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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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July 13, 2015

The Honorable John F. Kerry
Secretary of State
U.S. Department of State

Dear Secretary Kerry:

I am writing today for additional information regarding the Department of State's role in the federal government's handling of the Unaccompanied Alien Children (UAC) that have passed through federal custody in the last few years. Recently provided information raises key questions about the Department's international UAC efforts, including how the Department may be using federal funding in Mexico, El Salvador, Guatemala, and Honduras to supposedly address the UAC influx.

On June 23, I sent a letter to Health and Human Services Secretary Sylvia Mathews Burwell about a Department of Health and Human Services (HHS) slideshow presentation that was provided to the Committee.¹ This slideshow raised questions about not only the Administration's overall handling of the UAC issue, but also raised questions about whether the Administration has been honest with the American people about the origins, impact, and true costs of the UAC influx.²

While this slideshow is clearly an HHS work product, its contents indicate that your Department was (and likely still is) involved in a coordinated, multi-agency effort to address the UAC influx, and that there is a significant international component to this effort.³ While there were initial questions about which agencies were involved in exerting influence and spending federal dollars overseas, HHS personnel have since confirmed that your Department is entirely responsible for the international activity and overseas spending components of this effort.

¹ See generally Letter from Senator Ted Cruz to Health and Human Services Secretary Sylvia Mathews Burwell (Jun. 23, 2015) and that letter's original attachment (hereinafter ATTACHMENT). Both that letter and its original attachment are included as attachments to this letter. See also generally Paul Bedard, *Revealed: Feds predicted surge of illegals, see another 127,000 this year*, WASHINGTON EXAMINER (Jun. 29, 2015).

² See generally ATTACHMENT, *supra* note 1.

³ See *id.* at 3 (noting that the State Department "has actively worked with the home countries" that are the source for the overwhelming majority of UAC); see also *id.* at 13 (discussing unspecified information campaign, border security, and anti-trafficking efforts).

With respect to your Department, I have the following concerns about the information contained in that slideshow:

Details Regarding Department's Role in Developing Federal Intelligence Assessments. The slideshow offers discussion on the underlying "Reasons for UAC Migration," cites both "Push Factors" (meaning internal home country factors) and "Pull Factors" (meaning incentives outside of home countries), and draws statistical support from the United Nations Office of the High Commissioner for Refugees (UNHCR) in asserting that home country violence and displacement were among the primary drivers, if not *the* primary drivers, of UAC migration.⁴ The slideshow mentions "Opportunity Differential" as the main, overarching pull factor, and cites UNHCR data in support of the claim that 51% of UAC cite economic opportunity "as a reason for migrating [to the United States], but it is seldom the only reason."⁵ Bluntly stated, this slideshow differs sharply with a leaked, unclassified federal intelligence assessment, which claims that hundreds of UAC have attested, upon reaching the United States, that their perceptions of changes to U.S. immigration law were the primary motivators for their journeys to the United States.⁶ While it is true that this federal intelligence assessment was compiled after the date on this slideshow, the contrast in analysis raises questions about the degree to which the relevant agencies, including the Department, are accessing or presenting relevant information. The Department's role in UAC information collection is particularly important, given its access to foreign government officials and intelligence sources.

Details Regarding Department's Awareness of International Media Claims. Given that the Administration has taken pains in public comments to emphasize that "Push Factors" such as home country violence and displacement are driving the UAC influx, the information contained in the leaked federal intelligence assessment about Central American media outlets touting immigration benefits for those who travel to the United States is of great concern because it contradicts that claim. It is important to know what information the Department had in its possession in 2013 and 2014 regarding what Central American media outlets were communicating to their respective populations, particularly if the Department was providing conflicting information to different audiences. It is important to know what, if anything, the Department is now doing to counter any continuing media messaging in the four source countries in order to further reduce the flow of UAC into the United States.

⁴ See *id.* at 8 (citing UNHCR data to support claims that approximately 58% of UAC came to the United States after being "forcibly displaced because they suffered or faced harms" and that approximately 48% of UAC were "victims of or came in close contact with violent acts perpetrated by organized armed criminal actors"); but see El Paso Intelligence Center, EPIC Intelligence Assessment, *Misperceptions of U.S. Policy Key Driver in Central American Migrant Surge*, 3 (Jul. 7, 2014) (hereinafter EPIC REPORT) (citing *declining* incidence of violence in El Salvador, Guatemala, and Honduras).

