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Farmworker Association of Florida · National Hispanic Medical Association
Global Environmental Justice Project · Immigrant Action Alliance · Human Rights Defense Center
Labor Council for Latin American Advancement · MESA Community Empowerment and Violence Prevention**

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Submitted via email to OASHcomments@hhs.gov

Adm. Rachel L. Levine
Assistant Secretary for Health
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dr. LaToria Whitehead
Senior Public Health Analyst, Centers for Disease Control
U.S. Department of Health and Human Services
1600 Clifton Road
Atlanta, GA 30329

Re: Environmental Justice for Unaccompanied Migrant Children—Response to Request for Information (RFI): 2022 HHS Environmental Justice Strategy and Implementation Plan Draft Outline (Document No. 2022-07514)

Dear Adm. Levine and Dr. Whitehead:

Unaccompanied migrant children¹ in the United States are a uniquely vulnerable environmental justice population: they are predominantly Latinx and Indigenous minors who are fleeing poverty, violence, and climate change impacts in their home countries, who are then routinely held by the Department of Health and Human Services (HHS) in environmentally hazardous detention settings. We therefore write to you as a coalition of environmental, immigrants' rights, social justice, and civic organizations to emphasize the environmental injustices to which unaccompanied migrant children in your care are exposed. We further urge you to address these injustices as a Policy Development and Implementation priority action in your 2022 Environmental Justice Strategy and Implementation Plan ("environmental justice strategy plan").²

¹ Unaccompanied migrant children are children under age 18 who enter the U.S. without a parent or legal guardian and who, by law, are placed in HHS' custody and care. 6 U.S.C. § 279(g)(2). HHS's Office of Refugee Resettlement (ORR), within the Administration for Children and Families, is responsible for the care of unaccompanied migrant children. *Id.* § 279(a).

² Request for Information (RFI): 2022 HHS Environmental Justice Strategy and Implementation Plan Draft Outline, 87 Fed. Reg. 20876 (Apr. 8, 2022).

Background and Summary

Children who enter the U.S. unaccompanied are overwhelmingly Latinx and Indigenous, from El Salvador, Guatemala, Honduras, and Mexico.³ They are fleeing extreme poverty and violence, including gang recruitment and violence, domestic abuse, and sexual and gender-based violence.⁴

Climate change is also becoming an ever-increasing factor in driving migration from Central America, where droughts, floods, and extreme weather patterns have increased over time, impacting crops and causing food insecurity and instability.⁵ Children from Guatemala, Honduras, and Mexico in particular are at “high” risk for exposure and vulnerability to environmental hazards from climate change, according to UNICEF’s Children’s Climate Risk Index.⁶ As climate change contributes to their displacement and migration, children then face an increased risk of exploitation and abuse.⁷ They nevertheless risk dangerous and arduous conditions to journey to the U.S., in search of safety and a better life.

Despite Congress expressly recognizing that unaccompanied migrant children do not belong in detention-like settings,⁸ HHS in recent years has engaged in a practice of placing many of these children in detention camps on or near military bases that are in close proximity to toxic waste sites.⁹ And in at least one highly controversial instance, involving the Homestead detention camp, private companies operated the facility, profiting off of the children’s detention.¹⁰ As detailed below, children detained at the Homestead detention camp and Fort Bliss were and are near active Superfund and other waste sites contaminated with arsenic, lead, mercury, volatile organic compounds (VOCs), asbestos, and radioactive materials, among other

³ Cong. Rsch. Serv., *Unaccompanied Alien Children: An Overview*, 2 (Sept. 1, 2021), <https://sgp.fas.org/crs/homesecc/R43599.pdf>; Am. for Immigr. Just., *Do My Rights Matter? The Mistreatment of Unaccompanied Children in CBP Custody*, 16-25 (Oct. 2020), <https://aijustice.org/wp-content/uploads/2020/10/Do-My-Rights-Matter-The-Mistreatment-of-Unaccompanied-Children-in-CBP-Custody.pdf> (many migrant children, especially from Guatemala, are Indigenous and speak one of the many Indigenous Mayan languages).

⁴ U.N. High Commissioner for Refugees & United Nations Children’s Fund (UNICEF), *Families on the run: Why families flee from northern Central America?*, <https://familiesontherun.org/> (last visited June 8, 2022); Am. Immigr. Council, *No Childhood Here: Why Central American Children are Fleeing Their Homes* (July 2014), https://www.americanimmigrationcouncil.org/sites/default/files/research/no_childhood_here_why_central_american_children_are_fleeing_their_homes.pdf.

⁵ Abrahm Lustgarten, *The Great Climate Migration*, N.Y. Times Magazine (July 23, 2020), <https://www.nytimes.com/interactive/2020/07/23/magazine/climate-migration.html>.

⁶ UNICEF, *The climate crisis is a child rights crisis*, 73-74 (Aug. 2021), <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>.

⁷ *Id.* at 111.

⁸ HHS, Admin. for Children and Families, Fact Sheet, *Unaccompanied Children (UC) Program* (Feb. 17, 2022), <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf> (citing 8 U.S.C. § 1232(c)(2)).

⁹ See Earthjustice, *Hazards at Migrant Detention Facilities*, <https://earthjustice.org/cases/2021/hazards-at-migrant-detention> (last visited June 7, 2022).

