

July 12, 2018

The Honorable Ron Johnson
Chair, Senate Committee on Homeland Security
and Governmental Affairs
328 Hart Senate Office
Washington, DC 20510

The Honorable Claire McCaskill
Ranking Member, Senate Committee on
Homeland Security and Governmental Affairs
503 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Michael McCaul
Chairman, House Homeland Security
Committee
2001 Rayburn House Office Building
Washington, DC 20515

The Honorable Bennie Thompson
Ranking Member, House Homeland Security
Committee
2466 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Johnson, Ranking Member McCaskill, Chairman McCaul, and Ranking Member Thompson,

The undersigned organizations committed to government openness and accountability, civil liberties, human rights, and civil rights, write to urge you to immediately investigate the records management practices of the Department of Homeland Security (DHS) relating to the administration's "zero-tolerance"¹ immigration enforcement policy and family reunification efforts. This policy has caused a serious humanitarian crisis, and the administration is currently struggling to meet a court ordered deadline to reunify children with their parents. While the administration claims to know the location of all children in its custody, recent reports indicate that border agents are improperly destroying records on the separated families,² heightening concern that these children might never see their parents again. If these records are indeed being destroyed, the public and Congress must know so that urgent action can be taken to prevent more children from being permanently lost to their families.

The zero-tolerance policy that began in April 2018, and reported DHS enforcement actions prior to this date, has led to the separation of an estimated 2,500 children from their asylum seeking parents, 100 under the age of five. The practice of taking away children has taken place under a cloak of secrecy, shattering public confidence in the government's capacity and will to reunify the families, despite the court ordered deadline. Recent media reports indicate that "[r]ecords linking children to their parents have disappeared, and in some cases have been destroyed, according to two officials of the Department of Homeland Security, leaving the authorities struggling to identify connections between family

¹ U.S. Department of Justice, *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry*, April 6, 2018: <https://bit.ly/2qcRgKd>.

² *CREW Called on NARA to Investigate the Destruction of Immigrant Family Records*, Citizens for Responsibility and Ethics in Washington, July 6, 2018: <https://bit.ly/2unl5JS>.

members.”³ In hundreds of cases, Customs and Border Protection agents allegedly deleted the initial records in which parents and children were listed together as a family.

As you know, Congress enacted the Federal Records Act (FRA) in part to ensure “[a]ccurate and complete documentation of the policies and transactions of the Federal Government[.]”⁴ This obligation encompasses the documentation and preservation of records concerning the “organization, functions, policies, decisions, procedures and essential transactions of the agency and [those] designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.”⁵ The purposeful deletion of records by border agents would be a clear violation of the FRA, with dire humanitarian consequences.

Moreover, there are serious concerns that the White House Executive Order, issued on June 20, 2018, will lead to more secrecy and confusion over the handling of children at the border, and the indefinite detention of an unknown number of children with their families. Importantly, the Executive Order neither addressed how the separated children in custody will be immediately united with their parents who have been detained by ICE or who have already been deported, nor detailed the time frame of any reunification process.⁶ Without clear guidance, the public has no assurance that the government is not disappearing children, dropping them over the border or handing them off to non-relatives without notice.⁷

The administration claims to have a process established to ensure that family members know the location of their children and have regular communication after separation to ensure that those families are reunited. According to a fact sheet released in June, the U.S. Customs and Border Protection (CBP), HHS Office of Refugee Resettlement (ORR) and Immigration and Customs Enforcement (ICE), are all playing a role in the reunification efforts. That fact sheet indicates that ORR has publicly available guidance to carry out its role in the family reunification process. However, the same document fails to cite any similar guidance that CBP or ICE is using to carry out their role in family reunification.⁸

As part of an investigation into reports of border agents destroying documents, Congress should also ensure that DHS make available documents that are in the public interest. To enable adequate oversight, we ask that you request and make public the following records:

³ Caitlin Dickerson, *Trump Administration in Chaotic Scramble to Reunify Migrant Families*, The New York Times, July 5, 2018: <https://nyti.ms/2MU6hKG>.

⁴ 44 U.S.C. § 2901(1)

⁵ 44 U.S.C. § 3101

⁶ Executive Order, *Affording Congress an Opportunity to Address Family Separation*, June 20, 2018: <https://bit.ly/2ypU7Xy>.

⁷ There have been numerous reports of border agents dropping of children on the other side of the border without knowledge or consent from their parents. The organization LUPE reported on a case, for example, that occurred in June in Reynosa, Mexico. See Jenny Manrique, *Little progress at center where immigrant children are to be reunited with parents*, Dallas News, June 25, 2018: <https://bit.ly/2L3ibkO>.

⁸ U.S. Department of Homeland Security, *Fact Sheet: Zero-Tolerance Prosecution and Family Reunification*, June 23, 2018: <https://bit.ly/2K6QRpm>.

- All policy guidance used by immigration officials at the border on records management practices, and on the tracking of children after being separated from their parents.
- All policy guidance on the handling of “Unaccompanied Alien Children,” used by CBP officials at the border and by ICE agents in immigrant detention facilities.
- All policy guidance on the implementation of the administration’s zero-tolerance policy, and the President’s June 20th Executive Order on family separation.
- All documents explaining the administration’s reunification plan for the separated children and their families.

Family members, public advocates, and lawyers are in desperate need of more information to help ensure the separated children see their parents again. Secrecy surrounding such policies has drastically hindered the ability of the public and members of Congress to support reunification efforts as the lives of thousands of families hang in the balance. Only by exercising its authority can Congress begin to remedy the secrecy and confusion rampant in the immigration detention system, starting by investigating the record keeping practices and demanding maximum disclosure of information to the public in accordance with the law.

Thank you for your attention to our request. For further information, please contact Lisa Rosenberg at Open the Government, lrosenberg@openthegovernment.org or 202-332-6736.

Sincerely,

American Library Association
 Casa Esperanza
 Center for Media and Democracy
 Comunidad Colectiva from Charlotte, NC
 Concerned Archivists Alliance
 Detention Watch Network
 Defending Rights and Dissent
 Demand Progress
 Digital Library Federation’s Government
 Records Transparency interest group
 Electronic Privacy Information Center (EPIC)
 Faith in Public Life
 Family and Congregational Response
 First Amendment Coalition
 Freedom for Immigrants
 Friends of Broward Detainees
 Friends Committee on National Legislation
 Friends First of NJ & NY
 Government Accountability Project
 Government Information Watch
 Human Rights Data Analysis Group
 Human Rights First

Illinois Coalition for Immigrant and Refugee
 Rights
 Latino Community Center
 Liberty Coalition
 Immigrant Legal Advocacy Project
 Interfaith Welcome Coalition
 Justice Strategies
 Jobs to Move America
 Massachusetts Jobs with Justice
 National Association for the Advancement of
 Colored People (NAACP)
 National Association of Social Workers (NASW)
 National Coalition for History
 National Immigration Law Center
 National Immigration Project
 of the National Lawyers Guild
 National Immigrant Justice Center
 National Security Archive
 NC Conference UMC Task Force on Immigration
 NC Child
 New Mexico Faith Coalition for Immigrant
 Justice
 Open the Government

Pennsylvania Immigration and Citizenship
Coalition
Project On Government Oversight (POGO)
Refugee and Immigrant Center for Education
and Legal Services (RAICES)
Reformed Church of Highland Park
Sisters of Mercy South Central Community

Society of American Archivists
Society of Professional Journalists
Umstead Park United Church of Christ, Raleigh,
N.C.
18MillionRising.org

CC: Members of the Senate Judiciary Committee and House Committee on Oversight and Government Reform