⁵ ATTACHMENT, *supra* note 1, at 8.

⁶ See EPIC REPORT, *supra* note 4, at 2 (noting how, in interviews with Customs and Border Protection (CBP) personnel, hundreds of "migrants" informed their CBP interviewers that "the primary reason for migrating to the United States was the perception of U.S. immigration laws granting free passes or *permisos* to UAC and adult female [other than Mexicans] traveling with minors," and that in-country media outlets were claiming that the availability of *permisos* would end after June 2014) (emphasis in original). The report subsequently clarifies that UAC who mentioned *permisos* were referring to "the Notice to Appear documents issued to undocumented aliens, when they are released on their own recognizance, pending a hearing before a U.S. immigration judge." *Id.* at 3.

Details Regarding Department's Use of UAC Funds Internationally. It is also important to have far greater transparency about just how the Department has spent (and is spending) its funding in, or on behalf of, UAC source countries, particularly if taxpayer dollars are being used (intentionally or otherwise) to increase the flow of UAC.

In light of the above, I request that the Department engage in the following preservation efforts, effective immediately:⁷

1. Preserve all documents, records, and logs, including paper-based documents, e-mail, e-mail-based calendar appointments, electronic documents, and other electronic data (electronic records), created since October 1, 2009, that relate to any and all aspects of the UAC issue or the Department's⁸ response to, or handling of, the UAC issue, or otherwise include the phrases "unaccompanied alien child," "unaccompanied alien children," "unaccompanied child," "unaccompanied children," "Dangerous Journey," the acronyms "UAC" or "UC," the words "permiso" or "permisos," or any related phrases, terms, or acronyms. For the purposes of this request, "preserve" means taking any and all reasonable steps to prevent the partial or full destruction, alteration, overwriting, formatting, deletion, shredding, incineration, wiping, relocation, migration, theft, revision, or mutation of electronic and non-electronic documents, records, and logs, as well as negligent or intentional handling that would make such records incomplete or inaccessible.
2. Exercise any and all reasonable efforts to identify and notify former Department employees, contractors, subcontractors, grantees, subgrantees, and consultants (including those in foreign countries) who may have access to such electronic or non-electronic records that these records are also to be preserved.
3. If it is a practice of the Department, any Department component, any federal employee, any contract employee, any grantee or subgrantee, or any consultant to destroy or otherwise alter such electronic or non-electronic records, either halt such practices immediately, or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested.

Please also provide the following unredacted documents and information for the time period from October 1, 2009, to the present (unless a different time period is specified below):⁹

⁷ I would remind you, the Department, and its officials, personnel, contractors, grantees, and consultants that violation of this preservation order is a violation of federal criminal law. See generally 18 U.S.C. § 1505.

⁸ Please note that all references to the "Department" include the Department's Administration for Children & Families (ACF) and ACF's Office of Refugee Resettlement (ORR).

⁹ It is important to note that this is a request for a document production to the Committee, and is not a request for *in camera* review of documents in the Department's possession. The requested documents are to be *physically* transferred in *unredacted* form to the Committee. Similarly, this is also not a request for the provision of previously released versions of similar or redacted information that may have been made available via Freedom of Information Act requests, since congressional document requests are not restricted by either the Freedom of Information Act or the Privacy Act.

1. The following documents and information relevant to the scope of the anticipated UAC influx up to and including April 22, 2014:
 - a. All data or statistics (whether created or obtained by the Department) projecting the UAC influx for Fiscal Years and Calendar Years 2014 and 2015;
 - b. All internal and/or external communications regarding projections of the UAC influx for Fiscal Years and Calendar Years 2014 and 2015;
 - c. All documents or information provided by federal, state, or local law enforcement agencies regarding their projections of the UAC influx for Fiscal Years and Calendar Years 2014 and 2015;
 - d. All documents or information provided to federal, state, or local law enforcement agencies regarding the Department's projections of the UAC influx for Fiscal Years and Calendar Years 2014 and 2015;¹⁰
 - e. All documents or information provided by foreign governments or foreign government officials regarding their projections of the UAC influx for Fiscal Years and Calendar Years 2014 and 2015;
 - f. All documents or information provided to foreign governments or foreign government officials regarding the Department's or other federal agencies' projections of the UAC influx for Fiscal Years and Calendar Years 2014 and 2015;
 - g. All communications with El Paso Intelligence Center (EPIC) personnel regarding the UAC influx for Fiscal Years and Calendar Years 2014 and 2015;¹¹ and
 - h. All communications regarding justifications for requests for UAC-related supplemental appropriations for Fiscal Years 2014 and 2015.
2. The following documents and information regarding the Department's discussion of the factors driving the UAC influx:
 - a. All internal and/or external communications regarding federal intelligence assessments of the factors driving the UAC influx, including those supplying information to other federal agencies about the Department's perception of the factors driving the UAC influx;

