

# United States Senate

WASHINGTON, DC 20510

August 14, 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 express our extreme frustration that the Department of Homeland Security (DHS) has prolonged the stay of 539 immigrant children separated from their parents in government custody – despite bipartisan outcry and a federal court order requiring family reunification.<sup>1</sup> We urge DHS to take immediate steps to reunify all families separated at the Southwestern border because of this administration's ineffective and cruel "zero tolerance" policy. We specifically call on DHS to use humanitarian parole to reunify families with deported parents abroad, to adopt a presumption of reunification for families with parents now deemed "ineligible," and to ensure that no parents who relinquished their rights to reunification under coercion or duress are removed.

Each passing day that DHS fails to act to reunite separated immigrant children with their parents unacceptably exacerbates trauma that this administration has needlessly caused for children and their families seeking humanitarian protection. Leading medical experts have condemned family separations as causing children numerous and – in some cases lifelong – psychological and physical developmental harms. They note immense stressors for children, including for infants and toddlers, of being forcibly separated from a parent and being cared for by strangers and in institutional settings for prolonged periods. Experts have stressed that, "Without the nurturance and calming support of a caring adult who is known to the child, these traumas can alter the structure of the developing brain. Long term, we know that this toxic level of stress can affect other organ systems, leading to long term adverse health outcome such as mental illness, substance abuse, cardiovascular disease, and premature death."<sup>2</sup>

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<sup>1</sup> DHS reported in the most recent joint status report to the *Ms. L v. ICE* court, filed on August 9, 2018, that 539 children who were separated from their parents were still in government custody. This included: 386 children whose parents were already deported, 87 children with parents the government has deemed "ineligible" for reunification because of a "red flag" from a background check or other case file review, 88 children whose reunification the government says is "potentially affected by separate litigation," and 51 children whose parents have been released to the community or other custody.

<sup>2</sup> Deborah Gross, Ellen Olshansky, and Sarah Oerther, "Toxic effects of stress on children separated from parents," THE HILL, June 18, 2018, available at: <https://bit.ly/2JRqxzh>; see also Colleen Kraft, "American Academy of Pediatrics Statement Opposing Separation of Children and Parents at the Border," May 8, 2018, available at: <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx>



1) DHS should use humanitarian parole to reunify families with deported parents abroad.

A majority of separated immigrant children in government custody – approximately 386 children – remain there because DHS deported their parents after they were first separated. Hundreds of parents reportedly were not given an option of reunifying with their children prior to their removal from the country and some allege that DHS employees made them believe that agreeing to deportation was the only way to ever see their children again or that waiving their asylum rights would expedite their family reunification.<sup>3</sup> Many such parents are now hiding in their home countries from the very persecutors they fled in coming to the United States to seek protection, desperate to reunite with their children.<sup>4</sup>

We call on DHS to take immediate action to locate every deported parent abroad whose separated child remains in government custody. DHS should offer these parents an opportunity to return to the United States on a grant of humanitarian parole (under Immigration and Nationality Act Section 212(d)) to reunite with their child. Such reunited families in turn should be released into the community to pursue claims for asylum or other forms of protection for which they may be eligible.

2) DHS should adopt a presumption of reunification for families with parents now deemed “ineligible.”

Approximately 87 additional separated immigrant children remain in government custody because DHS officials have deemed their parents “ineligible” for reunification. Despite the court order for family reunification in *Ms. L v. ICE*, the government has failed to provide detailed information regarding its allegations of parental ineligibility excluding families from opportunities for reunification.<sup>5</sup> Attorneys representing families and appointed independent child advocates report that DHS officials have provided little to no evidence regarding such allegations in specific cases and no process exists for parents to challenge such determinations.<sup>6</sup>

We call on DHS to adopt a presumption of reunification for families with parents who are now deemed “ineligible” for reunification. We ask DHS to immediately inform all such parents, child advocates, and attorneys of record for parents and children about specific bases of determinations of ineligibility for family reunification and provide them with all evidence supporting such determinations. Parents in turn must be given an opportunity, with the assistance

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<sup>3</sup> Miriam Jordan and Caitlin Dickerson, “More Than 450 Migrant Parents May Have Been Deported Without Their Children,” NY TIMES, July 24, 2018, available at: <https://nyti.ms/2n6Ehsm>; Ted Hesson, Renuka Rayasam, and Dan Diamond, “Most deported parents were not asked about leaving children behind, Trump official says,” POLITICO, July 25, 2018, available at: <https://politi.co/2KizcpM>; Michael Garcia Bochenek, Human Rights Watch, “ICE Agents Use Deception, Coercion Against Migrant Parents,” July 20, 2018, available at: <https://bit.ly/2M2done>.

