REMINDER

The below guidance was disseminated for immediate implementation on June 20, 2018.

Please ensure ALL adhere to this Operational Guidance.

Thank you
Subject: Updated Headquarters Operational Guidance: June 20, 2018 Executive Order

PAICs: Please see the below Headquarters operational guidance for immediate dissemination to our field personnel and central processing teams; and for immediate implementation. I need confirmation that you have received and will implement the below guidance immediately.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. 

2. 

3. 

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.

5. 

If you have any further questions, please contact our Sector Prosecutions team or Acting ACPA at (b)(6)(b)(7)(C).

Regards,

Gloria I. Chavez
Effective immediately the following actions are to be implemented/acted upon:

1. (b)(7)(E)

2. (b)(7)(E)

3. (b)(7)(E)

Further guidance is forthcoming from HQ. In the interim please ensure that all field commanders and Supervisors are made aware and act accordingly. If you have any further questions, please contact Acting ACPA at (b)(6)(b)(7)(C)
https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/

GC

Regards,

Gloria I. Chavez

Chief Patrol Agent

El Centro Sector

U.S. Border Patrol

(b)(6)(b)(7)(C) (office)
CONSOLIDATION OF CURRENT GUIDANCE – (No change to DCPA Guidance sent at 5:05 AM 6/21/2018)

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b)(7)(E)
2. (b)(7)(E)
3. (b)(7)(E)
4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period after prosecution/conviction.
5. (b)(7)(E)
Robert L. Boatright  
Chief Patrol Agent  
Big Bend Sector  
United States Border Patrol  
(b) (6), (b) (7)(C) - Office  
(b) (7)(C), (b) (6) - iPhone  
(b) (6), (b) (7)(C)  

This message contains information intended only for the addressee named above. If you believe you have received this email in error, please notify the sender immediately.

From: BOATRIGHT, ROBERT L  
Sent: Wednesday, June 20, 2018 5:36 PM  
To: BBT_PAIC_DPAIC  
Cc: BBT TASKINGS  
Subject: IMMEDIATE ACTION REQUIRED - FAMILY SEPARATION GUIDANCE  

PLEASE ACKNOWLEDGE RECEIPT AND IMMEDIATE IMPLEMENTATION TO DC (b) (6), (b) (7)(C) WITHIN 1 HOUR  

New Executive Order – June 20, 2018  
https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/
Immediate action plan

Do not detain an alien family together when there is a concern that detention of an alien child with the child’s alien parent would pose a risk to the child’s welfare. EO Section 3 (b)

Additional Guidance
Will change over the next few days
Be Flexible
Err towards family unity

Path Forward – Big Picture

Direct questions to Division Chief

More to come as it becomes available.
Here is the guidance we will follow until things are clarified.

Thanks

All,

As we await guidance on some of the language used in the attachment all we can do is apply common sense and our own judgement.

Until we get further guidance, all encompassing so if something weird comes up, call.

This isn’t

Thanks
All,

More information will be forthcoming from Prosecutions, but we will begin 8 USC 1325 prosecutorial referrals for all amenable adults, to include adults that are part of family units. Please read the attached CONOP for further details on the efforts.

Reporting is still pending, but we will need each station to email the DRT PROS STAFF mailbox concerning any adults.

Division Chief
Del Rio Sector
Good afternoon,

Effective immediately, all amenable adults will be referred for prosecution under section 1325(a) of Title 8.

Please see specifics listed within the BBT CONOP for exclusions.

Consistency in reporting and data integrity are crucial for the correct reporting to USBP HQ. Please ensure that the attached spreadsheet is completed daily (Excel spreadsheet). Each station must submit their spreadsheet by COB following PAIC review to BBT Operations.

I know the additional reporting is not fail-proof, however, until a Sharepoint reporting method is established, we will have to continue to report the numbers via daily emails.
As we receive additional information regarding reporting requirements, we will send it to the stations immediately.

Thank you,

[b](6), [b](7)(C)

Division Chief
Big Bend Sector
[b](6)(b)(7)(C) Office
[b](6)(b)(7)(C) Cell
[b](6)(b)(7)(C)

From: HASTINGS, BRIAN S
Sent: Friday, May 04, 2018 4:01:07 PM
To: BP Field Chiefs; BP Field Deputies
Cc: PROVOST, CARLA (USBP); LUCK, SCOTT A (USBP); HUDSON, RICHARD M; [b](6)(b)(7)(C); [b](6)(b)(7)(C); [b](6)(b)(7)(C); [b](6)(b)(7)(C); HUFFMAN, BENJAMINE C; [b](6)(b)(7)(C); [b](6)(b)(7)(C); [b](6)(b)(7)(C)
Subject: FW: S1 Signed Action Memo Increasing Prosecutions

SWB Chief’s and Deputies,

Please see the attached, approved CONOP to develop a quickly scalable approach to achieve 100% immigration violation prosecution referrals for all amenable adults.

Border Patrol is authorized to implement increased Southwest Border Prosecutions, as outlined in the second attachment.
In a few moments, we will be sending out a manual spreadsheet to record declinations and purposes for declinations. (b)(5) Accurate data will be critical to show our progress toward 100% prosecutions and to acquire additional assets (AUSAs, Marshall's support, detention space, etc.)

We will be hosting a teleconference call at 6:10 p.m. EST to discuss and answer any questions. The call in information will be out in a few minutes.

V/r,
Brian
FOR IMMEDIATE RELEASE

Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry

Attorney General Jeff Sessions today notified all U.S. Attorney's Offices along the Southwest Border of a new "zero-tolerance policy" for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States by an alien. The implementation of the Attorney General's zero-tolerance policy comes as the Department of Homeland Security reported a 203 percent increase in illegal border crossings from March 2017 to March 2018, and a 37 percent increase from February 2018 to March 2018—the largest month-to-month increase since 2011.

"The situation at our Southwest Border is unacceptable. Congress has failed to pass effective legislation that serves the national interest—that closes dangerous loopholes and fully funds a wall along our southern border. As a result, a crisis has erupted at our Southwest Border that necessitates an escalated effort to prosecute those who choose to illegally cross our border," said Attorney General Jeff Sessions. "To those who wish to challenge the Trump Administration's commitment to public safety, national security, and the rule of law, I warn you: illegally entering this country will not be rewarded, but will instead be met with the full prosecutorial powers of the Department of Justice. To the Department's prosecutors, I urge you: promoting and enforcing the rule of law is vital to protecting a nation, its borders, and its citizens. You play a critical part in fulfilling these goals, and I thank you for your continued efforts in seeing to it that our laws—and as a result, our nation—are respected."

On April 11, 2017, Attorney General Jeff Sessions announced a renewed commitment to criminal immigration enforcement. As part of that announcement, the Attorney General issued a memorandum to all federal prosecutors and directed them to prioritize the prosecution of certain criminal immigration offenses.

Today's zero-tolerance policy further directs each U.S. Attorney's Office along the Southwest Border (i.e., Southern District of California, District of Arizona, District of New Mexico, Western District of Texas, and the Southern District of Texas) to adopt a policy to prosecute all Department of Homeland Security referrals of section 1325(a) violations, to the extent practicable.

Attachment(s):
Download Zero-Tolerance Memorandum

Topic(s):
Immigration

Component(s):
Office of the Attorney General
Objective:
- Achieve increased level of Border Security in the Big Bend Sector (BBT) area of responsibility (AOR) through consistent application of all legal authorities via consequence delivery.

Key Messages: This effort is not new. Each day, those that violate our immigration laws are referred for prosecution. In order to ensure the sovereignty of our Nation and secure our borders, the Department of Justice (DOJ) and the Department of Homeland Security are maximizing their capabilities to deliver the appropriate consequences to violators. In order to break the cycle of those who seek to enter unlawfully, all amenable adults who violate 8 U.S.C. § 1325(a) will be referred for prosecution. This includes those adults who are accompanying children. We will not exempt adults who engage in this criminal activity, including those who choose to put their children in harm’s way by crossing the border between the ports of entry.

Execution:
BBT, under the direction of the Chief Patrol Agent (CPA), will implement (b)(7)(E)

- Currently, BBT presents for prosecution all single adults who are amenable to prosecution under 8 U.S.C. § 1325(a).

- BBT has historical success in prosecuting all amenable 8 U.S.C. § 1325(a) cases.

- BBT will begin processing all adults who are amenable for prosecution under 8 U.S.C. § 1325(a). This includes adults who are part of family units.
BBT has notified DOJ and Immigration and Customs Enforcement (ICE) partners of the initiative.

The CPA will consider DOJ requests for Sector resources to support increased prosecutions on a case-by-case basis, in coordination with Headquarters LEOD. All requests for Chief Counsel resources will be referred to the Office of Chief Counsel.

The CPA will maintain current operations with respect to enforcement activities and prosecutions.

All aliens referred for prosecution within each sector will be entered into the module, with reasons for declinations recorded accurately.

Prosecution Priorities in the following order:
1.  
2.  

Reporting Requirements: (weekly statistics)

- Report requests from U.S. Attorney or U.S. Marshal’s Offices for CBP resources to assist with implementation.
- Report the number of apprehensions in the sector.
- Report the total number of prosecution referrals by sector for each priority throughout sector.
- Report the percentage of referred prosecutions for each priority.
- Report the percentage of declinations for each priority sub-categorized by reason.
- Report the total number of non-referred (for prosecution) by priority sub-categorized by reason.
- Any requests for reporting of prosecutions by SAUSAs from the Office of Chief Counsel, or reporting on Chief Counsel SAUSA resources, will be referred to the Office of Chief Counsel.

