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Senate Judiciary Committee Holds Hearing on Oversight of Immigration Enforcement and Family Reunification Efforts

GRASSLEY:

I want to thank our government witnesses for being here today, and everybody is welcome and I'm glad that we have a lot of interest in this issue and there has been for several weeks, or at least three months, I guess.

Originally this hearing was solely going to be focused on our annual oversight of the U.S. Immigration and Customs Enforcement, however it quickly became evident that more oversight of the administration's entire family separation and reunification effort was needed, so I expanded the hearing to provide oversight of that specific issue as well as just ICE.

In April this year, Attorney General Sessions announced a zero tolerance policy at the southwest border. This policy directed federal prosecutors to enforce our longstanding immigration laws and prosecute all individuals who cross the border against our laws. After all, when the laws on the books are enforced, it protects not only American citizens but those seeking shelter and protection here as well.

Remember, the Attorney General implemented this policy after the Department of Homeland Security reported a 203 percent increase in people crossing the border against our laws, and that -- and that 203 percent was between March 2017 and March 2018, and a 37 percent increase from February this year to March of this year, the largest month to month increase since 2011.

The Attorney General's policy was well-intentioned and simple: enforce our nation's border security laws so that people would stop migrating illegally. We must remember that the border security also affects our national security.

However, like many well-intentioned policies, these were -- there were unintended consequences. As a result of the administration's zero tolerance policy, more than 2,500 undocumented immigrant children were separated from their parents. As of last Thursday, 1,442 of those children have been reunited directly with their parents. An additional 378 have been released to other individuals under appropriate circumstances. However, almost one third of the children, or approximately 711, are still in government custody and are -- and are unable to be reunited with their parents.

Of that 711, some were ineligible for reunification with their families for legitimate reasons. According to the administration, 120 were ineligible because their parents waived the right to reunify. Sixty seven were not released because of what the bureaucracy call "red flags," including child abuse and serious felonies that were raised during background checks.

Of course, some adults were found to have not been related to the children with whom they were traveling. Over the last five months, federal authorities saw a 314 percent increase in adults and children arriving at the border fraudulently claiming to be a family unit. And of course this is a dangerous situation, and any policy we have that encourages the perilous practice I just described -- that policy ought to be revived (ph) immediately.

No child should be used as a pawn, subjected to sexual assault, extreme heat, or other -- and also criminal behavior by smugglers or traffickers seeking to make a buck on behalf of the most vulnerable. Now, 431 children, the largest number of the 711 who haven't been reunified were ineligible because their parents had already been deported. The administration claims that all of these parents elected to be deported without their children, but public reports -- these public reports indicate that many of them may have not made an informed choice to leave their children behind. Some of these reports (ph)

suggest that these parents weren't presented information in a language that they could even understand.

So we ought to be disturbed -- and I'm disturbed by these allegations, and I hope our witnesses are prepared to give us thorough answers.

Although the administration has mishandled the family separations, it's also important to remember that this institution, that Congress also deserves its fair share of blame. For years, Congress has failed to take a single simple step -- one simple step that could have prevented the family separations we now decry, and that means repealing the Flores v. Reno consent decree.

GRASSLEY:

In 1997, as a result of years of litigation, the federal government entered into that settlement known as the Flores case. When the U.S. government first entered into that consent decree, it was a much-needed step towards ensuring the humane and dignified treatment of unaccompanied, undocumented immigrant children, children often thousands of miles from their parents.

The settlement agreement provided that undocumented immigrant children without their parents could only be kept in federal custody for a maximum period of 20 days. It also required the government to treat these children humanely and ensure the type of quality care we would expect for any child, whether that child's documented or otherwise -- undocumented or otherwise, that they -- we ought to expect them to receive that fair treatment.

No one, Democrat or Republican, would disagree with that principle I would hope. However, in 2014, in addition to Flores, a single federal district court in California dramatically expanded the scope of that consent decree by applying it to undocumented immigrant children who arrived with their parents, a move even -- a move that even the previous administration, meaning the Obama administration, opposed at the time that court case was -- decision was delivered.

Under this single interpretation of Flores, the federal government faces a stark Hobson's choice: enforce the law and separate families by releasing only the children after 20 days, or keep families together by engaging in the past administration's "catch and release" policy. As Senator Cruz, Tillis, and I wrote in an op-ed on Sunday, neither of those options was good choices (ph). That's why we believe the best way to ensure this crisis never happens again is to repeal Flores agreement, but only as it relates to the time limitations governing accompanied undocumented immigrant children.

Some of my colleagues will claim that we would end all protections for minor children and just allow the government to detain families indefinitely, so that's not a true interpretation. In fact, nothing could be further from the truth. No one on our side of the aisle wants to end the humane standards of care required by Flores. If anything, given recent news reports, we are more than willing to statutorily enhance those protections.

