

March 21, 2023

January Contreras  
Assistant Secretary  
Administration for Children and Families  
U.S. Department of Health and Human Services  
330 C Street, S.W.  
Washington, D.C. 20201

Robin Dunn Marcos  
Director  
Office of Refugee Resettlement  
U.S. Department of Health and Human Services  
330 C Street, S.W.  
Washington, D.C. 20201

CC: Kate Wolff, Counsel to the Secretary, Administration for Children and Families;  
Jenifer Smyers, Chief of Staff, Office of Refugee Resettlement

**Re: The closure of Shenandoah Valley Juvenile Center and the future of secure detention within ORR's network**

Dear Assistant Secretary Contreras and Director Dunn Marcos,

The undersigned 35 organizations are legal service providers, immigrant rights, child welfare, faith-based, and civil rights organizations serving and advocating on behalf of unaccompanied children in the custody of the Office of Refugee Resettlement (ORR). For years, many of us have worked with children who suffered compounding harms within ORR's so-called "secure" juvenile jails across the United States — the highest level of restriction within ORR's network of facilities that hold unaccompanied children. These jail-like<sup>i</sup> facilities detain children often fleeing unspeakable forms of trauma, violence, and even torture. Rather than receive the care they need, children experience indefinite detention and abusive treatment in these secure facilities. These sites have been magnets for lawsuits, outrage, and condemnation from families, immigrant communities, and local governments alike.

Under the prior administration, two secure ORR facilities closed: Yolo County in California in 2019 and Alexandria's Northern Virginia Juvenile Detention Center (NoVA) in 2018. Prior to its closure, SVJC, also in Virginia, faced years of litigation for failing to provide mental health treatment and abusing immigrant children in its custody. This month, the last standing secure ORR site, Shenandoah Valley Juvenile Center (SVJC), just closed after years of litigation, ushering in an opportunity for ORR to operate its shelter services without the stain of these embattled secure facilities. Instead, **ORR is preparing to open new secure facilities, likely at other juvenile detention facilities, at a cost of up to \$15 million.**<sup>ii</sup>

We implore you to reverse course and avoid the use of any secure placement for children in your care and custody. There is no “right” way to jail children, whether in the domestic sphere or for migrant children. Within ORR’s network, secure placements have consistently facilitated and invited abusive, punitive, and traumatizing treatment of children, including:

- Months or years of prolonged detention with no end in sight: Children in secure custody experience such “profound helplessness and despair” that many opt to abandon their legitimate asylum claims because they simply cannot stay detained any longer;<sup>iii</sup>
- Indefinite restriction, with no tangible horizon for “step-down” to a more child-friendly environment: Children in secure custody frequently face elusive goalposts and unrealistic benchmarks such as 30 days of “good behavior,” only to remain in the same juvenile jails with no end in sight.<sup>iv</sup> Unsubstantiated allegations of dangerousness or flight risk are commonplace, as children’s sole remedy is to challenge their wrongful placement *after* they are transferred into secure custody.<sup>v</sup>
- Prolonged delays in family reunification: On average, children in secure custody spend nearly four times longer in ORR detention than their peers at lower-level shelter placements.<sup>vi</sup> Though other children are frequently directly released from lower level shelters to their families, children in secure facilities face heightened requirements separating them from their families for months or years due to their placement.<sup>vii</sup>
- Mislabeling and racial profiling of children: As a former secure facility program director testified, children are routinely mislabeled as “gang-involved” with scant evidence, leading to prolonged and restrictive placement in ORR custody.<sup>viii</sup> ORR’s secure juvenile jails have also facilitated the separation of children from their families and communities due to improper labeling by federal or local law enforcement authorities.<sup>ix</sup>
- Criminalization of developmentally appropriate behavior: Medium or staff secure facilities have increasingly turned to local law enforcement to manage children’s behavior, criminalizing boundary-testing behavior that is developmentally appropriate.<sup>x</sup> This has resulted in disturbing uses of force against children, prolonged stays in ORR custody, and placements in secure juvenile jails.<sup>xi</sup>
- Disparate harm to children with mental health disabilities: Children with disabilities are often trapped in secure settings based on behavioral history that frequently stems from their disability. However, secure settings exacerbate children’s symptoms rather than provide them with trauma-informed care,<sup>xii</sup> trapping them in a vicious circle where they are continuously punished with more restriction as a result of their disability. This contravenes best practices for the care of children with disabilities, as well as children’s rights under Section 504 of the Rehabilitation Act.<sup>xiii</sup>
- Physical and verbal abuse from adults tasked with their care: Shackling and “knocking down” youth is commonplace in secure sites, as well as reported uses of pepper spray.<sup>xiv</sup> In addition to physical abuse, children have also reported being called racial slurs.<sup>xv</sup>
- The violation of children’s rights to privacy: Children frequently confide deeply traumatic events to adults in ORR custody. In the recent past, children in secure settings have seen their trust and privacy violated as their confidences were shared with U.S. Immigration and Customs Enforcement (ICE), who in turn weaponized the information during their bond and asylum

