



**Written Testimony of Margaret Huang
Executive Director
Amnesty International USA**

Submitted to the
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies
House Committee on Appropriations

For a hearing on "Oversight of the Unaccompanied Children Program: Ensuring the
Safety of Children in HHS Care"

July 24, 2019

Chairwoman DeLauro, Ranking Member Cole, and Members of the Subcommittee:

On behalf of Amnesty International USA and our two million members and supporters in the United States, I thank the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies for the opportunity to submit this testimony.

Today's hearing is a critical opportunity to examine the conditions in which migrant children seeking safety here are being held, including the protracted use of influx facilities, which are utterly unsuited to properly care for this vulnerable population and are yet being employed far beyond the temporary, emergency situations for which they are envisioned. The administration is increasingly relying on influx facilities to house children in large part because its own policies needlessly prolong their detention.

Rather than placing children in warehouse-like facilities and tent camps, the administration should prioritize their speedy release and reunification with loved ones, as both U.S. and international human rights law require.

Amnesty International's Engagement on the Issue of Child Detention

I am the Executive Director of the U.S. country section of Amnesty International, the world's largest grassroots human rights organization, comprising a global support base of over eight million individual members, supporters, and activists in more than 150 countries and territories. Amnesty International engages in activism, research, policy advocacy, litigation, and education to demand human rights for all people – no matter who they are or where they are.

Both our global movement and the U.S. section have advocated for the freedom and safety of migrant children seeking protection in the United States for close to two decades. A top priority for the U.S. section of Amnesty International is the protection of the right to seek asylum, which is under relentless attack. We have documented the harmful impacts of “metering” at ports of entry, the misleadingly named “Migrant Protection Protocols,” and the abomination of separating asylum-seeking families and children.¹

In this context, we have observed with concern how the administration has weaponized the detention of asylum-seeking families, adults, and children to deter and punish the act of seeking protection. I have personally visited and documented conditions in each of the industrial-scale “influx facilities” constructed under this administration, including the infamous tent city in Tornillo, Texas; the warehouse-like facility in Homestead, Florida; and a newly opened campsite in Carrizo Springs, Texas.

¹ Amnesty International, *USA: 'You Don't Have Any Rights Here': Illegal pushbacks, arbitrary detention and ill-treatment of asylum seekers in the United States*, Oct. 11, 2018, <https://www.amnesty.org/en/documents/amr51/9101/2018/en/>.

Following field visits in April and July 2019, Amnesty International published a report titled *No Home for Children: The Homestead 'Temporary Emergency' Facility*, which documents our concerns about the prolonged detention of children in the Homestead facility in Florida.² The report concludes that the government is violating the human rights of thousands of unaccompanied children by warehousing them in a facility it claims is “temporary,” but in reality, has operated for 16 months and counting. Our report urges the closure of Homestead as soon as possible and the immediate release of children detained there to families, loved ones, or – as a last resort – permanent, state-licensed, small-scale ORR shelters more appropriate for their care and wellbeing.

Standards Governing the Detention of Children in Domestic and International Law

Each year, violence and persecution force thousands of children to come to the United States. These children are seeking asylum or other forms of humanitarian protection under U.S. and international law. They are among the most vulnerable people in our government’s care.

Children who arrive at the U.S. border alone, or who are separated from their parents or caregivers at the border, are considered “unaccompanied” and typically transferred from the custody of the Department of Homeland Security (DHS) to the care and custody of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS), where they are housed until they can be released and reunified with a “sponsor” – typically a parent or close family member.

Under U.S. and international law, the touchstone of any decision concerning these children must be the principle of the best interests of the child. As a starting point, and as reflected in the binding *Flores* agreement, family unity is generally always in a child’s best interests and must be prioritized wherever possible – meaning the administration’s practice of ripping apart children from their parents and caregivers at the border and prolonging the detention of those children in facilities, instead of expeditiously reuniting them with family members in the United States, are stark violations of this principle.