We also want to see families kept in federal custody -- we don't want to see families kept in federal custody indefinitely, or even long periods of time. As Director McHenry is going to testify, when families are placed on the detain docket, their cases are usually resolved in 40 days. In contrast, when families are released into the interior, they're given a notice to appear at a future immigration court hearing with little incentive to attend. That hearing occurs on average, not 40 days, but 700 days after their release, assuming they even show up.

And that's just the first hearing. According to the information provided to every single member of this committee during the closed door briefing, cases can take anywhere from 7 to 10 years to complete.

Worse still, almost 80 percent of the asylum cases are ultimately denied.

It just doesn't make sense then to release families en masse and hope that they will show up in the future court date, where they will more than likely be denied the right to remain in this country. But -- and I'll say this again -- if families and children are going to be kept in federal custody, they must be kept

in facilities where they will be treated humanely and with the basic dignity that all people, no matter what their immigration status is.

Unfortunately, recent media reporting I've seen suggests the federal government is failing miserably in the task that I just described. Over the last few months, multiple news reports have surfaced describing how illegal immigrant children, and in the case of family units, their mothers, have suffered unimaginable physical, mental, and emotional, and even sexual abuse while in federal custody.

Obviously that's unacceptable, and the American people expect better.

We hear it from our constituents every weekend we're home. To be clear, this isn't a new issue. Some of the abuse dates back to at least 2012, and seven -- several of the most horrific incidents occurred in 2015, 2016. Now, I don't say that to imply that this is all the Obama administration's fault, because it isn't. But clearly, there is a larger systemic issue that needs to be addressed.

Again, no one, no matter what their immigration status, should have to suffer such abuse. I am a consistent advocate for victims of domestic violence and sexual assault, so I'm troubled by these reports. That's why Senator Feinstein and I have sent a letter to the inspectors general of HH -- or, H -- I should say Homeland Security, and also Health and Human Services asking them to open an investigation.

We've also asked the inspectors general to look into practices, procedures, and policies that are in place regarding the custody of illegal immigrant families and children and to make recommendations both of - to both of us and the agencies regarding potential improvement in these practices. Also, I hope that our government witnesses are prepared to answer questions regarding these instances -- incidents and describe in detail steps that are being taken to ensure no person suffers more indignities again, and none of us on this committee, including this chairman, is going to accept anything less.

We've got a lot to cover today, so I'll now turn it over to Ranking Member Senator Feinstein for her opening remarks, but contrary to custom, we're also going to give Senator Cornyn and Durbin opportunities for short statements, because as they are Chairman and Ranking Member of the Immigration Subcommittee.

Senator Feinstein.

FEINSTEIN:

Thank you very much, Mr. Chairman. We're here today because the Trump administration has pursued what I believe is a deeply immoral and haphazard policy that fundamentally betrays American values. This administration has elected to engage in the systematic separation of immigrant -- immigrant children from their parents and without any plan to reunite them.

Even now -- though we're now months into this crisis, we still don't know the official number of children who have been separated from their parents. I hope the administration officials present today finally outline the official total number of children separated, where they are, what the facilities are, and where they are that they're detained in, what the conditions are in those facilities, and the location of their parents.

FEINSTEIN:

The little we have learned has come out of the case in the Southern District of California overseen by Judge Dana Sabraw. According to the joint court filing by the Department of Justice and the American Civil Liberties Union from last Friday, the numbers are 2,551 children age 5 to 17 taken from their parents at some point.

These children were required to be reunited by last Friday, July 26th and the government did not meet that deadline. Rather, only 1,442 of those children were reunited with their parents. Twenty children the government thought they separated from their parent, turned out not to have been unaccompanied

from the outset. Four hundred and thirty-one children remain alone in the United States because their parents have already been deported.

Shockingly, the government does not even know who or where the parents are for 94 children. This makes clear the government did not track them in the first place. There was no effort to ensure the government knew which children belong to which parents and where they were located.

Another 67 children were not reunified with their parent because of some red flag in their background. However, we don't know whether this flag had anything to do with the safety of their child, an abuse or neglect allegation, or rather some other reason that may be irrelevant to separating the child from his parent. And these are only the children and families we know about.

The New York Times reported that the Trump administration may be pressuring people by, quote, "using kids as hostages to get people to give up their asylum claims," end quote. "They take the children, and then tell the parents if they agreed to deport on their own, you can see your child at the airport." If not, "we will hold you for months; we don't know when you will see your child." end quote.

So it's not an exaggeration to say that the policies of President Trump and Attorney General Jeff Sessions may essentially orphan hundreds of immigrant children. In addition, The Washington Post reported over the weekend that Customs and Border Protection was so unprepared to grapple with this crisis President Trump -- that President Trump created, that it called the separated families quote, "deleted family units."