adjudication.<sup>xvi</sup> Although ORR has installed some safeguards,<sup>xvii</sup> children in secure settings are still vulnerable to privacy violations due to alleged behavioral histories and incident reports.<sup>xviii</sup>

- Lasting impact on children's self-worth and psychological well-being: The American Academy of Pediatrics has warned that even a short stay in detention can cause lasting harm to a child.<sup>xix</sup> In secure settings, children's psychological health frequently deteriorates to the point of self-harm and suicidal ideation — which in turn keeps them trapped in restrictive settings leading children to spiral further.

Rather than continue this history rife with abuse and controversy, you should abandon secure detention as a relic of a deeply misguided past. **We urge you *neither* to open new secure placements, *nor* engage in proxy, punitive practices that similarly harm children — such as contracting with juvenile jails for out-of-network placements, further institutionalizing children in locked residential treatment centers, or increasing the already troubling practice of calling law enforcement on children in your care and custody.**

The domestic sphere has rightly moved away from institutionalizing and jailing children with higher needs,<sup>xx</sup> and community-based and wraparound foster care models have proven to decrease the need for residential treatment centers or the juvenile justice system.<sup>xxi</sup> These solutions are also more resource-efficient, avoiding the cost-intensive practice of jailing or institutionalizing children indefinitely and defending a liability-ridden system of care. The closures of NoVA, Yolo County, and now SVJC's facilities have resulted in a sharp reduction of secure placements, making this the moment to change course. Instead of opening more secure jails, ORR should recruit and resource providers who can offer the kinds of individualized strengths-based, culturally competent, trauma-informed care that has allowed children in other systems to stay out of highly restrictive settings. Unfortunately, the funding opportunity announced by ORR is limited to applicants who are licensed as "a secure juvenile detention facility" by a state's Department of Juvenile Justice.<sup>xxii</sup> This eligibility criteria unnecessarily excludes programs with proven success serving children with complex behavioral and mental health needs through alternatives to juvenile jails. We have reached out to you about programs and resources that are viable alternatives to opening new secure jails, successfully and humanely addressing the needs of the very few youth for whom ORR cannot find placements within its network. It is not too late to take advantage of these resources and discontinue the harmful practice of keeping unaccompanied children in juvenile jails.

In the words of one child recently detained at SVJC:

*Here they treat us very bad. They treat us like dogs. Yesterday, they got mad at someone and put him in his room and threw food at him like he was a dog. They treat us like garbage. A week in your room without being able to leave feels awful and makes my behavior worse. One of the supervisors ... hit me so hard my nose was bleeding. In the bedrooms, there are no cameras. That's why they can hit us there. - 17 year old boy.*

Unaccompanied children, at all levels of care, are children first and foremost. For years, they have decried the conditions at SVJC and other secure facilities. It is past time to listen to their voices and offer them fair and humane treatment as they seek protection in the United States, which is incompatible with what juvenile jails can provide.