Detention is never in a child’s best interests, and children thus should generally never be detained for migration-related reasons. Under international law, individuals can be deprived of their liberty only when their detention is provided by law, necessary to fulfill a legitimate objective, and proportionate to that objective. In the exceptional circumstances where detention of children complies with these requirements, both *Flores* and international law require that it should be for the shortest time and in the least restrictive setting possible.³

Flores further requires that where release to a child’s family or loved ones is not possible, children must be held in non-secure facilities that are licensed by the appropriate state

² Amnesty International, *No Home For Children: The Homestead 'Temporary Emergency' Facility*, July 18, 2019, https://www.amnestyusa.org/wp-content/uploads/2019/07/Homestead-Report_1072019_AB_compressed.pdf.

³ *Flores v. Lynch*, No. CV 85-04544 DMG (Ex), Central District of California, 21 August 2015, <https://www.aila.org/File/Related/14111359p.pdf>.

child welfare agencies or entities. The Trafficking Victims Protection Reauthorization Act (TVPRA) similarly requires that children be placed in the “least restrictive setting that is in the best interest of the child,” and notes that children “shall not be placed in a secure facility absent a determination that the child poses a danger to self or to others.”⁴ Children in government custody generally must have access to legal representation, telephones, health care, counseling, education, recreation, and religious services.

Notably, *Flores* provides exemptions to these standards “in the event of an emergency or influx of minors into the United States.”⁵ By operating influx shelters indefinitely, the government is exploiting this loophole and evading state oversight and basic requirements for child shelters.

Administration Policies Have Jeopardized Family Unity and Prolonged Child Detention

Though domestic and international law require family unity to be preserved wherever possible, the government has adopted practices that do exactly the opposite: jeopardizing family unity and needlessly prolonging child detention by separating caregivers from children and implementing an information-sharing agreement between DHS and ORR that places potential sponsors at risk of deportation. These practices are not only antithetical to the principle of the best interests of the child; they have also proliferated the use of “temporary emergency” facilities when the only “emergency” is a crisis of the administration’s making.

- **Separation of Caregivers and Children at the Border**

While the cruel and illegal practice of family separation was nominally halted by a court order in June 2018, children continue to be separated from their parents, legal guardians, and adult caregivers upon arrival at the U.S. southern border, and thus become functionally “unaccompanied” even when they were accompanied by a loving family member or caretaker when they arrived.

Over 700 families have reportedly been separated since the date of the court injunction halting family separation and May 2019.⁶ This is because the government appears to be exploiting a loophole in the order that permits the separation of children from their parents or guardians for certain limited reasons.⁷ Further, agents at the border continue to separate children from adult caregivers who are not parents or legal guardians, ignoring the cultural context of these families, in which many of these caregivers are functionally these children’s parents.⁸ The “Migrant Protection Protocols” have also

⁴ 8 U.S.C. § 1232(c)(2)(A).

⁵ William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) § 235(c)(2); 8 U.S.C. §1232(c)(2), Pub. L. No. 110–457, 122 Stat. 5044 (2008).

⁶ Michelle Goldberg, “The Terrible Things Trump Is Doing in Our Name,” *The New York Times*, <https://www.nytimes.com/2019/06/21/opinion/family-separation-trump-migrants.html>.

⁷ *Id.*

⁸ “US: Family Separation Harming Children, Families,” Human Rights Watch, July 11, 2019, <https://www.hrw.org/news/2019/07/11/us-family-separation-harming-children-families>.

contributed to the separation of children from adult caregivers, who are forced to wait in precarious conditions in Mexico until the conclusion of their cases.⁹ A recent report found that the forcible separation of non-parent caregivers “appears to be a routine practice” because the administration is interpreting these children to be “unaccompanied” under the terms of the TVPRA.¹⁰ However, DHS’s own regulations give it the discretion to release children together with adult caregivers.¹¹

Not only are family separations abusive and traumatic, they also create unaccompanied children out of accompanied children. Lawyers who visited the infamous Clint Border Patrol station observed that many of the children held in filthy, neglectful conditions there initially came with family members from whom they had been separated.¹² An attorney representing migrant children in ORR custody to whom Amnesty International spoke in Texas described the difficulty of providing legal representation to children in custody who had been separated from caregivers: “When I speak to them about their cases, all they can think about is, ‘Where’s my uncle?’”

