

ONE HUNDRED EIGHTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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February 20, 2024

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
330 C St. S.W.  
Washington, DC 20201

Dear Secretary Becerra:

The Committee on the Judiciary is conducting oversight of the Department of Health and Human Services' (HHS) mismanagement of the placement of unaccompanied alien children (UACs). This mismanagement has resulted in unvetted UACs, who have been released by HHS to sponsors in the United States, committing heinous criminal acts against Americans.<sup>1</sup> To that end, we have requested the case files for several UACs who have been charged with committing crimes while in the United States after being released by HHS.<sup>2</sup> Your response without compulsory process has been woefully inadequate.

Since June 2023, the Committee has requested several HHS case files for criminal aliens charged with serious and violent crimes, including theft, brutal assault, and murder.<sup>3</sup> The Committee has followed up on its requests on numerous occasions.<sup>4</sup> Following months of non-responsiveness, on September 28, 2023, HHS finally provided a response that included a variety of baseless excuses to justify withholding the requested criminal alien case files.<sup>5</sup> Among other

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<sup>1</sup> Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic., to Xavier Becerra, Sec'y, U.S. Dep't of Health and Human Servs. (Nov. 13, 2023).

<sup>2</sup> Letter from Jim Jordan et al., Chairman, H. Comm. on the Judic., to Xavier Becerra, Sec'y, U.S. Dep't of Health and Human Servs. (June 23, 2023); Letter from Jim Jordan et al., Chairman, H. Comm. on the Judic., to Xavier Becerra, Sec'y, U.S. Dep't of Health and Human Servs. (Aug. 17, 2023); Letter from Jim Jordan et al., Chairman, H. Comm. on the Judic., to Xavier Becerra, Sec'y, U.S. Dep't of Health and Human Servs. (Aug. 29, 2023).

<sup>3</sup> *Id.*

<sup>4</sup> Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec'y for Legis., U.S. Dep't of Health and Human Servs. (Sept. 7, 2023) (on file with Comm.); Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec'y for Legis., U.S. Dep't of Health and Human Servs. (Sept. 6, 2023) (on file with Comm.); Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec'y for Legis., U.S. Dep't of Health and Human Servs. (Sept. 13, 2023) (on file with Comm.); Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic., to Xavier Becerra, Sec'y, U.S. Dep't of Health and Human Servs. (Nov. 13, 2023).

<sup>5</sup> Letter from Melanie Egorin, Acting Ass. Sec'y for Legislation, U.S. Dep't of Health and Human Servs., to Jim Jordan et al., Chairman, H. Comm. on the Judic. (Sept. 28, 2023).

excuses, HHS noted its concern for the privacy interests of criminal aliens and asserted that the Committee lacked a legitimate oversight purpose to obtain the case files.<sup>6</sup>

On November 13, 2023, the Committee wrote to HHS reiterating its outstanding requests for the case files.<sup>7</sup> In this letter, the Committee responded in detail to HHS's excuses for withholding the requested criminal alien case files, explaining that HHS lacks any legal basis on which to deny the Committee the materials.<sup>8</sup> Accordingly, the Committee requested that HHS produce the case files by November 27.<sup>9</sup>

On November 27, HHS responded but did not produce the requested materials.<sup>10</sup> HHS's letter rehashed its previously stated and baseless justifications for withholding the criminal alien case files.<sup>11</sup> Instead, HHS made a conditional offer to allow the Committee to review the documents *in camera* if the Committee would agree not to photograph or "otherwise record[]" any documents and to "provide the Department with advanced notice not fewer than three business days prior to the release of any non-public information obtained during such review and give meaningful consideration to proposed redactions of any information the Department determines would undermine its institutional interests."<sup>12</sup>

Subsequently, the Committee attempted to engage with HHS in good faith. Although there is no constitutional or legal basis for HHS to withhold these case files,<sup>13</sup> the Committee offered, as an extraordinary accommodation, to initially review the materials *in camera* so that HHS could articulate in a private setting its views on specific sensitivities of the information contained in the case files.<sup>14</sup> However, as the Committee communicated, HHS's demand that the Committee submit to restrictions on when and how it can use the information obtained during its oversight violates the separation of powers.<sup>15</sup> The case file materials are not classified or otherwise restricted and no case law, statute, recognized privilege, or other legal principle exempts them from review as part of the Committee's legitimate congressional oversight.<sup>16</sup> HHS's attempt to unilaterally limit or in any way dictate how a Congressional committee

