

United States Senate

WASHINGTON, DC 20510

July 30, 2018

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

Dear Secretary Azar:

We write today regarding our continued concerns with the Trump Administration's family separation policy and family reunification process. While the Department of Health and Human Services (HHS or the Department) has begun the process of reunifying families cruelly separated as a result of the family separation policy, we have significant concerns about the validity of the information the Department is providing to Congress and the public and the standards the Department is using for families it deems "ineligible for reunification." We therefore write to request a briefing specifically focused on the procedures and standards the Department is employing to make reunification eligibility decisions and the internal processes the Department uses to ensure accurate and timely communications with Congress and the public.

On June 26, 2018, a Federal judge in *Ms. L v. ICE* ordered that parents and children separated by the Trump Administration's family separation policy must be reunited within 30 days—with all children under five reunified under 14 days.¹ Following the court order, HHS revealed that it had nearly 1,000 more children in its custody as a result of the family separation policies than it had previously disclosed.² The Trump Administration subsequently failed to meet the reunification deadline for children under five.³ Two days after the Department failed to meet that deadline, it reported that of the 103 separated children under five years old, 57 children had been reunified, while 46 children were "ineligible for reunification or determined by HHS, DHS, and DOJ to be ineligible under court-approved criteria."⁴ Of these 46 children, the Administration claimed 24 were "not currently eligible for reunification due to circumstances of the adults in question," while 22 were "found ineligible due to safety concerns." On July 18, 2018, HHS, the Department of Homeland Security (DHS), and the Department of Justice (DOJ) issued a plan for family reunification for children ages five to 17.⁵ The plan outlines a five-step process for reunification, but notes, "there are circumstances that preclude a minor from being reunited with a purported parent." On July 26, 2018, the Trump Administration claimed this plan "is expected to result in the reunification of all class members found eligible for reunification at this time by the Court's July 26, 2018, deadline."⁶ This filing also claimed that approximately 711 children were not eligible for reunification, but provided too little information to justify this claim or explain why

¹ Order Granting Plaintiffs' Motion for Classwide Preliminary Injunction, *Ms. L et al v. U.S. Immigration and Customs Enforcement et al* (June 26, 2018).

² <https://www.cnn.com/2018/07/05/politics/separated-families-border-immigrants-number-of-kids/index.html>

³ <https://www.npr.org/2018/07/10/627821359/government-misses-migrant-family-reunification-deadline>

⁴ <https://www.hhs.gov/about/news/2018/07/12/trump-administration-completes-reunification-for-eligible-children-under-age-5.html>

⁵ <https://www.hhs.gov/sites/default/files/UAC-Tri-Department-Process.pdf>

⁶ Joint Status Report, *Ms. L et al v. U.S. Immigration and Customs Enforcement et al* (July 26, 2018).

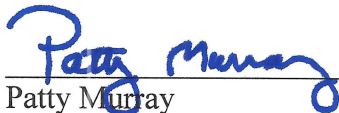
these children will remain separated from their parents.⁷

Given the ongoing failure of the Administration to provide timely and accurate information, we require additional information to understand the Department's processes and ascertain the credibility of the statistics being made public.⁸ In order to provide clear and unbiased information to the public about the Department's data and actions regarding separated children, please provide a staff briefing by no later than August 3, 2018, and written responses no later than August 1, 2018, to the following questions:

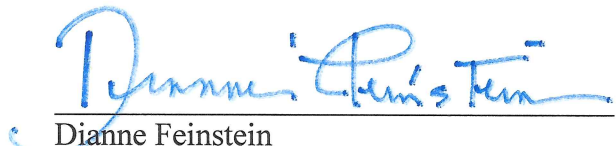
1. What written criteria are being used by the Administration to determine which children and parent or guardian are "ineligible for reunification"?
2. What process is being used and what written criteria are being applied to determine whether a parent has a criminal history that makes him or her ineligible for reunification?
3. How does the Department determine that an adult accompanying a child was not the child's parent or guardian?
4. What written criteria did the Department use to determine that a parent had abused a child?
5. What definition is the Department using for the term "parent"? Does a "parent" include an adult acting in loco parentis who may have traveled with the child?
6. How is the Department working with DHS and the Department of State to ensure that parents who have been deported are contacted, made eligible for parole into the U.S., and reunited with their children in the U.S. as soon as possible?
7. How is the Department working to ensure timely communications with Congress and the public regarding family reunification? How is the Department coordinating these communication efforts with DHS and DOJ?

Thank you in advance for your attention to this matter. If you have any questions, or would like to further discuss compliance with this request, please contact Jake Cornett with the HELP Committee staff at 202-224-0767.

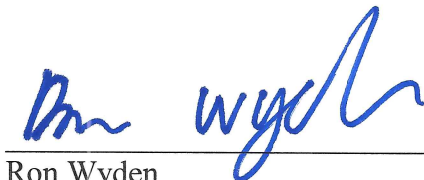
Sincerely,



Patty Murray
United States Senator



Dianne Feinstein
United States Senator



Ron Wyden
United States Senator

⁷ *Id.*

⁸ See Letter from Senators Durbin, Wyden, Feinstein, and Murray to Secretary Azar, July 11, 2018.