

Congress of the United States

Washington, DC 20510

September 26, 2018

John V. Kelly
Acting Inspector General
Department of Homeland Security
Washington, DC 20528

Dear Acting Inspector General Kelly:

We write to request that you investigate allegations that Department of Homeland Security (DHS) employees used coercion and abuse to compel parents who were separated from their children to sign paperwork to forgo their parental rights or their rights to pursue lawful asylum claims. Alarming, such tactics resulted in some parents' removal from the country while their children remain in government custody to pursue their lawful humanitarian protection claims.¹

We specifically ask that you investigate the numerous sworn allegations of parents about DHS employee misconduct in a complaint filed with the Office of Inspector General and the Office of Civil Rights and Civil Liberties and in a filing with the *Ms. L v. ICE* court during August 2018.² These parents' statements highlight a common fact pattern: parents were separated from their children, denied information about their children's wellbeing, and then subjected to inhumane detention conditions and coercive treatment – including verbal and physical abuse – that infringed on their legal rights.

Parents allege that DHS personnel attempted to use their children to force them to forego their legal rights or misled them into relinquishing rights in order to reunify with their children.³ For example, one mother stated that an Immigration and Customs Enforcement (ICE) employee demanded she sign a document and threatened, "I would never see my child again" if she refused to sign.⁴ Another mother recounts that in order to be reunited with her daughter she "signed about 10 pages of documents" even though she "[did not] know what all of the documents said."⁵

¹ See American Immigration Council and American Immigration Lawyers Association, *The Use of Coercion by U.S. Department of Homeland Security Officials Against Parents Who Were Forcibly Separated From Their Children* (Aug. 23, 2018) (complaint to DHS Office of Civil Rights and Civil Liberties and Office of the Inspector General) ("CRCL Complaint"), available at <https://americanimmigrationcouncil.org/advocacy/illegal-and-systematic-practice-coercing-separated-families-must-be-investigated>; Plaintiffs' Reply in Support of Motion for Stay of Removal, Joint Status Report, *Ms. L v. ICE*, No. 18-cv428-DMS-MDD (S.D. Cal. Aug. 18, 2018), ("Plaintiffs' Reply") available at <https://www.aclu.org/legal-document/ms-l-v-ice-plaintiffs-reply-support-motion-stay-removal>.

² *Id.*

³ See, e.g., Plaintiffs' Reply *supra* note 3, at 9.

⁴ CRCL Complaint, *supra* note 1, at 13.

⁵ CRCL Complaint, *supra* note 1, L.P. Aff ¶ 15.

Parents also allege that DHS placed them in abusive custodial settings. Vulnerable mothers noted that Customs and Border (CBP) officers forced them to sleep on cold floors next to toilets, did not allow them to shower for days, and denied them feminine hygiene products while they were menstruating.⁶ ICE employees allegedly insulted parents, withheld food from them, and falsely informed them that their children were placed for adoption.⁷ One mother claims that after attempting to speak with a person she believed was a White House representative, she was placed in solitary confinement, denied food and water for an extended period of time, and handcuffed constantly for what she believes to have been a five-day period.⁸

Many detained parents found it impossible to meaningfully participate in credible fear interviews for their asylum applications because of alleged verbal threats, physical abuse, and psychological distress from the lack of information about their children. Further, several parents were not told of the credible fear interview in advance, and did not understand the purpose of the interview. After not seeing their children for several weeks, many were desperate for information. One parent said: “I kept asking about my daughters [during the interview].... My mind was totally gone. I was only able to think about my daughters.”⁹

DHS’ alleged treatment of separated parents in custody raises substantial legal concerns that warrant swift investigation and policy reforms. The alleged coercion and abuse faced by these parents suggests that DHS employees may have violated the Immigration and Naturalization Act and its regulations, as well as international law governing the right to apply for asylum. Also, DHS employees may have possibly violated constitutional due process rights in subjecting asylum seekers to conditions that effectively compelled them to abandon their legal rights.¹⁰

Specifically, we request that you undertake the following and publish your findings:

- (1) Investigate all specific allegations of coercion or abuse by DHS personnel against parents separated from their children in DHS custody.
- (2) Investigate whether and how DHS officials investigated such allegations and disciplined any DHS employees who violated applicable law or policy or otherwise infringed on such parents’ legal rights.

⁶ See, e.g., CRCL Complaint *supra* note 1, at 8.

⁷ See, e.g., CRCL Complaint *supra* note 1, at 9.

⁸ CRCL Complaint, *supra* note 1, D.P. Aff. ¶ 32.

⁹ See, e.g., CRCL Complaint *supra* note 1, at 15-16

¹⁰ For example, an arriving asylum seeker has a statutory right to apply for asylum under 8 U.S.C. § 1182 (providing that a noncitizen “who is presently in the United States or who arrives in the United States ... may apply for asylum”), as well as a due process right under U.S. Const. Amend V to meaningfully access procedures attending that statutory right. Coercive practices compelling abandonment of asylum applications, then, violate both the statute and due process. See, e.g., *Orantes-Hernandez vs. Meese*, 685 F. Supp. 1488, 1505 (C.D. Cal 1988) F. Supp. at 1494 (finding that coercive INS practices aimed at pressuring Salvadoran asylum seekers into relinquishing their right to apply for asylum and instead accept voluntary departure violated their statutory and due process rights). In another example, forcing indigenous language speakers in CBP custody into signing documents they do not comprehend stands to violate 8 C.F.R § 235.3(b)(2)(i), which requires interpretative assistance.

- (3) Recommend appropriate disciplinary action for consideration by the DHS Secretary with respect to any such DHS employees.
- (4) Recommend comprehensive policy, guidance, and training for consideration by the DHS Secretary to prohibit DHS employees from pressuring detained individuals to waive or relinquish their legal rights.
- (5) Recommend comprehensive policy, guidance, and training for consideration by the DHS Secretary to ensure that DHS employees explain every form or other document requesting that detained individuals waive or relinquish their legal rights to such individuals in a manner they reasonably understand, including in a language they understand.

We appreciate your attention to these critical concerns and look forward to your prompt response.

Sincerely,



SEN. KAMALA D. HARRIS (D-CA)
Judiciary Committee Member



REP. JERROLD NADLER (D-NY)
Ranking Member
Judiciary Committee



REP. ZOE LOFGREN (D-CA)
Ranking Member
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SEN. RICHARD BLUMENTHAL (D-CT)
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SEN. BERNARD SANDERS (D-VT)



SEN. ELIZABETH WARREN (D-MA)



SEN. EDWARD J. MARKEY (D-MA)



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REP. HENRY C. JOHNSON, JR. (D-GA)
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REP. CEDRIC RICHMOND (D-LA)
Judiciary Committee Member

cc:

DHS Secretary Kirstjen Nielsen

DHS Officer for Civil Rights and Civil Liberties Cameron Quinn