

# United States Senate

WASHINGTON, DC 20510

March 16, 2022

President Joseph R. Biden, Jr.  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear President Biden:

We strongly support your Administration's efforts to provide a just resolution for thousands of families harmed by the Trump Administration's cruel and ineffective "zero-tolerance" family separation policy.

Thousands of children – some mere infants – were forcibly removed from their parents by the Trump Administration to create a stark warning to any others seeking refuge in our country, with little effort made to keep track of the separated families. The American Academy of Pediatrics characterized the family separations resulting from zero-tolerance as "government-sanctioned child abuse" that "causes irreparable harm" to children by inhibiting brain development and causing other long-term health problems.

At the request of several Senators, the Offices of Inspectors General (OIG) of the Department of Justice (DOJ), the Department of Homeland Security (DHS), and the Department of Health and Human Services (HHS) have each released devastating reports documenting the results of this policy and the lack of preparation by the Trump Administration for its implementation. One DHS OIG report found that "DHS was not fully prepared to implement the Administration's Zero Tolerance Policy or to deal with some of its after-effects," and "DHS struggled to identify, track, and reunify families separated under Zero Tolerance due to limitations with its information technology systems, including a lack of integration between systems." HHS OIG reports revealed that thousands of children were forcibly removed from their parents before the zero-tolerance policy was made public. The HHS OIG documented an example of a seven-or eight-year-old boy who was separated from his father without any explanation, resulting in delusions that his father had been killed and that he would also be killed, for which he needed emergency psychiatric care. The DOJ OIG determined "that the Department's single-minded focus on increasing prosecutions came at the expense of careful and appropriate consideration of the impact that prosecution of family unit adults and family separation would have on children traveling with them and the government's ability to later reunite the children with their parents."

More than 900 claims have been filed against the federal government on behalf of victims of the Trump Administration's zero-tolerance policy. The human toll of the zero-tolerance policy is revealed in the stories presented in these legal filings, which include families who were still separated years after the zero-tolerance policy took effect. In one example, according to a lawsuit against the federal government filed last year in February, Belinda and her eight-year-old

daughter Xenia arrived at the U.S. border in May 2018 after fleeing violence in El Salvador. Three days after their arrival, they were separated. Although Xenia was released to her father in California in May 2018, her mother remained in immigration detention and did not see an immigration judge until October 2018. Belinda had passed a credible-fear interview with an asylum officer, but the immigration judge denied her bond for release from detention, and, “[h]opeless and overwhelmed with grief, Belinda accepted deportation in November 2018.” The lawsuit states that the day of their separation in 2018 was the last time Xenia saw her mother.

Because of the Trump Administration’s callous disregard for record-keeping, even the task of identifying and locating separated families remains a significant challenge. In the aftermath of this orchestrated chaos and cruelty, your Administration quickly established an Interagency Task Force on the Reunification of Families to address the human tragedy of the zero-tolerance policy in an orderly way. The Task Force has since identified nearly 4,000 children who were separated from their parents under zero-tolerance. We understand that significant resources are required to find each of the parents separated from their children and lost by the previous Administration. Each family located and reunited reflects a bittersweet, hard-won success. According to the Task Force’s most recent interim progress report, as of November 29, 2021 at least 1,217 children had not been reunified with their parents. The Task Force lacked even confirmed contact information for another 280 separated children and their parents.

We strongly support the Task Force’s ongoing work to identify and locate separated family members, facilitate their reunification, and provide support for families post-reunification, including mental and behavioral health services, counseling, and legal support. It is unacceptable that the actions of the United States should lead to the permanent separation of any of these family members. We also support your Administration’s efforts to adopt policies and practices to ensure families are not similarly harmed moving forward.

Your Administration’s use of humanitarian parole authority for separated families is entirely appropriate, and we urge its continued and generous use. Section 212(d)(5) of the Immigration and Nationality Act permits the use of parole on a case-by-case basis for “urgent humanitarian reasons or significant public benefit.” The imperative to reunify families unjustly separated by the U.S. government constitutes a compelling and urgent humanitarian reason for parole – along with the horrific violence that many families fled, but from which parents were often not afforded a meaningful opportunity to seek asylum. Additionally, remedying the injustice of the zero-tolerance policy for these families provides a significant public benefit that further supports the use of parole.

We affirm the authority of DOJ to settle tort claims as appropriate, and we oppose ill-advised attempts to constrain the Department’s authority to defend the interests of the United States. Settlements are one of several critical tools available to the Department as it seeks to protect American taxpayers from potentially higher costs of continued litigation or judgments.

We recognize that none of these efforts would be necessary if the Trump Administration had not deliberately caused such needless harm to so many thousands of parents and children in the first place. Your Administration was saddled with the responsibility to fix the terrible damage

inflicted by the Trump Administration's policy, and we support your continued perseverance and commitment to do so.

Sincerely,



RICHARD J. DURBIN  
United States Senator

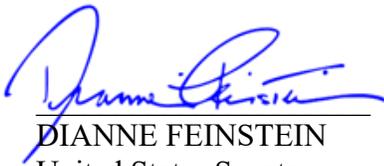
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United States Senator



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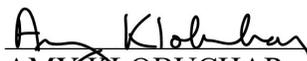
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cc: Attorney General Merrick B. Garland  
Secretary of State Antony J. Blinken  
Secretary of the Department of Homeland Security Alejandro Mayorkas  
Secretary of the Department of Health and Human Services Xavier Becerra