



VIA Fed Ex and Email

June 28, 2018

U.S. Department of Homeland Security
Attn: Chief Information Officer
245 Murray Lane, SW
Washington, DC 20528
DHS.InfoQuality@hq.dhs.gov

Re: *Request for Correction Under the Information Quality Act*

To whom it may concern:

On behalf of Americans for Immigrant Justice (“AI Justice”), Muslim Advocates, and the Refugee and Immigrant Center for Education and Legal Services (“RAICES” and, collectively, the “Requesters”), Democracy Forward Foundation (“Democracy Forward”) respectfully submits this request for correction of information (the “Request”) pursuant to the Information Quality Act (the “IQA”) to the U.S. Department of Homeland Security (“DHS” or the “Department”). By this Request, the Requesters ask the Department to retract and correct the misleading and unreliable information disseminated by the Department regarding the Trump Administration's decision to separate parents from their children as a consequence of the so-called 'zero tolerance policy' it has adopted. The Department publicly dismissed allegations that it adopted a policy of separating families as “myth.” As set forth below, however, family separation is indeed a central feature of the Department’s immigration enforcement policy. And in misrepresenting to the public that it does not engage (or has not engaged) in a policy of separating families, the Department runs afoul of the IQA.¹

¹ As explained further below, the Department’s policy of separating families encompasses the Department’s referral for federal criminal prosecution of parents or guardians who, with children, have allegedly unlawfully entered the

I. Zero-Tolerance and Family Separation

On April 6, 2018, the U.S. Department of Justice (the “DOJ”) issued a memorandum instructing “each United States Attorney’s Office along the Southwest Border . . . to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a)” of Title 8 of the U.S. Code (the “Zero-Tolerance Policy”).² Pursuant to the DOJ memorandum, arrests made by officers from the U.S. Customs and Border Protection (“CBP”)—a component office within DHS—of persons who have unlawfully entered the United States along the Southwest Border are referred for prosecution of the misdemeanor offense of unlawful entry.³ The immigrant-defendant is then transferred to the custody of the U.S. Marshals Service for transfer and prosecution by the DOJ. Where the individual referred for prosecution is a parent who entered the United States with children, the children are separated from their parent—forcefully, in some cases⁴—by CBP officials and are sent to detention facilities operated by the U.S. Department of Health and Human Services’ (“HHS”) Office of Refugee Resettlement (“ORR”) to be detained separately from their parent(s). The Department has openly acknowledged its policy of separating families in press statements,⁵ DHS forms,⁶ and, indeed, the Myth vs. Fact Sheet that is the focus of this petition.⁷

While entering the United States without legal permission qualifies as a misdemeanor offense under federal law, never before has the Department taken the dramatic step of referring

United States, and the Department’s consequent separation of those children from their parents or guardians. The children are transferred to the custody of the Department of Health and Human Services, and the parents or guardians are transferred to the custody of the U.S. Marshals Service.

² Memorandum from Jefferson B. Sessions, U.S. Attorney Gen., to Fed. Prosecutors Along the Sw. Border, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a) (Apr. 6, 2018), <https://www.justice.gov/opa/press-release/file/1049751/download>.

³ *Id.* (citing 8 U.S.C. § 1325(a)).

⁴ See Ed Lavandera et al., *She Says Federal Officials Took Her Daughter While She Breastfed the Child in a Detention Center*, CNN (June 14, 2018), <https://www.cnn.com/2018/06/12/us/immigration-separated-children-southern-border/index.html> (reporting on the story of a Honduran woman who conveyed to an attorney that federal authorities separated her daughter from her as she was in the process of breastfeeding her infant child while in custody, having been arrested under the Zero-Tolerance Policy for unlawful entry).

⁵ See Ginger Thompson, *Listen to Children Who’ve Just Been Separated From Their Parents at the Border*, Pro Publica (June 18, 2018), [https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-](https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy?utm_campaign=sprout&utm_medium=social&utm_source=twitter&utm_content=1529351580)

[policy?utm_campaign=sprout&utm_medium=social&utm_source=twitter&utm_content=1529351580](https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy?utm_campaign=sprout&utm_medium=social&utm_source=twitter&utm_content=1529351580) (linking to a statement from a CBP spokesperson who confirms that “[t]hose apprehended will be sent directly to federal court under the custody of the U.S. Marshals Service, **and their children will be transferred to the custody of Health and Human Services’ Office of Refugee Resettlement**”) (emphasis added).

