

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 17, 2018

The Honorable Trey Gowdy  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

We are writing to renew our urgent request for the Committee to investigate the development and consequences of the Trump Administration's "zero tolerance" policy of separating immigrant children from their parents at the border and referring family members for criminal prosecution—regardless of whether they may have legitimate asylum claims.

To evaluate the effects of this policy, we ask that the Committee hold a hearing in July with the Cabinet officials responsible for implementing this policy, including the Secretary of Homeland Security, the Attorney General, and the Secretary of Health and Human Services. We also ask for your help in obtaining critical documents and information relating to this policy, and in scheduling a trip for Committee Members to witness first-hand how this policy is being implemented and how children are coping in U.S. detention facilities.

### **Impact of Child Separation Policy**

According to multiple reports, the Trump Administration's child separation policy is "already leading to the breakup of hundreds of migrant families and channeling children into shelters and foster homes across the country." In just the first two weeks under this new policy, the Administration referred for prosecution "638 parents who arrived with 658 children."<sup>1</sup>

We have seen the heartbreaking consequences of this policy every day—consequences that subject separated children to severe conditions. For example, there are reports that children are not being promptly transferred from "icebox" facilities operated by Customs and Border Protection to the custody of the Office of Refugee and Resettlement within the Department of Health and Human Services, as required by law.<sup>2</sup> Instead, immigration experts report:

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<sup>1</sup> See, e.g., 'It's Horrendous': The Heartache of a Migrant Boy Taken from His Father, New York Times (June 7, 2018) (online at [www.nytimes.com/2018/06/07/us/children-immigration-borders-family-separation.html](http://www.nytimes.com/2018/06/07/us/children-immigration-borders-family-separation.html)).

<sup>2</sup> See 8 U.S.C. § 1232.

On the ground, transfers are frequently long-delayed, leaving kids to sit around for days and days, crowded and idle, in cold law enforcement “hold rooms”—universally called *hieleras* (iceboxes), because the air conditioning runs so high—rather than being housed in appropriate child-friendly facilities.<sup>3</sup>

Advocacy groups report that children are being separated from their parents for indefinite periods of time. One group reported on “at least six children left behind after their parents were deported, including a 2-year-old girl.”<sup>4</sup>

In March 2018, the American Academy of Pediatrics wrote a letter warning Secretary of Homeland Security Kirstjen Nielsen that child separation policies traumatize children and cause “toxic stress,” which “can harm the developing brain and harm short- and long-term health.”<sup>5</sup>

According to a Texas sheriff’s department report, on May 13, 2018, a Honduran man killed himself in a padded cell after being separated from his wife and child. Customs and Border Protection officials did not provide information from the man’s autopsy report or the location of his wife and child.<sup>6</sup>

The United Nations human rights office has called on the Trump Administration to “immediately halt” its new policy of separating immigrant children at the border. A spokesperson for the United Nations High Commissioner for Refugees stated: “The use of immigration detention and family separation as a deterrent runs counter to human rights standards and principles. The child’s best interest should always come first.”<sup>7</sup>

The Trump Administration also appears to be violating its own promise not to separate children or prosecute asylum seekers who present themselves to authorities at points of entry on the border. When the Administration announced the child separation policy, Immigration and Customs Enforcement Director Thomas Homan stated, “If you have a clear claim to asylum, go to the port of entry where you’re safe.”<sup>8</sup>

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<sup>3</sup> *This Is What’s Really Happening to Kids At The Border*, Washington Post (May 30, 2018) (online at [www.washingtonpost.com/news/monkey-cage/wp/2018/05/30/this-is-whats-really-happening-to-kids-at-the-border/](http://www.washingtonpost.com/news/monkey-cage/wp/2018/05/30/this-is-whats-really-happening-to-kids-at-the-border/)).

<sup>4</sup> *‘It’s Horrendous’: The Heartache of a Migrant Boy Taken from His Father*, New York Times (June 7, 2018) (online at [www.nytimes.com/2018/06/07/us/children-immigration-borders-family-separation.html](http://www.nytimes.com/2018/06/07/us/children-immigration-borders-family-separation.html)).

<sup>5</sup> Letter from Dr. Colleen A. Craft, President, American Academy of Pediatrics, to Secretary Kirstjen M. Nielsen, Department of Homeland Security (Mar. 1, 2018) (online at [downloads.aap.org/DOFA/AAP%20Letter%20to%20DHS%20Secretary%2003-01-18.pdf](http://downloads.aap.org/DOFA/AAP%20Letter%20to%20DHS%20Secretary%2003-01-18.pdf)).

<sup>6</sup> *A Family Was Separated at the Border, and This Distraught Father Took His Own Life*, Washington Post (June 9, 2018) (online at [www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637\\_story.html?noredirect=on&utm\\_term=.a6582ca70aa9](http://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html?noredirect=on&utm_term=.a6582ca70aa9)).

<sup>7</sup> *U.N. Human Rights Office to U.S.: Halt Trump Policy Separating Kids From Parents at Border*, USA Today (June 5, 2018) (online at [www.usatoday.com/story/news/world/2018/06/05/united-nations-tells-u-s-stop-separating-children-parents/673090002/](http://www.usatoday.com/story/news/world/2018/06/05/united-nations-tells-u-s-stop-separating-children-parents/673090002/)).

<sup>8</sup> *Trump Administration to Step Up Family Separation at the Border*, Politico (May 7, 2018) (online at

Despite this claim, reports indicate that the Trump Administration is separating children at ports of entry as well, as in the case of “Ms. L,” a plaintiff in a lawsuit brought by the ACLU who was separated from her daughter after seeking asylum at the port of entry at San Ysidro, California.<sup>9</sup> On June 6, 2018, a federal district court in San Diego ruled that the lawsuit could proceed and condemned the forcible separation of Ms. L from her six-year-old daughter:

Such conduct, if true, as it is assumed to be on the present motion, is brutal, offensive, and fails to comport with traditional notions of fair play and decency. At a minimum, the facts alleged are sufficient to show the government conduct at issue “shocks the conscience” and violates Plaintiffs’ constitutional right to family integrity.<sup>10</sup>

### **Request for Hearing, Documents, and Border Visit**

Ranking Member Cummings and Rep. Maloney wrote to you on May 22, 2018, requesting a hearing to investigate these issues, but they received no reply.<sup>11</sup> These new reports add great urgency to their request. For these reasons, we ask that the Committee hold a hearing before the August recess with Secretary Nielsen, Attorney General Jeff Sessions, Secretary of Health and Human Services Alex M. Azar II, and subject matter experts who can help the Committee fully evaluate this policy.

Today, we also request your assistance in obtaining the following documents from the Departments of Homeland Security, Justice, and Health and Human Services:

- (1) all policies, procedures, and protocols related to the Administration’s new “zero tolerance” policy to prosecute all individuals at the border, including any policy memoranda or memoranda of understanding involving the Departments of Justice, Homeland Security, Health and Human Services, and state and local officials;
- (2) all training materials, handbooks, operational instructions, or handouts prepared for the use of officials in the implementation of the Administration’s “zero tolerance” policy;
- (3) all documents and communications referring or relating to the number of individuals prosecuted under the “zero tolerance” policy, including how many parents and children have been separated, and how many of those individuals presented themselves to officials for asylum, and whether those individuals arrived at ports of entry or between ports of entry;

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[www.politico.com/story/2018/05/07/trump-administration-family-separation-border-519220](http://www.politico.com/story/2018/05/07/trump-administration-family-separation-border-519220)).

<sup>9</sup> *Family Separation at Border May Be Subject to Constitutional Challenge, Judge Rules*, New York Times (June 6, 2018) (online at [www.nytimes.com/2018/06/06/us/family-separations-migrants-court.html](http://www.nytimes.com/2018/06/06/us/family-separations-migrants-court.html)).

<sup>10</sup> *Ms. L v. ICE*, No. 3:18-cv-00428-DMS-MDD (S.D. Cal. June 6, 2018).

<sup>11</sup> Letter from Ranking Member Elijah E. Cummings and Rep. Carolyn Maloney to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (May 22, 2018) (online at [maloney.house.gov/sites/maloney.house.gov/files/MaloneyCummings%20ICE%20Child%20Separation%20OGR%20Hearing%20Request.pdf](http://maloney.house.gov/sites/maloney.house.gov/files/MaloneyCummings%20ICE%20Child%20Separation%20OGR%20Hearing%20Request.pdf)).

- (4) documents sufficient to show the number of parents and children separated and detained each month from January 1, 2018, to the present, including which facilities they have been detained in and the length of detention at each facility or while awaiting transfers;
- (5) all documents referring or relating to the legal basis for the Administration's "zero tolerance" policy and whether it violates domestic asylum and international human rights laws;
- (6) all documents and communications referring or relating to the safety and living standards and conditions of all adult or child migrant detention facilities used for the "zero tolerance" policy, including the number of bed spaces, room temperature, and any health or mental health services provided;
- (7) all documents and communications referring or relating to the Administration's tracking and plans to reunite families and children after separation;
- (8) all documents and communications referring or relating to the Administration's efforts to ensure children do not fall into the hands of human traffickers; and
- (9) all documents referring or relating to economic consequences of separating, transporting, and detaining children away from their parents as part of the "zero tolerance" policy.

Finally, we request that you schedule a trip to the border for Committee Members as soon as possible. The Committee should provide Members the opportunity to visit U.S. detention facilities and witness firsthand the impacts of the child separation policy.

Contrary to repeated assertions from President Donald Trump and other senior Administration officials, this policy is not required by the Trafficking Victims Protection Reauthorization Act or any other law. The "zero tolerance" policy is just that—a policy put in place by the Administration. It is our Committee's responsibility to conduct basic oversight over this policy and evaluate the justification, costs to the taxpayers, and consequences of this decision.

Thank you for your consideration of this request.

Sincerely,

  
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