¹⁰ Please inform me if any of the documents or information provided either to or by the Department regarding projections of the UAC influx for 2014 were classified, so that I can make arrangements for a classified document review.

¹¹ Please inform me if any of the communications between the Department's personnel and EPIC personnel were classified, so that I can make arrangements for a classified document review.

- b. All internal and/or external communications regarding the impending release of EPIC's July 2014 unclassified report entitled "Misperceptions of U.S. Policy Key Driver in Central American Migrant Surge";¹²
 - c. All internal and/or external communications containing the terms "permiso" or "permisos"; and
 - d. All communications with White House domestic policy advisor Cecilia Munoz or her staff.
3. The following documents and information regarding the interagency collaboration discussed in the slideshow:
- a. A list of all federal agencies involved in the effort to coordinate the federal response to the UAC influx (i.e., the "interagency effort");
 - b. The names of all officials and/or other personnel who have represented and/or currently represent the respective agencies during this interagency effort;
 - c. A list of the dates and locations of all interagency meetings relating to this interagency effort;
 - d. The minutes from the interagency meetings described in 3.c.;
 - e. The names and titles of the Department officials and/or other personnel who participated in the interagency meetings described in 3.c.;
 - f. Prior and current versions of the interagency strategy that has been developed by or as a result of this interagency effort;¹³ and
 - g. All copies of the interagency monthly reports prepared for appropriators.¹⁴
4. The following documents and information regarding the Department's UAC-related international expenditures:
- a. The overall amount of funding that the Department has spent to date in connection with the UAC issue;

¹² See generally EPIC REPORT, *supra* note 4.

¹³ See ATTACHMENT, *supra* note 1, at 11 (stating that, "[a]s directed by the Appropriations Committees, HHS, OMB, DHS, and State have been meeting, along with DOJ, to develop an *interagency strategy* to address the growing number of UAC") (emphasis added).

¹⁴ See *id.* at 24 (listing "[m]onthly reporting to appropriators on numbers, trends, [and] developments" in the slideshow's "Next Steps" section).

- b. With respect to any UAC-related funding that has been spent to date in Mexico, Guatemala, El Salvador, and/or Honduras:
 - i. The amount of funding that has been paid to government officials or agencies in these respective countries, the identities of the recipient government officials or agencies in these respective countries, and the line-item amounts (broken down by country, fiscal year, and primary point(s) of contact with contact information);
 - ii. The amount of funding that has been paid to non-governmental organizations (NGOs) in these respective countries, the identities of the recipient NGOs in these respective countries, and the line-item amounts (broken down by country, fiscal year, and primary point(s) of contact with contact information);
 - iii. The amount of funding that has been paid to public and/or private media outlets in these respective countries, the identities of the recipient media outlets in these respective countries, and the line-item amounts (broken down by country, fiscal year, and primary point(s) of contact with contact information);
 - iv. The amount of funding that has been paid to other individuals or entities in these respective countries, the identities of the recipient individuals or entities in these respective countries, and the line-item amounts (broken down by country, fiscal year, and primary point(s) of contact with contact information); and
 - v. Any amount of UAC-related funding that was applied to the “Dangerous Journey” media campaign based out of the above-mentioned countries, and line-item details about how that money was used to support that campaign;
- c. With respect to any UAC-related funding that has been spent in the United States:
 - i. The amount of funding that has been paid to NGOs, the identities of the recipient NGOs, and the line-item amounts (broken down by fiscal year and primary point(s) of contact with contact information);
 - ii. The amount of funding that has been paid to contractors, subcontractors, grantees, or subgrantees, the identities of the recipient contractors, subcontractors, grantees, or subgrantees, and the line-item amounts (broken down by fiscal year and primary point(s) of contact with contact information);
 - iii. The amount of funding that has been paid to public and/or private media outlets, the identities of the recipient media outlets, and the line-item amounts (broken down by fiscal year and primary point(s) of contact with contact information);
 - iv. The amount of funding that has been paid to other individuals or entities, the identities of the recipient individuals or entities, and the line-item amounts