⁶ See Bill Chappel & Jessica Taylor, *Defiant Homeland Security Secretary Defends Family Separations*, Nat’l Public Radio (June 18, 2018), <https://www.npr.org/2018/06/18/620972542/we-do-not-have-a-policy-of-separating-families-dhs-secretary-nielsen-says> (embedding a joint DHS-HHS document of “Next Steps for Families,” which acknowledges that children will be detained separately from their parent(s) while the parent(s) is being criminally prosecuted).

⁷ U.S. Dep’t of Homeland Sec., *Myth vs. Fact: DHS Zero-Tolerance Policy* (“Myth vs. Fact Shee”) (June 18, 2018), <https://www.dhs.gov/news/2018/06/18/myth-vs-fact-dhs-zero-tolerance-policy> (conceding that “DHS will separate adults and minors . . . when the parent or legal guardian is referred for criminal prosecution”).

for prosecution every individual who entered unlawfully.⁸ Instead, past Administrations have exercised discretion to prioritize certain cases for referral, such as cases involving individuals caught entering unlawfully on multiple occasions, or where other equities counseled in favor of criminal prosecution prior to instituting removal proceedings. More importantly, individuals crossing unlawfully for the purpose of establishing a claim for asylum were not prosecuted for the misdemeanor of unlawful entry. The DOJ memorandum, which was developed “in consultation with DHS”⁹ changed this practice. Once implemented, DHS referred for prosecution 1,940 adults for prosecution between April 19 and May 31, causing nearly 2,000 children to be separated from their parents over that same time period.¹⁰ Alarming, advocates who work with these detained immigrants contend that criminal prosecutions have targeted “people with children deliberately.”¹¹

II. The Department’s Myths vs. Facts Sheet

As public awareness has grown about the scale and scope of the Department’s policy of separating families, bipartisan criticism has quickly mounted.¹² In response, DHS has attempted to mislead the public into believing that no such policy, in fact, exists.¹³ DHS has done this on several occasions, most recently through statements issued by Secretary Kirstjen Nielsen on her official Twitter account, in an appearance by Secretary Nielsen at the White House press briefing, and, most pertinent to this Request, by disseminating a fact sheet through the Department’s website.

The Myth vs. Fact Sheet purports to correct what the Department describes as “reporters, Members of Congress, and other groups mislead[ing] the public about the Department of Homeland Security’s zero tolerance policy.”¹⁴ The Department characterizes as “myth” that

⁸ See Alan Bersin, et al., *Bipartisan Group of Former United States Attorneys Call on Sessions to End Family Separation*, Medium (June 18, 2018), <https://medium.com/@formerusattorneys/bipartisan-group-of-former-united-states-attorneys-call-on-sessions-to-end-child-detention-e129ae0df0cf?stream=top> (“[A]s former United States Attorneys, we also emphasize that ***the Zero Tolerance policy is a radical departure from previous Justice Department policy***[.]” (emphasis added)).

⁹ Memorandum, *supra* note 2.

¹⁰ See Julia Ainsley & Jane C. Timm, *1,995 Children Separated from Families at Border Under ‘Zero Tolerance’ Policy*, NBC News (June 15, 2018), <https://www.nbcnews.com/politics/donald-trump/1-995-children-separated-families-border-under-zero-tolerance-policy-n883716>.

¹¹ Russell Berman, *85 Immigrants Sentenced Together Before One Judge*, The Atlantic (June 19, 2018), https://www.theatlantic.com/politics/archive/2018/06/zero-tolerance-inside-a-south-texas-courtroom/563135/?utm_source=atltw (quoting Efrén Olivares, the racial and economic justice director for the Texas Civil Rights Project, who has observed: “[E]ven though [government lawyers] are not prosecuting everybody for the misdemeanor [of unlawful entry], ***they are prosecuting everyone with a child and therefore separating them indefinitely***.” (emphasis added)).