Instead of separating hundreds of children from their caregivers, which irreversibly traumatizes families and needlessly places children in government custody, the administration should preserve their unity wherever possible. Decisions to separate children from caregivers should be made only by trained child welfare professionals and only in the exceptional cases where unity would not be in a child’s best interests. Reunification of children with their families – the primary project of ORR’s migrant child program – is necessary only where the unity of those families is broken in the first place.

- **The DHS-ORR Information-Sharing Agreement**

Even though most children in ORR custody, including at Homestead, have family members or other sponsors to receive them, a new policy that prioritizes immigration enforcement over child welfare has led to their prolonged detention.

Under an DHS-ORR information-sharing agreement signed in April 2018, ORR has continuously shared a broad range of information on unaccompanied children, including their potential sponsors, with Immigration and Customs Enforcement (ICE). The agreement is a departure from prior ORR policy and practice to place unaccompanied children with the most appropriate sponsor without consideration of the sponsor’s immigration status for enforcement purposes.¹³

⁹ Women’s Refugee Commission, “New Report Reveals Danger of Remain in Mexico,” May 16, 2019, <https://www.womensrefugeecommission.org/news/press-releases-and-statements/3536-new-report-reveals-danger-of-remain-in-mexico-including-new-cases-of-family-separation-confiscated-identity-documents-new-inhumane-cbp-custody-tents>.

¹⁰ See *supra* note 8.

¹¹ 8 C.F.R. § 236.3.

¹² See *supra* note 8.

¹³ See National Center for Youth Law, Center for Human Rights and Constitutional Law, and the University of California Davis School of Law Immigration Clinic, *The Flores Settlement Agreement & Unaccompanied Children in*

The DHS-ORR agreement and subsequent immigration enforcement based on that agreement has chilled the willingness of potential sponsors to come forward and drastically delayed the placement of unaccompanied children with sponsors.¹⁴ Children's average length of stay in ORR custody nearly doubled following implementation of the policy, from 48 days to an average of 75 days.¹⁵

In December 2018, ORR acknowledged that the policy had delayed the timely release of unaccompanied children without benefiting children's safety.¹⁶ It dropped the requirement that all adult members of a potential sponsor's household be fingerprinted, and now does not require fingerprinting of parents, legal guardians, grandparents, or adult siblings.¹⁷ As a result, average lengths of stay at Homestead have plummeted from close to 90 days before the policy changes to approximately 25 days as of July 2019.

However, the information-sharing agreement remains in effect, meaning sponsors will continue to be afraid to come forward. The FY 2019 Department of Homeland Security appropriations bill signed in February 2019 prohibits ICE from initiating enforcement actions against a potential sponsor or sponsor or members of their households based on information shared by ORR. However, the bill's broad exceptions still enable ICE to potentially use information obtained from the DHS-ORR agreement to target sponsors or their household members for immigration enforcement.¹⁸

Influx Facilities Like Homestead Are Not in a Child's Best Interests

The temporary influx facility in Homestead, Florida, is one of two such facilities currently operating in the country; the other is a recently opened facility on the grounds of a former "man camp" for oil workers in remote Carrizo Springs, Texas.

When it opened in March 2018, Homestead was designated as "temporary," yet it has functioned more like a permanent shelter for 16 months and counting. During our April

Federal Custody at 12 (Feb. 2019) (hereinafter "*Flores Report*"), <https://youthlaw.org/publication/the-flores-settlement-agreement-unaccompanied-children-in-federal-custody>.

¹⁴ R. Moore, *Thousands of Migrant Children Could Be Released with Trump's Major Policy Reversal*, Texas Monthly, Dec. 18, 2018, <https://www.texasmonthly.com/news/trump-fingerprint-policy-change-reduce-migrant-children-detention-tornillo/>.

¹⁵ L. Kriel, *Longer stays leave record number of immigrant children in detention*, Houston Chronicle, Nov. 21, 2018, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Thanksgiving-in-immigration-shelters-as-number-of-13415048.php>.

¹⁶ R. Moore, *Thousands of Migrant Children Could Be Released with Trump's Major Policy Reversal*, Texas Monthly, Dec. 18, 2018, <https://www.texasmonthly.com/news/trump-fingerprint-policy-change-reduce-migrant-children-detention-tornillo/>.

