ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States

House of Representatives COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING WASHINGTON, DC 20515-6115 Majority (202) 225-2927 Minority (202) 225-3641

April 22, 2021

The Honorable Kamala Harris Vice President of the United States The White House 1600 Pennsylvania Avenue, N.W. Washington, DC 20500

Dear Vice President Harris:

On March 24, 2021, President Biden announced that you would serve as the White House's point person on immigration issues at our southern border.¹ Since that announcement, there has been confusion about the scope of your role on this matter.² Despite this confusion, we trust that you and your office have access to information, and have been briefed, on the current situation at the border, including the handling of unaccompanied children (UC). As we conduct oversight of the ongoing crisis, we request the administration brief us on the situation at our border and provide us with information about the Office of Refugee Resettlement's (ORR) operations related to the management, care, and treatment of UC and related matters given the historic surge we are experiencing.

According to U.S. Customs and Border Protection (CBP), in Fiscal Year 2021, the U.S. Border Patrol has had encounters with over 47,600 UC/Single Minors, with over 9,200 encounters in February and over 18,600 in March alone.³ Further, a March 16, 2021, *CBS News* article reported the number of migrant children in the CBP custody was up to 4,200, with 3,000 held longer than 72 hours.⁴ In addition, a recent *Politico* article noted that the number of

² Lauren Egan and Mike Memoli, Confusion clouds Harris immigration role, NBC News (April 10, 2021), available

¹ Eugene Daniels, *Biden makes Harris the point person on immigration issues amid border surge*, POLITICO (Mar. 24, 2021), *available at* https://www.politico.com/news/2021/03/24/kamala-harris-immigration-border-surge-477810.

at https://www.nbcnews.com/politics/white-house/confusion-clouds-harris-immigration-role-n1263671

³ U.S. Customs and Border Protection, Southwest Land Border Encounters, available at

https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters (last accessed on Apr. 12, 2021). ⁴ Camilo Montoya-Galvez, *Backlog of migrant children in Border Patrol custody soars to 4,200, with 3,000 held past legal limit*, CBS NEWS (Mar. 16, 2021), *available at* https://www.cbsnews.com/news/immigration-migrant-children-border-patrol-custody-4200-past-legal-limit/.

children held at the border reached a high in March of around 5,700.⁵ This is far higher than the peak of the 2019 border crisis where there were overcrowded facilities with around 2,600 UC in CBP custody.⁶ This is particularly concerning because, with the exception of Mexican and Canadian UC who meet certain criteria, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires CBP's U.S. Border Patrol to turn UC over to Immigration and Customs Enforcement (ICE) for transport to ORR within 72 hours of determining that the children meet the UC definition.⁷

According to ORR, as of March 31, 2021, there were approximately 12,900 UC in its care.⁸ Recent reports indicate that as of April 9, 2021, about 16,941 children were in ORR's care.⁹ As of April 12, 2021, over 18,000 UC were in ORR's care, and recent reports note that the number of children in ORR's care is fast approaching 20,000.¹⁰ Because of the large fluctuations in arrival numbers of UC that ORR experiences throughout the year, ORR maintains a mix of "standard" beds that are available year-round, and "temporary" beds that can be added or reduced as needed.¹¹ ORR has several types of facilities in its permanent bed network and, due to previous surges, ORR has worked to increase its standard, or permanent, bed capacity to a little over 13,000 beds – the highest number of permanent beds in the program's history. Additionally, ORR can utilize temporary, or influx, beds to ensure children do not spend more time at CBP facilities than necessary. ORR is considered to be at "influx capacity" when its operational capacity is at or exceeds 85 percent capacity for a period of three days.¹² ORR has used influx shelters during past surges, including the surges in 2014 and 2018.

