

United States Senate

WASHINGTON, DC 20510

July 26, 2018

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Inspector General Horowitz:

We respectfully request that you investigate the Department of Justice's (Department) role in the creation and implementation of the Trump Administration's "zero-tolerance" policy.¹

In justifying this policy, Attorney General Sessions has said: "I would cite you to the Apostle Paul and his clear and wise command in Romans 13, to obey the laws of the government because God has ordained them for the purpose of order. Orderly and lawful processes are good in themselves and protect the weak and lawful."² However, the Administration's implementation of this policy, the resulting separation of thousands of families, and the failure to promptly reunite these families have been anything but orderly and lawful.

It appears that the Attorney General announced this policy without an adequate plan or guidance for its orderly implementation. On June 26, Judge Dana Sabraw, a federal judge in the Southern District of California, ordered the reunification of families separated under the zero-tolerance policy. He called the Administration's conduct "reactive governance . . . to address a chaotic circumstance of the Government's own making," adding that the Administration's actions "belie measured and ordered governance, which is central to the concept of due process enshrined in our Constitution . . . [t]his is particularly so in the treatment of migrants, many of whom are asylum seekers and small children."³ More than two weeks later, on July 13, Judge Sabraw again admonished the Administration for its continued "lack of foresight and infrastructure necessary to remedy the harms caused by [its family separation] practice."⁴ The president of the American Academy of Pediatrics personally witnessed the impact of the zero-tolerance policy and characterized it as "nothing less than government-sanctioned child abuse."⁵

Further confusing matters, the Attorney General has made inconsistent representations about the purpose of the zero-tolerance policy. On May 7, he stated unequivocally: "If you don't want

¹ *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry*, April 6, 2018, <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

² *Attorney General Sessions Addresses Recent Criticisms of Zero Tolerance By Church Leaders*, June 14, 2018, <https://www.justice.gov/opa/speech/attorney-general-sessions-addresses-recent-criticisms-zero-tolerance-church-leaders>.

³ *Ms. L v. ICE*, Order Granting Plaintiffs' Motion For Classwide Preliminary Injunction, Case No. 18-cv-00428-DMS-MDD (S.D. Cal. June 26, 2018), available at <https://www.aclu.org/legal-document/ms-l-v-ice-order-granting-plaintiffs-motion-classwide-preliminary-injunction>.

⁴ *Ms. L v. ICE*, Order Following Status Conference, Case No. 18-cv-00428-DMS-MDD (S.D. Cal. July 13, 2018), available at <https://www.aclu.org/legal-document/ms-l-v-ice-order-following-status-conference-0>.

⁵ Dr. Colleen Kraft, cited in *Doctors saw immigrant kids separated from their parents. Now they're trying to stop it*, June 19, 2018, <https://www.cnn.com/2018/06/14/health/immigrant-family-separation-doctors/index.html>.

your child separated, then don't bring them across the border illegally,"⁶ implying that he knew family separation was an intended result of the zero-tolerance policy. On June 5, when asked, "Is it absolutely necessary . . . to separate parents from children when they are detained or apprehended at the border?" he answered, "Yes."⁷ Yet on June 21, after widespread public backlash, the Attorney General claimed that the Administration did not anticipate the separation of families, stating: "We never really intended to do that."⁸

We are also concerned about the public-safety impact of shifting limited law-enforcement resources to the ill-considered zero-tolerance policy. When the Attorney General directed each U.S. Attorney's Office along the Southwest border to immediately adopt the zero-tolerance policy, he added, "If adopting such a policy requires additional resources, each office shall identify and request such additional resources."⁹ The American people deserve an accounting of these resources and an examination of the public-safety and budgetary impact of the zero-tolerance policy. For example, resources were reportedly diverted from federal drug-smuggling cases to handle immigration charges under the zero-tolerance policy.¹⁰

The Department of Homeland Security Office of Inspector General and the Department of Health and Human Services Office of Inspector General are conducting reviews of the zero-tolerance policy, and the Department of Justice should also face scrutiny for its integral role in initiating and executing the zero-tolerance policy. Therefore we urge you to immediately launch an investigation of the Department's role in this humanitarian crisis.

Thank you for your time and consideration. We look forward to a prompt response.