¹⁷ See, e.g., National Center on Youth Law *Flores Report*; Women's Refugee Commission and National Immigrant Justice Center, *Children as Bait: Impacts of the ORR-DHS Information-Sharing Agreement*, March 2019, www.womensrefugeecommission.org/images/zdocs/Children-as-Bait.pdf.

¹⁸ House Joint Resolution 31, Consolidated Appropriations Act 2019 § 224, Feb. 25, 2019, <https://www.congress.gov/116/bills/hires31/BILLS-116hires31enr.pdf>; see, Tal Kopan, *Funding deal blocks ICE from arresting adults taking in undocumented children*, San Francisco Chronicle, Feb. 14, 2019.

2019 visit, the facility was straining at the seams, with well over 2,000 children in its care. Its population has since reduced and, as of this writing, stands at under 1,000. At the beginning of July, the facility stopped accepting children to reduce its size to no more than 1,200 children to shelter in place for hurricane season.

Both influx facilities currently in operation are large-scale settings unsuited for the care and shelter of unaccompanied children. Homestead has the look and feel of an industrial facility, composed of permanent and semi-permanent structures on a North and South Campus, which have at points warehoused thousands of children. Hundreds of children sleep in bunk beds on a single floor on the North Campus, and all children must wear ID cards with barcodes around their necks as they walk from place to place.¹⁹ Carrizo Springs similarly has the capacity to house over a thousand children in trailers in a remote setting, though it currently houses fewer than 200 children.

Because of its designation as a “temporary emergency” facility, Homestead has evaded obligations placed on permanent, state-licensed shelters. This has meant that thousands of children have been warehoused in a facility that is not adequately centered on the best interests of the child principle.

Below are some of the chief concerns Amnesty International identified at Homestead:

- **Prolonged and Indefinite Detention of Children for Profit**

While recent policy changes have been a step in the right direction, the prolonged and indefinite detention of children at Homestead remains a serious concern.

When Amnesty International first visited Homestead in April 2019, the average length of stay was over 52 days, and some children had languished in the facility for 100 to 200 days at a time. While, as noted above, the average length of stay has now reduced to 25 days, prolonged detention at Homestead is still a serious concern for children, particularly those who do not have close relatives to sponsor them.

Prolonged and indefinite detention is particularly detrimental for 17-year-old unaccompanied children, who represented a majority of the unaccompanied child population at Homestead when Amnesty International visited in April and July, and who are at risk of “aging out” of the facility and into adult detention. While Homestead has a dedicated case management team which works to expedite the release of any children within 90 days of their 18th birthday, children who are not released are subjected to the traumatic experience of a “birthday arrest,” where they are taken from ORR custody into adult detention the day they turn 18.²⁰

¹⁹ See Flores Agreement, para 12(3); see *Flores v. Lynch*, 212 F. Supp. 3d 907, 914, Central District of California, 2015, *affirmed in part, reversed in part and remanded*, 828 F.3d 898, 9th Circuit, 2016.

²⁰ John Burnett, “Migrant Youth Go From A Children's Shelter To Adult Detention On Their 18th Birthday,” NPR News, Feb. 22, 2019, <https://www.npr.org/2019/02/22/696834560/migrant-youth-go-from-a-childrens-shelter-to-adult-detention-on-their-18th-birth>. Though ORR policy requires unaccompanied children not to be placed at a temporary emergency facility if they will turn 18 within 30 days of the transfer, Amnesty International learned that children have

The prolonged detention of children at Homestead is particularly troubling when considering its operator, Comprehensive Health Services, is part of Caliburn International, a for-profit corporation that stands to directly profit from the prolonged detention of children. Indeed, Caliburn’s board members include former DHS Secretary John Kelly, who promoted policies prolonging the detention of children while in office. Detention at both influx facilities currently in operation is extraordinarily costly: between \$750-\$800 per day, per child, compared to approximately \$250 per day in a licensed, permanent shelter. However, in contrast to Homestead, the not-for-profit corporation operating the Carrizo Springs facility told us that its goal is to shut down its influx operation as quickly as possible, ideally by the end of July, because influx shelters should be a “last resort,” reserved for true emergencies.

