

Congress of the United States  
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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January 23, 2020

The Honorable Chad F. Wolf  
Acting Secretary  
U.S. Department of Homeland Security  
301 7th Street, S.W.  
Washington, D.C. 20528

Dear Acting Secretary Wolf:

The Committee on Oversight and Reform is investigating reports that the Trump Administration has continued to separate hundreds of additional immigrant children from their parents—even as some children separated more than a year ago under the Administration’s “zero tolerance” policy still have not been reunited with their families. The new separations appear to follow an opaque process and vague standards that may be causing many children to be separated unnecessarily.

The Trump Administration separated more than 3,000 children from their families before a federal court halted mass separations in June 2018 and ordered the Administration to reunite the children with their families if possible. Last summer, then-Acting Secretary Kevin McAleenan testified that ongoing child separations are “extraordinarily rare.”<sup>1</sup> Yet a court recently found that the Administration “separated nearly 1,000 migrant families at the border” in the 12 months following the June 2018 court order ending zero tolerance.<sup>2</sup>

The separation of even a single child from their parent is likely to cause deep and lasting trauma.<sup>3</sup> Separation should only occur in those exceedingly rare circumstances in which it is truly necessary to protect a child, and only following a rigorous, transparent process.

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<sup>1</sup> Senate Committee on Homeland Security and Governmental Affairs, *Hearing on Resources Needed to Protect and Secure the Homeland* (May 23, 2019) (online at [www.hsgac.senate.gov/resources-needed-to-protect-and-secure-the-homeland](http://www.hsgac.senate.gov/resources-needed-to-protect-and-secure-the-homeland)).

<sup>2</sup> Order Granting in Part and Denying in Part Plaintiffs’ Motion to Enforce Preliminary Injunction, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. Jan. 13, 2020). The Plaintiffs in this litigation estimated that, as of September 2019, the Administration had “separated approximately 1000 children (including around 200 under the age of five)” since the June 2018 court order. Plaintiffs’ Reply in Support of Motion to Enforce Preliminary Injunction, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. Sept. 18, 2019).

<sup>3</sup> Department of Health and Human Services, Office of Inspector General, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody* (Sept. 3, 2019) (online at <https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf>).

On July 18, 2019, Acting Secretary McAleenan testified before our Committee that ongoing separations “are carefully governed by policy and court order” to ensure the separation is “in the interest of the child.”<sup>4</sup> However, sworn declarations filed by independent experts—including child advocates, religious organizations, and medical professionals who have worked with these separated children—directly contradict his testimony. According to these declarations, the Administration has separated children based on mere allegations rather than convictions, minor or nonviolent convictions, extremely old convictions, non-serious medical issues, unsubstantiated doubts about parentage, and subjective judgments about parental fitness.

For example, the Administration separated multiple children from their parents on the basis of past driving-under-the-influence offenses, three young children due to their father’s HIV status, and a five-year-old child for 79 days because his mother had emergency surgery on a broken leg shortly after arrival at the border.<sup>5</sup> At a hearing before our Committee on July 12, 2019, Ann Maxwell, the Assistant Inspector General at the Department of Health and Human Services (HHS), testified that her office reviewed a case in which a child was separated for “a prior charge for marijuana possession.”<sup>6</sup>

After our Committee and others raised questions about these ongoing separations, the Administration admitted that some never should have occurred. For example, during the Committee’s July 18, 2019, hearing, Rep. Raskin asked Acting Secretary McAleenan about the separation of children based on their parent’s HIV status. He replied: “The simple fact of being HIV positive does not sound like that would meet the standard.”<sup>7</sup> In a subsequent court filing, the Administration conceded that multiple separations were “in error,” including the separation of children because of their father’s HIV status and the separation of a child due to his mother’s broken leg.<sup>8</sup>

The Department of Homeland Security (DHS) has stated that the Administration is continuing to separate children from their families based on “interim guidance” sent to the heads of Border Patrol and the Office of Field Operations within Customs and Border Protection (CBP)

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<sup>4</sup> Committee on Oversight and Reform, *Hearing with Acting Secretary of Homeland Security Kevin K. McAleenan* (July 18, 2019) (online at <https://oversight.house.gov/legislation/hearings/with-the-acting-secretary-of-homeland-security-kevin-k-mcaleenan>).

<sup>5</sup> Memorandum in Support of Motion to Enforce Preliminary Injunction, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. July 30, 2019).

<sup>6</sup> Committee on Oversight and Reform, *Hearing on The Trump Administration’s Child Separation Policy: Substantiated Allegations of Mistreatment* (July 12, 2019) (online at <https://oversight.house.gov/legislation/hearings/the-trump-administration-s-child-separation-policy-substantiated-allegations-of>).

<sup>7</sup> Committee on Oversight and Reform, *Hearing with Acting Secretary of Homeland Security Kevin K. McAleenan* (July 18, 2019) (online at <https://oversight.house.gov/legislation/hearings/with-the-acting-secretary-of-homeland-security-kevin-k-mcaleenan>).

<sup>8</sup> Defendants’ Opposition to Plaintiffs’ Motion to Enforce Preliminary Injunction, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. Sept. 10, 2019) (citing the “July 18, testimony of Acting Secretary of Homeland Security Kevin McAleenan before the House Oversight Committee”).

on June 27, 2018. This two-page document provides CBP personnel wide discretion to separate children when they arrive at the border. It states that the Administration “may” separate children based on several factors, including if the parent is being prosecuted for a felony, “presents a danger to the child,” has a “criminal conviction(s) for violent misdemeanors or felonies,” or has a “communicable disease.”<sup>9</sup>

The document provides no definitions and no guidance on how to apply its provisions. It also fails to identify any opportunity for families to be represented by counsel or to receive a hearing before or after separations occur. The guidance is also silent on the steps DHS must take to track separated children and parents, allow parents to contact separated children, and reunite families when possible.