¹⁰ Dan Primack, *America’s Only For-Profit Detention Center for Migrant Children*, Axios (June 27, 2019), <https://www.axios.com/2019/06/27/homestead-private-equity-migrant-children-camps>.

toxins, which are particularly dangerous to children, who are still developing.¹¹ Some detained children were also exposed to chronic noise pollution from military jet flights at decibel levels associated with cognitive harm.¹² HHS has considered and routinely considers other similarly polluted and dangerous military sites to detain unaccompanied migrant children, such as the Goodfellow Air Force Base, discussed below.¹³

HHS should include the care of unaccompanied migrant children as a priority item in its 2022 environmental justice strategy plan. This issue should also be a top priority for HHS' newly created Office of Environmental Justice. We demand that HHS immediately end its policy of detaining migrant children in the first place, including on toxic and military sites. For children who cannot be placed in the care of their parents, family members, or other appropriate sponsors, HHS should fund and implement non-carceral, community-based alternatives for them to live and thrive—as children—while their immigration cases are pending.

I. Children should not be held in detention camps

Congress has mandated that each child in HHS' care must “be promptly placed in the least restrictive setting that is in the best interest of the child.”¹⁴ Thus, HHS has a legal obligation to avoid the use of detention settings like “temporary influx facilities” and “emergency intake” sites, which are in fact cramped detention camps that are intrinsically harmful to children’s health and wellbeing. That a private company could then become enriched from a migrant child’s detention—and harm—by operating these camps is wholly unjust and is a practice HHS must end.

a. Detention harms children’s health and wellbeing, even long after they are no longer detained

Detention profoundly harms the mental and physical health of the children who are detained, many of whom faced significant trauma in their home countries. Studies have found that most detained children reported symptoms of depression, sleep problems, loss of appetite,

¹¹ Am. Friends Serv. Comm. & Earthjustice, *The Toxic Truth: Organizing Against Migrant Child Detention, Militarism, and Environmental Racism in Homestead, Florida*, 15-20 (Oct. 2021), https://earthjustice.org/sites/default/files/press/AFSC-Toxic_Truth-2021.pdf (“The Toxic Truth”); Earthjustice, *Fort Bliss Waste Sites and Potential Human Health Impacts at Proposed Migrant Detention Center* (Nov. 2019), https://earthjustice.org/sites/default/files/files/Fort-Bliss_Expert-Report_2019-11-18.pdf.

¹² The Toxic Truth, *supra* note 11, at 24-27.

¹³ See, e.g., David Martin & Eleanor Watson, *Pentagon Receives Request to Provide Space for Migrant Children at Military Bases*, CBS News (Mar. 24, 2021), <https://www.cbsnews.com/news/migrant-children-pentagon-military-bases/> (Joint Base San Antonio-Lackland, Fort Bliss, Peterson Air Force Base, Fort Lee considered in 2021); Karen Jowers, *These Three Military Bases May Soon House Unaccompanied Immigrant Children*, Military Times (June 5, 2019), <https://www.militarytimes.com/pay-benefits/2019/06/05/these-three-military-bases-may-soon-house-unaccompanied-immigrant-children/> (Malmstrom Air Force Base, Fort Sill, Fort Benning considered in 2019); Doug Stanglin, *Military Bases Eyed for Temporary Shelter for Growing Number of Migrant Children*, USA Today (June 17, 2018), <https://www.usatoday.com/story/news/world/2018/06/13/military-bases-eyed-site-tent-cities-house-migrant-children-report-says/697263002/> (Fort Bliss, Dyess Air Force Base, Goodfellow Air Force Base considered in 2018).

¹⁴ 8 U.S.C. § 1232(c)(2)(A).

headaches, and abdominal pains.¹⁵ Children in migrant detention are more vulnerable to substandard healthcare, and the health impacts of detention can be long-term, into adulthood.

When children are in detention facilities such as HHS' detention camps, their lives and movements are restricted, and they become subject to the rigid rules characteristic of prison and detention settings—including restrictions on their abilities to move freely, strict meal schedules, inability to control temperature or lighting, and practices like head counts or bed checks that can occur throughout the night.¹⁶

Physicians have therefore noted chronic sleep deprivation as a pervasive problem in migrant detention facilities, which has caused children to experience mental health and behavioral problems such as withdrawal, self-injurious behaviors, and suicidal ideation.¹⁷ Additionally, detained children have reported inadequate nutritional provisions, restricted mealtimes, and weight loss.¹⁸ These detention camps are also ill-equipped to handle frequent COVID-19 outbreaks caused by the crowded settings and inadequate disease prevention measures by contractors who operate the facilities.¹⁹ Indigenous children are particularly vulnerable to mistreatment and inadequate care from the lack of social workers and facility employees who can communicate with them in their native languages, such as Mam, Q'eqchi', or K'iche'.²⁰

The impacts of detention on the mental and physical health of detained children are severe and long-lasting.²¹ In one analysis, migrant children were found to have a tenfold

¹⁵ Kimberly A. Ehntholt et al., *Mental Health of Unaccompanied Asylum-Seeking Adolescents Previously Held in British Detention Centres*, 23 *Clinical Child Psych. Psychiatry* 238 (Apr. 2018), <https://pubmed.ncbi.nlm.nih.gov/29566557/>; Ann Lorek et al., *The Mental and Physical Health Difficulties of Children Held within a British Immigration Detention Center: A Pilot Study*, 33 *Child Abuse & Neglect* 573 (2009), <https://pubmed.ncbi.nlm.nih.gov/19811830/>; Fabricio E. Balcazar et al., *Policy Statement on the Incarceration of Undocumented Migrant Families*, 57 *Am. J. Community Psychol.* 255 (Mar. 2016), <https://www.communitypsychology.com/incarceration-of-undocumented-families-a-policy-statement-by-scra/> (summarizing research). See also Adolfo Flores & Hamed Aleaziz, *Immigrant Children Were Burned With Scalding Water and Threatened at an Emergency Shelter, A Whistleblower Said*, BuzzFeed News (Sept. 8, 2021), <https://www.buzzfeednews.com/article/adolfoflores/fort-bliss-immigrant-children-shelter-whistleblower> (describing conditions at a Pennsylvania emergency intake shelter in 2021, where “many children suffered from dehydration, developed gastrointestinal issues, and refused to eat the food provided because it was inedible or unfamiliar”).

