Commerce, Subcommittee on Health, Testimony of the Honorable Alex M. Azar II, Secretary, U.S. Department of Health and Human Services, *The Fiscal Year 2020 HHS Budget*, 116<sup>th</sup> Cong. (Mar. 12, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Trump Cabinet officials voted in 2018 White House meeting to separate migrant children, say officials*, *NBC News* (Aug. 20, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, Testimony of Commander Jonathan White, United States Public Health Service Commissioned Corps, *Examining the Failures of the Trump Administration’s Inhumane Family Separation Policy*, 116<sup>th</sup> Cong. (Feb. 7, 2019); *See* note 2.

would be inhumane or immoral[.]”<sup>10</sup> The Trump Administration would go on to separate thousands of migrant families, and transfer at least 4,000 children, without their parents, to the Office of Refugee Resettlement (ORR) within HHS.<sup>11</sup>

Throughout the fallout of the family separation crisis, you have worked to distance yourself from the policy, claiming that the policy originated at DHS and the Department of Justice, and was forced upon HHS. As noted above, you testified before this Committee that you wish you had known about it so that you could have objected.<sup>12</sup>

But if this new reporting is accurate, it indicates that at best, you should have known about the implications of the proposed family separation policy but did not object to it – and at worst, you were complicit in the decision to separate thousands of vulnerable children from their families.

Countless children and parents continue to live with the long-term ramifications of the Trump Administration’s cruel family separation policy. This Committee, Congress, and the American people deserve a full accounting of the failures that allowed this to happen. As such, we respectfully request a written response from you personally to the following questions by October 1, 2020.

1. Did a meeting take place in early May 2018 at the White House during which family separations were discussed? Did you attend the meeting? If not, why not?
2. *NBC News* reports that the attendees at the meeting were asked “by a show-of-hands vote” whether to recommend implementing family separations. Did you vote or provide input on this question at that meeting, and if so, how did you vote or what input did you provide?
3. Please provide any agenda, memoranda, meeting minutes, or any other documents related to this meeting, including materials shared in advance or prepared for purposes of this meeting.
4. If you attended this meeting and were informed of this policy proposal, why did you testify before the Committee that you were not aware of this policy and its impacts on HHS until after it was publicly announced?

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<sup>10</sup> See note 5.

<sup>11</sup> *Ms. L, et al. vs. U.S. Immigration and Customs Enforcement, et al.*, S.D. Cal. (No. 3:18 CV 00428); U.S. Department of Health and Human Services, Office of Inspector General, *Communication and Management Challenges Impeded HHS’s Response to the Zero-Tolerance Policy* (Mar. 2020) (OEI-BL-18-00510).

<sup>12</sup> See note 2.

The Honorable Alex M. Azar II

September 17, 2020

Page 4

Thank you for your assistance. If you have any questions about this request, please contact Kevin McAloon of the Majority staff at (202) 225-2927.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." in a cursive style.

Frank Pallone, Jr.  
Chairman

A handwritten signature in blue ink that reads "Anna Eshoo" in a cursive style.

Anna G. Eshoo  
Chairwoman  
Subcommittee on Health

A handwritten signature in blue ink that reads "Diana DeGette" in a cursive style.

Diana DeGette  
Chair  
Subcommittee on Oversight  
and Investigations