- **Evasion of State Oversight**

While *Flores* requires all ORR facilities to secure state licensing from state child welfare agencies, Homestead is exempted from this requirement both because it is designated as a temporary influx care facility and because it is on federal land.²¹ The continued categorization of Homestead as “temporary” facility – despite its prolonged operation – has thus enabled it to circumvent state welfare regulations critical for ensuring the safety of children in government care. The lack of state licensing and oversight has meant that the contractor operating Homestead can bypass running background checks on staff against Florida’s child abuse and neglect background check system. All staff of any ORR facility housing children must be properly and thoroughly vetted, without exception.

- **Conditions at Odds with the Best Interests Principle**

Available services and the conditions of Homestead – including the facility’s rigid institutional nature, educational services, language services, remote case management services, and systems to report allegations of sexual abuse – fail to center care based on the best interests of the child.

First, the facility’s **industrial size and highly regimented setting** is a far cry from the “least restrictive setting” principle outlined in *Flores*. Homestead provides care in a large-scale, warehouse-like environment with thousands of children adhering to highly regimented schedules, who are deprived of individualized care, attention, and freedom to be children.

Due to its sheer size and scale of operation, Homestead has the feel of a secure detention facility, not a small-size group home or residential setting that is centering the

been transferred to Homestead shortly before turning 18 years old, and have been transferred to adult detention as a result.

²¹ Administration for Children and Families, *ORR Guide* § 1.7, available at www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1; see *Flores* Agreement, para. 12(3).

child's best interests. Children wear ID badges with barcodes that they must scan as they enter and leave buildings, and they follow chalked lines when they walk outside. The barracks-style residences further contribute to the feel of a detention center. Daily life and services are highly regimented, with children's schedules tightly controlled from 6:30 a.m. to 10:00 p.m., with only an hour and 50 minutes of free time. Children must request any services – from sanitary pads to psychological counseling – via a “service request form.” Children interviewed by Amnesty International who had been held at Homestead complained of the strict and rigorous rules imposed on them at the facility.

By contrast, permanent shelters generally provide small-size residential settings designed to feel like homes, not detention facilities. One Honduran teenager who had been transferred from Homestead to a permanent shelter noted that the biggest difference she perceived was the intimacy of care she received in the permanent shelter: she was able to spend more time playing and felt more comfortable sharing details about herself with staff. Given the trauma many of these children have faced and their distinct vulnerabilities, they should be placed in drastically less restrictive settings than Homestead.

Second, while **education** is a critical right for children, temporary influx facilities are only required by ORR to provide that right “to the extent practicable.”²² While Homestead does provide educational services, they are deficient. Instruction takes place in large, noisy classroom settings. Education instructors are not certified and use a curriculum created by the corporation running the facility, while nearby ORR shelters (and even the other temporary facility in Carrizo Springs) require teachers to be licensed by the local county. In April 2019, when we visited a school classroom, children were being instructed in math, but there was not a single textbook to be seen: instead, children were copying the words of the Pledge of Allegiance. Since Amnesty International's visit in April, a head manager of education services had been hired, and individual classrooms seemed more child-centered, though the noise was still clamorous.

Third, lack of adequate access to **language services** particularly disadvantages children who do not speak English or Spanish. Homestead staff informed Amnesty International that, while the facility will identify Indigenous language speakers for transfer, children will not be transferred if they can communicate in Spanish or English. This is troubling given that nearly half of children detained in Homestead are Guatemalan, many of whom likely speak Indigenous languages as their first language. This approach to Indigenous and non-Spanish, non-English speakers is inadequate: relying on a child's ability to communicate in a secondary language fails to protect their best interests.

Fourth, Homestead is providing inconsistent and inadequate **case management and social services** for children in its care. Case management teams include caseworkers who focus on the child's release to sponsors as well as clinicians, who provide counseling

²² *Id.*

services to them. Homestead has aggressively expanded its use of remote case management services, which have often resulted in inadequate and impersonal care. Nearly a quarter of all case management teams at Homestead at the time of our April visit were based in Texas, meaning that children communicate by video with their case management team, including their clinicians. While children can request an in-person visit with their clinicians, they must do so via a request form.

