

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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September 17, 2018

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

Dear Mr. Chairman:

I am writing to request that you allow the Oversight Committee to vote on a motion to subpoena the Departments of Justice, Homeland Security, and Health and Human Services to produce documents they are withholding relating to the Trump Administration's immigrant child separation policy announced by Attorney General Jeff Sessions on April 6, 2018.

I understand that you will not issue these subpoenas on your own. However, I requested these documents on a bipartisan basis with Rep. Mark Meadows, the Chairman of the Subcommittee on Government Operations. Even if you continue to block requests from Committee Democrats, surely you can support requests from your own Republican Subcommittee Chairman.

If the Trump Administration is allowed to continue flouting bipartisan document requests from Congress—and if you continue blocking our efforts to obtain these documents—the integrity of our Committee will be severely undermined, and we will be unable to fulfill our Constitutional responsibility to conduct independent, credible oversight of the Executive Branch.

On July 5, 2018, Chairman Meadows and I sent a letter to Attorney General Sessions, Secretary of Homeland Security Kirstjen M. Nielsen, and Secretary of Health and Human Services Alex M. Azar requesting 11 categories of documents and information relating to the status of children separated from their parent or other accompanying adults as a result of the Trump Administration's child separation policy. This request was for basic information to monitor and promote efforts to unify these families—information Trump Administration officials should have had at their fingertips. We requested these documents by July 19, 2018.¹

¹ Letter from Chairman Mark Meadows, Subcommittee on Government Operations, and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Secretary Kirstjen M. Nielsen, Department of Homeland Security, Secretary Alex M. Azar II, Department of Health and Human Services, and Attorney General Jeff Sessions, Department of Justice (July 5, 2018) (online at democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Meadows-Cummings%20Letter%20Requesting%20Info%20on%20Separated%20Children.pdf).

Chairman Meadows and I sent our letter after you refused multiple previous requests from me and other Members of the Committee.² You declined to seek any documents from the agencies involved, to hold any hearings with Trump Administration officials, or to allow any meaningful investigation of the separation of hundreds of children from their parents.

In response to the bipartisan document request from me and Chairman Meadows, the Trump Administration refused to produce a single page from any of the 11 categories of documents and information we requested:

- The Department of Justice refused to produce any of the documents we requested and failed to even send a reply letter in response to our request.
- The Department of Health and Human Services refused to produce any of the documents we requested, asserting in a letter on July 11, 2018, that its policy is “to not publish” information related to children in its custody.³ Chairman Meadows and I did not ask the Department to “publish” any documents—but rather to produce them to Congress as part of a bipartisan oversight investigation.
- The Department of Homeland Security refused to produce any of the documents we requested, instead sending a response from Secretary Nielsen on July 24, 2018, claiming that the Department “has never had a blanket policy of separating families at the border,” contradicting statements by President Trump, Attorney General Sessions, and other senior officials.⁴

² See, e.g., Letter from Ranking Member Elijah E. Cummings, et al., to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (June 17, 2018) (online at democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-06-17.OGR%20Dems%20to%20Gowdy%20re%20Request%20for%20Child%20Separation%20Hearing.pdf).

³ Letter from Deputy Secretary Eric D. Hargan, Department of Health and Human Services, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (July 11, 2018) (online at democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/HHS%20to%20Meadows%20and%20Cummings%2007-11-18.pdf). See also Letter from Deputy Secretary Eric D. Hargan, Department of Health and Human Services, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Aug. 24, 2018) (online at democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-08-24%20HHS%20Response%20to%20EEC%20re%20child%20separation%20request.pdf) (responding again with only publicly available information, but none of the documents requested by Chairman Meadows and Ranking Member Cummings).

⁴ Letter from Secretary Kirstjen M. Nielsen, Department of Homeland Security, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (July 24, 2018) (democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-07-24%20DHS%20to%20Cummings%20Dems%20Child%20Separation%20Request%20062218.pdf). See also Letter from Secretary Kirstjen M. Nielsen, Department of Homeland Security, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Aug. 24, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-08-24%20DHS%20Response%20to%20EEC%20re%20child%20separation%20request.pdf>) (also providing none of the requested documents).

Instead of producing the documents we requested, the agencies briefed Committee Members and staff on July 18, 2018, but this briefing raised even more questions about the refusal of the Trump Administration to heed warnings from its own officials.

Specifically, Commander Jonathan White, the official overseeing this policy at the Department of Health and Human Services, reported that when Attorney General Sessions announced the Trump Administration's new child separation policy, "there was not at that time a specialized plan" for reuniting these children with their families.⁵

In addition, Commander White testified before the Senate on July 31, 2018, that he personally warned Trump Administration officials about the consequences of child separations. He stated:

During the deliberative process over the previous year, we raised a number of concerns in the ORR [Office of Refugee Resettlement] program about any policy which would result in family separation, due to concerns we had about the best interest of the child, as well as about whether that would be operationally supportable with the bed capacity we have.⁶

Commander White also stated that, after raising these concerns inside the Trump Administration, "I was advised that there was no policy which would result in separation of children from family units."⁷

As of September 13, 2018, more than 400 children intentionally separated from their parents by the Trump Administration remain in U.S. government facilities as a direct result of the policy announced by Attorney General Sessions.⁸

For all of these reasons, I reiterate my request to hold a business meeting as soon as possible to vote on a motion to issue subpoenas compelling the Departments of Justice, Homeland Security, and Health and Human Services to produce the documents they are withholding in response to our bipartisan request.

⁵ Briefing by Commander Jonathan D. White, Ph.D., Federal Health Coordinating Official for the 2018 UAC Reunification Effort, Department of Health and Human Services; Joseph Edlow, Deputy Assistant Attorney General, Department of Justice; Matt Albence, Executive Associate Director for Enforcement and Removal Operations, Immigration and Customs Enforcement; and Matthew Rogow, Acting Law Enforcement Operations Directorate Deputy Chief, Customs and Border Protection, to House Committee on Oversight and Government Reform (July 18, 2018).

⁶ Senate Committee on the Judiciary, *Oversight of Immigration Enforcement and Family Reunification Efforts*, 115th Cong. (July 31, 2018).

⁷ *Id.*

⁸ *416 Migrant Children Remain Separated Weeks After Deadline to Reunite Families*, USA Today (Sept. 13, 2018) (online at www.usatoday.com/story/news/nation-now/2018/09/13/separated-migrant-children-remain-united-states/1287860002/).

Thank you for your prompt attention to this matter.

Sincerely,


Elijah E. Cummings
Ranking Member