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<sup>6</sup> *Id.*

<sup>7</sup> Letter from Melanie Egorin, Acting Ass. Sec'y for Legislation, U.S. Dep't of Health and Human Servs., to Jim Jordan et al., Chairman, H. Comm. on the Judic. (Sept. 28, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Letter from Melanie Egorin, Acting Ass. Sec'y for Legislation, U.S. Dep't of Health and Human Servs., to Jim Jordan et al., Chairman, H. Comm. on the Judic. (Nov. 27, 2023).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> *See, e.g., Watkins v. United States*, 354 U.S. 178 (1957); 5 U.S.C. § 552a(b)(9) ("No agency shall disclose any record which is contained in a system of records...except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless the disclosure would be . . . to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.").

<sup>14</sup> Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec'y for Legis., U.S. Dep't of Health and Human Servs. (Dec. 8, 2023) (on file with Comm.); Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec'y for Legis. Aff., U.S. Dep't of Health and Human Servs. (Dec. 11, 2023) (on file with Comm.).

<sup>15</sup> *Id.*

<sup>16</sup> *See* 5 U.S.C. § 552a(b)(9).

lawfully uses materials to inform potential legislative reforms constitutes unacceptable interference with the workings of a coordinate branch of government and cannot be considered a good faith accommodation. The Supreme Court has been clear that Congress’s power to legislate includes the authority to acquire information to inform such legislation.<sup>17</sup>

Initially, HHS asserted that the Committee’s offer “would not be practicable,” demanding that if the Committee sought to use the case file materials in the course of its oversight, HHS needed access to internal Committee work product “one business day” prior to its release so HHS could review and propose redactions to “any quotes or factual characterizations of Department materials in any public-facing materials.”<sup>18</sup> As explained, such a proposal lacks any constitutional or legal basis and inappropriately intrudes into the Committee’s internal processes.<sup>19</sup>

Nonetheless, as an accommodation, the Committee agreed to review the case files *in camera*, with the understanding that while HHS could not make itself a party to the Committee’s internal review processes, it would have an opportunity to propose redactions prior to or during the review.<sup>20</sup>

Once Committee staff began to review the documents, it became clear that HHS had applied pervasive redactions to the documents—without notice to the Committee. HHS asserted the redactions covered UACs’ personal identifying information (PII) and personal health information (PHI). HHS further claimed that such redactions were justified based upon the Committee’s previous use of materials obtained through its oversight and the supposed refusal to allow HHS an opportunity to propose redactions. As the Committee has reminded HHS on countless occasions, the Committee has a right to possess the requested materials and HHS cannot dictate how Congress uses information obtained through its legitimate oversight.<sup>21</sup> Moreover, even assuming that the extensive redactions to the case files could be justified on that basis, the Committee majority has not previously released PII or PHI. In fact, in contravention of HHS’s stated goal to “protect the information [HHS] has a responsibility to keep confidential,”<sup>22</sup> it was HHS’s previous provision of nonpublic information to the Committee’s minority that resulted in PII being made publicly available—a matter later rectified by the majority.<sup>23</sup> Further,

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<sup>17</sup> See *Watkins*, 354 U.S. 178 (1957).

<sup>18</sup> Email from Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs., to Comm. staff, H. Comm. on the Judic. (Dec. 15, 2023) (on file with Comm.).

<sup>19</sup> Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Dec. 11, 2023) (on file with Comm.).

<sup>20</sup> Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Jan., 5, 2024) (on file with Comm.).

<sup>21</sup> See Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Dec. 8, 2023) (on file with Comm.); Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec’y for Legis. Aff., U.S. Dep’t of Health and Human Servs. (Dec. 15, 2023) (on file with Comm.); Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec’y for Legis. Aff., U.S. Dep’t of Health and Human Servs. (Jan. 5, 2024) (on file with Comm.).

<sup>22</sup> Email from Off. of Ass. Sec’y of Legis., U.S. Dep’t of Health and Human Servs., to Comm. staff, H. Comm. on the Judic. (Jan. 2, 2024) (on file with Comm.).

