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Via email

Heidi Stirrup
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Re: COVID-19 Plan at New York ORR Facilities

Dear Ms. Stirrup and Ms. Rivera:

We write on behalf of the New York Civil Liberties Union, which represents unaccompanied immigrant children in two class-action lawsuits against the Office of Refugee Resettlement,¹ to urge ORR immediately to develop and implement a comprehensive plan for preventing and managing COVID-19 at New York facilities that house children in ORR custody. Last night's media reporting of the first known case of COVID-19 at an ORR facility in New York underscores the critical importance of meaningful action by your agency during this crisis.² ORR's failure now to create appropriate safeguards may cost children's lives in the immediate future. By next Friday, March 27, 2020, we ask that ORR explain whether and how it will act on the recommendations in this letter. We also ask that ORR immediately schedule a call with the NYCLU and ORR-contracted legal service providers in the New York area to discuss ORR's response to COVID-19 in New York and address concerns that these organizations may have.

As you are certainly aware, the COVID-19 pandemic poses a life-threatening risk to children and staff members at ORR facilities, jeopardizing the standard of care at those

¹ See *Duchitanga v. Lloyd*, No. 1:18-cv-10332 (S.D.N.Y.); *L.V.M v. Lloyd*, No. 1:18-cv-1453 (S.D.N.Y.).

² Hamed Aleaziz, *A Staff Member at a Facility Housing Unaccompanied Immigrant Children Has Tested Positive for the Coronavirus*, BUZZFEED NEWS (Mar. 19, 2020, 8:26 PM), <https://www.buzzfeednews.com/article/hamedaleaziz/staff-member-coronavirus-diagnosis-unaccompanied-immigrant>.

facilities. Children in your custody, like other people in detention, are particularly vulnerable to outbreaks of contagious diseases. As former New York City Department of Correction Commissioner Martin Horn warned with regard to prisons and jails, “Contagious disease [is] a most dangerous foe and the least amenable to structured control in a setting where social isolation is difficult.”³ In adult immigration detention facilities, the high population density and ease of transmission may lead to an “attack rate” of “exponential proportions” by which as many as half of detained people and staff are infected.⁴ Children in ORR custody, like people detained in these other contexts, are housed in close quarters, have little control over their daily interaction with others, and often lack independent access to necessary cleaning supplies. They are at great risk of exposure to the virus, and transmitting it to other children and staff at their facility.

We are aware of the “COVID-19 Interim Guidance for ORR Facilities,” dated March 13, 2020, that ORR has released to some, but not all, stakeholders. However, we are concerned the interim guidance fails to address key components of an appropriate response to this rapidly evolving and worsening crisis. Further, we are concerned the agency is not adequately engaging with relevant stakeholders or publicizing its efforts to the general public. A number of legal service providers who represent children in ORR custody requested more than a week ago to speak with ORR about its plan, and the agency has not yet responded to that request. And as of this writing, ORR has not shared any information publicly about its plan to respond to the pandemic. Engaging with stakeholders and public transparency are vital to ensure a proper response to this crisis.

In light of this serious risk, we ask that you immediately develop a more detailed plan to prevent and respond to COVID-19 exposure in ORR facilities, and communicate that plan to legal service providers, children in your custody, potential sponsors, and the general public. We urge you to work together with public health professionals, including those at the New York State and relevant county Departments of Public Health and the New York Office of Children and Family Services, to create specific, evidence-based plans to prevent and respond to an outbreak of COVID-19 at ORR facilities.

Given that ORR care providers may lack the resources to take the necessary steps to address the pandemic, we urge you to immediately assess whether and to what extent additional resources must be allocated to care providers in order to implement your plan. ORR’s plan to prevent COVID-19 exposure, to mitigate the spread of the disease, and to ensure the treatment of people who are exposed should, at minimum, address the following issues:

- **Communication with Children and Staff:** Children in ORR’s custody, facility staff, and others in regular contact with ORR facilities should be educated on the

³ N.Y.C. Bd. of Corr., Meeting Minutes 4 (May 14, 2009), [https://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20\(5.14.09\).pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20(5.14.09).pdf) (discussing the risk of H1N1 swine flu).

⁴ Letter from Dr. Carlos Franco-Paredes (Mar. 19, 2020), <https://ohioimmigrant.org/wp-content/uploads/sites/12/2020/03/COVID-19-Letter.pdf>.

virus and prevention measures they can immediately take, including proper handwashing procedure and social distancing.