Given how unpredictable migration patterns can be, how quickly a surge in UC referrals can happen, and how long it can take to add beds or stand up and fully staff a facility, the Trump administration kept two influx facilities in "warm status" after the 2018 surge. Keeping these facilities in warm status would enable ORR to add additional bed capacity quickly should another surge occur. These facilities are Carrizo Springs in Texas and Biscayne Bay (formerly

⁵ Adam Cancryn, Anita Kumar, and Sabrina Rodriguez, *Border fiasco spurs a blame game inside Biden world*, POLITICO (Apr. 16, 2021), *available at* https://www.politico.com/news/2021/04/16/hhs-becerra-biden-migrant-kids-482582.

⁶ Catherine E. Shoichet, *Why the big numbers you're hearing about the border are only part of the story*, CNN (Mar. 12, 2021), *available at* https://www.cnn.com/2021/03/10/us/border-numbers/index.html.

⁷ Congressional Research Service, *Unaccompanied Alien Children: An Overview* (last updated Oct. 9, 2019), *available at* https://fas.org/sgp/crs/homesec/R43599.pdf.

⁸ Office of Refugee Resettlement, Office of the Administration for Children and Families, Unaccompanied Children (UC) Program Fact Sheet (Apr. 2, 2021), *available at* https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf.

⁹ Gaby Moreno, *HHS receives 100 unaccompanied migrant children into Michigan facility* (Apr. 12, 2021), *available at* https://www.valleycentral.com/news/hhs-receives-100-unaccompanied-migrant-children-into-michigan-facility/.

¹⁰ Adam Cancryn, Anita Kumar, and Sabrina Rodriguez, *Border fiasco spurs a blame game inside Biden world*, POLITICO (Apr. 16, 2021), *available at* https://www.politico.com/news/2021/04/16/hhs-becerra-biden-migrant-kids-482582.

¹¹ Office of Refugee Resettlement, Office of the Administration for Children and Families, Unaccompanied Children (UC) Program Fact Sheet (Apr. 2, 2021), *available at* https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf.

¹² Office of Refugee Resettlement, Children Entering the United States Unaccompanied, Section 7: Policies for Influx Care Facilities, *available at* https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-7 (last accessed on Apr. 7, 2021).

Homestead) in Florida. On February 22, 2021, HHS reactivated the Carrizo Springs facility. In addition, the administration has activated other temporary influx care facilities and emergency intake sites.¹³ However, to date, ORR has not reactivated Biscayne Bay despite the facility being kept in warm status for surges in referrals of UC, like the one ORR is currently experiencing. We are concerned your refusal to reactivate Biscayne Bay is politically motivated.

On June 28, 2019, you, along with other Democratic presidential hopefuls, traveled to Biscayne Bay (then Homestead) to criticize the facility. During that visit you said, "[w]hat is happening with the detention of these children, the circumstances by which they arrived, is a human rights abuse being committed by the United States government."¹⁴ You went on to say, "when elected, the first thing I'm going to do, is to shut down these private detention facilities. Just shut them down."¹⁵ Refusing to reactivate an ORR influx facility that has been kept in "warm status" while ORR experiences a surge in UC referrals is having real consequences, especially when border patrol facilities are significantly overcapacity and children are being kept in CBP facilities for longer than 72 hours.¹⁶ Given the circumstances, why has Biscayne Bay not been reactivated?

In order to ensure that ORR facilities provide a safe environment for the children in its care, ORR imposes requirements for preventing and addressing potential dangers, including an examination of the background and qualifications of facility employees who have direct contact with the children, and minimum staff-to-child ratios.¹⁷ ORR facilities are prohibited from hiring or enlisting the services of any individual who will have direct contact with children if the applicant has engaged in sexual abuse, sexual harassment, intimate partner (domestic) violence, or any type of inappropriate sexual behavior.¹⁸ Thus, facilities must complete background investigations on all prospective staff, contractors, and volunteers who will have access to

¹³ Fernie Ortiz, *3 new facilities for unaccompanied migrant children open in Texas; sites in California considered* (Apr. 6, 2021), *available at* https://www.wric.com/border-report-tour/3-new-facilities-for-unaccompanied-migrant-children-open-in-texas-sites-in-california-considered/amp/; HHS receives 375 unaccompanied migrant children into new Donna facility (Apr. 7, 2021), *available at* https://www.valleycentral.com/immigration/hhs-receives-375-unaccompanied-migrant-children-into-new-donna-

facility/#:~:text=The%20Delphi%20Emergency%20Intake%20Site,potential%20capacity%20of%201%2C500%20b eds.; Gaby Moreno, *HHS receives 100 unaccompanied migrant children into Michigan facility* (Apr. 12, 2021), *available at* https://www.valleycentral.com/news/hhs-receives-100-unaccompanied-migrant-children-into-michigan-facility/.