Sincerely,

Acacia Center for Justice  
Americans for Immigrant Justice  
The Bazelon Center for Mental Health Law  
Capital Area Immigrants' Rights (CAIR) Coalition  
Catholic Charities NY // Immigrant and Refugee Services  
Center for the Human Rights of Children, Loyola University Chicago School of Law  
CHILDREN AT RISK  
Coalition for Juvenile Justice  
Disability Rights California  
Disability Rights Florida  
The Door-A Center for Alternatives  
First Focus on Children  
Florence Immigrant and Refugee Rights Project  
Forum for Youth Investment  
Human Rights First  
Immigrant Legal Resource Center  
Juvenile Law Center  
Legal Aid Justice Center  
Legal Services for Children  
Mental Health Advocacy Services  
Michigan Immigrant Rights Center  
National Alianza for Youth Justice  
National Crittenton  
National Disability Rights Network (NDRN)  
National Immigrant Justice Center  
National Juvenile Justice Network  
Our Children Oregon  
Public Counsel  
Rights Behind Bars  
The Sentencing Project  
SIREN  
Tsuru for Solidarity  
United Women in Faith  
Women's Refugee Commission  
Young Center for Immigrant Children's Rights

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<sup>i</sup> ORR Juvenile Coordinator Report at 7, 22, *Flores v. Garland*, No. 85-cv-04544-DMG-AGR, ECF No. 1259-3 (C.D.Cal. Jul. 1, 2022).

<sup>ii</sup> Department of Health and Human Services Administration for Children and Families - ORR, HHS-2023-ACF-ORR-ZU-0008 Residential (Secure) Services for Unaccompanied Children (Jan 12, 2023), *available at*

<https://www.grants.gov/web/grants/view-opportunity.html?oppId=344685>.

<sup>iii</sup> *Flores v. Sessions*, 862 F.3d 863, 873 at n.11 (9th Cir. 2017) (describing children held in Yolo).

<sup>iv</sup> *Id.* at 873; *see also* Statement of Uncontroverted Facts and Conclusions of Law in Supp. Pls.’ Mot. Partial Summ. J. ¶ 152, *Lucas R. v. Becerra*, ECF No. 269-2 (C.D. Cal. October 2, 2020).

<sup>v</sup> *Lucas R. v. Becerra*, 2022 WL 2177454, at \*22 (C.D. Cal. Mar. 11, 2022) (describing placement review panel).

<sup>vi</sup> *Lucas R. v. Becerra*, 2022 WL 2177454, at \*7 (C.D. Cal. Mar. 11, 2022) (children in secure custody spend on average 185.9 days in ORR detention while children in shelter placements spend on average 52.6 days according to data from November 2017 to March 2020).

<sup>vii</sup> *Santos v. Smith*, 260 F.Supp.3d 598 (W.D. Va. 2017).

<sup>viii</sup> Kelsey R. Wong, *Written Statement*, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, United States Senate (April 26, 2018), *available at*

<https://www.hsgac.senate.gov/subcommittees/investigations/library/files/wong-testimony/> (testimony from former SVJC program director).

<sup>ix</sup> In 2017, allegations surfaced that Immigration and Customs Enforcement (ICE) racially profiled Central American children and wrongfully labeled them as gang members before placing them in ORR’s secure juvenile jails for months on end. A class action suit debunked most of these allegations. *See Saravia v. Sessions*, 280 F.Supp.3d 1168 (N.D.Ca. 2017).

<sup>x</sup> Aura Bogado and Laura C. Morel, “‘I’m going to tase this kid’: Government shelters are turning refugee children over to police,” *Reveal*, June 8, 2021, *available at* <https://revealnews.org/article/im-going-to-tase-this-kid-government-shelters-are-turning-refugee-children-over-to-police/> (tasing and detaining child who did not want to go to classes).

<sup>xi</sup> Dep’t of Justice, *United States’ Investigation of Maine’s Behavioral Health System for Children*

*Under Title II of the Americans with Disabilities Act* (June 22, 2022), at 13, *available at*

<https://www.justice.gov/opa/press-release/file/1514326/download> (“Law enforcement responses to mental health crises are not only ineffective, they increase the likelihood that children whose needs could be met with behavioral health services will instead enter the juvenile justice system. In the worst situations, children end up incarcerated at [juvenile detention facility].”).

<sup>xii</sup> *Doe v. Shenandoah Valley Juvenile Ctr. Comm’n.*, 985 F.3d 327, 347 (4th Cir. 2021).

