

**Congress of the United States**  
**Washington, DC 20515**

August 29, 2018

The Honorable Kirstjen Nielsen  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Ave., NW  
Washington, DC 20016

Dear Secretary Nielsen:

We write to urge the Department of Homeland Security (DHS) to take immediate steps to facilitate the reunification of the 483 children that remain separated from their parents and in government custody because of the Administration's "zero-tolerance" policy of forcibly separating families at the border. Although 1,923 previously separated children have already rejoined their families, we fear that the remaining children could face long-term or even permanent separation unless the Administration acts swiftly to remove barriers to reunification and provide parents with the opportunity to knowingly and freely determine what is best for their families. Any delay will compound the long-term physical and emotional health consequences experienced by these children.

Numerous medical associations, including the American Academy of Pediatrics, have condemned the practice of forcibly separating immigrant families, drawing upon scientific evidence that the trauma of separation inflicts toxic stress upon children and leads to lifelong health implications. Separation can disrupt children's mental development and magnify their risk of mental illnesses. According to the American Psychological Association, "the longer that children and parents are separated, the greater the reported symptoms of anxiety and depression for the children. Negative outcomes for children include psychological distress, academic difficulties and disruptions in their development."

No child's health or wellbeing should be endangered because the government fails to reunite the families that it separated. We call upon DHS to limit the damage inflicted upon these children by offering humanitarian parole to parents who have been removed from the country, staying the removal of parents who have waived their reunification rights, and assuming a presumption of reunification for families with a parent that has been found ineligible.

**1. Offer humanitarian parole to deported parents for the purpose of family reunification in the United States.**

As of the government's latest filing in *Ms. L v. ICE*, 343 children face indefinite separation because their parents were deported by DHS. On August 9, 2018, the Administration submitted to the court the *Interagency Plan for the Reunification of Separated Minors with Removed Parents*, which details the government's intention to contact deported individuals and reunite families. We are concerned that both the original and revised plans require reunification to occur concurrently with the child's repatriation into the country of origin.

Such a requirement encourages families to abandon legal claims to protection and deprives families of the opportunity to confer with one another and with legal counsel before making a life-changing decision. Forcing parents to choose between reunification and their children's safety is all the more concerning given widespread reports that hundreds of parents received inadequate or misleading information regarding their rights, their children's rights, and the waiver process prior to their deportation. We urge DHS to exercise its discretionary authority under Section 212(d) of the Immigration and Nationality Act to offer deported parents humanitarian parole for family reunification in the United States. Families rejoined under humanitarian parole should subsequently be released into the community on alternatives to detention to assert claims for any legal protection for which they may qualify, including asylum.

**2. Ensure that parents who waived their rights to reunification under coercion or duress are not deported.**

According to the August 23<sup>rd</sup> *Joint Status Report*, 139 children remain in government custody because their parents waived the right to reunification. Again, we are deeply alarmed by reports that many parents were forced to make this decision with misleading information or under coercive conditions. For example, affidavits filed by the American Civil Liberties Union (ACLU) in *Ms. L* assert that DHS personnel reunited a group of fathers with their children, provided them with pre-completed forms concerning their children's rights, denied them the time or information necessary to make an informed decision, and used intimidation to prevent them from deviating from the pre-filled option. This raises the question of whether the government has upheld the due process rights of these and other parents.

In the August 9<sup>th</sup> *Joint Status Report*, the ACLU also notes troubling inconsistencies in reported numbers of children in Office of Refugee Resettlement (ORR) custody because their parents waived reunification. The Administration reported 130 such children on July 23, 2018, 120 children on July 26<sup>th</sup>, 34 children on August 2<sup>nd</sup>, 106 children on August 9<sup>th</sup>, and 154 children on August 16<sup>th</sup>. We reiterate the ACLU's concerns that these disparities may indicate that parents lack adequate information about their rights, or the rights of their children, during the waiver process. We therefore urge DHS to stay the removal of all parents who have relinquished the right to reunification until each parent has had the opportunity to meet with legal counsel. This stay should apply to all parents who waived reunification, including the parents of children who were placed with a sponsor and are no longer in government custody. DHS should provide parents with another opportunity to reunite with their children and subsequently release the families on alternatives to detention in order to pursue any legal claims for which they may qualify.