¹⁴ Kamala Harris, Twitter (June 28, 2019), available at

https://twitter.com/KamalaHarris/status/1144707220258656256?s=20.

¹⁵ Id.

¹⁶ Mireya Villareal, Nicole Sganga, and Camilo Montoya-Galvez, *Inside a Border Patrol Facility holding 16 times more migrants than its capacity*, CBS NEWS (Mar. 31, 2021), *available at*

https://www.cbsnews.com/news/immigration-border-patrol-migrant-holding-facility-over-capacity/.

¹⁷ U.S. Department of Health and Human Services, Office of Inspector General, *Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks but Faced Challenges in Hiring, Screening, and Retaining Employees* (Sept. 2019), *available at* https://oig.hhs.gov/oas/reports/region12/121920001.pdf.

¹⁸ *Id.*; 45 CFR § 411.16(a); Office of Refugee Resettlement, Children Entering the United States, Unaccompanied: Section 4, Preventing, Detecting, and Responding to Sexual Abuse and Harassment, *ORR Guide* § 4.3.4, Hiring Decisions, *available at* https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-4 (last accessed Apr. 6, 2021).

children in ORR care. In addition, care provider facilities must provide training to all staff, contractors, and volunteers.¹⁹

In September 2019, the Department of Health and Human Services (HHS) Office of Inspector General (HHS OIG) released a report that found some facilities did not have evidence of the required Federal Bureau of Investigation (FBI) fingerprint or Child Protective Services (CPS) check results and did not always ensure that the out-of-State CPS checks were conducted.²⁰ In addition, the report found that over half of the 45 facilities that HHS OIG reviewed allowed employees to begin employment before receiving the results of either the FBI fingerprint check or the CPS check, or both.²¹ Further, the report found that ORR facilities had difficulty maintaining required staffing ratios because of challenges experienced in screening, hiring, and retaining qualified employees.²² HHS OIG made a number of recommendations to address the challenges identified in the report, including a recommendation to reiterate to facilities that ORR requires all background checks be completed prior to the employee's start date and access to children.²³ Despite these concerns raised by the HHS OIG in 2019, recent reports note that the Biden administration is not requiring FBI background checks for caregivers working at emergency intake sites, which could compromise the safety of the children in ORR's care.²⁴

There are also reports of allegations of neglect and abuse at an ORR facility in San Antonio that is holding more than 1,600 UC.²⁵ The allegations include sexual abuse, insufficient staffing, children not eating, and those who tested positive for COVID-19 not being separated.²⁶ We understand that there is a crisis at the border and ORR is working to stand up facilities as quickly as possible, but these allegations are incredibly alarming. ORR must ensure the health and safety of the children in its care, regardless of the facility where the children are placed and how quickly that facility is stood up.

¹⁹ Office of Refugee Resettlement, Children Entering the United States, Unaccompanied: Section 4, Preventing, Detecting, and Responding to Sexual Abuse and Harassment, *ORR Guide* § 4.3.6, Staff Training, *available at* https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-4 (last accessed Apr. 6, 2021).

²⁰ *Id.*; 45 CFR § 411.16(c)-(d);

²¹ U.S. Department of Health and Human Services, Office of Inspector General, *Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks but Faced Challenges in Hiring, Screening, and Retaining Employees* (Sept. 2019), *available at* https://oig.hhs.gov/oas/reports/region12/121920001.pdf.

 $^{^{22}}$ *Id*.

