

United States Senate

WASHINGTON, DC 20510

August 1, 2018

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

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

The Honorable Alex Azar
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Attorney General Sessions, Secretary Nielsen and Secretary Azar:

On April 6th, the Attorney General announced the implementation of a zero-tolerance policy for those crossing the southern border without authorization. As a result of the policy, all individuals who illegally entered the United States and were detained by the Department of Homeland Security (DHS) would be referred to the Department of Justice (DOJ) for prosecution. Before and after the Attorney General's announcement, DHS policy required children to be separated from their parents only in three situations: if DHS could not confirm that the individual claiming to be the parent actually was the parent, if the child is in immediate risk of harm, or if the parent faces criminal prosecution. Due to the zero-tolerance policy, all individuals who cross the border without authorization face prosecution, and thus qualify under DHS policy to be separated from their children.

We believe that the default position of the United States of America should be to keep families together. Additionally, we must prioritize the reunification of families that have already been separated.

When a criminal referral occurs, individual adults are transferred from DHS to DOJ custody for the duration of the prosecution and sentencing. If the individual to be prosecuted entered the country with a minor child, that child would be transferred to HHS custody when the parent goes into DOJ custody. HHS retains custody of the child until he or she can be reunited with a parent or other individual according to HHS regulations.

Between May 5th and June 9th, DHS reports that 2,235 family units with a total of 4,548 family members were detained: 2,206 parents or legal guardians were referred to DOJ for prosecution, which resulted in 2,342 children being separated from their parents and placed in HHS custody.

On June 20, 2018, the President signed Executive Order (EO) #13841, Affording Congress an Opportunity to Address Family Separation. This EO directed DHS, with certain exceptions, to maintain custody of individuals who have been referred to DOJ for custody if they have entered the country with their children. This would enable families to stay together while parents face prosecution for illegally entering the country. The EO also directed the Attorney General to seek a modification of the *Flores* settlement, which provides the framework for the treatment of detained immigrant children. On July 9th, the U.S. District Court for the Central District of California denied the Administration's request to modify the *Flores* settlement to expand the ability of the Administration to detain children for prolonged periods of time in secure settings.

Throughout this process, affected families, the public, and many congressional offices have sought clarifying information and data from your Departments to explain why policy decisions were made, how those policies have been implemented, and the effects of the implementation. We understand that certain information may be protected. Throughout this process, we have also requested simple data to give us more complete information for our own legislative decision-making process. Unfortunately, the flow of information to the

public and to congressional offices with important oversight responsibilities has been both incomplete and below acceptable standards. Congress and the American people need regularly updated information to remain informed and to ensure Members of Congress are able to fully conduct their important congressional responsibilities.

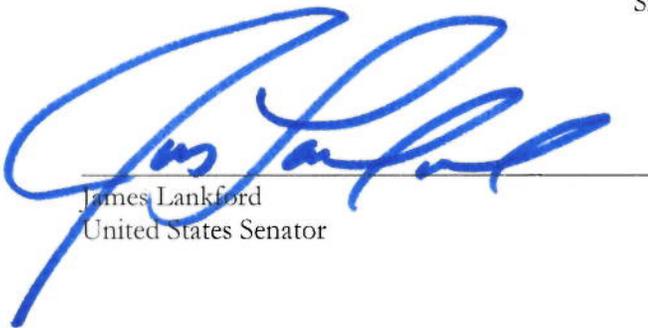
Therefore, we respectfully ask that you provide to interested congressional offices and the relevant oversight Committees in the House and Senate the following information-not less than twice a month until 1) all families separated through the zero-tolerance policy have been reunited or 2) a determination has been made that they cannot be reunited, with an explanation for the reasons that is the case:

1. The number of families, including the number of children, detained for crossing the border without authorization.
2. The number of parents or legal guardians referred to DOJ for prosecution and the types of crimes for which they have been referred.
3. The number of children separated from their parents after entering the country without authorization, broken down by gender for ages 0 to 4 and 5 to 17.
4. The number of family units (with the number of children specifically listed) in DHS custody with a breakdown by the number of weeks the families have been in custody (ex: how many families have been in custody for one week, for two weeks, etc.).
5. The number of children in HHS's responsibility after being separated by DHS from their parent or legal guardian who have been referred to DOJ for prosecution with a breakdown by the number of weeks the children have been in custody (ex: how many children have been in custody for one week, for two weeks, etc.).
6. The number of children separated from their parents or legal guardians after the implementation of the zero-tolerance policy who have been reunited with a numerical breakdown by week for the length of time between separation and reunification.
7. The number of children who have been reunited with their family members following implementation of Executive Order #13841 of June 20, 2018.
8. The number of parents or legal guardians (or those who entered the country with a child) who have been deported since the institution of the zero-tolerance policy, including the number of those that declined to be reunited with their children prior to deportation.
9. The number of children who cannot be reunited with the adult with whom they entered the country without authorization because the adult is not a parent or legal guardian or the child would be in immediate risk if they were reunited with their parent.
10. Changes to the written guidance for prosecuting individuals who cross the border without authorization and family separations for individuals crossing the border. The first report should include all variations of this guidance that have been in place since January 20, 2017, including any pilot programs, and the current guidance.

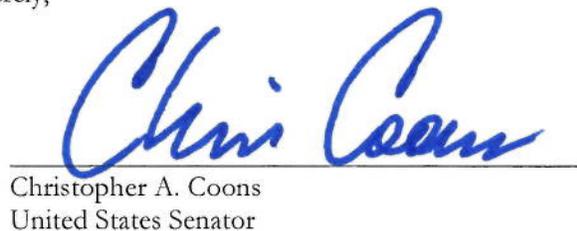
We stand ready to work with you to ensure that these goals are met. However, it is essential that Congress be afforded access to the basic information requested above.

Thank you for your attention to this critically important matter.

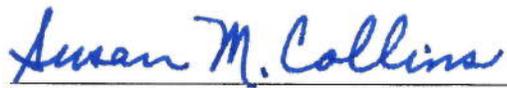
Sincerely,



James Lankford
United States Senator



Christopher A. Coons
United States Senator



Susan Collins
United States Senator



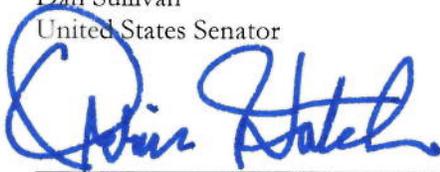
Amy Klobuchar
United States Senator



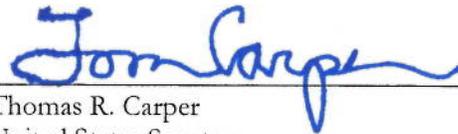
Dan Sullivan
United States Senator



Margaret Wood Hassan
United States Senator



Orrin G. Hatch
United States Senator



Thomas R. Carper
United States Senator



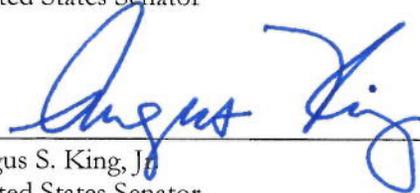
Thom Tillis
United States Senator



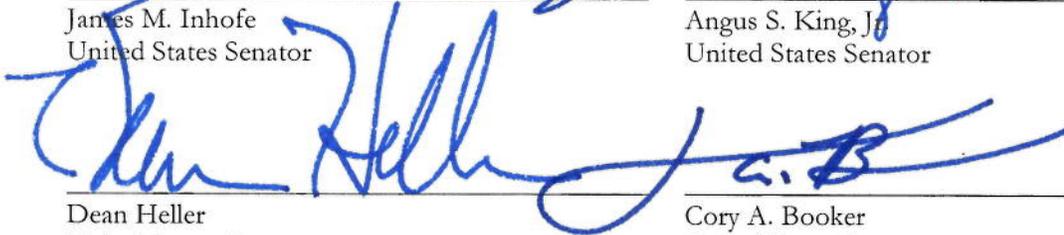
Michael F. Bennet
United States Senator



James M. Inhofe
United States Senator



Angus S. King, Jr.
United States Senator



Dean Heller
United States Senator



Cory A. Booker
United States Senator