¹² See, e.g., Laura Bush, *Separating Children from Their Parents at the Border ‘Breaks My Heart’*, Wash. Post (June 17, 2018), https://www.washingtonpost.com/opinions/laura-bush-separating-children-from-their-parents-at-the-border-breaks-my-heart/2018/06/17/f2df517a-7287-11e8-9780-b1dd6a09b549_story.html?utm_term=.f9999314ce5c (“I appreciate the need to enforce and protect our international boundaries, but this zero-tolerance policy is cruel. It is immoral. And it breaks my heart.”).

¹³ Kirstjen Nielsen, Sec’y Dep’t of Homeland Sec. (@SecNielsen), Twitter (June 17, 2018, 5:52 PM), <https://twitter.com/SecNielsen/status/1008467414235992069> (“We do not have a policy of separating families at the border. Period.”).

¹⁴ Myth vs. Fact Sheet, *supra* note 7.

“DHS has a policy to separate families at the border,” and represents as “fact” that “DHS does not have a blanket policy of separating families at the border.”¹⁵

The Myth vs. Fact Sheet has been used by the Department to defend its policy of separating families. For the reasons set forth below, however, the Myth vs. Fact Sheet contains misleading information that violates the IQA.

III. Requirements of the IQA

The IQA, which is found at Section 515 of Public Law 106-554, together with its implementing regulations and guidelines, requires that information disseminated to the public by federal agencies, including by DHS, be accurate, reliable, and unbiased.¹⁶ It also directs the Office of Management and Budget (“OMB”) to issue guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”¹⁷ Federal agencies, in turn, must issue their own guidelines, likewise “ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency” and establishing “administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.”¹⁸

Pursuant to these directives, OMB, as well as DHS, promulgated guidelines establishing information quality standards and providing a means for parties to seek redress for information that does not conform to these standards. Thus, under the OMB and DHS guidelines, the touchstone for the IQA is that (1) information (2) disseminated by an agency (3) be of requisite quality.

The Myth vs. Fact Sheet is covered by the IQA. DHS guidelines define “information,” in relevant part, as “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.”¹⁹ The Myth vs. Fact Sheet purports to present facts about the Zero-Tolerance Policy, and the implications that policy has for the separation of children from family members at the Southwest Border. It was, therefore, required to adhere to the standards of the IQA.²⁰

The Myth vs. Fact Sheet was also disseminated to the public, within the meaning of the IQA. DHS’s IQA guidelines define “dissemination” to include an “agency initiated or sponsored

¹⁵ *Id.*

¹⁶ Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 & 154, 44 U.S.C. § 3516, note (the “IQA”); Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002) (“OMB Guidelines”); U.S. Dep’t of Homeland Sec., Information Quality Guidelines (“DHS Guidelines”), <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf> (last visited June 22, 2018).

¹⁷ IQA § 515(a).

¹⁸ *Id.* § 515(b); *see also Prime Time Int’l Co. v. Vilsack*, 599 F.3d 678, 684-86 (D.C. Cir. 2010) (describing the statutory and administrative scheme of the IQA).

¹⁹ *See* DHS Guidelines at 11.

²⁰ Myth vs. Fact Sheet, *supra* note 7.

distribution of information to the public.”²¹ The Department posted the Myth vs. Fact Sheet on its website to deny that it has a policy of separating families, a denial also made by Secretary Nielsen in tweets,²² and in a White House press briefing.²³

IQA guidelines define what it means for information to be of sufficient quality to meet the statutory standard. Specifically, quality “is an encompassing term comprising utility, objectivity, and integrity.”²⁴ Among other standards relevant here, “in assessing the usefulness of the information that the agency disseminates to the public, the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public.”²⁵ “Objectivity” includes:

Whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.²⁶

As set forth in detail below, the Myth vs. Fact Sheet fails to meet the IQA’s requirements regarding quality, utility, objectivity, and integrity. In particular, the Myth vs. Fact Sheet fails to present the information in the proper context, as required under the “objectivity” standard of the IQA’s guidelines.²⁷ Proper context, in this case, would require the Department to acknowledge that the DOJ memorandum directing Southwest Border U.S. Attorneys to prosecute *all* unlawful entry referrals from CBP converts a former exercise of prosecutorial discretion into a blanket policy resulting in widespread separation of families. Absent that consideration, the Department cannot claim to have presented its claims within the proper context.

This failure is not without consequence: the Department’s misinformation presents an impediment to the public’s ability to participate in the ongoing debate regarding immigration policy, particularly with respect to the Department’s separation of families.

IV. The Myths vs. Facts Sheet Violates the IQA by Disseminating Information Which is Designed to Mislead the Public About the Existence of a Policy to Separate Families

A. The Department Plainly Does Have a Family Separation Policy

The Department has falsely denied that it has engaged in a policy of separating families in several prominent instances. First, the day before the Myth vs. Fact Sheet was disseminated, Secretary Nielsen issued a blanket denial through her official Twitter account, asserting that the

²¹ See DHS Guidelines at 11.

²² See Nielsen, *supra* note 13.

²³ See Chappel & Taylor, *supra* note 6.

²⁴ See OMB Guidelines, 67 Fed. Reg. at 8459.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

Department “do[es] not have a policy of separating families at the border. Period.”²⁸ The following day, Secretary Nielsen appeared at the White House press briefing to defend the Administration’s immigration policies and again asserted that “this administration did not create a policy of separating families at the border.”²⁹ Finally, the Department issued a Myth vs. Fact Sheet on its website, which labeled the claim that “DHS has a policy to separate families at the border” as a “Myth.”³⁰

Despite its protestations and assertions to the contrary, the Department plainly did have, and is operating, a policy that resulted in the separation of family members on the Southwest Border. Particularly in light of the nearly 2,000 instances where children have been separately detained from their parents—a figure provided by DHS—it strains credulity for the Department to assert otherwise. Indeed, one need look no further than the very document at issue in this Request to understand the shape of the Department’s misinformation. In explaining why the Department views allegations that it has a policy of separating families as “Myth,” the Department highlights three instances in which it acknowledges it separates families, including “when the parent or legal guardian is referred for criminal prosecution.”³¹ Having acknowledged that family separation will occur once DHS refers an individual for prosecution, the Department cannot then dismiss claims that it has a blanket policy to separate families at the border while the DOJ memorandum remains in effect. DHS’s referral of unlawful entry cases to U.S. Attorneys for prosecution necessarily results in a separation in all such cases where the alleged unlawful entry is made by families.

Moreover, statements from others in the Administration, including the former DHS Secretary, give lie to the Department’s assertions that it does not have a policy of separating families.³² Indeed, a review of these statements makes clear that family separation is a policy that has been under consideration since shortly after President Trump came into office, and that the separation of families at the border was an outcome expected, even desired, by the Administration and the Department.³³ In announcing the DOJ memorandum, Attorney General Jeff Sessions issued an ominous warning to would-be immigrants: “If you don’t want your child

²⁸ See Nielsen, *supra* note 13.

²⁹ The White House, Press Briefing Tr. of Press Sec’y Sarah Sanders and Dep’t of Homeland Sec. Sec’y Kirstjen Nielsen (June 18, 2018), <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-department-homeland-security-secretary-kirstjen-nielsen-061818/>.

³⁰ See Myth vs. Fact Sheet, *supra* note 7.

³¹ *Id.*

³² See Daniella Diaz, *Kelly: DHS Is Considering Separating Undocumented Children from Their Parents at the Border*, CNN (Mar. 7, 2017), <https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/> (Secretary Kelly confirmed in March 2017 that the Department was considering separating children from their parents “in order to deter more movement” by immigrants across the Southwest Border).

³³ Although Secretary Kelly eventually walked back the idea of a policy to separate families, the draconian policy apparently continued to surface within the Administration during conversations about methods that might be employed to deter unlawful immigration. See Jonathan Blitzer, *How The Trump Administration Got Comfortable Separating Immigrant Kids From Their Parents*, The New Yorker (May 30, 2018), <https://www.newyorker.com/news/news-desk/how-the-trump-administration-got-comfortable-separating-immigrant-kids-from-their-parents>.

separated, then don't bring them across the border illegally. It's not our fault that somebody does that.”³⁴

The Attorney General's remarks are revealing: under the Zero-Tolerance Policy, it is not formally DOJ that is responsible for initiating the government action that separates children from their parents. DHS starts this process when it refers a parent for misdemeanor prosecution knowing full well that choice will result in the parent being detained separately from the child.³⁵ For at least two months, DHS exercised that discretion each and every time it had an opportunity to do so, including—and by some accounts, especially—where it understood that the result would be the separation of parent and child solely because DHS wished to initiate criminal proceedings.

And yet, in defending its policy of separating families, the Department has obfuscated, asserting that such a policy does not exist at all; that it is merely a “myth.”³⁶ This brazen effort to mislead the public about the existence of that policy fails to meet the basic information quality standards required by federal law.

V. The Requesters are Affected Persons

AI Justice is an affected person entitled to seek a correction of disseminated information that fails to meet the IQA's quality standards. AI Justice is a non-profit law firm dedicated to promoting and protecting the basic rights of immigrants. In Florida and on a national level, AI Justice serves as a watchdog on immigration detention and immigration enforcement practices and policies. Since its inception in 1996, AI Justice has served over 120,000 immigrants from all over the world. Its clients include unaccompanied immigrant children; survivors of domestic violence, sexual assault, and human trafficking and their children; immigrants who are detained and facing removal proceedings; as well as immigrants seeking assistance with work permits, legal permanent residence, asylum, and citizenship. AI Justice is currently representing children separated from their families at the border.

Muslim Advocates is an affected person entitled to seek a correction of disseminated information that fails to meet the IQA's quality standards. Muslim Advocates is a civil rights organization that promotes freedom and justice for people of all faiths. Muslim Advocates engages in civil rights litigation, policy advocacy, and public education to challenge inhumane immigration policies that separate families, particularly where those policies are predicated on dangerous race-based or religion-based stereotypes.

³⁴ Sari Horwitz & Maria Sacchetti, *Sessions Vows to Prosecute All Illegal Border Crossers and Separate Children from Their Parents*, Wash. Post (May 7, 2018), https://www.washingtonpost.com/world/national-security/sessions-says-justice-dept-will-prosecute-every-person-who-crosses-border-unlawfully/2018/05/07/e1312b7e-5216-11e8-9c91-7dab596e8252_story.html?utm_term=.23b868761836.

³⁵ Myth vs. Fact Sheet, *supra* note 7 (explaining that, pursuant to DHS and DOJ policy, “[i]f an adult is referred for criminal prosecution, the adult will be transferred to U.S. Marshals Service custody and any children will be classified as an unaccompanied alien child and transferred to the Department of Health and Human Services custody.”).

³⁶ *Id.*

RAICES is an affected person entitled to seek a correction of disseminated information that fails to meet the IQA's quality standards. RAICES is a nonprofit agency that promotes justice by providing free and low-cost legal services to underserved immigrant children, families, and refugees in Texas. RAICES is the largest immigration legal service provider in Texas and operates on the frontlines of the current immigration crisis, providing legal assistance to the very families who have been separated by the Department's family separation policy.

The IQA guidelines define "affected person" as one who "may benefit or be harmed by the disseminated information," including one who "use[s] information."³⁷ The Requesters all use reliable information concerning federal immigration policy and the immigrant population in their work. That work is made more difficult when they cannot rely on the Department to state clearly and accurately whether or not a policy is in place. Moreover, the Requesters all currently represent individuals who have been directly affected by the Department's family separation policy or have otherwise directed organizational resources to advocating against the Department's family separation policy. Reliable information about how and why children have been separated from their families is critical to this work.

VI. Conclusion and Relief Requested

Given the importance and immediacy of the public dialogue about the Administration's immigration policy efforts, and the impact that the Department's refusal to acknowledge that it in fact engaged in a policy of separating families may have on this debate, we request that DHS retract and, if you determine that publishing a revised version is necessary, correct the Myth vs. Fact Sheet as outlined above within 60 days. Should you have any questions, please do not hesitate to contact me at kjones@democracyforward.org or (202) 701-1774.

Sincerely,

/s/ Karianne Jones

Karianne Jones, Counsel
Democracy Forward Foundation
Counsel for the Requesters

Cc:

Hon. Kirstjen Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

³⁷ See DHS Guidelines at 9.