²³ U.S. Department of Health and Human Services, Office of Inspector General, *Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks but Faced Challenges in Hiring, Screening, and Retaining Employees* (Sept. 2019), *available at* https://oig.hhs.gov/oas/reports/region12/121920001.pdf.

²⁴ Nomaan Merchant, *US waives FBI checks on caregivers at new migrant facilities*, THE ASSOCIATED PRESS (Mar. 27, 2021), *available at* https://apnews.com/article/joe-biden-health-immigration-child-welfare-coronavirus-pandemic-c4c87f6e76a7fd3ab6e4850ed028c002.

 ²⁵ Paul J. Weber and Nomaan Merchant, *Texas investigating abuse allegations at migrant facility*, THE ASSOCIATED PRESS (Apr. 7, 2021), *available at* https://apnews.com/article/greg-abbott-immigration-child-welfare-coronavirus-pandemic-san-antonio-9cb5c714c184a5e442b01a46adc6a434.
²⁶ Id.

In addition to concerns about background checks on ORR facility staff, contractors, and volunteers, we are concerned that ORR's recent efforts to expedite the placement of children with sponsors could lead to children being placed with a sponsor who presents a danger to the child. The Obama administration relaxed the usual background checks to release children to sponsors faster, and in 2016, the Senate Committee on Homeland Security and Government Affairs' Permanent Subcommittee on Investigations issued a report detailing more than a dozen cases of children who were sent to abusive sponsors.²⁷ While we support placing children with sponsors as quickly as possible, sponsors must be properly vetted to ensure the safety of the children once they leave ORR's care.

An added challenge to the current surge in UC is the ongoing global pandemic, especially since those in congregate care settings are particularly vulnerable to the spread of SARS-CoV-2, the virus that causes COVID-19. We are particularly concerned by recent reports that suggest the Biden administration lacks a centralized system for tracking or responding to COVID-19 cases among the surge of migrants at our southern border²⁸ and other reports that suggest that even though children are tested for COVID-19 when they are transferred to ORR facilities, CBP is not testing migrant children for COVID-19.²⁹ It is critical for the administration to better track and test migrants at all border facilities to prepare for and address potential COVID-19 outbreaks. It is also important for ORR to have policies and procedures in place to ensure that facilities take the appropriate precautions and implement mitigation measures. This is critical for the health and safety of the child being transferred into ORR's care and the other children and staff at the ORR facility to which the child is being transferred. In addition, such policies and procedures will help to protect against potential community spread where these facilities are located, and in communities where a child may be placed with a sponsor.

Accordingly, to assist our request, please provide written answers to the following questions, as well as the requested documents, no later than May 14, 2021.

ORR Facilities and Capacity Issues

1. Why has the administration not reactivated Biscayne Bay, which is in warm status, to provide additional capacity?

²⁷ Jonathan Blitzer, *Biden Has Few Good Options For The Unaccompanied Children At The Border*, THE NEW YORKER (Mar. 9, 2021), *available at* https://www.newyorker.com/news/daily-comment/why-biden-has-few-good-options-at-the-border; U.S. Senate Permanent Subcommittee on Investigations, Comm. on Homeland Security & Governmental Affairs, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement, available at*

https://www.hsgac.senate.gov/imo/media/doc/Majority%20&%20Minority%20Staff%20Report%20-%20Protecting%20Unaccompanied%20Alien%20Children%20from%20Trafficking%20and%20Other%20Abuses %202016-01-282.pdf.

²⁸ Erin Banco and Sabrina Rodriguez, *Biden administration scrambles to avert Covid outbreaks at the southern border*, POLITICO (Mar. 18, 2021), *available at https://www.politico.com/news/2021/03/18/biden-administration-covid-southern-border-tracking-477073*.