Metrics:

- Total number of prosecutions – increase or decrease
Southwest Border Prosecutions
Big Bend Sector
May 6, 2018

- Total number of apprehensions in relation to increase/decrease of prosecutions
- Demographic shift of aliens entering illegally
  - Number of OTMs entering illegally
  - Number of family units entering illegally
- Increase/decrease in presentations at the ports of entry

Execution Timeline:
1. (b)(7)(E)

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**Weekly Prosecution Report**

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For Official Use Only
### United States Border Patrol

**Weekly Prosecution Report**

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- Priority 4: 4
- Priority 5: 8
- Total: 49

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**Priority 4**
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**Priority 5**
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United States Border Patrol
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### Weekly Prosecution Report

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# United States Border Patrol
Weekly Prosecution Report

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- Total: 20 (10%)
United States Border Patrol

### Weekly Prosecution Report

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**FOIA000289**
### Weekly Prosecution Report

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*FOR OFFICIAL USE ONLY*

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For Official Use Only*

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For Official Use Only

CBP FOIA000325
### United States Border Patrol

#### Weekly Prosecution Report

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#### Priority 3

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<td></td>
<td>Weekly Prosecution Report</td>
<td>Unofficial Statistics</td>
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</tr>
</tbody>
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Objective:
- Achieve increased level of Border Security along the southwest border through consistent application of all legal authorities via consequence delivery.

Key Messages: This effort is not new. Each day, those that violate our immigration laws are referred for prosecution. In order to ensure the sovereignty of our Nation and secure our borders, the Department of Justice and the Department of Homeland Security are maximizing their capabilities to deliver the appropriate consequences to violators. In order to break the cycle of those who seek to enter unlawfully, all amenable adults who violate 8 U.S.C. § 1325(a) will be referred for prosecution. This includes those adults who are accompanying children. We will not exempt adults who engage in this criminal activity, including those choose to put their children in harm’s way by crossing the border between the ports of entry.

Execution:
The southwest border sectors, under the direction of their Chief Patrol Agents (CPAs), will implement 

- Sectors will provide localized, phased plans while recognizing that our partners will need time to adjust resources to achieve shared DHS and DOJ goals.
- CPAs will expand and maintain this prosecution initiative
- CPAs will consider DOJ request for Sector resources to support increased prosecutions on a case-by-case basis, in coordination with Headquarters LEOD. All requests for Chief Counsel resources will be referred to the Office of Chief Counsel.
- CPAs will maintain current operations in other with respect to enforcement activities and prosecutions.
- All aliens referred for prosecution within each sector will be entered into the module, with reasons for declinations recorded accurately.

Prosecution Priorities in the following order:
1. 
2. 

Authored by: Associate Chief
Approved by: LEOD Deputy Chief Richard Hudson

CBP FOIA000331
Southwest Border Prosecutions
May 3, 2018

Reporting Requirements: (weekly statistics)
• Report requests from U.S. Attorney or U.S. Marshal offices for CBP resources to assist with implementation.
• Report the number of apprehensions in targeted and non-targeted by sector.
• Report the total number of prosecution referrals by sector for each priority in targeted and non-targeted by sector.
• Report the percentage of referred prosecutions for each priority in targeted and non-targeted.
• Report the percentage of declinations for each priority sub-categorized by reason.
• Report the total number of non-referred (for prosecution) by priority sub-categorized by reason.
• Any requests for reporting of prosecutions by Special Assistant United States Attorneys (SAUSAs) from the Office of Chief Counsel, or reporting on Chief Counsel SAUSA resources, should be referred to the Office of Chief Counsel.

Metrics:
• Total number of prosecutions – increase or decrease
• Total number of apprehensions in relation to increase/decrease of prosecutions
• Demographic shift of aliens entering illegally
  o Number of OTMs entering illegally
  o Number of family units entering illegally
• Increase/decrease in presentations at the ports of entry

Execution Timeline:
Southwest Border Prosecutions
May 3, 2018

(b)(7)(E)
MEMORANDUM FOR FEDERAL PROSECUTORS ALONG THE SOUTHWEST BORDER

FROM: THE ATTORNEY GENERAL

SUBJECT: Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)

On April 11, 2017, I issued a memorandum to all federal prosecutors entitled “Renewed Commitment to Criminal Immigration Enforcement,” in which I directed the prioritization of the prosecution of certain criminal immigration offenses. I further directed each United States Attorney’s Office along the Southwest Border to work with the Department of Homeland Security to develop guidelines for prosecuting offenses under 8 U.S.C. § 1325(a).

Those seeking to further an illegal goal constantly alter their tactics to take advantage of weak points. That means we must effectively respond with smart changes also. The recent increase in aliens illegally crossing our Southwest Border requires an updated approach. Past prosecution initiatives in certain districts—such as Operation Streamline—led to a decrease in illegal activities in those districts. We must continue to execute effective policies to meet new challenges.

Accordingly, I direct each United States Attorney’s Office along the Southwest Border—to the extent practicable, and in consultation with DHS—to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a). This zero-tolerance policy shall supersede any existing policies. If adopting such a policy requires additional resources, each office shall identify and request such additional resources.

You are on the front lines of this battle. I respect you and your team. Your dedication and insight into border reality is invaluable. Keep us informed, and don’t hesitate to give us suggestions for improvement. Remember, our goal is not simply more cases. It is to end the illegality in our immigration system.

This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
From: [b] [6], [b] [7](C)
Sent: Wednesday, June 20, 2018 8:28 PM
To: [b] [6], [b] [7](C)
Cc: [b] [6], [b] [7](C)

Subject: FW: June 20, 2018 Executive Order – Updated Operational Guidance *****(UPDATED)*****

Updated Guidance below.

Please keep in mind that there will likely be several more updates coming. Your flexibility and resilience is greatly appreciated. Thank you.

______________________________
From: HASTINGS, BRIAN S
Sent: Thursday, June 21, 2018 4:09:29 AM
To: BP Field Chiefs; BP Field Deputies
Cc: MCALEENAN, KEVIN K; VITIELLO, RONALD D (USBP); PROVOST, CARLA (USBP); LUCK, SCOTT A (USBP); HUDSON, RICHARD M; [b] [6][b] [7](C) HUFFMAN BENJAMINE C; [b] [6][b] [7](C) [b] [6](b)[7](C) [b] [6][b] [7](C) HOOVER, CRINLEY S; SINGLETON, RUYNARD R; [b] [6][b] [7](C) [b] [6](b)[7](C) [b] [6][b] [7](C)

Subject: RE: June 20, 2018 Executive Order – Updated Operational Guidance *****(UPDATED)*****

Chief, Deputies,

Updated Operational Guidance 2:

Amending number 3 below, until further implementation guidance is received. [b] [7](E)

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.
Please send verification to Deputy Division Chief Hudson and I please.

V/r,
Brian

From: HASTINGS, BRIAN S
Sent: Wednesday, June 20, 2018 9:54 PM
To: BP Field Chiefs BP Field Deputies
Cc: MCALEENAN, KEVIN K VITIELLO, RONALD D (USBP) PROVOST, CARLA (USBP) HUDDSON, RICHARD M LUCK, SCOTT A (USBP) HUFFMAN, BENJAMINE C SINGLETON, RUYNARD R
Subject: June 20, 2018 Executive Order – Updated Operational Guidance

Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b) (7)(E)
4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.

V/r,

Brian
From: HASTINGS, BRIAN S
Sent: Wednesday, June 20, 2018 10:09 PM
To: BP Field Chiefs (b)(7)(E) BP Field Deputies (b)(7)(E)

FYSA. Current guidance on zero tolerance prosecutions. Changes expected.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information or otherwise protected by law. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.
Chief, Deputies,

Updated Operational Guidance 2:

- Amending number 3 below, until further implementation guidance is received. (b)(7)(E)

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,
Brian

From: HASTINGS, BRIAN S
Sent: Wednesday, June 20, 2018 9:54 PM
To: BP Field Chiefs
Cc: MCALEENAN, KEVIN K
      PROVOST, CARLA (USBP)
      LUCK, SCOTT A (USBP)
      VITIELLO, RONALD D (USBP)
      HUFFMAN, BENJAMINE C
      HOOVER, CRINLEY S

(612x792)
Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b) (7)(E)

2. (b) (7)(E)

3. (b) (7)(E)

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. (b) (7)(E)

5. (b) (7)(E)
V/r,

Brian
Team,

As it pertains to bullet number 2 below:

If you have any questions please contact AACPA at [b](6), [b](7)(C)

Thank you for all of your hard work!
Subject: Updated Headquarters Operational Guidance: June 20, 2018 Executive Order

PAICs: Please see the below Headquarters operational guidance for immediate dissemination to our field personnel and central processing teams; and for immediate implementation. I need confirmation that you have received and will implement the below guidance immediately.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b) (7)(E)

2. (b) (7)(E)

3. (b) (7)(E)

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. (b) (7)(E)
If you have any further questions, please contact our Sector Prosecutions team or Acting ACPA at [REDACTED].

Regards,
Gloria I. Chavez
Chief Patrol Agent
El Centro Sector
U.S. Border Patrol

From: CHAVEZ, GLORIA I
Sent: Wednesday, June 20, 2018 4:54 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Zero Tolerance and Executive Order Guidance

ALCON:

Effective immediately the following actions are to be implemented/acted upon:

1. [REDACTED]
2. [REDACTED]
Further guidance is forthcoming from HQ. In the interim please ensure that all field commanders and Supervisors are made aware and act accordingly. If you have any further questions, please contact Acting ACPA at (b)(6), (b)(7)(C).

Presidential Executive Order

https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/

GC

Regards,
Gloria I. Chavez
Chief Patrol Agent
El Centro Sector
U.S. Border Patrol

(b)(6)(b)(7)(C) (office)
(b)(5), (b)(6), (b)(7)(C)
(b)(5), (b)(6), (b)(7)(C)
(b)(5), (b)(6), (b)(7)(C)
(b)(5), (b)(6), (b)(7)(C)
(b)(5), (b)(6), (b)(7)(C)
(b)(5), (b)(6), (b)(7)(C)
SWB DFOs,

For your awareness, direction to the Border Patrol to increase prosecutions. As this develops, we will need to monitor any such developments.

Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations
U.S. Customs & Border Protection

From: FLANAGAN, PATRICK S
Sent: Friday, May 04, 2018 4:59 PM
To: PROVOST, CARLA (USBP) LUCK, SCOTT A (USBP)
Cc: MCALEENAN, KEVIN K VITIELLO, RONALD D (USBP)
Owen, Todd C (AC OFO)
MEMORANDUM FOR THE SECRETARY

FROM: Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection

L. Francis Cissna
Director
U.S. Citizenship and Immigration Services

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

SUBJECT: Increasing Prosecutions of Immigration Violations

Purpose: This memo seeks your decision on increasing immigration violation prosecution referrals.

Summary: Illegal migration toward the Southwest Border (SWB) continues to rise. The two categories with the largest increases are: (1) Single Adults, now averaging over 1,000 aliens either apprehended between the ports of entry or found inadmissible at the ports of entry per day over the last 21 days, and (2) family units (FMUA), averaging over 450 for the same period. More starkly, inadmissible FMUAs encountered at and between the ports of entry during the period of April 18–19, 2018, reached the highest level since 2016—at almost 700 per day.

Family groups are one of the most challenging populations to the integrity of the immigration enforcement system both because of the strictures placed by the Flores Settlement Agreement, but also because of the costly and challenging nature of operationally addressing their particular needs and requirements. Without statutory changes and additional policy and operational intervention, U.S. Customs and Border Protection (CBP) anticipates the number of apprehensions and inadmissible aliens will continue to rise in April and May. Accordingly, the Department of Homeland Security (DHS) continues to diligently pursue numerous pathways to address this flow consistent with our laws, in coordination with federal interagency, departmental, and foreign partners.
Background: Recent presidential direction and guidance from the Attorney General (AG) instruct the U.S. Government to increase the consequences for dangerous illegal crossings. On April 6, 2018, the President signed a Presidential Memorandum titled Ending Catch and Release at the Border of the United States and Directing Other Enhancements to Immigration Enforcement. This memorandum directed Cabinet departments to apply all available resources and tools toward enhancing immigration enforcement and ending catch and release practices.

Additionally, on April 6, 2018, the AG released a memorandum directed to all federal prosecutors titled Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a). In the memorandum, the AG directed each U.S. Attorney’s Office (USAO) along the SWB – to the extent practicable, and in consultation with DHS – to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under §1325(a). The AG additionally directs each USAO on the SWB to work with DHS to develop guidelines to prosecute offenses under §1325(a).

In response to ongoing challenges with the flow of illegal crossings between ports of entry, and in accordance with the President’s direction and AG guidance, OHS and CBP are working with the USAOs across the SWB to identify current prosecution thresholds and capacity to receive additional caseload. This will serve as a benchmark to help inform any future Department of Justice (DOJ) resource requirements. Fully realizing the zero-tolerance goals outlined in the AG’s memorandum will require DOJ, the USAOs, and the U.S. Marshals Service to adjust policy thresholds and increase capacity across the southwest border. CBP and U.S. Immigration and Customs Enforcement will also have to apply additional resources toward enhanced referrals for prosecution.

The Immigration and Nationality Act (INA) authorizes the detention of certain aliens who entered the United States unlawfully until they can be removed from the United States. Inadmissible aliens are subject to removal, and aliens who illegally cross into the United States may be subject to criminal penalties as well as removal. The Secretary of Homeland Security

---

1 8 U.S.C. § 1325(a) provides that prosecution in the following situations: (a) improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts. Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both. 2 See, e.g., 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (providing that certain aliens subject to “expedited removal” procedures under Section 1225 “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”); 8. U.S.C. § 1225(b)(2)(A) (providing that aliens who have not been determined to be clearly and beyond a doubt entitled to admission shall be detained for 8 U.S.C. § 1229a proceedings); 8 U.S.C. § 1226(a) (establishing that, subject to certain exceptions, an alien may be arrested and detained “[o]n a warrant issued by the Attorney General ... pending a decision on whether the alien is to be removed from the United States.”); 8 U.S.C. § 1226(c) (authorizing the detention of certain criminal aliens); 8 U.S.C. § 1231(a)(2) (requiring the Attorney General to detain aliens “during the removal period” as they are removed from the United States following appropriate proceedings).

has broad legal authorities to carry out her responsibility to enforce the immigration laws. DHS could also permissibly direct the separation of parents or legal guardians and minors held in immigration detention so that the parent or legal guardian can be prosecuted pursuant to these authorities.

DHS has several options for how to pursue this increased prosecution, "Zero-Tolerance" initiative:

a. 

(b)(7)(E)

b. 

(b)(7)(E)

c. 

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

*See 6 U.S.C. § 202 (conveying broad authority to the Secretary of Homeland Security to secure the borders and carry out immigration enforcement functions); 8 U.S.C. § 1103(a)(3) (laying out broad regulatory authority for the Secretary of Homeland Security under the INA).

*For full legal analysis of this initiative, please see Attachment.
Accordingly, we request your decision on whether to pursue increased prosecution of amenable persons crossing the United States border illegally, and your guidance on the preferred option.
Recommendation: We recommend Option 3 as the most effective method to achieve operational objectives and the Administration's goal to end "catch and release." This initiative would pursue prosecution of [redacted] who cross our border illegally, including those [redacted] between ports of entry in coordination with DOJ.

Option 1:
Approve/date __ _ _ __ _ _ Disapprove/date __ _ _ __ _ _
Modify/date __ _ _ __ _ _ Needs discussion/date __ _ _ __ _ _

Option 2:
Approve/date __ _ _ __ _ _ Disapprove/date __ _ _ __ _ _
Modify/date __ _ _ __ _ _ Needs discussion/date __ _ _ __ _ _

Option 3: [redacted]
Approve/date 5/4/18 Disapprove/date __ _ _ __ _ _
Modify/date __ _ _ __ _ _ Needs discussion/date __ _ _ __ _ _
Objective:

- Achieve increased level of Border Security in the Big Bend Sector (BBT) area of responsibility (AOR) through consistent application of all legal authorities via consequence delivery.

Key Messages: This effort is not new. Each day, those that violate our immigration laws are referred for prosecution. In order to ensure the sovereignty of our Nation and secure our borders, the Department of Justice (DOJ) and the Department of Homeland Security are maximizing their capabilities to deliver the appropriate consequences to violators. In order to break the cycle of those who seek to enter unlawfully, all amenable adults who violate 8 U.S.C. § 1325(a) will be referred for prosecution. This includes those adults who are accompanying children. We will not exempt adults who engage in this criminal activity, including those who choose to put their children in harm’s way by crossing the border between the ports of entry.

Execution:

BBT, under the direction of the Chief Patrol Agent (CPA).

- Currently, BBT presents for prosecution all single adults who are amenable to prosecution under 8 U.S.C. § 1325(a).

- BBT has historical success in prosecuting all amenable 8 U.S.C. § 1325(a) cases.

- BBT will begin processing all adults who are amenable for prosecution under 8 U.S.C. § 1325(a). This includes adults who are part of family units.
BBT has notified DOJ and Immigration and Customs Enforcement (ICE) partners of the initiative.

The CPA will consider DOJ requests for Sector resources to support increased prosecutions on a case-by-case basis, in coordination with Headquarters LEOD. All requests for Chief Counsel resources will be referred to the Office of Chief Counsel.

The CPA will maintain current operations with respect to enforcement activities and prosecutions.

All aliens referred for prosecution within each sector will be entered into the module, with reasons for declinations recorded accurately.

Prosecution Priorities in the following order:

1. 
2. 

Reporting Requirements: (weekly statistics)

- Report requests from U.S. Attorney or U.S. Marshal’s Offices for CBP resources to assist with implementation.
- Report the number of apprehensions in the sector.
- Report the total number of prosecution referrals by sector for each priority throughout sector.
- Report the percentage of referred prosecutions for each priority.
- Report the percentage of declinations for each priority sub-categorized by reason.
- Report the total number of non-referred (for prosecution) by priority sub-categorized by reason.
- Any requests for reporting of prosecutions by SAUSAs from the Office of Chief Counsel, or reporting on Chief Counsel SAUSA resources, will be referred to the Office of Chief Counsel.

Metrics:

- Total number of prosecutions – increase or decrease
Southwest Border Prosecutions
Big Bend Sector
May 6, 2018

- Total number of apprehensions in relation to increase/decrease of prosecutions
- Demographic shift of aliens entering illegally
  - Number of OTMs entering illegally
  - Number of family units entering illegally
- Increase/decrease in presentations at the ports of entry

Execution Timeline:

1. (b)(7)(E)

(b)(7)(E)
Please review the below Executive Order drafted June 20, 2018, and continue to operate under this guidance until any updates or modifications are received.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b)(7)(E)
2. (b)(7)(E)
3. (b)(7)(E)

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. (b)(7)(E)
Respectfully,

(b)(6)(b)(7)(C) MEP
Acting Assistant Chief Patrol Agent
Laredo Sector
Office: (b)(6)(b)(7)(C)
GOV Cell: (b)(6)(b)(7)(C)

From: (b)(6)(b)(7)(C)
Sent: Thursday, June 21, 2018 6:39 AM
To: LRT STATION COMMAND GML LRT SECTOR
STAFF GML LRT-CPU MANAGEMENT
Cc: LRT-Pross-Management LRT-CPU MANAGEMENT

Subject: FW: June 20, 2018 Executive Order – Updated Operational Guidance *****(UPDATED)******

FYSA
Initial EO operational guidance and update.

Respectfully,

(b)(6)(b)(7)(C)
Acting Assistant Chief Patrol Agent
Laredo Sector
GOV Cell: (b)(6)(b)(7)(C)

Sent from a mobile device
Update

Thank you,

(b)(6)(b)(7)(C)
Special Operations Supervisor
Combine Enforcement Unit
USBP Laredo Sector
Office: (b)(6)(b)(7)(C)
Gov: (b)(6)(b)(7)(C)

FYSA

Thank you,

(b)(6)(b)(7)(C)
(a) Deputy Chief Patrol Agent
Laredo Sector Border Patrol

From: HASTINGS, BRIAN S
Sent: Wednesday, June 20, 2018 8:09:29 PM
To: BP Field Chiefs; BP Field Deputies
Cc: MCALEENAN, KEVIN K; VITIELLO, RONALD D (USBP); PROVOST, CARLA (USBP); LUCK, SCOTT A (USBP); HUDSON, RICHARD M; (b)(6)(b)(7)(C); HUFFMAN BENJAMINE C; (b)(6)(b)(7)(C) [AJO]; (b)(6)(b)(7)(C) [HOOVER, CRINLEY S; SINGLETON, RUYNARD R; (b)(6)(b)(7)(C) [OCC]; (b)(6)(b)(7)(C) [OCC]; (b)(6)(b)(7)(C)
Updated Operational Guidance 2:

Amending number 3 below, until further implementation guidance is received.

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,
Brian
Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. [Redacted]

2. [Redacted]

3. [Redacted]

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. [Redacted]

5. [Redacted]

V/r,

Brian
Gentlemen,

With this new guidance, (b)(5), (b)(7)(E)

Assistant Chief Patrol Agent
Del Rio Sector

(b)(6)(b)(7)(C) Office
(b)(6)(b)(7)(C) G-cell
From: (b)(6)(b)(7)(C)
Sent: Friday, May 04, 2018 6:08 PM
To: DRT-PAICS (b)(7)(E) DRT-DPAICS (b)(7)(E)
Cc: (b)(6)(b)(7)(C)
Subject: Zero Tolerance Prosecutions

All,

More information will be forthcoming from Prosecutions, but we will begin 8 USC 1325 prosecutorial referrals for all amenable adults, to include adults that are part of family units. Please read the attached CONOP for further details on the efforts.

1.
2.
3.
4.
5.

Reporting is still pending, but we will need each station to email the DRT PROS STAFF mailbox concerning any adults.
Objective:
- Achieve increased level of Border Security along the southwest border through consistent application of all legal authorities via consequence delivery.

Key Messages: This effort is not new. Each day, those that violate our immigration laws are referred for prosecution. In order to ensure the sovereignty of our Nation and secure our borders, the Department of Justice and the Department of Homeland Security are maximizing their capabilities to deliver the appropriate consequences to violators. In order to break the cycle of those who seek to enter unlawfully, all amenable adults who violate 8 U.S.C. § 1325(a) will be referred for prosecution. This includes those adults who are accompanying children. We will not exempt adults who engage in this criminal activity, including those who choose to put their children in harm’s way by crossing the border between the ports of entry.

Execution:
The southwest border sectors, under the direction of their Chief Patrol Agents (CPAs), will implement

- (b)(7)(E)
- (b)(5)
- (b)(7)(E)
- (b)(7)(E)

Sectors will provide localized, phased plans to (b)(7)(E) while recognizing that our partners will need time to adjust resources to achieve shared DHS and DOJ goals.
- CPAs will expand and maintain this prosecution initiative (b)(7)(E)
- CPAs will consider DOJ request for Sector resources to support increased prosecutions on a case-by-case basis, in coordination with Headquarters LEOD. All requests for Chief Counsel resources will be referred to the Office of Chief Counsel.
- CPAs will maintain current operations in other (b)(7)(E) with respect to enforcement activities and prosecutions.
- All aliens referred for prosecution within each sector will be entered into the (b)(7)(E) module, with reasons for declinations recorded accurately.

Prosecution Priorities in the following order:
1. (b)(7)(E)
2. (b)(7)(E)
Southwest Border Prosecutions
May 3, 2018

Reporting Requirements: (weekly statistics)

- Report requests from U.S. Attorney or U.S. Marshal offices for CBP resources to assist with implementation.
- Report the number of apprehensions in targeted and non-targeted by sector.
- Report the total number of prosecution referrals by sector for each priority in targeted and non-targeted by sector.
- Report the percentage of referred prosecutions for each priority in targeted and non-targeted.
- Report the percentage of declinations for each priority sub-categorized by reason.
- Report the total number of non-referred (for prosecution) by priority sub-categorized by reason.
- Any requests for reporting of prosecutions by Special Assistant United States Attorneys (SAUSAs) from the Office of Chief Counsel, or reporting on Chief Counsel SAUSA resources, should be referred to the Office of Chief Counsel.

Metrics:
- Total number of prosecutions – increase or decrease
- Total number of apprehensions in relation to increase/decrease of prosecutions
- Demographic shift of aliens entering illegally
  - Number of OTMs entering illegally
  - Number of family units entering illegally
- Increase/decrease in presentations at the ports of entry

Execution Timeline:
Southwest Border Prosecutions
May 3, 2018

(b)(7)(E)
From: VILLAREAL, ROY D
Sent: Thursday, June 21, 2018 4:35:14 AM
To: SDC PAIC APAIC; SDC PROS SUPS
Cc: SCOTT, RODNEY S
Subject: FW: June 20, 2018 Executive Order – Updated Operational Guidance ***** (UPDATED)*****

Please take note of the amended guidance.

Roy Villareal
Deputy Chief Patrol Agent
San Diego Sector
(b)(6)(b)(7)(C)

From: HASTINGS, BRIAN S
Sent: Thursday, June 21, 2018 4:09:29 AM
To: BP Field Chiefs; BP Field Deputies
Cc: MCALEENAN, KEVIN K; VITIELLO, RONALD D (USBP); PROVOST, CARLA (USBP); LUCK, SCOTT A (USBP); HUDSON, RICHARD M; HUFFMAN, BENJAMINE C; AJO; (b)(6)(b)(7)(C) (OCC);
HOOVER, CRINLEY S; SINGLETON, RUYNARD R; (b)(6)(b)(7)(C) (OCC); (b)(6)(b)(7)(C) (OCC)
Subject: RE: June 20, 2018 Executive Order – Updated Operational Guidance ***** (UPDATED)*****
Chief, Deputies,

Updated Operational Guidance 2:

...Amending number 3 below, until further implementation guidance is received.

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,
Brian

From: HASTINGS, BRIAN S
Sent: Wednesday, June 20 2018 9:54 PM
To: BP Field Chiefs BP Field Deputies
Cc: MCALEEAN, KEVIN K VITIELLO, RONALD D (USBP) PROVOST, CARLA (USBP) LUCK, SCOTT A (USBP) HUFFMAN, BENJAMINE C HUDDSON, RICHARD M SINGLETON, RUYNARD R

Subject: June 20, 2018 Executive Order – Updated Operational Guidance

Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.
Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. [redacted]

2. [redacted]

3. [redacted]

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. [redacted]

5. [redacted]

V/r,

Brian
MEMORANDUM FOR THE SECRETARY

FROM:  

Kevin K. McAleenan  
Commissioner  
U.S. Customs and Border Protection

L. Francis Cissna  
Director  
U.S. Citizenship and Immigration Services

Thomas D. Homan  
Acting Director  
U.S. Immigration and Customs Enforcement

SUBJECT:  
Increasing Prosecutions of Immigration Violations

Purpose: This memo seeks your decision on increasing immigration violation prosecution referrals.

Summary: Illegal migration toward the Southwest Border (SWB) continues to rise. The two categories with the largest increases are: (1) Single Adults, now averaging over 1,000 aliens either apprehended between the ports of entry or found inadmissible at the ports of entry per day over the last 21 days, and (2) family units (FMUA), averaging over 450 for the same period. More starkly, inadmissible FMUAs encountered at and between the ports of entry during the period of April 18–19, 2018, reached the highest level since 2016—at almost 700 per day.

Family groups are one of the most challenging populations to the integrity of the immigration enforcement system both because of the strictures placed by the Flores Settlement Agreement, but also because of the costly and challenging nature of operationally addressing their particular needs and requirements. Without statutory changes and additional policy and operational intervention, U.S. Customs and Border Protection (CBP) anticipates the number of apprehensions and inadmissible aliens will continue to rise in April and May. Accordingly, the Department of Homeland Security (DHS) continues to diligently pursue numerous pathways to address this flow consistent with our laws, in coordination with federal interagency, departmental, and foreign partners.
Background: Recent presidential direction and guidance from the Attorney General (AG) instruct the U.S. Government to increase the consequences for dangerous illegal crossings. On April 6, 2018, the President signed a Presidential Memorandum titled Ending Catch and Release at the Border of the United States and Directing Other Enhancements to Immigration Enforcement. This memorandum directed Cabinet departments to apply all available resources and tools toward enhancing immigration enforcement and ending catch and release practices.

Additionally, on April 6, 2018, the AG released a memorandum directed to all federal prosecutors titled Zero-Tolerance for Offenses Under 8 U.S.C. §1325(a).1 In the memorandum, the AG directed each U.S. Attorney’s Office (USAO) along the SWB – to the extent practicable, and in consultation with DHS – to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under §1325(a). The AG additionally directs each USAO on the SWB to work with DHS to develop guidelines to prosecute offenses under §1325(a).

In response to ongoing challenges with the flow of illegal crossings between ports of entry, and in accordance with the President’s direction and AG guidance, DHS and CBP are working with the USAOs across the SWB to identify current prosecution thresholds and capacity to receive additional caseload. This will serve as a benchmark to help inform any future Department of Justice (DOJ) resource requirements. Fully realizing the zero-tolerance goals outlined in the AG’s memorandum will require DOJ, the USAOs, and the U.S. Marshals Service to adjust policy thresholds and increase capacity across the southwest border. CBP and U.S. Immigration and Customs Enforcement will also have to apply additional resources toward enhanced referrals for prosecution.

The Immigration and Nationality Act (INA) authorizes the detention of certain aliens who entered the United States unlawfully until they can be removed from the United States.2 Inadmissible aliens are subject to removal, and aliens who illegally cross into the United States may be subject to criminal penalties as well as removal.3 The Secretary of Homeland Security

---

1 8 U.S.C. § 1325(a) provides that prosecution in the following situations: (a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts. Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

2 See, e.g., 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (providing that certain aliens subject to “expedited removal” procedures under Section 1225 “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”); 8. U.S.C. § 1225(b)(2)(A) (providing that aliens who have not been determined to be clearly and beyond a doubt entitled to admission shall be detained for 8 U.S.C. § 1229a proceedings); 8 U.S.C. § 1226(a) (establishing that, subject to certain exceptions, an alien may be arrested and detained “[o]n a warrant issued by the Attorney General . . . pending a decision on whether the alien is to be removed from the United States.”); 8 U.S.C. § 1226(c) (authorizing the detention of certain criminal aliens); 8 U.S.C. § 1231(a)(2) (requiring the Attorney General to detain aliens “[d]uring the removal period” as they are removed from the United States following appropriate proceedings).

has broad legal authorities to carry out her responsibility to enforce the immigration laws. DHS could also permissibly direct the separation of parents or legal guardians and minors held in immigration detention so that the parent or legal guardian can be prosecuted pursuant to these authorities.

DHS has several options for how to pursue this increased prosecution, "Zero-Tolerance" initiative:

a. (b)(7)(E)

b. (b)(7)(E)

c. (b)(7)(E)

For full legal analysis of this initiative, please see Attachment.
Accordingly, we request your decision on whether to pursue increased prosecution of amenable persons crossing the United States border illegally, and your guidance on the preferred option.
Recommendation: We recommend Option 3 as the most effective method to achieve operational objectives and the Administration’s goal to end “catch and release.” This initiative would pursue prosecution of [redacted] who cross our border illegally, including those [redacted] between ports of entry in coordination with DOJ.

Option 1:
Approve/date __________________________ Disapprove/date __________________________
Modify/date __________________________ Needs discussion/date __________________________

Option 2:
Approve/date __________________________ Disapprove/date __________________________
Modify/date __________________________ Needs discussion/date __________________________

Option 3: (b)(6); (b)(7)(C)
Approve/date 5/4/18 Disapprove/date __________________________
Modify/date __________________________ Needs discussion/date __________________________
SWB Chief’s and Deputies,

Please see the attached, approved CONOP to develop a quickly scalable approach to achieve 100% immigration violation prosecution referrals for **all amenable adults**.

Border Patrol is authorized to implement increased Southwest Border Prosecutions, as outlined in the second attachment.

In a few moments, we will be sending out a manual spreadsheet to record declinations and purposes for declinations. Accurate data will be critical to show our progress toward 100% prosecutions and to acquire additional assets (AUSAs, Marshall’s support, detention space, etc.)

We will be hosting a teleconference call at 6:10 p.m. EST to discuss and answer any questions. The call in information will be out in a few minutes.

V/r,

[Redacted]
Objective:
- Achieve increased level of Border Security along the southwest border through consistent application of all legal authorities via consequence delivery.

Key Messages: This effort is not new. Each day, those that violate our immigration laws are referred for prosecution. In order to ensure the sovereignty of our Nation and secure our borders, the Department of Justice and the Department of Homeland Security are maximizing their capabilities to deliver the appropriate consequences to violators. In order to break the cycle of those who seek to enter unlawfully, all amenable adults who violate 8 U.S.C. § 1325(a) will be referred for prosecution. This includes those adults who are accompanying children. We will not exempt adults who engage in this criminal activity, including those choose to put their children in harm’s way by crossing the border between the ports of entry.

Execution:
The southwest border sectors, under the direction of their Chief Patrol Agents (CPAs), will implement

- Sectors will provide localized, phased plans to while recognizing that our partners will need time to adjust resources to achieve shared DHS and DOJ goals.
- CPAs will expand and maintain this prosecution initiative while recognizing that our partners will need time to adjust resources to achieve shared DHS and DOJ goals.
- CPAs will consider DOJ request for Sector resources to support increased prosecutions on a case-by-case basis, in coordination with Headquarters LEOD. All requests for Chief Counsel resources will be referred to the Office of Chief Counsel.
- CPAs will maintain current operations in other with respect to enforcement activities and prosecutions.
- All aliens referred for prosecution within each sector will be entered into the module, with reasons for declinations recorded accurately.

Prosecution Priorities in the following order:
1.  
2.  

Approved by: LEOD Deputy Chief Richard Hudson
Southwest Border Prosecutions
May 3, 2018

Reporting Requirements: (weekly statistics)

- Report requests from U.S. Attorney or U.S. Marshal offices for CBP resources to assist with implementation.
- Report the number of apprehensions in targeted and non-targeted by sector.
- Report the total number of prosecution referrals by sector for each priority in targeted and non-targeted by sector.
- Report the percentage of referred prosecutions for each priority in targeted and non-targeted.
- Report the percentage of declinations for each priority sub-categorized by reason.
- Report the total number of non-referred (for prosecution) by priority sub-categorized by reason.
- Any requests for reporting of prosecutions by Special Assistant United States Attorneys (SAUSAs) from the Office of Chief Counsel, or reporting on Chief Counsel SAUSA resources, should be referred to the Office of Chief Counsel.

Metrics:

- Total number of prosecutions – increase or decrease
- Total number of apprehensions in relation to increase/decrease of prosecutions
- Demographic shift of aliens entering illegally
  - Number of OTMs entering illegally
  - Number of family units entering illegally
- Increase/decrease in presentations at the ports of entry

Execution Timeline:
Southwest Border Prosecutions
May 3, 2018

(b)(7)(E)
Additional guidance. Ensure compliance.

Thank you,

Patrol Agent in Charge
/ Big Bend Sector
office
mobile

All,
Please see updated guidance below for immediate implementation. Contact DC  if you have any questions. Thank you.
Chief, Deputies,

**Updated Operational Guidance 2:**

- Amending number 3 below, until further implementation guidance is received.

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,

From: [redacted]
Sent: Wednesday, June 20, 2018 9:54 PM
To: BP Field Chiefs [redacted]
Cc: MCALEENAN, KEVIN K [redacted]

Subject: June 20, 2018 Executive Order – Updated Operational Guidance
June 20, 2018 Executive Order – Updated Operational Guidance:

1. [Redacted]

2. [Redacted]

3. [Redacted]

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.

5. [Redacted]

V/r, [Redacted]
All,

Please see updated guidance below for immediate implementation. Contact DC if you have any questions.

Chief, Deputies,

Updated Operational Guidance 2:

- Amending number 3 below, until further implementation guidance is received.

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,
Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b)(7)(E)

2. (b)(7)(E)

3. (b)(7)(E)

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. (b)(7)(E)

5. (b)(7)(E)

V/r,
CONSOLIDATION OF CURRENT GUIDANCE – (No change to DCPA Guidance sent at 5:05 AM 6/21/2018)

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b)(7)(E)
2. (b)(7)(E)
3. (b)(7)(E)
4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. (b)(7)(E)
5. (b)(7)(E)

Robert L. Boatright
Chief Patrol Agent
Big Bend Sector
From: BOATRIGHT, ROBERT L  
Sent: Wednesday, June 20, 2018 5:36 PM  
To: BBT PAIC DPAIC  
Cc: BBT TASKINGS  
Subject: IMMEDIATE ACTION REQUIRED - FAMILY SEPARATION GUIDANCE  

PLEASE ACKNOWLEDGE RECEIPT AND IMMEDIATE IMPLEMENTATION TO DC WITHIN 1 HOUR  

New Executive Order – June 20, 2018  
https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/  

Immediate action plan  

Do not detain an alien family together when there is a concern that detention of an alien child with the child’s alien parent would pose a risk to the child’s welfare. EO Section 3 (b)
Additional Guidance
Will change over the next few days
Be Flexible
Err towards family unity

Path Forward – Big Picture
(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

(b) (5), (b) (7)(E)

Direct questions to Division Chief

More to come as it becomes available.

Robert L. Boatright
Chief Patrol Agent
Big Bend Sector
United States Border Patrol

This message contains information intended only for the addressee named above. If you believe you have received this email in error, please notify the sender immediately.
From: BOATRIGHT, ROBERT L  
Sent: Thursday, June 21, 2018 6:30 AM  
To: BBT_PAIC_DPAIC  
Cc: BBT TASKINGS  
Subject: UPDATED 6/21/2018 - FAMILY SEPARATION GUIDANCE  

CONSOLIDATION OF CURRENT GUIDANCE – (No change to DCPA Guidance sent at 5:05 AM 6/21/2018)

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b)(7)(E)
Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.

Robert L. Boatright
Chief Patrol Agent
Big Bend Sector
United States Border Patrol

(b)(7)(E)
(b)(7)(E)
(b)(7)(E)
(b)(7)(E)
(b)(7)(E)
Immediate action plan

Do not detain an alien family together when there is a concern that detention of an alien child with the child’s alien parent would pose a risk to the child’s welfare. EO Section 3 (b)

Additional Guidance
Will change over the next few days
Be Flexible
Err towards family unity

**Path Forward – Big Picture**

Direct questions to Division Chief [ ]

More to come as it becomes available.

