

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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November 6, 2023

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Garland:

The Committee on the Judiciary is conducting oversight of the Biden Administration's enforcement of federal immigration authorities. As the Committee has uncovered, of the 5 million illegal alien border encounters from the beginning of the Biden Administration through the end of March 2023, nearly 2.5 million illegal aliens had no confirmed departure from the United States.¹ Meanwhile, between October 2021 and July 2023, the Administration has released into the country more than 1.1 million family unit individuals, with upward of 200,000 transferred to the custody of Immigration and Customs Enforcement for potential release into the United States.²

Despite these unprecedented numbers, the Administration continues policies that will only worsen the border crisis. For example, on October 16, 2023, the Department of Justice announced that the United States had reached a settlement in *Ms. L. v. U.S. Immigration and Customs Enforcement*, a class action lawsuit involving family units who illegally crossed the southwest border during the Trump Administration.³ Under the proposed settlement, certain illegal aliens can receive a grab-bag of U.S. taxpayer-funded services, including behavioral health services, medical assistance, temporary housing support, legal services, and expedited processing—all because in 2018 the U.S. government prosecuted, under the existing criminal

¹ See H. Comm. on Judiciary, Report on The Biden Border Crisis: How the Biden Administration Opened the Southwest Border and Abandoned Interior Immigr. Enf't (Oct. 9, 2023), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-10-09-New-Data-and-Testimony.pdf>.

² *Id.* at 4.

³ U.S. Government Reaches Settlement in Class Action Family Separation Case Seeking Injunctive Relief, U.S. DEP'T OF JUSTICE (Oct. 16, 2023), <https://www.justice.gov/opa/pr/us-government-reaches-settlement-class-action-family-separation-case-seeking-injunctive>.

code enacted by Congress, illegal aliens for illegally entering the United States with their children.⁴

As if the Department's stipulation is not egregious enough, the settlement also allows an illegal alien to escape criminal prosecution for illegally crossing the border solely because the alien is traveling with a child.⁵ Because that legally dubious prohibition in the settlement lasts for eight years, it prevents future administrations from taking definitive steps to control the border.⁶ Such a provision also ensures that cartels can exploit yet another dangerous loophole to continue their criminal smuggling and trafficking enterprises. In fact, knowing the Biden Administration refuses to detain family units, cartels already separate minors from their parents and have cartel members pose as the minors' relatives to ensure quick entry into the United States.⁷ The settlement will no doubt have a similar effect, with both children and the American people left to suffer because of the perverse incentives of President Biden's failed border policies.

Accordingly, to assist the Committee with its continued oversight of federal immigration policy and procedures, we ask that you provide the following documents and information:

1. All documents and communications referring or relating to the decision(s) to provide social services to illegal aliens and limit prosecution of certain illegal aliens between or among employees of the Department.
2. All documents and communications referring or relating to the decision(s) to provide social services to illegal aliens and limit prosecution of certain illegal aliens between or among the Department of Justice and the American Civil Liberties Union and any other immigration advocacy groups.
3. All documents and communications referring or relating to the decision(s) to provide social services to illegal aliens and limit prosecution of certain illegal aliens between or among employees of the Department of Justice and employees of the Executive Office of the President.

⁴ See Fact Sheet: Overview of Proposed Ms. L Settlement Agreement, U.S. DEP'T OF JUSTICE (Oct. 16, 2023), <https://www.justice.gov/media/1319521/dl?inline>; see *Ms. L v. U.S. Immigration and Customs Enf't*, No. 3:18-cv-00428-DMS-AHG (S.D. Cal.), Doc. 711-1, <https://www.justice.gov/media/1319516/dl?inline> [hereinafter Settlement Agreement].

⁵ See Settlement Agreement at 27 (“[Customs and Border Protection] will not refer an adult for prosecution solely under 8 U.S.C. § 1325(a) if the adult is traveling with a minor, is the minor's parent or Legal Guardian, and is the only parent or Legal Guardian traveling with the child[.]”).

⁶ See Settlement Agreement at 3; see also Rebecca Santana & Elliot Spagat, *Settlement over Trump family separations at the border limits future separations for 8 years*, ASSOCIATED PRESS (Oct. 16, 2023, 1:43 PM), <https://apnews.com/article/separated-children-trump-biden-border-immigration-f9a73685d0ddbcda86e5b69997f5f7dd>.

⁷ See Gabrielle Fonrouge, *Mexican drug cartels using kids as decoys in to smuggle its members into US: sheriff*, N.Y. POST (Mar. 22, 2021, 12:01 PM), <https://nypost.com/2021/03/22/mexican-drug-cartels-use-kids-as-decoys-to-smuggle-members-into-us/>.


4. All documents and communications referring or relating to the decision(s) to provide social services to illegal aliens and limit prosecution of certain illegal aliens between or among employees of Executive Branch agencies, including, but not limited to, employees of the Department of Justice, the Department of Homeland Security, the Department of Health and Human Services, and the Department of Housing and Urban Development.
5. All documents and communications referring or relating to estimates of the total cost of the settlement, including a final cost estimate and a breakdown of the funds and programs used to provide social services to the settlement class and qualifying additional family members.
6. Whether the Department is considering, or has considered, payments to class members as part of this settlement or any related settlements.
7. An explanation of the legal basis for limiting future administrations from pursuing criminal charges against illegal aliens, including all documents and communications with the Department of Justice Office of Legal Counsel referring or relating to that basis.

Please provide this information as soon as possible, but no later than 5:00 p.m. on November 20, 2023. Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary is authorized to conduct oversight of federal immigration policy and procedures.⁸ If you have any questions, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman



Tom McClintock
Chairman
Subcommittee on Immigration
Integrity, Security, and Enforcement

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Pramila Jayapal, Ranking Member, Subcommittee on Immigration
Integrity, Security, and Enforcement

⁸ Rules of the U.S. House of Representatives, R. X (2023).