The court overseeing family reunifications in *Ms. L v. ICE* recently found that separations under this interim guidance were “generally” not in conflict with the court’s order ending the zero tolerance policy. In reaching this conclusion, the court noted “processes now in place for parents to challenge such decisions,” including a “tear sheet, which informs a parent who has been separated from his or her child of the reasons for separation, how to contact their child and how to contest separation from their child.”<sup>10</sup>

However, the court also held that some recent separations were “unwarranted” and noted a specific concern about DHS’s failure to routinely conduct DNA testing before separating families based on “unverified family relationship.” The court also explained that judicial oversight of ongoing separations would be “potentially massive in scope” and highlighted “the intensely factual nature of these decisions.” As a result, the court left the door open to case-by-case challenges.<sup>11</sup>

The Committee is deeply concerned by the number of separations the Trump Administration is causing, the lack of clear and transparent processes, the inadequate justifications for taking children away from their families, and the ongoing inability to track and reunify families.

These concerns are reinforced by recent findings from the DHS Inspector General (IG). The IG found that the Trump Administration separated thousands of children from their families even though officials knew the Trump Administration lacked the ability to effectively track and reunify families. The report also highlighted that serious problems continued into 2019—months after the end of the zero tolerance policy. For example, the IG found that DHS and HHS still

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<sup>9</sup> Memorandum from Commissioner Kevin K. McAleenan to Chief Carla Provost and Executive Assistant Commissioner Todd C. Owen, Customs and Border Protection, Interim Guidance on Preliminary Injunction in *Ms. L v. ICE*, No. 18-428 (C.D. Cal. June 26, 2018) (June 27, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Interim%20Guidance%20on%20Preliminary%20Injunction.pdf>).

<sup>10</sup> Order Granting in Part and Denying in Part Plaintiffs’ Motion to Enforce Preliminary Injunction, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. Jan. 13, 2020).

<sup>11</sup> *Id.*

lacked a “formal reunification plan” as of March 2019, more than nine months after an inter-agency working group convened to address reunification issues.<sup>12</sup>

The IG’s report also revealed that the Trump Administration planned to separate tens of thousands of additional children before a court ordered an end to the zero tolerance policy in June 2018. The IG reported that in May 2018, CBP estimated that “it would separate more than 26,000 children between May and September 2018 because of Zero Tolerance.”<sup>13</sup>

For all these reasons, please provide the following documents and information by February 6, 2020:

1. Documents sufficient to show all children separated from a parent from June 27, 2018, to the present, including:
  - a. the detailed justification for each separation;
  - b. the age of the child;
  - c. the date of the separation;
  - d. the duration of the separation;
  - e. whether the parent received a “tear sheet” as referenced in the recent court order; and
  - f. whether the child was later reunited with the same parent, sent to a different sponsor, or remains in government custody;
2. All documents, including memoranda, policy manuals, guidance documents, and other communications to CBP personnel, referring or relating to separating children from their families at the border from June 27, 2018, to the present, including all documents setting forth relevant legal authorities for child separations and any documentation, review, or approval requirements for separations;
3. Documents sufficient to show all trainings provided to CBP personnel on how to implement the June 27, 2018, interim guidance and any subsequent guidance for separating children from their families;
4. All documents, including memoranda, policy manuals, guidance documents, or other communications to CBP personnel, referring or relating to informing parents and legal guardians about a child separation, including any opportunity to challenge the basis of separation before or after it takes place, information on the location and health of the separated child, and opportunities to communicate with the separated child;

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<sup>12</sup> Department of Homeland Security, Office of Inspector General, *DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families* (Nov. 25, 2019) (OIG-20-06) (online at [www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf](http://www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf)).

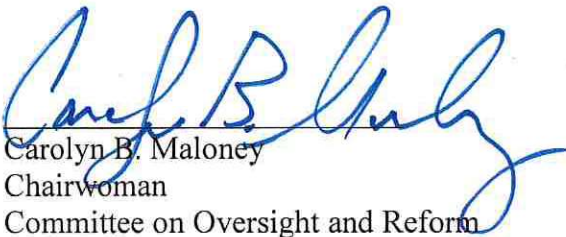
<sup>13</sup> *Id.*

5. Documents sufficient to show the number of parents who challenged separation from their children and the number of parents who were reunited following such challenges;
6. Documents sufficient to show the Department's tracking and reunification of separated children, including all guidance documents or other communication on tracking children across agencies and ensuring prompt reunification with a parent when reunification is authorized; and
7. All documents from January 20, 2017, to the present showing projections or estimates of the number of children who would be separated from their families, whether occurring under the zero tolerance policy or otherwise, including May 2018 estimates provided to the Office of Management and Budget referenced in the recent DHS IG report.


The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee's document request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Thank you for your prompt attention to this matter.

Sincerely,



Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform



Jamie Raskin  
Chairman  
Subcommittee on Civil Rights and  
Civil Liberties

Enclosure

cc: The Honorable Jim Jordan, Ranking Member  
Committee on Oversight and Reform

The Honorable Chip Roy, Ranking Member  
Subcommittee on Civil Rights and Civil Liberties