<sup>4</sup> See Alex Wagner, “The Lost Ones,” THE ATLANTIC, July 27, 2018, available at: <https://bit.ly/2LvkJG2>.

<sup>5</sup> The most detailed allegations include a list of 11 types of exclusions with categories including “two DUI convictions” or an un-specified warrant issued by the parent’s country of origin. *Ms. L v. ICE*, Joint Status Report, July 12, 2018, available at: <https://www.aclu.org/legal-document/ms-l-v-ice-joint-status-report>.

<sup>6</sup> See Jonathan Blitzer, “The Government Has Decided that Hundreds of Immigrant Parents are Ineligible to Be Reunited with Their Kids. Who Are they?” THE NEW YORKER, July 26, 2018, available at: <https://bit.ly/2NS2n5o>.



of counsel, to rebut any such evidence. If there is credible evidence that a parent poses an imminent risk of harm to their child and a parent is unable to rebut that evidence, a state child welfare agency, not the federal government, is the appropriate entity to determine whether there is abuse or neglect or a child cannot safely be placed in their parent's care. Families reunified under this presumption should be released into the community to pursue claims for asylum or other forms of protection for which they may be eligible.

- 3) DHS should ensure that no parents who relinquished their rights to reunification under coercion or duress are removed.

The government argues that at least 34 separated immigrant children remain in government custody because their parents voluntarily relinquished their right to reunification.<sup>7</sup> We are alarmed, however, by reports suggesting that some parents may be relinquishing this right under coercion and duress. The American Civil Liberties Union, for example, recently filed affidavits with the *Ms. L* court alleging that DHS employees gave separated fathers forms to sign that would significantly affect their children's legal rights without clear explanation or time to make a decision and then spoke in a threatening manner and denied the fathers an opportunity for an in-person goodbye after they declined joint deportation with their children.<sup>8</sup>

We call on DHS to stay the removal of all parents who have relinquished their rights to reunite with their children until they have had a sufficient opportunity to consult with an attorney regarding their and their children's legal rights. Following such legal consultation, DHS should provide these parents with a new opportunity to reunite with their children and should release these families into the community to pursue claims for asylum or other forms of protection for which they may be eligible.

In sum, we strongly urge DHS to take all available actions – as quickly as possible – to reunify all families that have been separated for an unacceptably long time as a result of this administration's zero tolerance policy. Using humanitarian parole to reunite families with deported parents, adopting of a presumption of reunification for families with parents now deemed "ineligible," and ensuring that parents who relinquished their rights to reunification under coercion or duress are not removed will help to mitigate some of the immense harms that this administration has caused for children and families seeking humanitarian protection in our country. DHS should apply these solutions further to address the cases of the remaining separated immigrant children in government custody whose parents' status has yet to be resolved.

We appreciate your consideration and prompt response this time-sensitive call for action.

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<sup>7</sup> DHS reported this in the joint status report to the *Ms. L v. ICE* court, filed on August 2, 2018. In the joint status report filed with this same court on August 8, 2018, DHS reported more generally that 163 parents "indicated desire against reunification."

<sup>8</sup> Dara Lind, "ICE agents pressured parents to be deported with their children--then separated them again when they refused," VOX, July 29, 2018, available at: <https://bit.ly/2vhLnxz>; American Civil Liberties Union Affidavits 58 and 59, filed July 29, 2018 in the *Ms. L v. ICE* litigation, available at: <https://bit.ly/2OBF5BM> and <https://bit.ly/2n62cYM>.

Sincerely,



KAMALA D. HARRIS  
United States Senator



DIANNE FEINSTEIN  
United States Senator



ROBERT MENENDEZ  
United States Senator



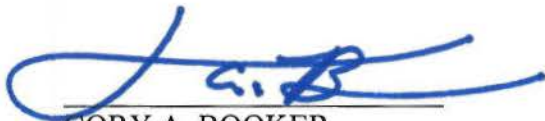
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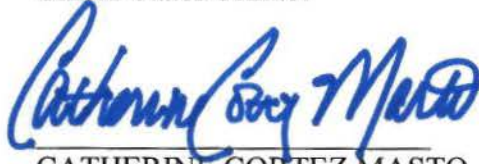
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