²⁹ Julia Ainsley and Alicia Victoria Lozano, U.S. to open overflow facility for unaccompanied migrant children, NBC NEWS ((Mar. 20, 2021), available at https://www.nbcnews.com/news/us-news/u-s-open-overflow-facility-unaccompanied-migrant-children-n1261681

- a. What is the criteria ORR uses to determine whether to reactivate a facility that is being kept in warm status?
- b. If there are difficulties in adequately staffing a facility or putting in place a contactor to operate the facility, can ORR leverage partners like the American Red Cross and other NGOs, similar to what it is doing for other influx care facilities and emergency intake sites, to staff Biscayne Bay?
- c. How much money has the federal government spent to date to keep Biscayne Bay in warm status? Please include a breakdown of how much money the federal government spends per month to keep Biscayne Bay in warm status.
- 2. During the current surge in referrals of UC to ORR's care, when did ORR first reach 85 percent capacity for a period of three days (or "influx capacity")?
- 3. From November 2020 to present, how many UC have been in ORR custody? Please provide such numbers for each month.
- 4. From November 2020 to present, how many UC have been held at a CBP facility for longer than 72 hours since the current surge in border crossings began?
 - a. Please provide a breakdown of the age of those children, and how long each of them stayed at a CBP facility before being transferred to an ORR facility.
- 5. What is ORR's current capacity for UC? Please provide a breakdown of how much of that capacity is permanent, influx care, or emergency intake.
 - a. Given ORR's recent notification to facilities that they may temporarily reactivate capacity to their full licensed capability up to safe occupancy levels, what percentage of ORR's pre-COVID-19 permanent bed capacity is ORR currently able to utilize?
 - b. Given the current referral and discharge rates, how much additional capacity does ORR need to ensure that UC are not stuck at CBP facilities for longer than 72 hours?

Staff Hiring and Training; and Reports of Neglect and Abuse

- 6. Please provide all current policies and procedures, guidance, or directives that have been issued regarding the hiring and training of staff, contractors, or volunteers.
 - a. Do these policies and procedures, guidance, or directives differ for staff, contractors, or volunteers who are working at the influx care facilities or emergency intake sites? If so, please explain.

- 7. From November 2020 to present, please identify how many staff, contractors, or volunteers have been hired to staff ORR facilities for each month.
 - a. How many staff, contractors, and volunteers have completed the required background checks and training outlined in ORR's policies and procedures?
 - b. How many staff, contractors, and volunteers started working before the background checks and training were completed?
 - c. Has ORR waived any of these requirements in order to expedite the standing up of these facilities? If so, which requirements were waived and why?
- 8. What are the current staffing ratios for each of the influx care facilities and emergency intake sites?
 - a. What were those ratios when the influx care facilities and emergency intake sites first opened?
- 9. Please provide all current policies and procedures, guidance, or directives in place to mitigate risks related to neglect and abuse.
- 10. Please provide any details or additional information ORR has regarding the allegations of abuse and neglect at the aforementioned San Antonio facility, including (1) the allegations of sexual abuse at the facility; (2) the allegations of insufficient staffing at the facility; (3) the allegations of children not eating at the facility; and (4) the allegations of those who tested positive for COVID-19 not being separated from others.
- 11. From January 20, 2021 to present, has ORR received reports of similar allegations at any of its other facilities, both permanent and temporary? If so, please provide the details of those allegations.

Policies, Procedures, and Guidance on UC Care

- 12. Please provide all current policies and procedures, guidance, or directives that have been issued regarding the care of UC while in ORR custody.
 - a. Do these policies and procedures differ for any of the influx care facilities or emergency intake sites that have been quickly stood up since November 2020?
 - b. Is there a difference in the care and services that are provided to UC at the influx care facilities or emergency intake sites? If so, please explain.
- 13. Please provide all current policies and procedures, guidance, or directives that have been issued regarding the placement of UC with a sponsor.

- a. Please identify any policies that have changed since January 20, 2021, in order to expedite the placement of UC with a sponsor. Please also identify when those policy changes were made.
- b. Was an analysis conducted to determine whether these policy changes could put children in danger? If so, please explain that analysis.
- 14. What is the average length of time that a UC is in ORR's custody before they are placed with a sponsor? How does that compare to the average length of time prior to the current surge in UC referrals?
- 15. The Office of the Assistant Secretary for Preparedness and Response (ASPR) has helped ORR in the past. Is ASPR assisting ORR with the current surge in referrals of UC? If so, please describe their current role and responsibilities.
- 16. Please describe Federal Emergency Management Agency's current role in helping to stand up and staff the influx care facilities and emergency intake sites.