When the Customs and Border Patrol sent Health and Human Services information about these deleted families, HHS had no way to track the children. In the end, 12,000 case files had to be sorted by hand to determine which children had been separated and which children arrived in the United States without their parents.

Even worse are the stories we heard about the separations and the bad conditions in which they were held. My staff visited a facility in California where children did not have sufficient food or water, and were forced to sleep on the cold concrete floor without a cot or a blanket. Unfortunately, despite the public outcry and the rebuke by the courts, the administration has demonstrated it can't be trusted to put the welfare of children above its own hard-lined views on immigration.

Therefore, we the Congress have a constitutional and a moral obligation to intervene. I've been working with Senator Cruz, Tillis and Senator Durbin on a narrow bill that prohibits the separation of children from their families, requires an ongoing reporting by the administration -- excuse me -- and public reporting about what has occurred.

The bill would also provide additional judges, lawyers, and resources to ensure that these families are treated humanely and not left ignored in facilities without proper sanitary conditions, food, water, or cots and blankets to sleep on. The bill is straightforward and limited to address the current crisis. I'm hopeful that we are close to an agreement and that the bill could enjoy broad bipartisan support.

Mr. Chairman, thank you for holding this hearing. I hope the administration officials are ready today to give us the official figures on reunified children and how it plans to ensure that no further infringements occur on the constitutional rights of the parent and the child to be together. I look forward to the hearing, and to the witnesses, and working with my colleagues to get legislation enacted quickly. Thank you very much.

GRASSLEY:

Me too.

Senator Cornyn?

CORNYN:

Thank you, Mr. Chairman, for holding this hearing to discuss this important matter and one that directly impacts my state perhaps the most of any in the country and, of course, all of our concern about separation of families.

It is ironic to me that last year alone, there were 41,500 unaccompanied children who came across the border. We had not heard from our Democratic colleagues about that, even though The New York Times had reported that about 1,500 of them who had been placed with sponsors are unaccounted for under the current -- current regime -- or pre-existing regime I should say.

I recently traveled to Brownsville and Weslaco to get an idea of what the facts were on the ground, since I think many of our colleagues are relying on what I would characterize as incorrect media reports about circumstances on the ground. And at the same time, I spoke with a number of federal and local officials who were responsible for implementing government policy, including Rio Grande Valley Sector Chief Manny Padilla, who's my sort of personal expert on this topic.

Border Patrol and all of our professionals at the border have been invaluable in helping me understand exactly what's going on. And I look forward to hearing additional testimony today. I toured two of these facilities myself that housed teenagers as well as younger children.

And I found that these facilities were well managed with case workers, mental health professionals and teachers, 24/7 access to fresh food and water, daily education classes for school-age children; obviously a stark contrast with what has been portrayed by some of our friends across the aisle and the media.

CORNBYN:

One thing I've learned in my time in the Senate is there are few things more complicated than immigration when it comes to public policy. Often the rhetoric is so high and the facts are mangled that the fundamental concept of the rule of law and the imperative that the United States government enforce who can -- its own immigration laws and regulate who can come into the country and under what circumstances, those seem to go -- fall by the wayside.

The fact that some disagree with those laws, and even have gone so far as to call for the abolition of the principal law enforcement agency at the border and in the interior, ICE, doesn't alter the fact that these are the laws of the land that our law enforcement officials are enforcing. And they are -- been passed by Congress and signed by the president. They reflect the will of the American people.

I would say even while many people have been critical of the status quo at the border, even as we work together to try to unify these families, the critics offer no plausible and workable alternative solution at all. And I'll talk about that just in -- in a moment.

Family separation at the border is not a new issue, nor is the adoption of a so-called "zero tolerance policy." I guess a zero tolerance policy is -- means you're enforcing the law that Congress has written and that the president has signed. President Bush adopted a similar policy, President Obama expanded the program to more locations along the border, because they realized that the system of catch and release was an incentive for future illegal immigration into the country. Families were separated under the Obama administration because that's what the law required in certain circumstances.

We've even seen more than a 300 percent increase in adults appearing at the border with small children claiming to be their parents when in fact they are not their parents. And why would they do that? Well, they figured a way to beat -- beat the system and that's why.

So despite our political differences, we all agree that the same standard of -- of care and housing that apply to unaccompanied minors should apply to parents and accompanied minors when they cross the border illegally.

And thankfully, we do have a solution. I'm glad that -- to hear what Senator Feinstein said about the bill that Senator Tillis and Senator Cruz have proposed, and I hope that they continue to work on that. We could pass that legislation today. It would allow parents and children to stay in a safe facility while they