¹⁶ See Katherine R. Peeler et. al, *Sleep Deprivation of Detained Children: Another Reason to End Child Detention*, 22 *Health & Hum. Rts. J.* 317 (June 2020), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2020/06/Peeler.pdf>.

¹⁷ *Id.*

¹⁸ Ehntholt et al., Balcazar et al., *supra* note 15.

¹⁹ Flores & Aleaziz, *supra* note 15.

²⁰ The Toxic Truth, *supra* note 11, at 10-11.

²¹ Trine Filges et al., *The Impact of Detention on the Health of Asylum Seekers: A Systematic Review*, 28 *Res. on Soc. Work Prac.* 399 (Feb. 17, 2016), <https://journals.sagepub.com/doi/abs/10.1177/1049731516630384>.

increase in psychiatric disorders after detention.²² Physicians have also warned that detention can cause “toxic stress,” which is especially harmful to children, whose brains and other biological systems are still developing.²³ Elevated stress hormones can affect memory, the ability to focus, and behavior regulation, as well as increase the risk of heart disease, diabetes, depression, and other chronic illnesses into adult years.²⁴ Despite a clear need for mental health care for detained children, emergency intake shelters often lack adequate access to such care, particularly to practitioners qualified to treat children who are having mental health crises.²⁵

Detention settings are an inherently harmful and damaging setting for children’s physical and mental health. These harms become exacerbated when, as with unaccompanied minors, the children may be experiencing trauma, are separated from their families, and/or have an inability to communicate in their native language. These reasons, along with the fact that children are still developing and health harms from detention camps can be permanent or long-lasting, require HHS to urgently reassess and remedy how it cares for unaccompanied migrant children in its custody.

b. For-profit child detention camps are unjust and should be abolished

One of the only things more unjust than detaining migrant children in these detention camps is private companies profiting from the children’s detention. We call on HHS to abolish its practice of contracting with for-profit companies to provide care for migrant children, consistent with the principles of President Biden’s executive order ending privately operated federal prisons.²⁶ A business model that depends on detaining children is fundamentally unjust and untenable. Moreover, a capitalist construct designed to prioritize profit above all else while keeping costs as low as possible is at odds with a mission of caring for a vulnerable population: migrant children fleeing poverty, violence, and other forms of trauma. This moral and ethical dilemma is made worse by the fact that it is government (taxpayer) funds enriching these private companies.

²² Zachary Steel et al., *Psychiatric Status of Asylum Seeker Families Held for a Protracted Period in a Remote Detention Centre in Australia*, 28 *Australian & N.Z. J. of Pub. Health* 527 (2004), <https://pubmed.ncbi.nlm.nih.gov/15707201/>. Detention has a negative impact on mental health in adults as well. In a 2003 study, eighty-six percent of individuals in immigration detention reported experiencing symptoms of depression, seventy-seven percent experienced anxiety, and fifty percent experienced Post-Traumatic Stress Disorder. Physicians for Hum. Rts. & Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers*, 2 (June 2003), http://www.pegc.us/archive/Organizations/PHR_detention.pdf. Most of those individuals attributed their mental illness symptoms to being detained and reported that symptoms worsened significantly during their detention. *Id.*

²³ Jack P. Shonkoff, M.D., *Toxic Stress: Issue Brief on Family Separation and Child Detention*, Immigration Initiative at Harvard Policy Brief 1, 1-2 (Oct. 2019), https://immigrationinitiative.harvard.edu/files/hii/files/shonkoff_final_9.25.pdf.

²⁴ *Id.*

²⁵ Flores & Aleaziz, *supra* note 15; Elizabeth Trovall, *Whistleblower Complaint Outlines Mismanagement, Abuse at Texas Shelters for Migrant Kids*, *Houston Chronicle* (Sept. 9, 2021), <https://www.houstonchronicle.com/news/houston-texas/immigration/article/Whistleblower-outlines-mismanagementand-abuse-at-16444752.php>.

²⁶ The White House, Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities (Jan. 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>.

In addition to being fundamentally unjust, private, for-profit detention facilities are also associated with increased mismanagement and malpractice. Private detention facilities are associated with higher rates of assault, use of force incidents, and lockdowns.²⁷ When it was last operational, the Homestead detention camp was the largest detention facility for migrant children in the country and the only for-profit one.²⁸ Children detained at Homestead reported sexual assault, overcrowding, inadequate healthcare, and inadequate language services.²⁹ Moreover, according to an HHS Office of Inspector General report, ORR mismanaged its contract awards at Homestead, paying \$67 million to private company Comprehensive Health Services for the facility to operate for three months *after* the last child had left and overpaying \$2.6 million overall.³⁰

* * *

Detention settings are inherently harmful environments for unaccompanied children, an environmental justice population more vulnerable to the physical and mental health impacts and the tolls of detention. Any HHS environmental justice strategy plan should end the use of detention-like settings for children in the agency's care and eliminate the practice of contracting facility operations to private companies.