Sincerely,



Richard J. Durbin
United States Senator



Patrick Leahy
United States Senator

⁶ Attorney General Sessions, cited in *Sessions vows to prosecute all illegal border crossers and separate children from their parents*, May 7, 2018, https://www.washingtonpost.com/world/national-security/sessions-says-justice-dept-will-prosecute-every-person-who-crosses-border-unlawfully/2018/05/07/e1312b7e-5216-11e8-9c91-7dab596e8252_story.html?utm_term=.01e4633f852c.

⁷ Attorney General Sessions, cited in *US Attorney General Jeff Sessions On Children Separated From Parents At Border, F-1 Visas For PRC Students, And Masterpiece Cakeshop Decision*, June 5, 2018, <http://www.hughhewitt.com/attorney-general-jeff-sessions-on-the-immigration-policies-concerning-children-apprehended-at-the-border-and-f-1-visas/>.

⁸ Attorney General Sessions, cited in *'I Don't Think It Was an Extreme Position I Took': Jeff Sessions on the Bible, Immigration and His Critics*, June 21, 2018, <http://www1.cbn.com/cbnnews/politics/2018/june/i-dont-think-it-was-an-extreme-position-i-took-jeff-sessions-on-the-bible-immigration-and-his-critics>.

⁹ *Memorandum from Attorney General Sessions for Federal Prosecutors along the Southwest Border*, April 6, 2018, <https://www.justice.gov/opa/press-release/file/1049751/download>.

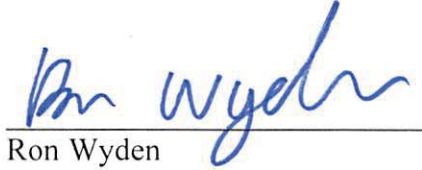
¹⁰ See, e.g., *DOJ: Trump's immigration crackdown 'diverting' resources from drug cases*, June 22, 2018, <https://www.usatoday.com/story/news/2018/06/22/zero-tolerance-immigration-crackdown-diverting-resources-drug-cases/727532002/>.



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United States Senator



Patty Murray
United States Senator



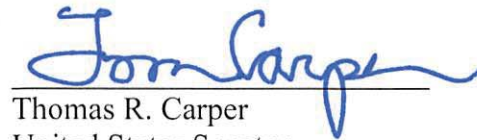
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Jack Reed
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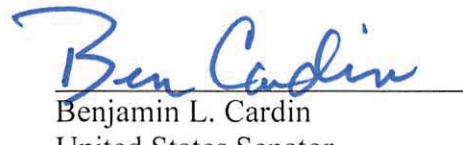
Bill Nelson
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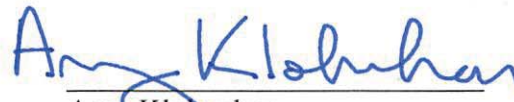
Robert Menendez
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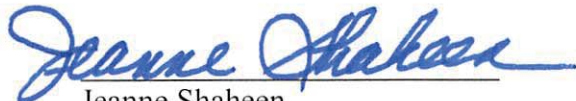
Amy Klobuchar
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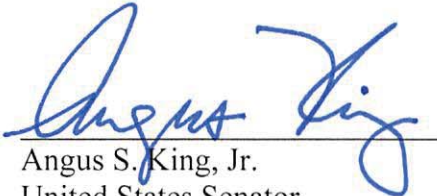
Richard Blumenthal
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Tammy Baldwin
United States Senator



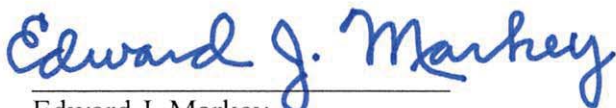
Mazie Hirono
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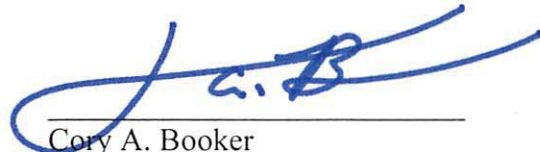
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Elizabeth Warren
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Cory A. Booker
United States Senator



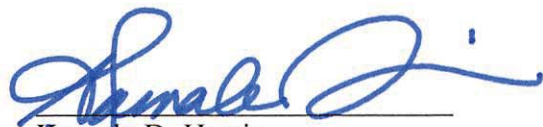
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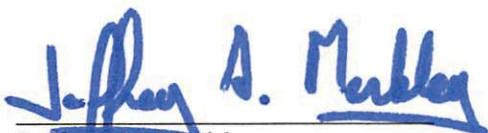
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