Remote case management has been detrimental for the children held at Homestead. One 17-year-old boy who had been diagnosed with tuberculosis upon arrival was held at Homestead for eight months and assigned a remote case manager based in Texas despite his vulnerability. Another boy discovered that he may have been held much longer than necessary, as his remote case manager falsely told him that she was speaking to his sponsor every day. In three months, this boy met with his case manager only three times.

Similarly, medical care has at times been inadequate at Homestead. Amnesty International spoke with two boys who were both diagnosed with HIV after arriving at Homestead. In one case, the boy's sponsors dropped out after learning of his HIV-positive status. In one case, Homestead personnel kept the boy in medical segregation for a month, and doctors told him not to tell anyone else about his status. Given the incredible vulnerability of children like these, remote case management services and impersonal care are utterly inadequate.

Finally, the **system for reporting allegations of sexual abuse** is insufficient. According to media reports, there have been at least six or more allegations of sexual abuse at Homestead, including two involving staff members, since the facility opened in 2018.²³ Despite this, Homestead fails to provide adequate privacy for unaccompanied children to report allegations of sexual abuse. At the time of Amnesty International's visit in April, in one area housing 17-year-olds, children who wished to report abuse were directed to use an open-air cubicle, within five feet of a ping-pong table in a recreation room. While the ping-pong table was later moved, this improvised cubicle demonstrated the inherent problems in a facility designed to warehouse children rather than root practices in their best interests.

Recommendations: Towards a System Where Children and Families are Together and Free

- **Family unity must be prioritized in legislation and policy.** Both Congress and the administration must prioritize reunification of migrant children with family members and sponsors as a paramount goal. The administration should rescind policies that categorically separate children from adult caregivers. For its part, Congress should legislate protections ensuring that children are not separated

²³ CBS Miami, *State Probed Abuse Claims At Child Migrant Shelter In Homestead*, March 20, 2019, <https://miami.cbslocal.com/2019/03/20/state-probed-abuse-claims-at-child-migrant-shelter-in-homestead/>.

from caregivers and should invest in hiring more staff to expedite release of children to their families and other sponsors, including increasing the numbers of ORR Federal Field Specialists.

- **The Homestead influx facility must be shut down as soon as possible.** Homestead is an industrial line for processing children, not a shelter for children. We laud efforts that have been made to reduce its population and urge the administration to close it in full as soon as possible and release children to their sponsors.
- **Congress must prioritize funding for licensed, permanent, small-scale facilities, as influx shelters should truly be a measure of last resort.** HHS should develop a far-sighted planning process that has the elasticity and responsiveness necessary to accommodate variations in the numbers of unaccompanied children. Congress should ensure that funding for ORR facilities prioritizes licensed, permanent, small-size shelters that can more appropriately care for children, and that influx facilities are used only for true emergencies, not as the new default standard of migrant child care. Temporary emergency facilities should always be state-licensed, built at a smaller scale, and adhere to U.S. and international human rights law. Congress should also invest in increased psychological and psychosocial care in ORR facilities, including by increasing the number of clinicians available per child.
- **Congress should invest more resources in long-term care for children who truly cannot be reunified with families or sponsors.** Several advocates described to us the challenges faced in securing long-term care for children who have no sponsors or family members in the United States and whose cases often fall through the cracks. Rather than needlessly detaining children who have sponsors, the administration should dedicate shelter resources to care for those children who do not have sponsors, including through long-term shelter placement programs.
- **The DHS-ORR information-sharing agreement should be rescinded in full, and congressional appropriations should restrict without exception all enforcement actions based on information shared via the agreement.** The administration should rescind the DHS-ORR agreement in full, and Congress should place limits on FY2020 DHS spending bill to ensure that no dollars go to enforcement based on information obtained in the agreement. Congress should also pass the *Families, Not Facilities Act* (H.R. 2217), which would prohibit enforcement actions taken on the basis of information gleaned in the information-sharing agreement.
- **Congress should place limitations on funding for contracts with for-profit corporations, as they will not be properly incentivized to care for children.** The detention of children should not be a business. Congress should place strict limits on ORR's ability to contract with for-profit corporations to ensure that corporations are not wrongly incentivized to cut corners and prolong child detention, particularly detention in influx facilities ill-suited to children's care.