- **Release to Sponsors:** In light of the extreme risks of detention during a pandemic, it is essential that ORR continue to abide by its legal obligation to expeditiously release children to sponsors. Where the COVID-19 pandemic delays or precludes a sponsor from completing the usual prerequisites for release, such as a home study or fingerprints, ORR must implement alternative means to confirm that release to a sponsor is appropriate. We also urge you to consider automatically releasing on their own recognizance children who “age out” of ORR custody, given the enormous risk of transmission posed by their continued detention.
- **Sanitization:** ORR should ensure that facilities provide extra handwashing and sanitizing supplies to staff, children, and visitors, and sanitize common areas after use.
- **Screening and Testing:** ORR should develop a process for screening symptomatic visitors and for testing staff and children in your custody.
- **Housing:**
 - **Preventative:** ORR should determine how and where to house children who are at high risk of serious illness if they become infected. It should also identify high-risk housing placements—such as where many children are housed in close proximity—and require facilities to prevent high-risk placements and facilitate social distancing where practicable. In particular, ORR should consider transferring children from higher-density placements such as congregate-care facilities to lower-density placements such as temporary foster care. To avoid potential transmission to the new placement, ORR should ensure that children being transferred are properly screened.
 - **Responsive:** ORR should develop a plan for how and where children will be housed if they are exposed to the virus or test positive for the virus.
- **Treatment:** ORR should ensure prompt and appropriate treatment to children and staff who are exposed to or contract the virus. That plan should be based on available scientific and public health evidence.
- **Staffing:** ORR should develop plans for staffing facilities if staff become ill.
- **Vulnerable Populations:** ORR should develop plans to ensure screening, testing and prompt medical care for those who are at high risk of serious illness if they are infected, including children with chronic illnesses (such as heart disease, diabetes, or chronic respiratory diseases like asthma)⁵ or compromised immune systems;

⁵ See U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, *Are you at risk for serious illness?* (Mar. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

children whose housing placements restrict their access to medical care and limit the staff's ability to observe them; and people who are pregnant.

- **Mental Health Treatment:** The threat of a global pandemic on the scale of COVID-19, and the social distancing measures that it necessitates, is a profoundly disruptive and stressful event. ORR should invest significant resources into providing additional mental health treatment to help children with existing mental health needs cope with this added stressor, and into screening children who may develop a need for mental health treatment as a result of the pandemic.
- **Data Collection on Virus Transmission:** ORR should collect data regarding the spread of COVID-19 within its facilities. In the event that a child or staff member at a facility tests positive for COVID-19, ORR should ensure that the facility immediately informs staff and legal service providers working at the facility.
- **Legal Visitation:** To the extent in-person legal visitation may be suspended or impracticable, ORR should ensure facilities provide free access to legal telephone *and* video calls. In order for children to work effectively with their attorneys, it is crucial that ORR ensure that facilities can provide video calls.⁶ ORR should immediately assess the capability of facilities and provide technological resources where that capability does not currently exist. In addition, ORR must assess whether facilities have a sufficient number of confidential spaces for children to make legal calls.
- **Flu Vaccines:** The COVID-19 pandemic overlaps with the influenza season, and detained individuals are particularly at risk of contracting both viruses at the same time. We would like to know whether ORR has plans to provide the seasonal influenza vaccine to all children in its custody (or if you have already done so).

Having a robust, detailed plan that addresses these core issues can save lives and reduce the need for drastic restrictions later on. We therefore ask that you immediately develop and implement an improved plan addressing the critical issues noted above; ensure that plan is available to all ORR facilities, ORR-contracted legal service providers, potential sponsors, and children in New York; and publicize the plan on the ORR website.

Please respond by no later than next Friday, March 27, 2020, explaining whether and how ORR will implement a plan to respond to the COVID-19 pandemic at New York facilities, including to what extent that plan addresses the concerns raised in this letter. We also ask that you contact us immediately to schedule a call between ORR, the NYCLU, and ORR-contracted legal service providers in the New York area, to discuss ORR's response to COVID-19 in New York and address concerns that these organizations may have.

⁶ Ordinarily, in-person legal visitation provides the most effective means of communication between children in ORR custody and their attorneys. ORR should not treat video calls as a permanent substitute for in-person legal visitation but rather as an extraordinary measure in light of the unique risks that the COVID-19 pandemic presents.

Thank you for your attention to this serious and urgent matter. We look forward to your prompt response.

Sincerely,



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Jordan Laris Cohen
Christopher Dunn

cc:

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