

United States Senate

WASHINGTON, DC 20510

May 29, 2019

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

Dear Secretary Azar:

Last Wednesday, the Health and Human Services (HHS) Office of Refugee Resettlement (ORR) acknowledged that a 10-year-old girl from El Salvador died in the agency's custody on September 29, 2018. To our knowledge, this was your agency's first comment on this tragedy, which took place eight months ago. This was the first death of a migrant child in federal custody since 2010, and the first of six deaths of migrant children in the last eight months of the Trump Administration.

While HHS must protect the privacy of the children in your custody, your agency also has a responsibility to be accountable and transparent to Congress and the American people. In recent weeks, Senators Durbin and Feinstein met multiple times with senior HHS officials, including HHS Deputy Secretary Eric Hargan, Assistant Secretary for the Administration for Children and Families Lynn Johnson, and ORR Director Jonathan Hayes, to discuss the humanitarian crisis at our border, particularly ORR's responsibility for the care and custody of unaccompanied migrant children. None of these officials mentioned the death of this girl. Moreover, Mr. Hayes did not mention this death during his recent testimony before the Senate Judiciary Committee's Subcommittee on Border Security and Immigration, nor did you mention this death during your recent testimony before the Senate Appropriations Committee's Subcommittee on Labor, Health, Human Services, Education and Related Agencies.¹

Please respond to the following questions as soon as possible, and no later than June 12, 2019:

1. How and when did you first learn of this child's death? What actions did you take upon learning of the death?
2. How and when did HHS Deputy Secretary Hargan first learn of this child's death? What actions did Deputy Secretary Hargan take upon learning of the death?

¹ Senate Committee on the Judiciary, Subcommittee on Border Security and Immigration hearing entitled "At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border," May 8, 2019 <https://www.judiciary.senate.gov/meetings/at-the-breaking-point-the-humanitarian-and-security-crisis-at-our-southern-border>; Senate Committee on Appropriations, Subcommittee on Labor, Health, Human Services, Education and Related Agencies hearing entitled, "Review of the FY2020 Budget Request for the U.S. Dept. of Health and Human Services," Apr. 4, 2019 <https://www.appropriations.senate.gov/hearings/review-of-the-fy2020-budget-request-for-the-us-dept-of-health-and-human-services>

3. How and when did Assistant Secretary for the Administration for Children and Families Lynn Johnson first learn of this child's death? What actions did Assistant Secretary Johnson take upon learning of the death?
4. How and when did ORR Director Jonathan Hayes first learn of this child's death? What actions did Mr. Hayes take upon learning of the death?
5. It appears that ORR only made this child's death public in response to a media inquiry nearly eight months after the death. Why did ORR not make the death public earlier?
6. Please describe all discussions at HHS, including any discussions with the White House, and provide all relevant HHS documents regarding whether to notify Congress and the public about this child's death.
7. ORR and its care providers must immediately report the death of an unaccompanied child in ORR custody to appropriate Federal, State, and local authorities. ORR must also notify the child's parent, legal guardian, or next-of-kin; attorney; and applicable consulate of the death.²
 - a. Did ORR comply with these requirements in this case?
 - b. Which federal, state, and local authorities, including public health authorities, were notified of this child's death? Did any of these authorities conduct investigations of this child's death conducted, and what were the results of any such investigations?
 - c. ORR's procedures for the death of an unaccompanied child in ORR custody do not appear to require that an investigation be conducted, or that Congress and the public be notified of the results of the investigation. Will you commit to request an investigation by the HHS Office of the Inspector General of all deaths in ORR custody and to notify Congress and the public of the results of any investigations of deaths in ORR custody? Will you change HHS ORR policy to reflect this commitment?
 - d. Will you support codifying such a requirement in the law?
8. U.S. Customs and Border Protection's (CBP) Interim Procedures on Notification of a Death in Custody require CBP to notify relevant Members of Congress within 24 hours of a death of a migrant in CBP custody, and to notify the public within one hour thereafter.³

² Notification and Reporting of the Death of an Unaccompanied Alien Child
<https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3#3.3.16>

³ U.S. Customs and Border Protection Interim Procedures on Notification of a Death in Custody
<https://www.cbp.gov/sites/default/files/assets/documents/2018-Dec/Interim-Procedures-on-Notification-of-a-Death-in-Custody-December-2018.pdf>

a. Will you commit that HHS ORR will notify Congress of the death of an unaccompanied child in ORR custody within 24 hours of the death and notify the public within one hour thereafter? Will you change HHS ORR policy to reflect this commitment?

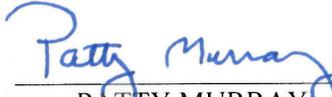
b. Will you support codifying such a requirement in the law?

Thank you for your time and consideration. I look forward to your prompt response.

Sincerely,



RICHARD J. DURBIN
United States Senator



PATY MURRAY
United States Senator



DIANNE FEINSTEIN
United States Senator

cc: The Honorable Daniel Levinson, Inspector General, HHS
The Honorable Eric Hargan, Deputy Secretary, HHS
The Honorable Lynn Johnson, Assistant Secretary, Administration for Children and Families, HHS
Mr. Jonathan Hayes, Director, Office of Refugee Resettlement, HHS