**3. Assume a presumption of reunification for families with parents considered "ineligible" for reunification.**

We appreciate the government's reported concern for the safety of children in ORR custody. However, we are troubled by the lack of information about parents who have been found ineligible for reunification. As of the most recent *Joint Status Report*, 35 children face long-term or even permanent separation because the Administration issued a "red flag background check" for their parents, 17 remain in ORR care because of a "red flag case review" for child safety, and 10 children are separated from adults that have been assigned a "red flag case review" for parentage. Due to the profound child welfare implications of severing the parent-child relationship, the de facto termination of parental rights must only occur after a transparent and robust determination process.



We call upon DHS to assume a presumption of reunification for families that remain separated because a parent is considered ineligible for reunification. We urge DHS to immediately provide all parents, attorneys, and advocates with access to evidentiary information on allegations of ineligibility. The Administration must also allow parents to challenge such a determination with the support of legal counsel. Neither DHS nor the Department of Health and Human Services (HHS) is the proper government agency to issue weighty legal determinations regarding parental rights that are typically handled by state child welfare agencies and state court systems.

It is of immense importance that the Administration reunite families separated under its zero-tolerance policy without further delay and ensure that parents can make informed decisions about what is best for their families. In order to take meaningful steps to uphold the constitutional rights of these families and ameliorate some of the wrongs that they have suffered, the Administration should immediately offer humanitarian parole to deported parents for reunification in the United States, stay the removal of parents who have waived their right to reunification, and assume a presumption of reunification for families that remain separated due to a determination of parental ineligibility.

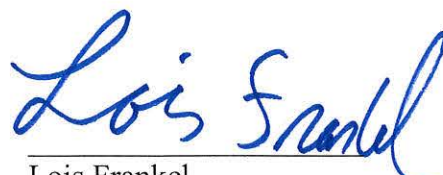
We appreciate your immediate attention to this matter and look forward to your prompt response.


Sincerely,

  
Jackie Speier  
Member of Congress

  
Lucille Roybal-Allard  
Member of Congress

  
Pramila Jayapal  
Member of Congress

  
Lois Frankel  
Member of Congress

  
Brenda L. Lawrence  
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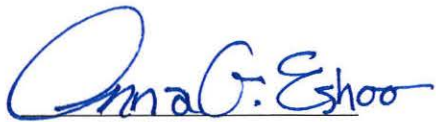
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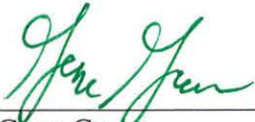
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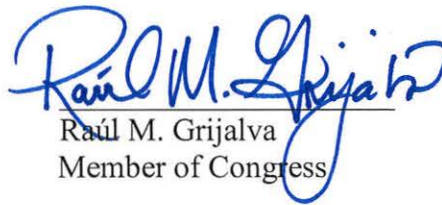
Bill Foster  
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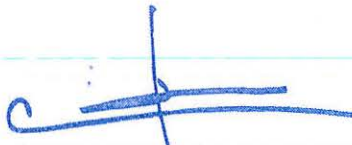
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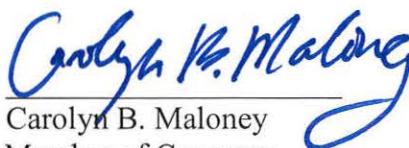
Barbara Lee  
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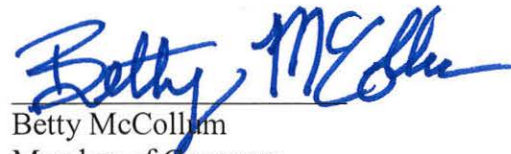
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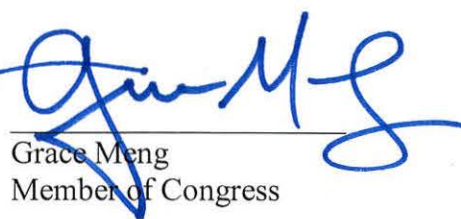
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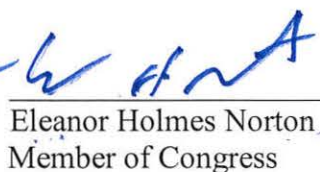
Betty McCollum  
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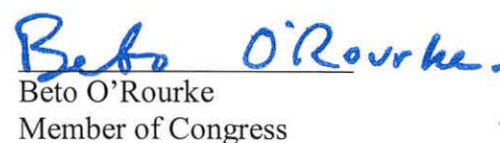
  
