



July 15, 2021

SUBMITTED VIA U.S. MAIL & EMAIL

U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
xavier.becerra@hhs.gov

Administration for Children and Families
Office of Refugee Resettlement
330 C Street, S.W.
Washington, D.C. 20201
jooyeun.chang@acf.hhs.gov
cindy.huang@acf.hhs.gov

U.S. Department of Defense
1400 Defense Pentagon
Washington, DC 20301-1400

U.S. Department of the Army
101 Army Pentagon
Washington, DC 20310-0101
christine.wormuth@us.army.mil

RE: Demand for Closure of the Fort Bliss Army Base Emergency Intake Site and Immediate Need for Environmental Testing and Health Risk Assessment

Dear Secretary Becerra, Acting Assistant Secretary Chang, Director Huang, Secretary Austin, and Secretary Wormuth:

Earthjustice, in coordination with our clients Hispanic Federation, Alianza Nacional de Campesinas, GreenLatinos, and Labor Council for Latin American Advancement, submit this letter calling for the immediate closure of the migrant child detention center located on the Fort Bliss Army Base in El Paso, Texas. We are alarmed by the growing number of reports of dangerous and unsafe conditions for children at Fort Bliss¹ and other emergency intake shelters and join the call for HHS and the Biden administration to close the shelter and ensure that children are never again held in these types of conditions.

¹ Julia Ainsley, NBC News, *Whistleblowers Allege Poor Care for Migrant Kids by Contractor Specializing in Disaster Cleanup* (July 7, 2021, 4:30 AM EDT), <https://www.nbcnews.com/news/amp/ncna1273124>; Government Accountability Project, *[Updated] Press Release: Whistleblowers' Complaints of Gross Mismanagement at Fort Bliss Immigrant Children's Site Ignored* (July 7, 2021), <https://whistleblower.org/press-release/press-release-whistleblowers-complaints-of-gross-mismanagement-at-fort-bliss-immigrant-childrens-site-ignored/>.



We also request that the required environmental testing, investigation, and assessment of health risks at Fort Bliss be completed to determine the safety of this site as a shelter for any asylum seekers including migrant children. If such testing and assessment has been recently completed, the Biden administration must immediately release all relevant information to the public as required by law.

As summarized below, we are providing information related to the potential threats to the health and safety of the children currently being detained at Fort Bliss, even though this information has been previously provided to the Office of Refugee Resettlement and White House during the Biden administration. Earthjustice obtained this information on behalf of its clients through Freedom of Information Act (FOIA) litigation involving records related to a temporary migrant child detention center at Fort Bliss that was proposed, but never constructed, during the Trump administration.

In March 2021, the Biden administration constructed a temporary detention center for migrant children at Fort Bliss, which has detained up to approximately 4,300 children and reportedly has the potential to detain up to 10,000 children.² As detailed in reports published by Earthjustice, several locations at Fort Bliss are not suitable for residential purposes due to the United States Army's previous failure to take the necessary steps to ensure that the sites are free of toxic hazards.³

Despite these hazards and our best efforts to obtain information from the relevant agencies, we are not aware of where exactly the current detention center at Fort Bliss is located or any recent environmental testing at the site, nor are we aware of any assessment regarding the health risks and suitability of such a site for residential purposes for children. It is also unclear whether the Army prepared a new Environmental Assessment (EA) as required by the National Environmental Policy Act (NEPA)⁴ or relied on a previously prepared EA from 2012 that involved a completely different project of a significantly smaller scale, which was the plan for the site proposed during the Trump administration.⁵ Relying on an outdated EA for a different project of a significantly smaller scale is both inadequate and unlawful under NEPA. The Army must prepare a new, project-specific EA for the current site, if the agency has not already done so.

² See <https://www.elpasotimes.com/story/news/2021/05/27/migrant-children-shelter-el-paso-fort-bliss-conditions-unacceptable/7446897002/>; see also <https://abcnews.go.com/Health/covid-19-cases-unaccompanied-migrant-children-facilities-spark/story?id=76788478>.

³ Earthjustice, Stopping Toxic Cages (Nov. 21, 2019), <https://earthjustice.org/features/migrant-children-detention-center-fort-bliss-documents>; Earthjustice, Expert Report: November 2019, https://earthjustice.org/sites/default/files/files/Fort-Bliss_Expert-Report_2019-11-18.pdf, attached.