II. HHS should end its practice of detaining children on military bases and contaminated sites

In addition to facing severe and long-lasting health impacts from detention itself, children detained at HHS detention camps often face another public health threat: pollution. Many of HHS' detention camps have been in places that are highly polluted, with contamination from Superfund sites, military bases, and/or industrial activity near the facility. A few such examples are detailed below.

²⁷ U.S. Dep't of Just., Office of the Inspector Gen., *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons* (Aug. 2016), <https://oig.justice.gov/reports/2016/e1606.pdf>.

²⁸ John Burnett, *Inside the Largest and Most Controversial Shelter for Migrant Children in the U.S.*, NPR (Feb. 13, 2019), <https://www.npr.org/2019/02/13/694138106/inside-the-largest-and-most-controversial-shelter-for-migrant-children-in-the-u->; Graham Kates, *Nation's Largest Holding Facility for Migrant Children Expands Again*, CBS News (Apr. 4, 2019), <https://www.cbsnews.com/news/homestead-nations-largest-holding-facility-for-migrant-children-expands-again/>.

²⁹ Amnesty Int'l, *No Home for Children: The Homestead "Temporary Emergency" Facility* (2019), https://www.amnestyusa.org/wp-content/uploads/2019/07/Homestead-Report_1072019_AB_compressed.pdf; Monique O. Madan, *Sex abuse claims revealed at Homestead shelter, where staff was not vetted for child abuse*, Miami Herald (July 15, 2020), <https://www.miamiherald.com/news/local/immigration/article244244402.html>.

³⁰ HHS, Office of the Inspector Gen., *The Office of Refugee Resettlement Did Not Award and Manage the Homestead Influx Care Facility Contracts in Accordance with Federal Requirements* (Dec. 2020), <https://oig.hhs.gov/oas/reports/region12/122020001.pdf>.

a. Fort Bliss

In March 2021, ORR constructed a temporary detention camp with the capacity to detain 10,000 children at Fort Bliss, a U.S. Army Base in El Paso, TX.³¹ HHS is still detaining children at the camp at Fort Bliss today, despite calls from advocates to shut down the facility for egregious violations, such as lack of clothing and sanitation for children; contractors with no childcare experience being responsible for the children; unqualified healthcare staff; and bullying, rioting, and sexual harassment.³² Worse still, as detailed in Earthjustice’s July 2021 letter to HHS and its published reports, Fort Bliss has a significant amount of environmentally contaminated, toxic sites.³³

Earthjustice began investigating potential contamination at the Fort Bliss sites in 2018, when the Trump Administration announced that it was considering constructing a temporary influx shelter for children and/or families at the base.³⁴ Earthjustice’s investigation uncovered grave potential threats to the health and safety of children detained there from toxic waste contamination. Fort Bliss has at least 80 distinct contaminated areas, or operable units (“OUs”), regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or “Superfund”) or Resource Conservation and Recovery Act (RCRA) hazardous waste cleanup programs.³⁵ At these OUs, contaminants include chlorinated VOCs; aromatic VOCs including benzene, toluene, ethyl benzene, and xylenes; radioactive materials; asbestos; explosive compounds, including unexploded ordinance; per- and polyfluoroalkyl substances (PFAS); semi-volatile organic compounds; and pesticides and herbicides.³⁶

³¹ See Cong. Rsch. Serv., *supra* note 3, at 31; Lauren Villagran, *Workers Describe Sprawling Tent City, “Deeply Alarming” Conditions for Kids at Fort Bliss Shelter*, El Paso Times (May 27, 2021), <https://www.elpasotimes.com/story/news/2021/05/27/migrant-children-shelter-el-paso-fort-bliss-conditions-unacceptable/7446897002/>; see also Marlene Lenthag, *COVID-19 Cases Among Unaccompanied Migrant Children in Facilities Spark Concerns over Crowding*, ABC News (Mar. 31, 2021), <https://abcnews.go.com/Health/covid-19-cases-unaccompanied-migrantchildren-facilities-spark/story?id=76788478>.

³² See, e.g., Fallon Fischer, *Whistleblower Group Calls for Investigation into Safety of Migrant Children at Fort Bliss*, KFOX14 (Apr. 6, 2022), <https://kfoxtv.com/news/local/fort-bliss-conditions>.

³³ Earthjustice, *Stopping Toxic Cages: An Unprecedented Collection of Government Documents Sheds Light on the Trump Administration’s Process to Create Migrant Detention Centers* (Nov. 21, 2019), <https://earthjustice.org/features/migrant-children-detention-center-fort-bliss-documents> (“Stopping Toxic Cages”); Earthjustice, *Expert Report: November 2019, Fort Bliss Waste Sites and Potential Human Health Impacts at Proposed Migrant Detention Center*, https://earthjustice.org/sites/default/files/files/Fort-Bliss_Expert-Report_2019-11-18.pdf (“Fort Bliss Expert Report”); Letter from Mychal Ozaeta & Melissa Legge, Attorneys, Earthjustice, to HHS et. al (July 15, 2021), https://earthjustice.org/sites/default/files/files/2021_07_15_-_letter_demanding_closure_of_the_fort_bliss_army_base_emergency_intake_site.pdf.