(broken down by fiscal year and primary point(s) of contact with contact information); and

- v. Any amount of UAC-related funding that was applied to the “Dangerous Journey” media campaign based out of the United States, and line-item details about how that money was used to support that campaign;
 - d. The specific Department account or accounts from which this funding has been drawn or is being drawn;
 - e. Whether funding has been transferred from any other account or accounts within the Department to supplement its UAC-related spending, and if it has, the amount(s) transferred, the account(s) involved in the transfer, and the date(s) of the transfer;
 - f. Whether funding has been transferred from any other federal agency to the Department to supplement its UAC-related spending and if it has, the amount(s) transferred, the agency or agencies involved in the transfer, and the date(s) of the transfer; and
 - g. The statutory or regulatory authority authorizing the Department to engage in the above international expenditures or fund transfers.
5. The following documents and information regarding the Department’s UAC-related international expenditures:
 - a. All documents or information indicating Department officials’ and/or other personnel’s awareness of foreign media outlets’ impact on the UAC influx; and
 - b. All internal and/or external communications discussing any aspect of the Administration’s immigration policies and their potential or actual impact on influxes of people from Mexico, El Salvador, Guatemala, and/or Honduras.
 6. The names and titles of the Department’s Bureau of Population, Refugees, and Migration who are responsible for handling UAC policy development and/or implementation.
 7. All electronic and paper communications of Anne C. Richard, Assistant Secretary of the Department’s Bureau of Population, Refugees, and Migration, from April 1, 2012, to the present:
 - a. That contain any of the following words, phrases, and/or acronyms: “unaccompanied alien child,” “unaccompanied alien children,” “unaccompanied child,” “unaccompanied children,” “Dangerous Journey,” “UAC,” “UC,” “permiso,” “permisos,” “El Salvador,” “Guatemala,” “Honduras,” and/or “Mexico”; and

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- b. Between Assistant Secretary Richard and any employee of HHS, regardless of subject matter.

I would also request that you provide any additional materials that fall into the above categories on a continuing basis but are created, written, or otherwise produced after the Department's initial receipt of this request.

Please provide the requested documents and information as soon as possible, but **no later than 9:00 a.m. on Tuesday, July 28, 2015**. When producing documents to the Committee, please deliver separate production sets to both the Majority Staff in Room 224 of the Dirksen Senate Office Building and the Minority Staff in Room 152 of the Dirksen Senate Office Building.

I appreciate your cooperation in this very important matter and look forward to your response and delivery of the requested material by the stated date and time. Please contact Committee staff at (202) 224-5225 if you have any additional questions about how to comply with the terms of this production request.

Sincerely,



Ted Cruz
Chairman
Subcommittee on Oversight, Agency Action,
Federal Rights and Federal Courts

Attachment

cc: The Honorable Charles E. Grassley
Chairman
Senate Committee on the Judiciary

The Honorable Patrick J. Leahy
Ranking Member
Senate Committee on the Judiciary

The Honorable Christopher A. Coons
Ranking Member
Subcommittee on Oversight, Agency Action,
Federal Rights and Federal Courts

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The Honorable Jeff B. Sessions
Chairman
Subcommittee on Immigration and
the National Interest

The Honorable Charles E. Schumer
Ranking Member
Subcommittee on Immigration and
the National Interest

The Honorable Bob Corker
Chairman
Senate Committee on Foreign Relations

The Honorable Ben Cardin
Ranking Member
Senate Committee on Foreign Relations

The Honorable Rob Portman
Chairman
Permanent Subcommittee on Investigations

The Honorable Claire McCaskill
Ranking Member
Permanent Subcommittee on Investigations

The Honorable Steve A. Linick
Inspector General
U.S. Department of State and the Broadcasting
Board of Governors