⁴ Under NEPA, federal agencies are required to prepare an EA for any major federal action to assess the significance of the proposed action's effects on human health and the environment. 40 C.F.R. § 1501.5. If the EA finds that the proposed action significantly affects the quality of the human environment, the agency must then prepare an Environmental Impact Statement. *Id.* § 1502.4.

⁵ See Stopping Toxic Cages.



Until such time as a full investigation, environmental testing, risk assessment, and an environmental review that complies with NEPA have occurred to determine the suitability of the current site as a shelter for children, the Biden Administration must suspend indefinitely all operations of the detention center at Fort Bliss.

Earthjustice Investigation into Toxic Waste Sites at Fort Bliss

In June 2018, news reports indicated that the Department of Defense, at the direction of the Trump administration, was preparing to house approximately 20,000 migrants on military bases, including Fort Bliss, and that construction of tent encampments was to begin shortly.⁶

In response, Earthjustice, on behalf of its clients, submitted a FOIA request to the Army seeking several categories of records, including but not limited to, records concerning known or suspected toxic sites that have the potential to cause dangerous exposure to toxic chemicals via air, water, and soil to migrant adults and children detained at Fort Bliss and to workers constructing the detention camps. After the Army's failure to respond within timeframes mandated by FOIA, Earthjustice filed a FOIA lawsuit in the United States District Court for the Southern District of New York.

As detailed in the enclosed Earthjustice expert report analyzing the documents received through FOIA litigation, at least 80 contaminated sites have been identified at Fort Bliss. These sites are regulated under the Environmental Protection Agency's Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous waste cleanup programs.⁷ As listed in Army records from March 2002⁸, these sites at Fort Bliss include:

- 18 Landfills/Rubble Pits
- 3 Fire Training Areas
- 27 UST/Oil Pit Sites
- 4 Storage Areas
- 6 UXO/Detonation Areas
- 10 Illegal Dump Sites
- 6 Evaporation/Oxidation Ponds
- 6 others

Among these sites, contaminants include the following, at a minimum:

- Chlorinated volatile organic compounds
- Aromatic volatile organic compounds including benzene, toluene, ethyl benzene and xylenes

⁶ See <http://time.com/5324490/zero-tolerance-detention-centers-military/>; see also <https://wamu.org/story/18/06/28/military-bases-to-start-building-tents-after-july-4-to-house-migrant-families/>.

⁷ Earthjustice, Expert Report, at 3.

⁸ *Id.*



- Radioactive metals
- Asbestos
- Explosive compounds, including unexploded ordnance
- Per- and polyfluoroalkyl substances
- Semi-volatile organic compounds
- Pesticides and herbicides

Exposure to these hazardous chemicals in isolation can lead to deleterious health effects like 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. Given the sheer number of contaminated sites at Fort Bliss, it is likely that detainees would experience exposure to multiple hazardous chemicals simultaneously, compounding the risk of cumulative adverse health effects. Because several of the contaminated and unsafe areas at Fort Bliss have not yet been remediated, they are unfit for human residents, especially children.

Concerns About the Site Selected in 2018

The documents received through Earthjustice’s FOIA litigation revealed that the area being proposed for the detention center, “Parcel 2,” was very near an illegal dump and spill site known as the Rubble Dump and Spill Site or simply the Rubble Dump Site.⁹ **Testing at this site conducted prior to the Army’s attempted cleanup efforts in the late-1990s, revealed levels of cancer-causing chemicals in the soil at more than 460 times the level for cancer risk as determined by EPA.**¹⁰ Despite these alarming levels, the Army did not adequately ensure that its eventual cleanup efforts at the site met the federal standards, and the cleanup validation sampling was incomplete, particularly for carcinogenic volatile organic compounds. Post-cleanup soil sampling by the Army at the Rubble Dump Site in 2000 and 2001 indicates that the soil still contains arsenic, a carcinogenic heavy metal that has been linked to lower IQ scores in children,¹¹ at levels at least 19 times the level for cancer risk for residential soils according to EPA.¹²

The Army has also failed to control access to the site to prevent known illegal dumping. Despite attempts to prevent further illegal dumping in 2001, the Army has observed unauthorized entry at nearby sites as recently as June 2018.¹³

Based on this information, the previously proposed site at Fort Bliss would clearly pose a substantial and imminent threat to the life or physical safety of those detained in and near the contaminated and impacted areas. Therefore, additional sampling and characterization of soil,

⁹ *Id.* at 1.