³⁴ Despite Earthjustice’s best efforts to obtain information from the relevant agencies through multiple FOIA requests, we do not know whether the location of the current temporary influx facility at Fort Bliss is on the same parcel of land identified as a potential location at Fort Bliss for the family detention facility considered in 2018, which was the subject of the Stopping Toxic Cages Fort Bliss Expert Report. It is also unclear whether the Army and/or HHS prepared a new EA as required by the National Environmental Policy Act (NEPA) or relied on a previously prepared EA from 2012 that involved a different project of a significantly smaller scale, which was the inadequate approach to NEPA compliance taken by the Trump administration for the proposed temporary detention camp at Fort Bliss. See *Stopping Toxic Cages*, *supra* note 33. Relying on an outdated EA for a different project of a significantly smaller scale is both inadequate and unlawful under NEPA.

³⁵ Fort Bliss Expert Report, *supra* note 33, at 3.

³⁶ *Id.*

Exposure to these hazardous chemicals can lead to cancer, neurological damage, and injury to major human organs. Children face an even greater risk of harm from these chemicals because they are undergoing critical periods of rapid growth and development that make them more sensitive to even low levels of chemical exposures and more likely to suffer irreversible harm than adults.³⁷ Given the sheer number of contaminated sites at Fort Bliss still undergoing cleanup, it is likely that children detained experience exposure to multiple hazardous chemicals simultaneously, compounding the risk of cumulative adverse health effects.

Earthjustice’s investigation also uncovered that the site at Fort Bliss for the proposed family detention center was close to an illegal dump and spill site known as the Rubble Dump and Spill Site, or simply the Rubble Dump Site.³⁸ Testing at this site in the late 1990s revealed levels of cancer-causing chemicals in the soil at more than 460 times the level for cancer risk determined by EPA.³⁹ Despite these alarming levels, the Army did not properly clean up or remediate this site, particularly with regard to carcinogenic VOCs and arsenic.⁴⁰ Arsenic is a carcinogenic heavy metal linked to lower IQ scores in children, and it was present in the Army’s post-“remediation” soil sampling data at 19 times the level for cancer risk for residential soils according to EPA.⁴¹

The Army has also failed to control access to the site to prevent known illegal dumping.⁴² Therefore, there may be additional waste at the site, of unknown type and quantity.

Children detained at Fort Bliss clearly face substantial and imminent threats to their health and physical safety. Fort Bliss and military bases like it—replete with contaminated sites at various stages of (sometimes insufficient) cleanup—are wholly unsafe and unsuitable for children, and HHS should eliminate its harmful practice of placing children at these military and environmentally contaminated locations.

b. Homestead

From 2016 to 2019, HHS detained migrant children at the Homestead detention camp right next to the Homestead Air Reserve Base, in Homestead, Florida. With 3,200 beds at its peak, it was the largest detention facility for migrant children in the country and the only private, for-profit one.⁴³ Children were routinely detained at the Homestead detention camp for months.⁴⁴ Though the detention camp is not currently operational, the latest reports are that the facility remains in “warm status,” meaning it can be reopened at any time.⁴⁵ Indeed, in March

³⁷ U.S. EPA, *Children’s Health: Children are Not Little Adults!*, <https://www.epa.gov/children/children-are-not-little-adults> (last visited June 8, 2022).

³⁸ Fort Bliss Expert Report, *supra* note 33, at 1.

³⁹ *Id.* at 4.

⁴⁰ *Id.* at 6.

⁴¹ *Id.* at 5-6.

⁴² *Id.* at 7.

⁴³ Burnett & Kates, *supra* note 28.

⁴⁴ Miriam Jordan, *Migrant Children Are Spending Months ‘Crammed’ in a Temporary Florida Shelter*, N.Y. Times (June 26, 2019), <https://www.nytimes.com/2019/06/26/us/homestead-migrant-children-shelter.html>.

⁴⁵ Monique O. Madan and Alex Daugherty, *Exclusive: Homestead Detention Center for Unaccompanied Migrant Teens to Reopen Under Biden*, Miami Herald (Feb. 23, 2021), <https://www.miamiherald.com/article249449265.html>.

2021, the Biden Administration announced plans to reopen the detention camp as the “Biscayne Influx Care Facility,” in response to a claimed rise in unaccompanied migrant children crossing the border.⁴⁶

The Homestead detention camp is an unsafe place for children because it is directly adjacent to Homestead Air Force Base Superfund OUs, historically contaminated by munitions and industrial waste; waste from aircraft maintenance, testing, and disposal; and improper disposal of waste paints, pesticides, solvents, waste oils, waste gasoline, and hydraulic fluids.⁴⁷ Though the Homestead detention camp is not technically part of the current Homestead Air Reserve Base property, it was previously part of the former Homestead Air Force Base, before a Base Realignment and Closure process in the 1990s sectioned off parcels of the base’s land for sale and redesignated the Homestead Air Force Base as the Homestead Air Reserve Base.

Near the detention camp, there are 34 Superfund OUs.⁴⁸ Sixteen of these OUs are within two-thirds of a mile of the detention camp. The closest OUs to the detention camp are contaminated with arsenic, lead, mercury, polycyclic aromatic hydrocarbons, and trichloroethene.⁴⁹ Exposure to these contaminants can cause cancer; damage to the kidneys, liver, and immune system; anemia; and developmental harm in children.⁵⁰ Indeed, arsenic contamination at OU 21 has increased over time.⁵¹ This is worrisome given that OU 21 is one of the closest OUs to the detention camp.