<sup>23</sup> Ashley Oliver, *Jayapal Lectures GOP For Exposing Murder Case Details, Then Reveals Minor MS-13 Suspect’s Name*, BREITBART (May 23, 2023), <https://www.breitbart.com/immigration/2023/05/23/jayapal-lectures-gop-for->

as the Committee has communicated to HHS on numerous occasions, the Committee was willing to “take into account proposed redactions prior to or during the *in camera* review,”<sup>24</sup> but HHS declined to accept that offer and instead unilaterally implemented excessive redactions.

In addition, these extensive redactions went beyond HHS’s stated purpose of protecting PII and PHI. The redactions prevented the Committee from viewing answers to specific question fields unrelated to PII or PHI and, in some cases, blocked entire pages of material. HHS redacted entire narrative fields throughout many of the materials, including, for example, information about the route of travel taken by the UAC prior to illegally entering the U.S. and “serious incident reports”—reports completed by HHS employees that document significant incidents related to UACs while in HHS custody. Across multiple case files, HHS redacted information about whether specific UACs had “identifying scars, marks, or tattoos”—information that can be indicative of gang affiliation. Worse, HHS went so far as to redact information explicitly requested by the Committee, including information shared with HHS by other agencies and immigration case history information.<sup>25</sup> By unilaterally redacting the case files, HHS rendered the requested materials provided for *in camera* review all but useless, frustrating and impeding the Committee’s constitutional oversight obligations.

HHS’s failure to provide the requested case file materials hinders the Committee’s ability to fulfill its constitutional oversight obligations and is unacceptable. The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”<sup>26</sup> Pursuant to the Rules of the House of Representatives, the Committee has jurisdiction to conduct oversight of matters concerning federal immigration law to inform potential legislative reforms.<sup>27</sup> These potential legislative reforms could include reforming HHS ORR’s placement process, including to ensure criminal aliens are held in secure placements,

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revealing-murder-case-details-then-exposes-minor-ms-13-suspects-name/. Immigration Integrity, Security, and Enforcement Subcomm. Ranking Member Jayapal (WA-D) introduced into the official Congressional record email correspondence between HHS Office of the Ass. Sec’y for Legislation and Majority Comm. staff, leaked to the Minority by HHS Office of the Ass. Sec’y for Legislation, revealing the name of the alien charged with the murder of Kayla Hamilton.

<sup>24</sup> Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Jan., 5, 2024) (on file with Comm.); *See also* Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Dec. 8, 2023) (on file with Comm.); Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Dec. 11, 2023) (on file with Comm.); Email from Comm. staff, H. Comm. on the Judic., to Off. of Ass. Sec’y for Legis., U.S. Dep’t of Health and Human Servs. (Dec. 15, 2023) (on file with Comm.).

<sup>25</sup> *See* Letter from Jim Jordan et al., Chairman, H. Comm. on the Judic., to Xavier Becerra, Sec’y, U.S. Dep’t of Health and Human Servs. (June 23, 2023); Letter from Jim Jordan et al., Chairman, H. Comm. on the Judic., to Xavier Becerra, Sec’y, U.S. Dep’t of Health and Human Servs. (Aug. 17, 2023); Letter from Jim Jordan et al., Chairman, H. Comm. on the Judic., to Xavier Becerra, Sec’y, U.S. Dep’t of Health and Human Servs. (Aug. 29, 2023). The Committee’s correspondence explicitly requests “all case history information, including but not limited to... materials provided to HHS ORR by federal agencies such as CBP upon the alien’s referral, and any information provided to HHS ORR pursuant to its request for information from the referring agency.”

<sup>26</sup> *See, e.g., Trump v. Mazars LLP*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks and citations omitted).

<sup>27</sup> Rules of the House of Representatives R. X (2023).

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rather than being released to a sponsor, or to enhance the level of scrutiny ORR applies in vetting UACs and potential sponsors before UACs are released in the care of a sponsor.

Accordingly, and considering your disregard of our earlier voluntary requests and rejection of the extraordinary accommodation as offered by the Committee, please find attached a subpoena for the requested documents and information.

Sincerely,



Jim Jordan  
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure