

RESOLUTION DIRECTING THE SECRETARY OF HOMELAND SECURITY TO TRANSMIT CERTAIN DOCUMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO THE BORDER SECURITY POLICIES, PROCEDURES, AND ACTIVITIES AS SUCH RELATE TO THE INTERDICTION OF FAMILIES BY THE U.S. BORDER PATROL BETWEEN PORTS OF ENTRY

JULY 26, 2018.—Referred to the House Calendar and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security, submitted the following

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 1005]

The Committee on Homeland Security, to whom was referred the resolution (H. Res. 1005) directing the Secretary of Homeland Security to transmit certain documents to the House of Representatives relating to the border security policies, procedures, and activities as such relate to the interdiction of families by the U.S. Border Patrol between ports of entry, having considered the same, report unfavorably thereon without amendment and recommend that the resolution not be agreed to.

CONTENTS

	Page
Purpose and Summary .....	2
Background and Need for Legislation .....	2
Hearings .....	2
Committee Consideration .....	2
Committee Votes .....	2
Committee Oversight Findings .....	3
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	3
Congressional Budget Office Estimate .....	3
Statement of General Performance Goals and Objectives .....	3
Duplicative Federal Programs .....	3
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ...	4
Federal Mandates Statement .....	4
Preemption Clarification .....	4
Disclosure of Directed Rule Makings .....	4
Advisory Committee Statement .....	4
Applicability to Legislative Branch .....	4

Section-by-Section Analysis of the Legislation .....	4
Changes in Existing Law Made by the Bill, as Reported .....	4
Dissenting View .....	5

#### PURPOSE AND SUMMARY

On July 19, 2018, Representative Bennie G. Thompson of Mississippi introduced H. Res. 1005, a non-binding resolution of inquiry directing the Secretary of Homeland Security to transmit certain documents to the House of Representatives relating to the border security policies, procedures, and activities as such relate to the interdiction of families by the U.S. Border Patrol between ports of entry.

#### BACKGROUND AND NEED FOR LEGISLATION

A resolution of inquiry is a House resolution directing the President or the head of an executive department to provide to the House specific information in the possession of the Administration.

Clause 7 of House Rule XIII provides that, if properly drafted, a resolution of inquiry is provided special parliamentary status allowing the Committee to which the measure was referred to be discharged if the Committee has not reported the measure back to the House within 14 legislative days after its introduction.

The Committee notes that the consideration of this resolution of inquiry is to have the Committee comply with rule XIII, it does not affect the Committee's obligation or commitment to investigate and require documentation from the Administration on issues within the Committee's jurisdictional authorities.

The Committee will investigate any credible allegation of misconduct in the Executive Branch to the extent that such allegations fall within the Committee's jurisdiction.

#### HEARINGS

No hearings were held on H. Res. 1005 in the 115th Congress.

#### COMMITTEE CONSIDERATION

The Committee met on July 24, 2018, to consider H. Res. 1005, and ordered the measure to be reported to the House with an unfavorable recommendation, without amendment, by a recorded vote of 16 yeas and 11 nays (Roll Call Vote No. 40).

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

The Committee on Homeland Security considered H. Res. 1005 on July 24, 2018, and took the following votes:

#### Roll Call No. 40

#### H. RES. 1005

On ordering H. Res. 1005 to be reported to the House with an unfavorable recommendation, without amendment, by a recorded vote of 16 yeas and 11 nays (Roll Call Vote No. 40). The vote was as follows:

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair .....	X	.....	Mr. Thompson of Mississippi, Ranking Member.	.....	X
Mr. Smith of Texas .....	.....	.....	Ms. Jackson Lee .....	.....	X
Mr. King of New York .....	.....	.....	Mr. Langevin .....	.....	X
Mr. Rogers of Alabama .....	X	.....	Mr. Richmond .....	.....	X
Mr. Barletta .....	X	.....	Mr. Keating .....	.....	X
Mr. Perry .....	X	.....	Mr. Payne .....	.....	.....
Mr. Katko .....	X	.....	Mr. Vela .....	.....	X
Mr. Hurd .....	X	.....	Mrs. Watson Coleman .....	.....	X
Ms. McSally .....	X	.....	Miss Rice of New York .....	.....	X
Mr. Ratcliffe .....	X	.....	Mr. Correa .....	.....	X
Mr. Donovan .....	X	.....	Mrs. Demings .....	.....	X
Mr. Gallagher .....	X	.....	Ms. Barragan .....	.....	X
Mr. Higgins of Louisiana .....	X	.....			
Mr. Garrett .....	X	.....			
Mr. Fitzpatrick .....	X	.....			
Mr. Estes .....	X	.....			
Mr. Bacon .....	X	.....			
Mrs. Lesko .....	X	.....			
			Vote Total .....	16	11

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H. Res. 1005, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Committee estimates that this non-binding resolution would not result in any significant costs.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H. Res. 1005 requests that the Department of Homeland Security transmit documents to the to the U.S. House of Representatives related to the U.S. Border Patrol policies, procedures, and activities as such relate to the interdiction of families between ports of entry, including the numbers of families interdicted.

#### DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H. Res. 1005 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS AND LIMITED  
TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H. Res. 1005 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H. Res. 1005 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

H. Res. 1005 requests that the Department of Homeland Security transmit the following documents to the U.S. House of Representatives: 1) U.S. Border Patrol policies, procedures, and activities as such relate to the interdiction of families between ports of entry; 2) Procedures disseminated within the U.S. Border Patrol on how interdicted families, including families with small children, are to be treated and processed; 3) All records made at or near the time that a family is interdicted between ports of entry by the U.S. Border Patrol from June 2016 through June 2018 regarding such interdiction, including any such records or information regarding the following: The ages of children interdicted and what actions were taken with respect to such children, and the number of criminal referrals made by the U.S. Border Patrol, including for trafficking children.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H. Res. 1005 makes no changes to existing law.

## DISSENTING VIEWS

On behalf of Committee Democrats, I submit these dissenting views regarding the Majority voting to report H. Res. 1005, a resolution of inquiry to compel the Department of Homeland Security (DHS) to share with the House of Representatives documents regarding the border security policies, procedures, and activities relating to the interdiction of families by the U.S. Border Patrol between ports of entry, with an unfavorable recommendation.

On April 6, 2018, Attorney General Jeff Sessions announced the Trump Administration's adoption of a "zero tolerance" policy toward anyone entering, or attempting to enter, the United States illegally.<sup>1</sup> The policy directs the Department of Justice (DOJ) to criminally prosecute migrants for illegal entry,<sup>2</sup> including migrant parents seeking asylum under U.S. law who arrive with their children. As a result of this policy, U.S. Customs and Border Protection (CBP) referred thousands of parents for criminal prosecution and placed their children in government custody or foster care as "unaccompanied minors." These actions to enforce the Trump Administration's zero tolerance policy created a humanitarian crisis on U.S. soil that shocks the conscience.

Although the zero tolerance policy was not officially announced until this year, the Trump Administration has been separating children from their parents since October 2017.<sup>3</sup> Almost a year and a half ago, I wrote to then-DHS Secretary John Kelly when he floated the idea, in March 2017, of the Department separating families at the border as a deterrent and expressed my outrage at the prospect of our government engaging in family separation.<sup>4</sup> Since then, I have sent five other letters to the Trump Administration; for each, I received either no response or a non-responsive one.<sup>5</sup> This stonewalling by the Trump Administration has made it

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<sup>1</sup> Department of Justice, Office of Public Affairs, "Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry," April 6. <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry> (accessed July 25, 2017).

<sup>2</sup> *Id.*

<sup>3</sup> Caitlin Dickerson, "Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border," *The New York Times*, April 20, 2018, <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html> (accessed July 25, 2018).

<sup>4</sup> John Kelly, Secretary of Homeland Security. March 7, 2017. Interview with Wolf Blitzer; Letter to John Kelly, Secretary of Homeland Security, sent by Ranking Member Bennie G. Thompson, Rep. Filemon Vela, and Rep. Donald M. Payne on March 8, 2017.

<sup>5</sup> February 8, 2018—Letter to Honorable Kirstjen Nielsen, Secretary of Homeland Security, expressing strong opposition to any policies that would formalize migrant family separation and seeking information about reports and complaints about the increased use of this practice along the southern border. Response received April 25, 2018, without answers to questions.

May 25, 2018—Letter to Honorable Kevin McAleenan, Commissioner of U.S. Customs and Border Protection, asking for additional information regarding the implementation of the zero-tolerance policy, a de facto family separation policy.

May 25, 2018—Letter to Mr. Scott Lloyd, Director of the Office of Refugee Resettlement within the Administration for Children and Families, asking for additional information regarding the effect of the zero-tolerance policy on migrant children separated from their adult family members.

Continued

impossible to obtain basic information about the processes used by CBP to separate families, what records were kept to link family members in Federal custody, whether reunification was ever planned and, if not, why not, as well as details about the conditions of separated parents and children in custody.

A lawsuit filed by the American Civil Liberties Union (ACLU) resulted in a June 26, 2018 ruling requiring the Trump Administration to reunite children under the age of five, or “tender age” children, within 14 days and to reunite all children within 30 days.<sup>6</sup> In response to the lawsuit, the Trump Administration identified 40 percent of all separated children (103 children under the age of five and 2,551 children between the ages of five and 17) as “ineligible” for reunification.<sup>7</sup> The Committee has not been provided a written justification for why the Administration contends that 40 percent of children that were taken by the U.S. government cannot be reunited with their parents.

The little that Committee Democrats know about family separation was executed has been learned from the ACLU lawsuit and the publication of court records. Committee Democrats have not been provided necessary documentation from the Department to effectively oversee how the Department carried out family separation. In addition to multiple letters requesting information on the family separation, Committee Democrats and staff have participated in multiple briefings and conference calls with Trump Administration officials in which basic questions went unanswered. Subsequent to each briefing and conference call, no written documentation was furnished to the Committee to explain the how the Trump Administration carried out family separation, conditions of separated parents and children in Federal custody, efforts and obstacles to reunification, and grounds for deeming nearly half of these children as “ineligible” to be reunited with their parents.

At a July 18, 2018 closed-door briefing with Trump Administration officials from DHS, DOJ, and the Department of Health and Human Services (HHS), Committee Members were told that all deported parents that were returned to their originating country without their children had knowingly and voluntarily agreed to withdraw their asylum claims and be deported without their children. This assertion was out of step with anecdotal evidence to the contrary. Then, during the Committee mark up of H. Res. 1005, Committee Republicans insisted that they were satisfied with the answers provided by Trump Administration officials. In fact, Congressman Scott Perry stated that:

“ . . . when somebody says that 463 parents were deported without their children and the folks that do that work sat there and told us that none of them were de-

June 18, 2018—Letter to Honorable Kirstjen Nielsen, Secretary of Homeland Security, regarding U.S. Immigration and Customs Enforcement transfer of 1600 detainees to criminal Bureau of Prison’s facilities due to effect of zero tolerance policy on detention facilities.

June 28, 2018—Letter to Secretary Nielsen, requesting information on how the Department would effectuate the court migrant family reunification order.

<sup>6</sup>Ms. L, et al. v. U.S. Immigration and Customs Enforcement, et al., Order Granting Plaintiffs’ Motion for Classwide Preliminary Injunction, Docket 18cv0428 DMS (MDD), S.D. CA (June 26, 2018).

<sup>7</sup>Ms. L, et al. v. U.S. Immigration and Customs Enforcement, et al., Joint Status Report, Docket 18cv0428 DMS (MDD), S.D. CA (July 19, 2018).

ported without their children unless they requested that. The people being deported requested to leave their children behind. It wasn't the decision of the United States of America or their agents working on the border that did that."

However, on Wednesday, July 25, the ACLU filed affidavits that indicate as many as three-quarters of these migrant parents removed from the United States were not given a choice about leaving their children behind.<sup>8</sup> We now have proof, thanks to the court proceedings, that Congress was not told the truth.

The failure of DHS to provide information to Congress, as sought pursuant to H. Res. 1005, undermines our capacity to carry out ongoing oversight to resolve question about various aspects of this humanitarian crisis, such as with respect to the guidance that was sent to the field to inform CBP officers on how to carry out family separation, the numbers of children reunited with parents, the validity of the "ineligible" category, the current status of the parents of separated children, and conditions in the detention centers.

Since DHS failed to provide such information, on July 19, 2018, I introduced this resolution of inquiry to compel production of such critical information to the House of Representatives to ensure effective oversight. Regrettably, the Majority refused to demand transparency and accountability from the Department and, on a partisan basis, quashed any chance of this Committee receiving the information it needs to do meaningful oversight. I would note that this is the fourth resolution of inquiry that the Majority quashed, saying that we can get such information without having to compel them, by law, to do so. If the Majority had bothered to check the record, they would see that such an assertion is unsupported. To date, the Department has failed to provide information the Russian hacking of our election systems,<sup>9</sup> costs associated with protecting the Trump children on overseas Trump Organization business,<sup>10</sup> and ZTE, the Chinese telecom that the Intelligence Community has indicated poses a national security threat.<sup>11</sup>

I strongly believe that the Majority's decision to report H. Res. 1005 with an unfavorable recommendation is unjustified and undermines the Committee's ability to carry out its vital responsi-

<sup>8</sup>Flores, Adolfo. "Separated Parents Were "Totally Unaware" They Had Waived Their Right To Be Reunited With Their Children," *Buzzfeed News*, July 25, 2018. <https://www.buzzfeednews.com/article/adolfoflores/separated-parents-totally-unaware-they-had-waived-their>. (accessed July 25, 2018)

Hesson, Ted, et al. "Most deported migrants were not asked about leaving children behind, Trump official says," *POLITICO*, July 26, 2018. <https://www.politico.com/story/2018/07/25/deported-migrants-leaving-children-behind-712088> (accessed July 26, 2018)

<sup>9</sup>H. Res. 235—Directing the Secretary of Homeland Security to transmit certain documents to the House of Representatives relating to the Department of Homeland Security's research, integration, and analysis activities relating to Russian Government interference in the elections for Federal office held in 2016. Introduced on March 30, 2017, and reported adversely by the Committee on Homeland Security on April 7, 2017.

<sup>10</sup>H. Res. 447—Directing the Secretary of Homeland Security to transmit certain documents to the House of Representatives relating to Department of Homeland Security policies and activities relating to businesses owned or controlled by President Donald J. Trump. Introduced on July 14, 2017, and reported adversely by the Committee on Homeland Security on July 28, 2017.

<sup>11</sup>H. Res. 898—Directing the Secretary of Homeland Security to transmit certain documents to the House of Representatives relating to Department of Homeland Security policies and activities relating to homeland security information produced and disseminated regarding cybersecurity threats posed by the ZTE Corporation, headquartered in Shenzhen, China. Introduced on May 16, 2018, and reported adversely on June 8, 2018.

bility to carry out oversight of the Department of Homeland Security.