Though some of the Superfund OUs have been remediated, cleanup at the site is ongoing. Not only is the site yet to be fully remediated so that it is safe for reuse and redevelopment, but the government has determined that the only appropriate use for the site is industrial, not residential.⁵²

Moreover, a 2018 Environmental Assessment (EA) of the detention camp documented toxins including asbestos, lead-based paint, and mold in the facility’s decaying buildings.⁵³ The same assessment warned that a 1992 study found elevated levels of radon in some buildings, and some of the buildings with radon had not been mitigated or retested since 1992.⁵⁴ The EPA reports that radon causes lung cancer and that children are “considerably more sensitive to the carcinogenic effects” of radon than adults.⁵⁵

The Homestead detention camp is not only toxic, but it is also a site of noise pollution that is harmful for developing children. It is adjacent to the Homestead Air Reserve Base

⁴⁶ *Id.*

⁴⁷ U.S. EPA, Superfund Site: Homestead Air Force Base, Homestead Air Force Base, FL, Cleanup Activities, Background, <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=0404746> (last visited June 8, 2022).

⁴⁸ *Id.*

⁴⁹ The Toxic Truth, *supra* note 11, at 1.

⁵⁰ *Id.* at 16.

⁵¹ *Id.* at 18.

⁵² Superfund Site: Homestead Air Force Base, *supra* note 47; The Toxic Truth, *supra* note 11, at 21-22.

⁵³ The Toxic Truth, *supra* note 11, at 23.

⁵⁴ *Id.* at 23.

⁵⁵ *Id.* at 23-24.

runway, which routinely flies F-16C fighter jets that produce noise in the 65-69 decibel zone.⁵⁶ According to the Air Force, the Federal Aviation Administration, and the U.S. Department of Housing and Urban Development, human residence is “normally unacceptable” in areas exposed to noise between 65 and 75 decibels.⁵⁷ Moreover, according to the World Health Organization (WHO), chronic environmental noise exposure is linked to impaired cognition and neurodevelopment in children, particularly related to tasks involving central processing and language, such as reading comprehension, memory, and attention.⁵⁸ Exposure to chronic noise during childhood can potentially “impair development and have lifelong effect on educational attainment.”⁵⁹ Studies suggest that an estimated 30 percent of children routinely exposed to noise at 65 decibels experience cognitive impairment.⁶⁰

The extent of the environmental hazards at the Homestead detention camp are nevertheless not fully known because Earthjustice and American Friends Service Committee have had difficulties obtaining records under the Freedom of Information Act (FOIA) from the Air Force, the agency responsible for Superfund cleanup at the base, which has led to pending litigation.

In sum, the Homestead detention camp is wholly unsuitable for children to live for any period of time, as it is directly adjacent to a military base and active Superfund site, where buildings are decaying and fighter jets routinely come and go, producing noise levels associated with cognitive and developmental harm.

c. Goodfellow

In 2018, HHS evaluated Goodfellow Air Force Base in San Angelo, Texas, as a potential site for a detention camp for unaccompanied children.⁶¹ The proposed detention camp at Goodfellow would have had the capacity to detain 7,500 unaccompanied migrant children. The site that HHS and the Air Force chose for the detention center was located directly on top of Superfund OUs, specifically a former firing range and landfill. The OUs are contaminated with lead, arsenic, benzene, PFAS, and other chemicals associated with increased risks of cancer and permanent neurological damage.⁶² Other contaminants detected at the site include VOCs, which

⁵⁶ *Id.* at 25.

⁵⁷ Headquarters Air Force Reserve Command, *Air Installation Compatible Use Zone (AICUZ) Study for the Homestead Air Reserve Base, Florida*, at 3-1 (Oct. 2007), <https://www.homestead.afrc.af.mil/Portals/134/Documents/SusOps/AFD-071029-030.pdf>.

⁵⁸ WHO, *Burden of disease from environmental noise* (2011) at 45-48, https://www.euro.who.int/_data/assets/pdf_file/0008/136466/e94888.pdf.

⁵⁹ *Id.* at 45.

⁶⁰ *Id.* at 48, Fig.3.2 (the percentage of children who experience cognitive impairment as a result of chronic noise exposure increases from 10 percent at 55 decibels to 30 percent at 65 decibels and 55 percent at 75 decibels).

⁶¹ Dept. of the Air Force, 17th Training Wing, *Draft Environmental Assessment for the HHS Temporary Facilities for Sheltering Unaccompanied Children at Goodfellow Air Force Base, Texas* (July 2018), <https://www.goodfellow.af.mil/Portals/5/documents/DEA-HHS%20Temporary%20Facilities%20at%20Goodfellow.pdf?ver=2018-07-06-171402-213>.

⁶² See Earthjustice, *Toxic Cages: Toxic Contaminants at Goodfellow Air Force Base Put Children's Health at Risk*, at 1 (Feb. 2019), https://earthjustice.org/sites/default/files/files/Goodfellow_report_2019-02-11.pdf (“Toxic Cages: Goodfellow”); David Lang, *Toxic Threats for Migrant Children at Goodfellow Air Force Base* (Jan. 9, 2019), <https://earthjustice.org/sites/default/files/files/Toxic-Threats-for-Migrant-Children-at-GAFB.pdf> (“Goodfellow Expert Report”).

contaminate the air and threaten human health through vapor intrusion causing nausea, headaches, and damage to the nervous system, kidneys, and liver.⁶³ Most of the Superfund OUs had never been fully evaluated to determine the nature and extent of pollution and either have not yet been remediated or were remediated but not to standards deemed safe for children's housing.