COVID-19 Protocols

- 17. Has the Centers for Disease Control and Prevention (CDC) notified you of any ORR, CBP, or other border facilities as being in violation of any CDC COVID-19 guidance, particularly as it relates to masking, social distancing, and quarantining of migrants who test positive? If so, please identify which facilities and why.
- 18. Have any public health officials from the administration, including Dr. Fauci or Dr. Walensky, traveled to the border to review the conditions at ORR, CBP, or other border facilities to assess their safety from a public health perspective? If yes, please disclose who, when, and which facilities were visited.
- 19. Please provide all current policies and procedures, guidance, or directives that have been issued for UC regarding COVID-19, including screening, testing, and quarantining of children before they are transferred to an ORR facility, once they are at an ORR facility, if they are transferred to another ORR facility, and when they are released to a sponsor.
 - a. Do those policies and procedures, guidance, or directives differ depending on the type and location of the ORR facility? If so, please explain.
 - b. Is ORR quarantining UC who test positive for COVID-19? If so, and given the capacity issues ORR is currently experiencing, please identify how the ORR facilities are quarantining UC who test positive for COVID-19. If ORR is not quarantining UC who test positive for COVID-19, please details the care and accommodations provide for such UC.
 - c. Are children required to complete any necessary quarantine periods prior to being released to a sponsor? If not, are there policies or agreements in place with

sponsors to ensure that children complete their quarantine period in order to prevent potential community exposure or spread of COVID-19? If so, please explain.

- 20. Please provide all current policies and procedures, guidance, or directives that have been issued for ORR staff, contractors, and volunteers regarding COVID-19, including screening, testing, and any vaccination efforts underway.
 - a. Do these policies and procedures, guidance, or directives differ depending on the type and location of the ORR facility? If so, please explain.
- 21. Is the administration considering requiring UC or any migrant currently held in ORR custody to test negative for COVID-19 before releasing them?
 - a. If so, please explain when we can expect this requirement to go into effect.
 - b. If not, please explain why not.

In addition to our request for the administration to brief us, please also make arrangements to provide a briefing to Committee staff to review your response by May 14, 2021. If you have any questions, please contact Brittany Havens or Bijan (BJ) Koohmaraie with the Minority Committee staff at (202) 225-3641. Thank you for your attention to this request.

Sincerely,

Josh Mrs Lodger

Cathy McMorris Rodgers Republican Leader Committee on Energy and Commerce

Bob Latta Republican Leader Subcommittee on Communications and Technology

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Fred Upton Republican Leader Subcommittee on Energy

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Brett Guthrie Republican Leader Subcommittee on Health

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David McKinley Republican Leader Subcommittee on Environment and Climate Change

J. Mars

H. Morgan Griffith Republican Leader Subcommittee on Oversight and Investigations

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Gus Bilirakis Republican Leader Subcommittee on Consumer Protection and Commerce

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Michael C. Burgess, M.D. Member of Congress

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Steve Scalise Member of Congress

Adam Kinzinger Member of Congress

Bill Johnson

Bill Johnson Member of Congress

Lary Buchter

Larry Bucshon, M.D. Member of Congress

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Richard Hudson Member of Congress

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Tim Walberg Member of Congress

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Earl L. "Buddy" Carter Member of Congress

Gary Palmer Member of Congress

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John Curtis Member of Congress

Greg Pence Member of Congress

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Jeff Duncan Member of Congress

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Neal P. Dunn, M.D. Member of Congress

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Debbie Lesko Member of Congress

Dan Crenshaw Member of Congress

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John Joyce, M.D. Member of Congress

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Kelly Armstrong Member of Congress

CC: The Honorable Xavier Becerra, Secretary, U.S. Department of Health and Human Services