<sup>xiii</sup> The Department of Justice has investigated parallel concerns in the domestic sphere under the Americans with Disability Act. *See* Dep’t of Justice, *Investigation of the State of Alaska’s Behavioral Health System for Children* (Dec. 15, 2022), at 16, *available at* <https://www.justice.gov/opa/press-release/file/1558151/download> (“Prolonged institutional stays often cause children to regress in their behaviors because they become frustrated about being unable to leave, delaying their discharge even further.”); Dep’t of Justice, *Investigation of Nevada’s Use of Institutions to Serve Children with Behavioral Health Disabilities* (Oct. 4, 2022), at 14, *available at*

<https://www.justice.gov/opa/press-release/file/1540616/download> (“Institutional and restrictive placements can exacerbate the children’s behavioral health disabilities, place them at increased risk of further institutional placements in residential treatment facilities and psychiatric hospitals, and separate them from their homes, families, and communities for long periods of their childhoods.”).

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<sup>xiv</sup> Xavier Becerra et al., *The California Department of Justice's Review of Immigration Detention in California* (Feb. 2019), p.52-53, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf> (describing take-downs of youth and use of force, including pepper spray in Yolo).

<sup>xv</sup> Michael Biesecker, *Young immigrants detained in Virginia center allege abuse*, AP News (June 21, 2018), available at <https://apnews.com/article/5afc79382c2147b9b2540ea4fd74be0c> ("Immigrant children as young as 14 housed at [SVJC] say they were beaten while handcuffed and locked up for long periods in solitary confinement, left nude and shivering in concrete cells."); CBS News, *Report: Young Immigrants Detained in Virginia Center Allege Abuse* (June 21, 2018), available at <https://www.cbsnews.com/detroit/news/young-immigrants-detained-in-virginia-center-allege-abuse/> (lawsuit alleging racial epithets).

<sup>xvi</sup> Hannah Dreier, *To stay or to go? Amid coronavirus outbreaks, migrants face the starkest of choices: Risking their lives in U.S. detention or returning home to the dangers they fled*, Wash. Post, Dec. 26, 2020, available at <https://www.washingtonpost.com/nation/2020/12/26/immigration-detention-covid-deportation/?arc404=true>.

<sup>xvii</sup> ORR Unaccompanied Children Program Policy Guide, section 5.10.2 (last updated May 31, 2022) (limiting sharing of mental health information and behavioral reports).

<sup>xviii</sup> NIJC & the Young Center for Immigrant Children, *Punishing Trauma: Incident Reporting and Immigrant Children in Government Custody* (Sept. 2022), available at <https://www.theyoungcenter.org/overhaulsirreports>.

<sup>xix</sup> American Academy of Pediatrics, *Detention of Immigrant Children* (May 2017), Vol. 139 / Issue 5, p. 6; available at <https://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full.pdf> ("Qualitative reports about detained unaccompanied immigrant children in the United States found high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems. Additionally, expert consensus has concluded that even brief detention can cause psychological trauma and induce long-term mental health risks for children.").

<sup>xx</sup> See Family First Prevention Services Act (2018), signed into law as part of the Bipartisan Budget Act of 2018, Public Law (P.L.) 115-123 on February 9, 2018.

<sup>xxi</sup> See, e.g., Dep't of Justice, *United States' Investigation of Maine's Behavioral Health System for Children Under Title II of the Americans with Disabilities Act*, at 5 ("Maine previously operated a statewide wraparound program that prevented children from being institutionalized, saving money and resources that would have been spent on institutional care. Wraparound programs are a best practice that go beyond coordinating services to identifying and building a wider net of resources for youth, including family and community supports. Children who participated in Maine's statewide wraparound program greatly improved their day-to-day functioning with a 43% reduction in the use of psychiatric hospitals and a 29% reduction in the use of residential treatment facilities.").

<sup>xxii</sup> Department of Health and Human Services Administration for Children and Families - ORR, HHS-2023-ACF-ORR-ZU-0008 Residential (Secure) Services for Unaccompanied Children (Jan. 12, 2023), available at <https://www.grants.gov/web/grants/view-opportunity.html?oppld=344685>.