---

**Robert L. Boatright**

*Chief Patrol Agent*

*Big Bend Sector*

*United States Border Patrol* - Office

*b) (5), (b) (7)(E)*

---

This message contains information intended only for the addressee named above. If you believe you have received this email in error, please notify the sender immediately.
From: HUDSON, RICHARD M
Sent: Monday, August 6, 2018 7:02 PM
To: BP Field Chiefs
Cc: LUCK, SCOTT (USBP) BP Field Deputies (b)(7)(E) PROVOST, CARLA (USBP) HUFFMAN, BENJAMINE C (USBP)
LEOD Associate Chiefs (b)(6);(b)(7)(C) PROVOST, CARLA (USBP)
Subject: Re: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION - UPDATED GUIDANCE

Chiefs,

(b)(5)

This is now part of a court ordered stay.

(b)(5)

(b)(5)

I anticipate future permutations of this situation as the legal process continues to play out.

Appreciate your patience and flexibility.

VR

Rich

Richard M. Hudson
Acting Chief
Chiefs,

Please be prepared for late night direction and potential direction change.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters
Chiefs,

Again, please confirm receipt of this email to the [redacted] and I.

Thank you in advance for your patience and understanding.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters

From: HUDSON, RICHARD M
Sent: Tuesday, July 31, 2018 9:44 PM
To: BP Field Chiefs
Cc: LUCK, SCOTT A (CBP) HUFFMAN, BENJAMINE C

CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the exclusive use of the intended recipient(s) and may contain confidential and privileged information or otherwise protected by law. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please notify the sender by reply and destroy all copies of the original message.
Subject: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION

Importance: High

Chiefs,

Please ensure this guidance is provided to all processing centers and stations that would be impacted by this guidance.

Please confirm receipt via a return e-mail to me.

If you have any issues with, please elevate immediately to HQ for intervention.

If you have any questions, please let me know and we will work with OCC to get you an answer if we cannot provide one immediately.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
United States Border Patrol Headquarters
Office
Cellular

VR
All,
I’ve compiled two different emails here on guidance regarding the EO from yesterday. The first one had the string below and the second one is an amendment which I pasted immediately below.

Chief, Deputies,

**Updated Operational Guidance 2:**

- Amending number 3 below, until further implementation guidance is received.

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,

Please disseminate

Chief Patrol Agent
Detroit Sector
U.S. Border Patrol
Serving Michigan, Ohio, Illinois, and Indiana
From: [b](6);[b](7)(C)  
To: BP Field Chiefs  
Cc: MCALEENAN, KEVIN K  
     PROVOST, CARLA (USBP)  
     PROVOST, CARLA (USBP)  
     HUFFMAN, BENJAMINE C  
     HOOVER, CRINLEY S  
     SINGLETON, RUYNARD R  
     (OCC)  
     (OCC)  
     (b)(6);[b](7)(C)  
     (b)(6);[b](7)(C)  
     (b)(6);[b](7)(C)  
     (b)(6);[b](7)(C)  
     (b)(6);[b](7)(C)  
     [b](6);[b](7)(C)  

Subject: June 20, 2018 Executive Order – Updated Operational Guidance

Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. 

2. 

3. 

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.  

5. 

V/r,
This is the latest guidance.

1. 
2. 

Any questions, let us know.

Special Operations Supervisor
Interagency Coordination
Office
Cell
If you have any questions, please feel free to call me or another member of the MCS management team.

Thanks,

AUSA (b)(6);(b)(7)(C)
Principal Deputy Chief, Major Crimes Section
United States Attorney’s Office
Southern District of California
Office: (b)(6);(b)(7)(C)
Cell: (b)(6);(b)(7)(C)
PAICs,

The attached memorandum is for immediate implementation.

Please provide an email to Acting DCPA [b](6);(b)(7)(C) that you have read, understand and have disseminated the guidance to your agents for immediate implementation.

Any questions please contact Acting DCPA [b](6);(b)(7)(C).

Thank you,

From: [b](6);[b](7)(C)
Sent: Wednesday, June 27, 2018 3:51 PM
To: BP Field Chiefs [b](7)(E); BP Field Deputies [b](7)(E)
Cc: PROVOST, CARLA (USBP)[b](6);(b)(7)(C) LUCK, SCOTT A (USBP)[b](6);(b)(7)(C) HUFFMAN, BENJAMINE [b](6);(b)(7)(C) HUDSON, RICHARD M.


Chiefs, Deputies,

Please see the attached guidance memo from Commissioner McAleenan to Chief Provost and AC Owen regarding the Interim Guidance on Preliminary Injunction in Ms. L. v. ICE, No. 18-428 (C.D. Cal. June 26, 2018).

This memo and guidance is for immediate implementation.
Please provide an email that you have read, understand and disseminated the guidance to your agents for immediate implementation.

If you have any questions or concerns, please give me a call.

V/r,

[Redacted]

O: (b)(6);(b)(7)(C)
C: (b)(6);(b)(7)(C)
June 27, 2018

MEMORANDUM FOR: Carla L. Provost  
Chief  
U.S. Border Patrol

Todd C. Owen  
Executive Assistant Commissioner  
Office of Field Operations

FROM: Kevin K. McAleenan  
Commissioner

SUBJECT: Interim Guidance on Preliminary Injunction in  
Ms. L. v. ICE, No. 18-428 (C.D. Cal. June 26, 2018)

On June 26, 2018, the court granted plaintiffs' request for a nationwide preliminary injunction, enjoining the government from separating parents and legal guardians, who are detained in Department of Homeland Security (DHS) custody, from their children in certain circumstances. This interim guidance provides initial direction on compliance with that court order.

- (b)(7)(E)
- (b)(7)(E)
Any questions about how to comply with the court order should be raised through the appropriate chain of command for contact with local Office of Chief Counsel. This guidance will be updated as needed and appropriate.

cc: All Executive Assistant Commissioners and Assistant Commissioners
Good evening. A few hours ago U.S. District Court Judge Sabraw in San Diego issued the attached two orders affecting CBP operations nationwide. We'll be in touch tomorrow but wanted you to be aware as the media has already started reporting on the attached court orders. Cheers.///
Eleven weeks ago, Plaintiffs leveled the serious accusation that our Government was engaged in a widespread practice of separating migrant families, and placing minor children who were separated from their parents in government facilities for “unaccompanied minors.” According to Plaintiffs, the practice was applied indiscriminately, and separated even those families with small children and infants—many of whom were seeking asylum. Plaintiffs noted reports that the practice would become national policy. Recent events confirm these allegations. Extraordinary relief is requested, and is warranted under the circumstances.

On May 7, 2018, the Attorney General of the United States announced a “zero tolerance policy,” under which all adults entering the United States illegally would be subject to criminal prosecution, and if accompanied by a minor child, the child would be
separated from the parent.\textsuperscript{1} Over the ensuing weeks, hundreds of migrant children were separated from their parents, sparking international condemnation of the practice. Six days ago on June 20, 2018, the President of the United States signed an Executive Order ("EO") to address the situation and to require preservation of the "family unit" by keeping migrant families together during criminal and immigration proceedings to the extent permitted by law, while also maintaining "rigorous[ ]" enforcement of immigration laws. See Executive Order, Affording Congress an Opportunity to Address Family Separation § 1, 2018 WL 3046068 (June 20, 2018). The EO did not address reunification of the burgeoning population of over 2,000 children separated from their parents. Public outrage remained at a fever pitch. Three days ago on Saturday, June 23, 2018, the Department of Homeland Security ("DHS") issued a "Fact Sheet" outlining the government’s efforts to "ensure that those adults who are subject to removal are reunited with their children for the purposes of removal."\textsuperscript{2}

Plaintiffs assert the EO does not eliminate the need for the requested injunction, and the Fact Sheet does not address the circumstances of this case. Defendants disagree with those assertions, but there is no genuine dispute that the Government was not prepared to accommodate the mass influx of separated children. Measures were not in place to provide for communication between governmental agencies responsible for detaining parents and those responsible for housing children, or to provide for ready communication between separated parents and children. There was no reunification plan in place, and families have been separated for months. Some parents were deported at separate times and from


different locations than their children. Migrant families that lawfully entered the United States at a port of entry seeking asylum were separated. And families that were separated due to entering the United States illegally between ports of entry have not been reunited following the parent’s completion of criminal proceedings and return to immigration detention.

This Court previously entered an order finding Plaintiffs had stated a legally cognizable claim for violation of their substantive due process rights to family integrity under the Fifth Amendment to the United States Constitution based on their allegations the Government had separated Plaintiffs from their minor children while Plaintiffs were held in immigration detention and without a showing that they were unfit parents or otherwise presented a danger to their children. See Ms. L. v. U.S. Immigration & Customs Enf’t, 302 F. Supp. 3d 1149, 2018 WL 2725736, at *7-12 (S.D. Cal. June 6, 2018). A class action has been certified to include similarly situated migrant parents. Plaintiffs now request classwide injunctive relief to prohibit separation of class members from their children in the future absent a finding the parent is unfit or presents a danger to the child, and to require reunification of these families once the parent is returned to immigration custody unless the parent is determined to be unfit or presents a danger to the child.