Of particular concern were contaminated sites overlapping with and immediately adjacent to the footprint of the proposed detention center. One such site within the proposed detention center housing area was the Small Arms Firing Range, used by base personnel from the 1960s to the 1990s. Lead was detected in soil near the range at levels 27 times higher than EPA standards for lead in soil in play areas.⁶⁴ Lead is a powerful neurotoxin, and there is no known safe level of lead in the human body. Lead exposure can result in numerous adverse health outcomes in young children, including brain damage, neurodevelopmental harm, learning disabilities, stunted growth, hearing problems, and even death. Although some cleanup occurred in 2009, the remaining contamination levels nevertheless rendered the area unsafe for residential use, according to EPA.⁶⁵

HHS planned to build the detention camp on top of a second overlapping OU known as the Southeast Landfill.⁶⁶ Between 1970 and 1982, when regulations for addressing spilled chemicals were nearly non-existent, the Air Force dumped toxic chemicals, fuels, pesticides, and other solid wastes at the landfill.⁶⁷ Testing and monitoring at the landfill were inadequate to determine the extent of the soil and groundwater pollution at the site or to determine whether it was safe to build there. Earthjustice's expert identified vapor intrusion as a concerning potential pathway of exposure to contaminants in the groundwater at the landfill.⁶⁸ Groundwater monitoring had previously identified multiple contaminants in the groundwater at the landfill, including 1,1,2,2-tetrachloroethane, tetrachloroethene, trichloroethene, carbon tetrachloride, acetone, phthalates, several pesticides, lead, and arsenic; however, contractors working for the Air Force destroyed the groundwater monitoring wells at the site in 2007, leaving the current state of groundwater contamination largely unknown.⁶⁹ While the Air Force had conducted a partial cleanup, the landfill was never properly closed, nor was it remediated to residential standards to be considered safe for children.⁷⁰ Worse still, recent dumping around the landfill has not been investigated and potentially poses additional environmental hazards.

Widespread PFAS contamination is another issue of concern at Goodfellow. Goodfellow has at least nine fire training areas where Aqueous Film Forming Foam (AFFF) containing PFAS was stored and used, and where releases to soil or groundwater may have occurred.⁷¹

⁶³ Toxic Cages: Goodfellow, *supra* note 62, at 1.

⁶⁴ *Id.* at 4.

⁶⁵ *Id.* at 3.

⁶⁶ *Id.*

⁶⁷ Goodfellow Expert Report, *supra* note 62, at 7.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Toxic Cages: Goodfellow, *supra* note 62, at 3.

⁷¹ *Id.* at 3-4. The Louis F. Garland Department of Defense Fire Academy is located at the base; See Goodfellow Air Force Base, 312th Training Squadron, <https://www.goodfellow.af.mil/About-Us/Fact-Sheets/Display/Article/372985/312th-training-squadron/> (last visited June 6, 2022).

Goodfellow Air Force Base had only begun to identify and investigate PFAS releases at the base in 2018.

PFAS are both extremely persistent and resistant to environmental degradation, meaning PFAS releases to soil and groundwater from decades ago may still cause adverse health effects. Studies have linked PFAS exposure to adverse neurodevelopmental effects, including learning delays and increased risk for ADHD and autism.⁷² Other health impacts of PFAS exposure include altered thyroid and immunological system function, altered timing of puberty onset, and increased risk of cancer. Children exposed to PFAS have been found to have a higher body burden, or elevated levels of PFAS compared to adults, and the exposure may affect a child's health throughout development and potentially later in life. The proximity of the PFAS/AFFF release areas to the site of the potential detention camp—and particularly the potential pathways for exposure to PFAS through inhalation, ingestion, or skin contact with PFAS contaminated soil—creates a serious health and safety risk for any children who would be detained there.

Due to these and other known toxic waste sites, HHS should never have considered Goodfellow as a potential site for detaining children. Though HHS never built a temporary detention camp at Goodfellow, unless the agency establishes a clear policy against detaining unaccompanied migrant children at military and contaminated sites, nothing prevents the agency from dusting off its problematic 2018 plans and using this site in the future.

* * *

Under the *Flores* Settlement Agreement, unaccompanied minors must be treated with dignity and respect and, only if necessary, held in “safe and sanitary” facilities that take into account the “particular vulnerability of minors.”⁷³ Furthermore, Section 7.5 of the ORR'S policies for influx care facilities requires proper physical care and suitable living accommodations for unaccompanied minors, in compliance with state child welfare laws and state and local building, fire, health, and safety codes.⁷⁴ Detention settings surrounded by toxic waste and other environmental hazards, on or very close to military bases, do not meet the legally and agency-required standards of care for minors.

HHS' environmental justice strategy plan should end the practice of detaining children at facilities near such contaminated sites. HHS' plan should also require robust environmental reviews prior to using or constructing any facility for the care of children, to ensure children are not exposed to harmful toxins, contaminants, noise pollution, or anything else that could harm the children's health and development.

⁷² Toxic Cages: Goodfellow, *supra* note 62, at 4-5.

⁷³ See Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. 1997) at 7 ¶ 12A., available at https://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf (“Flores Settlement Agreement”).

⁷⁴ ORR revised its policies in 2019 as required by the 2019 Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, Pub. L. 116-26, which at Section 404 requires the standards of influx care facilities to generally be in keeping with the *Flores* Settlement Agreement. See ORR, Children Entering the United States Unaccompanied: Section 7, Policies for Influx Care Facilities, <https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-7#7.1> (last visited June 8, 2022).