James P. McGovern  
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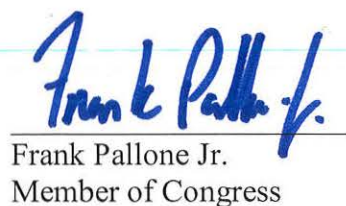
  
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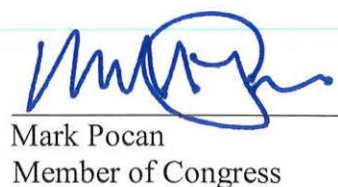
  
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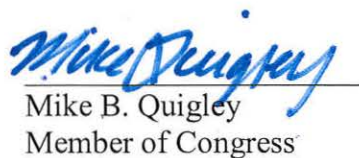
  
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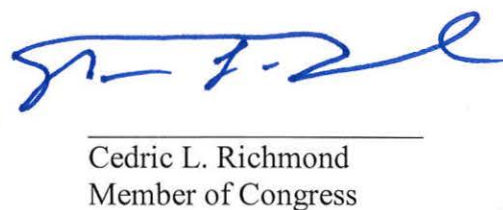
  
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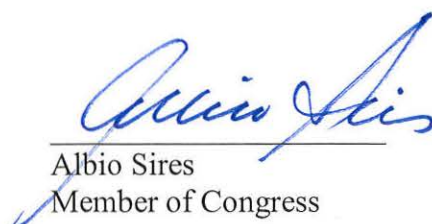
  
Kathleen M. Rice  
Member of Congress

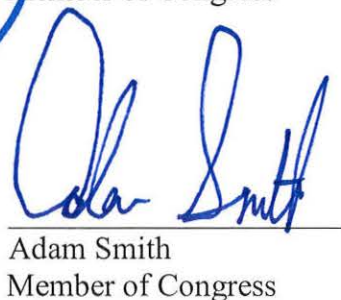
  
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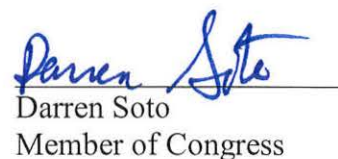
  
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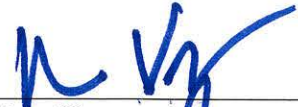
  
Darren Soto  
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Mark Takano  
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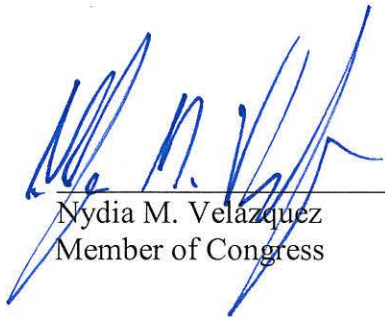
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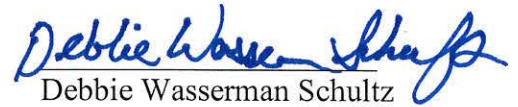
Marc Veasey  
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Filemon Vela  
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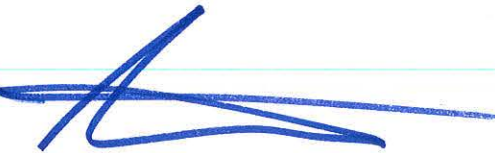
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