Plaintiffs have demonstrated a likelihood of success on the merits, irreparable harm, and that the balance of equities and the public interest weigh in their favor, thus warranting issuance of a preliminary injunction. This Order does not implicate the Government’s discretionary authority to enforce immigration or other criminal laws, including its decisions to release or detain class members. Rather, the Order addresses only the circumstances under which the Government may separate class members from their children, as well as the reunification of class members who are returned to immigration custody upon completion of any criminal proceedings.
I. BACKGROUND

This case started with the filing of a Complaint by Ms. L., a Catholic citizen of the Democratic Republic of the Congo fleeing persecution from her home country because of her religious beliefs. The specific facts of Ms. L.’s case are set out in the Complaint and this Court’s June 6, 2018 Order on Defendants’ motion to dismiss. See Ms. L., 2018 WL 2725736, at *1-3. In brief, Ms. L. and her then-six-year-old daughter S.S., lawfully presented themselves at the San Ysidro Port of Entry seeking asylum based on religious persecution. They were initially detained together, but after a few days S.S. was “forcibly separated” from her mother. When S.S. was taken away from her mother, “she was screaming and crying, pleading with guards not to take her away from her mother.” (Am. Compl. ¶ 43.) Immigration officials claimed they had concerns whether Ms. L. was S.S.’s mother, despite Ms. L.’s protestations to the contrary and S.S.’s behavior. So Ms. L. was placed in immigration custody and scheduled for expedited removal, thus rendering S.S. an “unaccompanied minor” under the Trafficking Victims Protection and Reauthorization Act (“TVPRA”), Pub. L. No. 110-457 (Dec. 23, 2008), and subjecting her to the “care and custody” of the Office of Refugee Resettlement (“ORR”). S.S. was placed in a facility in

3 The TVPRA provides that “the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of” HHS and its sub-agency, ORR. 8 U.S.C. § 1232(b)(1). An “unaccompanied alien child” (“UAC”) is a child under 18 years of age with no lawful immigration status in the United States who has neither a parent nor legal guardian in the United States nor a parent nor legal guardian in the United States “available” to care for them. 6 U.S.C § 279(g)(2). According to the TVPRA, a UAC “may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child’s physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian’s identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.” 8 U.S.C. § 1232(c)(3)(A).
Chicago over a thousand miles away from her mother. Immigration officials later determined Ms. L. had a credible fear of persecution and placed her in removal proceedings, where she could pursue her asylum claim. During this period, Ms. L. was able to speak with her daughter only “approximately 6 times by phone, never by video.” (Am. Compl. ¶ 45.) Each time they spoke, S.S. “was crying and scared.” (Id. ¶ 43.) Ms. L. was “terrified that she would never see her daughter again.” (Id. ¶ 45.) After the present lawsuit was filed, Ms. L. was released from ICE detention into the community. The Court ordered the Government to take a DNA saliva sample (or swab), which confirmed that Ms. L. was the mother of S.S. Four days later, Ms. L. and S.S. were reunited after being separated for nearly five months.

In an Amended Complaint filed on March 9, 2018, this case was expanded to include another Plaintiff, Ms. C. She is a citizen of Brazil, and unlike Ms. L., she did not present at a port of entry. Instead, she and her 14-year-old son J. crossed into the United States “between ports of entry,” after which they were apprehended by U.S. Border Patrol. Ms. C. explained to the agent that she and her son were seeking asylum, but the Government, as was its right under federal law, charged Ms. C. with entering the country illegally and placed her in criminal custody. This rendered J. an “unaccompanied minor” and he, like S.S., was transferred to the custody of ORR, where he, too, was housed in a facility in Chicago several hundred miles away from his mother. Ms. C. was thereafter convicted of misdemeanor illegal entry and served 25 days in criminal custody. After completing that sentence, Ms. C. was transferred to immigration detention for removal proceedings and consideration of her asylum claim, as she too had passed a credible fear screening. Despite being returned to immigration custody, Ms. C. was not reunited with J. During the five months she was detained, Ms. C. did not see her son, and they spoke on the phone only “a handful of times[.]” (Id. ¶ 58.) Ms. C. was “desperate” to be reunited with her son, worried about him constantly and did not know when she would be able to see him. (Id.) J. had a difficult time emotionally during the period of separation from his mother. (Id. ¶ 59.) Ms. C. was eventually released from immigration detention on bond, and only recently reunited
with J. Their separation lasted more than eight months despite the lack of any allegations or evidence that Ms. C. was unfit or otherwise presented a danger to her son.4

Ms. L. and Ms. C. are not the only migrant parents who have been separated from their children at the border. Hundreds of others, who have both lawfully presented at ports of entry (like Ms. L.) and unlawfully crossed into the country (like Ms. C.), have also been separated. Because this practice is affecting large numbers of people, Plaintiffs sought certification of a class consisting of similarly situated individuals. The Court certified that class with minor modifications,5 and now turns to the important question of whether Plaintiffs are entitled to a classwide preliminary injunction that (1) halts the separation of class members from their children absent a determination that the parent is unfit or presents a danger to the child, and (2) reunites class members who are returned to immigration custody upon completion of any criminal proceedings absent a determination that the parent is unfit or presents a danger to the child.

Since the present motion was filed, several important developments occurred, as previously noted. First, on May 7, 2018, the Government announced its zero tolerance policy for all adult persons crossing the border illegally, which resulted in the separation of hundreds of children who had crossed with their parents. This is what happened with Ms. C., though she crossed prior to the public announcement of the zero tolerance policy.

4 As stated in the Court’s Order on Defendants’ motion to dismiss, Plaintiffs do not challenge Ms. C.’s initial separation from J. as a result of the criminal charge filed against her. Plaintiffs’ only complaint with regard to Ms. C. concerns the Government’s failure to reunite her with J. after she was returned to immigration custody.

5 The class is defined to include: “All adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by the [DHS], and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody absent a determination that the parent is unfit or presents a danger to the child.” (See Order Granting in Part Mot. for Class Cert. at 17.) The class does not include parents with criminal history or communicable disease, or those apprehended in the interior of the country or subject to the EO. (See id. at 4 n.5.)
She is not alone. There are hundreds of similarly situated parents, and there are more than 2,000 children that have now been separated from their parents.

When a parent is charged with a criminal offense, the law ordinarily requires separation of the family. This separation generally occurs regardless of whether the parent is charged with a state or federal offense. The repercussions on the children, however, can vary greatly depending on status. For citizens, there is an established system of social service agencies ready to provide for the care and well-being of the children, if necessary, including child protective services and the foster care system. This is in addition to any family members that may be available to provide shelter for these minor children. Grandparents and siblings are frequently called upon. Non-citizens may not have this kind of support system, such as other family members who can provide shelter for their children in the event the parent is detained at the border. This results in immigrant children going into the custody of the federal government, which is presently not well equipped to handle that important task.

For children placed in federal custody, there are two options. One of those options is ORR, but it was established to address a different problem, namely minor children who were apprehended at the border without their parents, i.e., true “unaccompanied alien children.” It was not initially designed to address the problem of migrant children detained with their parents at the border and who were thereafter separated from their parents. The second option is family detention facilities, but the options there are limited. Indeed, at the time of oral argument on this motion, Government counsel represented to the Court that the “total capacity in [family] residential centers” was “less than 2,700.” (Rep. Tr. at 9, May 9, 2018, ECF No. 70.) For male heads of households, i.e., fathers traveling with their children, there was only one facility with “86 beds.” (Id. at 43.)

The recently issued EO confirms the government is inundated by the influx of children essentially orphaned as a result of family separation. The EO now directs “[h]eads of executive departments and agencies” to make available “any facilities … appropriate” for the housing and care of alien families. EO § 3(d). The EO also calls upon the military...
by directing the Secretary of Defense to make available “any existing” facility and to
“construct such facilities[,]” if necessary, id. § 3(c), which is an extraordinary measure.
Meanwhile, “tent cities” and other make-shift facilities are springing up. That was the
situation into which Plaintiffs, and hundreds of other families that were separated at the
border in the past several months, were placed.

This situation has reached a crisis level. The news media is saturated with stories of
immigrant families being separated at the border. People are protesting. Elected officials
are weighing in. Congress is threatening action. Seventeen states have now filed a
complaint against the Federal Government challenging the family separation practice. See
State of Washington v. United States, Case No. 18cv0939, United States District Court for
the Western District of Washington. And the President has taken action.

Specifically, on June 20, 2018, the President signed the EO referenced above. The
EO states it is the Administration’s policy “to maintain family unity, including by detaining
alien families together where appropriate and consistent with law and available resources.”
Id. § 1. In furtherance of that policy, the EO indicates that parents and children who are
apprehended together at the border will be detained together “during the pendency of any
criminal improper entry or immigration proceedings” to the extent permitted by law. Id. § 3.
The language of the EO is not absolute, however, as it states that family unity shall be
maintained “where appropriate and consistent with law and available resources[,]” id. § 1,
and “to the extent permitted by law and subject to the availability of appropriations[.]” Id.
§ 3. The EO also indicates rigorous enforcement of illegal border crossers will continue.
Id. § 1 (“It is the policy of this Administration to rigorously enforce our immigration
laws.”). And finally, although the Order speaks to a policy of “maintain[ing] family unity,”

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6 The Order defines “alien family” as “any person not a citizen or national of the United
States who has not been admitted into, or is not authorized to enter or remain in, the United
States, who entered this country with an alien child or alien children at or between
designated ports of entry and who was detained[.]” Id. § 2(a)(i).
it is silent on the issue of reuniting families that have already been separated or will be separated in the future.” *Id.*

In light of these recent developments, and in particular the EO, the Court held a telephonic status conference with counsel on June 22, 2018. During that conference, the Court inquired about communication between ORR and DHS, and ORR and the Department of Justice (“DOJ”), including the Bureau of Prisons (“BOP”), as it relates to these separated families. Reunification procedures were also discussed, specifically whether there was any affirmative reunification procedure for parents and children after parents were returned to immigration detention following completion of criminal proceedings. Government counsel explained the communication procedures that were in place, and represented, consistent with her earlier representation to the Court, that there was no procedure in place for the reunification of these families.7

The day after the status conference, Saturday, June 23, DHS issued the Fact Sheet referenced above. This document focuses on several issues addressed during the status conference, e.g., processes for enhanced communication between separated parents and children, but only “for the purposes of removal.” It also addresses coordination between and among three agencies, CBP, ICE, and HHS agency ORR, but again for the purpose of removal. The Fact Sheet does not address reunification for other purposes, such as immigration or asylum proceedings, which can take months. It also does not mention other vital agencies frequently involved during criminal proceedings: DOJ and BOP.