III. HHS Should Incorporate Robust Performance Measures and Transparent Reporting into its Environmental Justice Strategy and Implementation Plan

Section VI of HHS' RFI on its environmental justice strategy plan involves performance measures and evaluations to account for progress and to demonstrate accountability. It is imperative that HHS clarify the methodologies of such evaluations, whether its evaluations will be summative or formative, and whether they will be conducted internally or externally.

Furthermore, progress evaluations should occur on at least a biannual or annual basis, to demonstrate a commitment to swift action, public accountability, and achievement of measurable results. All progress reports and evaluations should be made available to the public in an easy-to-understand format. HHS should also hold public engagement sessions regularly and periodically to receive input and answer questions about its environmental justice strategy plan and its performance and implementation.

Conclusion

We call on HHS to end its inhumane practice of detaining unaccompanied migrant children at detention camps on or near military sites and environmentally contaminated sites. Unaccompanied migrant children in the U.S. are here as a matter of survival; they are fleeing violence, extreme poverty, and direct impacts of climate change. It is unjust and against established legal standards of care for HHS to detain migrant children in camps on or near military bases with significant environmental hazards, such as active Superfund OUs, landfills, RCRA waste sites, or noise pollution from military jet flights. These sites are replete with contaminants known to cause cancer, neurological harms, and other significant health harms to which developing children are particularly vulnerable. Beyond physical impacts, the mental health impacts to children can be severe and long-lasting from being detained in a carceral setting with inadequate healthcare, the inability to communicate in one's native language, and in certain instances, abuse and mistreatment. We demand that HHS include and prioritize in its 2022 environmental justice strategy plan the proper care of unaccompanied migrant children, who comprise a vulnerable environmental justice population.

The first, most immediate step HHS should take in furthering a commitment to properly caring for unaccompanied migrant children is to permanently shut down the detention camps at Fort Bliss and Homestead—taking these camps out of active or “warm” status and terminating all contracts for their operation.

In prioritizing unaccompanied migrant children in its environmental justice strategy plan, we further demand that HHS develop a system for caring for migrant children in their custody that prioritizes family reunification or releasing children to an appropriate sponsor in the community, and only if those options are not possible, placing children in safe shelters that prioritize the children's developmental needs. HHS should seek and incorporate the guidance of child and health experts and advocates in its plan developments. Moreover, recognized

international norms and rights of children should be centered in HHS' policies, including the rights enshrined in the United Nations Convention on the Rights of the Child.⁷⁵

We also request the opportunity to speak with HHS further about our concerns. Thank you for your consideration of our comments, and if we can provide any further information or input, please do not hesitate to contact us.

Sincerely,

Dominique Burkhardt

Senior Attorney
Earthjustice
4500 Biscayne Blvd., Ste. 201
Miami, FL 33137
dburkhardt@earthjustice.org

Melissa Legge

Associate Attorney
Earthjustice
48 Wall Street, 15th Floor
New York, NY 10005
mlegge@earthjustice.org

Nestor Perez

Associate Attorney
Earthjustice
4500 Biscayne Blvd., Ste. 201
Miami, FL 33137
nperez@earthjustice.org

Guadalupe De La Cruz

Program Director
American Friends Service Committee Florida
12000 Biscayne Blvd., Ste. 202
Miami, FL 33181
gdelacruz@afsc.org

Emma Shaw Crane, Ph.D.

Postdoctoral Fellow, Society of Fellows
Columbia University
ec2972@columbia.edu

Laura M. Esquivel

Vice President, Federal Policy and Advocacy
Hispanic Federation
1133 19th Street NW, Ste. 1035
Washington, DC 20036
lesquivel@hispanicfederation.org

Meryl Ranzer

Communications Lead
Respond Crisis Translation
meryl@respondercrisistranslation.org

⁷⁵ See U.N. Convention on the Rights of the Child, Art. 3 (the best interests of the child must be a top priority); Art. 9-10 (upholding family relations and not being separated from one's parents against one's will); Art. 24 (right to health); Art. 12 (right to voice); Art. 27 (right to adequate standard of living); Art. 28 (right to education); Art. 19, 32, 34-36 (right to freedom from any form of violence or exploitation); Art. 30 (right to Indigenous culture and language); Art. 31 (right to recreation and play), Nov. 20, 1989, 1577 U.N.T.S. 3.

Elena Rios, MD, MSPH, MACP
President and CEO
National Hispanic Medical Association
1920 L St. NW, Ste. 725
Washington, DC 20036
erios@nhmamd.org

David N. Pellow
Director, Global Environmental Justice Project
University of California Santa Barbara
pellow@es.ucsb.edu

Paul Wright
Director
Human Rights Defense Center
P.O. Box 1151
Lake Worth, FL 33460
pwright@prisonlegalnews.org

Mark Magaña
President and CEO
GreenLatinos
1919 14th St., Ste. 700
Boulder, CO 80302
markmagana@greenlatinos.org

Cynthia Vanderpool Garcia
Policy and Advocacy Coordinator
Alianza Nacional de Campesinas, Inc.
cynthia.vanderpoolgarcia@campesinasunite.org

Nezahualcoyotl Xiuhtecutli
General Coordinator
Farmworker Association of Florida
1264 Apopka Blvd.
Apopka, FL 32703
neza@floridafarmworkers.org

Wendy King
Executive Director
Immigrant Action Alliance
wendy@immigrantactionalliance.org

Kimber J. Nicoletti-Martínez
MESA Community Empowerment and Violence
Prevention

Jose Vargas
Executive Director
Labor Council for Latin American Advancement
(LCLAA)
815 Black Lives Matter Plaza NW
Washington, DC 20006
jvargas@lclaa.org