

United States Senate

WASHINGTON, DC 20510

July 30, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Mr. John V. Kelly
Acting Inspector General
Department of Homeland Security
245 Murray Lane, SW
Washington, D.C. 20528

Dear Secretary Nielsen and Acting Inspector General Kelly,

We write today deeply alarmed by reports that the Department of Homeland Security (DHS) has been improperly – and perhaps unlawfully – destroying records of families that it forcibly separated at the border. The abhorrent and inhumane policy of separating families has hopefully finally ended after Americans across the country stood together and made their voices heard. The Trump administration was under a court-ordered deadline to reunify all separated families by July 26. But they did not meet that deadline. Over 700 children remain in government custody.¹ At least 463 parents appear to have already been deported, with the vast majority never having been given a meaningful choice about leaving their children behind.² The administration has provided no details for how they plan to reunify children with parents who have already been deported, nor is it clear how the 900 parents facing imminent removal are going to be reunified with their children. If DHS officials are destroying essential records that link children to their parents, these separations may be unnecessarily prolonged and risk becoming permanent.

According to two officials at DHS, records linking children to their parents are mysteriously disappearing or being intentionally destroyed.³ These officials indicated that Customs and Border Protection agents have been deleting hundreds of records that listed parents and their children together as a family. Meanwhile, the administration failed to meet the court-ordered deadline to reunify all children under the age of 5 with their parents by July 10 and the

¹ Tal Kopan, *Hundreds of Separated Children Not Reunited by Court-Ordered Deadline*, CNN, July 26, 2018, <https://www.cnn.com/2018/07/26/politics/family-separations-deadline/index.html>.

² Ted Hesson, Renuka Rayasam & Dan Diamond, *Most Deported Migrants Were Not Asked About Leaving Children Behind, Trump Official Says*, POLITICO, July 25, 2018, <https://www.politico.com/story/2018/07/25/deported-migrants-leaving-children-behind-712088>.

³ Caitlin Dickerson, *Trump Administration in Chaotic Scramble to Reunify Migrant Families*, N.Y. Times, July 5, 2018, <https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-separation.html>.

July 26th deadline to reunify all other separated children.⁴ Given these blunders, we cannot take seriously DHS's claims that it knows the location of all children who have been separated,⁵ particularly when DHS may be destroying the very records necessary to locate these children and reunify them with their families.

Additionally, in a declaration that a senior official at the Department of Health and Human Services filed in the *Ms. L* case, HHS claims that it does not have sufficient documentation to quickly and effectively reunify parents with their children.⁶ This declaration further suggests that the destruction of records linking parents and children could very well be delaying the reunification of families and interfering with the government's legal obligations. The psychological trauma that family separation causes will not end as long as the government is unnecessarily delaying reunification. Therefore, the destruction and disappearance of these vital records may be adding to the pain and anguish our government has already inflicted on these innocent families fleeing violence and persecution.

As you know, the Federal Records Act requires the Department of Justice to take action against agency heads who either participate in or fail to recover records that their agency has improperly destroyed or removed.⁷ DHS's own regulations also require it to preserve records that have been requested pursuant to the Freedom of Information Act.⁸ The destroyed and missing records may be responsive to several pending FOIA requests submitted to DHS.⁹

We therefore request that the Department of Homeland Security's Inspector General promptly conduct an independent investigation into whether the destruction of records by CBP agents violate these or other legal obligations. We also request that Secretary Nielsen immediately issue a preservation order to prevent the further destruction of records and hold CBP agents accountable for any unlawful actions taken to destroy them.

The Trump administration created a crisis out of thin air when it initiated the "zero tolerance" policy and began tearing infants and toddlers away from their parents. The possible

⁴ Monica Ortiz Uribe, *Trump Officials Struggle to Meet Deadlines Even as More Migrant Families Reunited*, NPR, July 12, 2018, <https://www.npr.org/2018/07/12/628546630/u-s-officials-say-they-need-to-do-more-dna-tests-before-reuniting-migrant-famili>.

⁵ Department of Homeland Security, "Fact Sheet: Zero-Tolerance Prosecution and Family Reunification," June 23, 2018, <https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification> ("The United States government knows the location of all children in its custody").

⁶ Declaration of Chris Meekins at 12, *Ms. L v. U.S. Immigration and Customs Enforcement*, No. 18cv428 (S. D. Cal. July 13, 2018).

⁷ 44 U.S.C. § 3106 (a)-(b).

⁸ 6 C.F.R. § 5.9.

⁹ See, e.g., "Family Separation FOIA Request," AMERICAN IMMIGRATION COUNCIL, April 3, 2018, <https://www.americanimmigrationcouncil.org/foia/family-separation-foia-request> (requesting from both DHS and CBP "all records regarding the past or planned implementation and use of any electronic system . . . to track instances in which at least one child is separated from at least one family member while in the custody (?) of CBP" and including information regarding the "title of officer who apprehended or encountered individual" and "whether family relationship is verified, and by what means"); Hayley Burgess, "NILC Files FOIA Asking 16 Government Agencies to Reveal How They Plan to Reunify Families," NATIONAL IMMIGRATION LAW CENTER, June 25, 2018, <https://www.nilc.org/2018/06/25/foia-asks-govt-agencies-how-families-will-be-reunified/> (requesting, e.g., "any records relating to or referring to any policy and/or practice of identifying and/or tracking children who have been separated from their parents or adult guardians).

destruction of records that potentially tie these vulnerable children to their parents – and thus could effectuate reunification – only exacerbates this manufactured chaos and unnecessarily prolongs the suffering of these vulnerable immigrants. We hope that a prompt investigation into the reported destruction of hundreds of vital records will shed light on the scope of this potentially unlawful conduct and hold the relevant agency officials accountable for their actions.

Sincerely,



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United States Senate



PATRICK LEAHY
United States Senate



MAZIE K. HIRONO
United States Senate



CHRISTOPHER A. COONS
United States Senate



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