¹⁰ *Id.* at 4.

¹¹ See <https://www.atsdr.cdc.gov/toxprofiles/tp2.pdf>

¹² *Id.* at 5-6.

¹³ *Id.* at 7.



soil gas, and ambient air must be completed before the “Parcel 2” site can be deemed safe for residential purposes. If a different site was chosen for the current operations at Fort Bliss, the Army must still undertake a comprehensive environmental review of the site—as required by NEPA—and ensure that adequate testing has been conducted.

Until thorough testing, analysis, and any required cleanup of the current site at Fort Bliss is completed, children cannot be detained at Fort Bliss.

Obligations under the Flores Agreement

By law, HHS must provide care for each unaccompanied minor in its custody in the United States.¹⁴ The *Flores* Settlement Agreement sets forth that unaccompanied minors must be treated with dignity and respect and, if necessary, held in “safe and sanitary” facilities that take into account the “particular vulnerability of minors.”¹⁵ Furthermore, Section 7.5 of ORR’s policies for influx care facilities requires proper physical care and suitable living accommodations for unaccompanied minors in its custody, in compliance with state child welfare laws and state and local building, fire, health, and safety codes.¹⁶

A detention center located on or directly adjacent to hazardous, toxic waste sites, potentially impacting the facility’s water and air quality, likely does not meet the legal and agency-required standards of care for minors and is unsafe and unsuitable for detaining children. Community-based solutions that do not involve placing children on military sites or in detention-like settings should be immediately developed and implemented, but the health and safety of children in the custody of the federal government should never be in question. Until suitable housing for children under federal custody is found, the federal government retains the legal responsibility to keep them physically and emotionally safe. Providing such safety also means keeping children away from exposures to toxic chemicals that can have dire consequences on the children’s health.

While migrants remain locked up, immigrants and asylum seekers frequently endure horrific conditions, with sexual assault, violent abuse, and medical negligence commonplace. Stories of neglect, filth, and fear have been reported through firsthand as well as investigative accounts, corroborated by government oversight bodies. The COVID-19 pandemic has only further highlighted the dangers of detention, with illness sweeping through facilities and hundreds of cases reported at Fort Bliss.¹⁷ The Biden administration pledged to create a just and humane immigration system, yet in addition to the aforementioned concerns, confining migrants

¹⁴ See 6 U.S.C. § 279.

¹⁵ See Flores Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. 1997) at 7 ¶ 12A.

¹⁶ As posted on the webpage for this policy provision, the 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> (last visited July 14, 2021).

¹⁷ See Hilary Andersson, BBC News, ‘Heartbreaking’ Conditions in US Migrant Child Camp, (June 23, 2021) <https://www.bbc.com/news/world-us-canada-57561760>.



and legal asylum seekers in facilities on or near potentially toxic waste sites without regard to potential short- and long-term health impacts can now be added to the list.

We urge HHS and the Army to use their authorities to immediately close the migrant detention center at Fort Bliss and prioritize the use of community-based solutions. Failing that, at a minimum, HHS and the Army must immediately engage in federally required environmental review, which is required at all detention center sites, and testing to gather data and to assess whether the facility at Fort Bliss is in fact safe for children. If recent testing and assessment has been completed, the agencies must immediately release all relevant information to the public.

Sincerely,

Mychal R. Ozaeta
Earthjustice
707 Wilshire Blvd., Suite 4300
Los Angeles, CA 90017
(213) 766-1069
mozaeta@earthjustice.org

Melissa Legge
Earthjustice
48 Wall Street, 15th Fl.
New York, NY 10005
(212) 823-4978
mlegge@earthjustice.org

*On behalf of Earthjustice, Hispanic
Federation, Alianza Nacional de
Campesinas, GreenLatinos, and Labor
Council for Latin American Advancement*

CC: Cecilia R. Martinez, Council on Environmental Quality
Corey F. Solow, Council on Environmental Quality
Karen L. Martin, U.S. Environmental Protection Agency
Paula Flores-Gregg, U.S. Environmental Protection Agency
George QE Ward, U.S. Environmental Protection Agency

Texas Commission on Environmental Quality, Public Interest Counsel
Texas Commission on Environmental Quality, Compliance and Enforcement