

Congress of the United States
Washington, DC 20515

July 29, 2019

The Honorable Kevin K. McAleenan
Acting Secretary
U.S. Department of Homeland Security
301 7th Street, S.W.
Washington, D.C. 20528

Dear Acting Secretary McAleenan,

We write to express our profound concern that Customs and Border Protection agents may be separating children from their parents on the basis of the parent's HIV status. We know of no legal or moral basis for such a cruel and senseless policy and, in light of contradictory statements from your Department on the issue, we seek immediate clarification and official renunciation of any such policy.

Numerous experts have testified to the lifelong trauma that may be inflicted on children based on family separation at the border. That is why the child separations under the so-called zero tolerance policy met with widespread public revulsion and legal repudiation.

Under the current injunction in the *Ms. L v. ICE* litigation, the government is allowed to separate families at the border only for specific reasons, among them a significant criminal history or a "communicable disease." Yet there have been more than 700 cases of separation since the injunction and there are numerous reports that suggest these guidelines are being abused. Among them, there is at least one reported case of a parent being separated from his three daughters because he is HIV-positive.

You were questioned about this report during your appearance before the House Committee on Oversight on July 18, 2019, and testified that HIV status, by itself, should not be the basis for separating a parent from his or her children.¹

Yet just days later, Brian Hastings, the Border Patrol Chief for law enforcement operations, testified before the House Judiciary Committee that HIV status would trigger a family separation,

¹ Oral testimony of Acting Secretary McAleenan, at "The Trump Administration's Child Separation Policy: Substantiated Allegations of Mistreatment," U.S. House of Representatives Committee on Oversight and Reform, July 18, 2019.

as a “communicable disease.” “It is a communicable disease under the guidance,” Hastings testified. “That’s the guidance that we follow.”²

Indeed, that statement appears to confirm the press report that a Honduran father was separated from his three daughters in November 2018 on the basis of his HIV-positive status.³

This policy flies in the face of the expert judgment of the Centers for Disease Control and Prevention, which in 2010 removed HIV status as grounds for barring admission to the United States.⁴ We can think of no reason that HIV status, by itself, should be the basis for separating a child from his or her parent.

Following his testimony before the Judiciary Committee, Chief Hastings on July 26 offered the Committee a clarification stating:

.... To clarify my exchange with Rep. Raskin regarding potential reasons for separation due to communicable diseases, while HIV is not a communicable disease that would bar entry into the U.S., HIV does present additional considerations that may affect how migrants might move forward in processing. CBP would not separate families due to the communicable nature of HIV. Generally speaking, separations of this type are due to the potential requirement for hospitalization and whether it is in the best interest of the child to wait for the disposition of... their parent in HHS or CBP custody.

While it is somewhat reassuring to know that CBP would not separate a family based solely on a parent’s HIV status, this statement continues to raise troubling questions about how a CBP officer might apply this vague and subjective standard to an individual parent who is HIV-positive. Would it only apply if the parent required immediate and long-term hospitalization, or might an agent make the determination based on his or her own prediction regarding a “potential requirement for hospitalization” sometime in the future? Would medical personnel or child welfare experts be involved in making such a determination?

In light of the continued uncertainty and confusion on this issue, we ask that you promptly provide us with a full explanation of the policy and practice of the Department of Homeland Security with respect to parents and other individuals encountered at or near the border who are HIV-positive, particularly with respect to family separation. Specifically, we request the following no later than August 5, 2019:

- 1) A complete list of what health conditions can potentially trigger a family separation under the “communicable disease” provision of the interim guidance of June 27, 2018 in relation to the *Ms. L* preliminary injunction or any subsequent guidance;

² Oral testimony of Chief Hastings, at “Oversight of Family Separation and U.S. Customs and Border Protection Short-Term Custody under the Trump Administration,” U.S. House of Representatives Committee on the Judiciary, July 25, 2019.

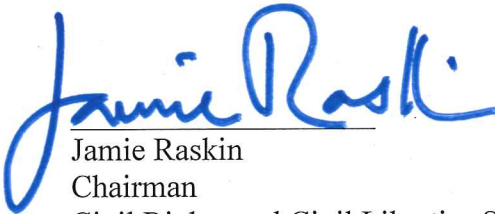
³ Heather Timmons, “US border officials permanently separated 3 girls from their father because he is HIV+” *Quartz* (July 12, 2019), available at <https://qz.com/1664355/border-agents-permanently-separated-3-girls-from-hiv-father/>.

⁴ Centers for Disease Control, Final Rule Removing HIV Infection from U.S. Immigration Screening (November 2, 2009), available at <https://www.cdc.gov/immigrantrefugeehealth/laws-regs/hiv-ban-removal/final-rule.html>.

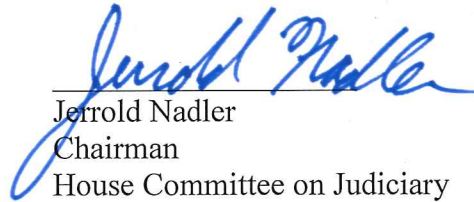
- 2) Any specific guidance on how to determine whether a parent's health status, whether or not it involves a communicable disease, should be the basis for family separation;
- 3) Any specific guidance or policies regarding HIV status with respect to family separation or processing at the border generally;
- 4) The number of cases involving a separation triggered in whole or in part by HIV status, as well as the total number of children involved and their ages; and
- 5) The legal basis for treating HIV status as a potential trigger for family separation, and any supporting analysis.

Thank you for your attention to this matter and we look forward to your response.

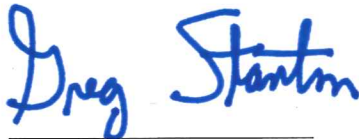
Sincerely,



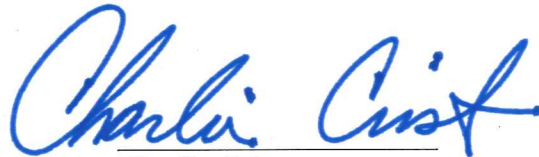
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