At the conclusion of the recent status conference, the Court requested supplemental briefing from the parties. Those briefs have now been submitted. After thoroughly

7 The Court: “Is there currently any affirmative reunification process that the government has in place once parent and child are separated? Government counsel: I would say … when a parent is released from criminal custody and taken into ICE custody is the practice to reunite them in family detention[?] And at that [previous hearing] I said no, that that was not the practice. I think my answer on that narrow question would be the same.” (Rep. Tr. at 29-30, June 22, 2018, ECF No. 77.)
considering all of the parties’ briefs and the record in this case, and after hearing argument from counsel on these important issues, the Court grants Plaintiffs’ motion for a classwide preliminary injunction.

II. 

DISCUSSION

Plaintiffs seek classwide preliminary relief that (1) enjoins Defendants’ practice of separating class members from their children absent a determination that the parent is unfit or presents a danger to their child, and (2) orders the government to reunite class members with their children when the parent is returned to immigration custody after their criminal proceedings conclude, absent a determination that the parent is unfit or presents a danger to the child. Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). To meet that showing, Plaintiffs must demonstrate “[they are] likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest.” Am. Trucking Ass'ns v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter, 555 U.S. at 20).8

8 The Ninth Circuit applies separate standards for injunctions depending on whether they are prohibitory, i.e., whether they prevent future conduct, or mandatory, i.e., “they go beyond ‘maintaining the status quo[.]’” Hernandez v. Sessions, 872 F.3d 976, 997 (9th Cir. 2017). The standard set out above applies to prohibitory injunctions, which is what Plaintiffs seek here. To the extent Plaintiffs are also requesting mandatory relief, that request is “subject to a higher standard than prohibitory injunctions,” namely that relief will issue only “when ‘extreme or very serious damage will result’ that is not capable of compensation in damages,’ and the merits of the case are not ‘doubtful.’” Id. at 999 (quoting Marilyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 879 (9th Cir. 2009)). The Ninth Circuit recognizes that application of these different standards “is controversial[,]” and that other Circuits have questioned this approach. Id. at 997-98. This Court need not, and does not, address that discrepancy here. Suffice it to say that to the extent some portion of Plaintiffs’ requested relief is subject to a standard higher than
Before turning to these factors, the Court addresses directly Defendants’ argument that an injunction is not necessary here in light of the EO and the recently released Fact Sheet. Although these documents reflect some attempts by the Government to address some of the issues in this case, neither obviates the need for injunctive relief here. As indicated throughout this Order, the EO is subject to various qualifications. For instance, Plaintiffs correctly assert the EO allows the government to separate a migrant parent from his or her child “where there is a concern that detention of an alien child with the child’s alien parent would pose a risk to the child’s welfare.” EO § 3(b) (emphasis added). Objective standards are necessary, not subjective ones, particularly in light of the history of this case. Furthermore, the Fact Sheet focuses on reunification “at time of removal[,]” U.S. Dep’t of Homeland Sec., supra, note 2, stating that the parent slated for removal will be matched up with their child at a location in Texas and then removed. It says nothing about reunification during the intervening time between return from criminal proceedings to ICE detention or the time in ICE detention prior to actual removal, which can take months. Indeed, it is undisputed “ICE has no plans or procedures in place to reunify the parent with the child other than arranging for them to be deported together after the parent’s immigration case is concluded.” (Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 31 ¶ 11.) Thus, neither of these directives eliminates the need for an injunction in this case. With this finding, the Court now turns to the Winter factors.

A. Likelihood of Success

“The first factor under Winter is the most important—likely success on the merits.” Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015). While Plaintiffs carry the burden of demonstrating likelihood of success, they are not required to prove their case in full at the preliminary injunction stage but only such portions that enable them to obtain the injunctive relief they seek. See Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981).
Here, the only claim currently at issue is Plaintiffs’ due process claim. Specifically, Plaintiffs contend the Government’s practice of separating class members from their children, and failing to reunite those parents who have been separated, without a determination that the parent is unfit or presents a danger to the child violates the parents’ substantive due process rights to family integrity under the Fifth Amendment to the United States Constitution. To prevail on this claim, Plaintiffs must show that the Government practice “shocks the conscience.” In the Order on Defendants’ motion to dismiss, the Court found Plaintiffs had set forth sufficient facts to support that claim. Ms. L., 2018 WL 2725736, at *7-12. The evidence submitted since that time supports that finding, and demonstrates Plaintiffs are likely to succeed on this claim.

As explained in the Court’s Order on Defendants’ motion to dismiss, the “shocks the conscience” standard is not subject to a rigid list of established elements. See County of Sacramento v. Lewis, 523 U.S. 833, 850 (1998) (stating “[r]ules of due process are not … subject to mechanical application in unfamiliar territory.”) On the contrary, “an investigation into substantive due process involves an appraisal of the totality of the circumstances rather than a formalistic examination of fixed elements[.]” Armstrong v. Squadrito, 152 F.3d 564, 570 (7th Cir. 1998).

Here, each Plaintiff presents different circumstances, but both were subjected to the same government practice of family separation without a determination that the parent was unfit or presented a danger to the child. Ms. L. was separated from her child without a determination she was unfit or presented a danger to her child, and Ms. C. was not reunited with her child despite the absence of any finding that she was unfit or presented a danger

9 In their supplemental brief, Defendants assert Plaintiffs are raising new claims based on events that transpired after the Complaints were filed, e.g., the announcement of the zero tolerance policy and the EO. The Court disagrees. Plaintiffs’ claims are not based on these events, but are based on the practice of separating class members from their children. The subsequent events are relevant to Plaintiffs’ claim, but they have not changed the claim itself, which remains focused on the practice of separation.
to her child. Outside of the context of this case, namely an international border, Plaintiffs would have a high likelihood of success on a claim premised on such a practice. See D.B. v. Cardall, 826 F.3d 721, 741 (4th Cir. 2016) (citing cases finding due process violation where state action interfered with rights of fit parents); Heartland Academy Community Church v. Waddle, 595 F.3d 798, 808-811 (8th Cir. 2010) (finding removal of children from religious school absent evidence the students were “at immediate risk of child abuse or neglect” was violation of clearly established constitutional right); Brokaw v. Mercer County, 235 F.3d 1000, 1019 (7th Cir. 2000) (citing Croft v. Westmoreland County Children and Youth Services, 103 F.3d 1123, 1126 (3d Cir. 1997) (“courts have recognized that a state has no interest in protecting children from their parents unless it has some definite and articulable evidence giving rise to a reasonable suspicion that a child has been abused or is in imminent danger of abuse.”)

The context of this case is different. The Executive Branch, which is tasked with enforcement of the country’s criminal and immigration laws, is acting within its powers to detain individuals lawfully entering the United States and to apprehend individuals illegally entering the country. However, as the Court explained in its Order on Defendants’ motion to dismiss, the right to family integrity still applies here. The context of the family separation practice at issue here, namely an international border, does not render the practice constitutional, nor does it shield the practice from judicial review.

On the contrary, the context and circumstances in which this practice of family separation were being implemented support a finding that Plaintiffs have a likelihood of success on their due process claim. First, although parents and children may lawfully be separated when the parent is placed in criminal custody, the same general rule does not apply when a parent and child present together lawfully at a port of entry seeking asylum. In that situation, the parent has committed no crime, and absent a finding the parent is unfit or presents a danger to the child, it is unclear why separation of Ms. L. or similarly situated class members would be necessary. Here, many of the family separations have been the result of the Executive Branch’s zero tolerance policy, but the record also reflects that the
practice of family separation was occurring before the zero tolerance policy was announced, and that practice has resulted in the casual, if not deliberate, separation of families that lawfully present at the port of entry, not just those who cross into the country illegally. Ms. L. is an example of this family separation practice expanding beyond its lawful reach, and she is not alone. (See, e.g., Pls.’ Reply Br. in Supp. of Mot. for Class Cert., Exs. 22-23, 25-26) (declarations from parents attesting to separation at border after lawfully presenting at port of entry and requesting asylum); Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 32 ¶¶ 9, 10b, 11a (listing parents who were separated from children after presenting at ports of entry)).

As set out in the Court’s prior Order, asylum seekers like Ms. L. and many other class members may be fleeing persecution and are entitled to careful consideration by government officials. Particularly so if they have a credible fear of persecution. We are a country of laws, and of compassion. We have plainly stated our intent to treat refugees with an ordered process, and benevolence, by codifying principles of asylum. See, e.g., The Refugee Act, PL 96-212, 94 Stat. 102 (1980). The Government’s treatment of Ms. L. and other similarly situated class members does not meet this standard, and it is unlikely to pass constitutional muster.

Second, the practice of separating these families was implemented without any effective system or procedure for (1) tracking the children after they were separated from their parents, (2) enabling communication between the parents and their children after separation, and (3) reuniting the parents and children after the parents are returned to immigration custody following completion of their criminal sentence. This is a startling reality. The government readily keeps track of personal property of detainees in criminal and immigration proceedings. Money, important documents, and automobiles, to name a few, are routinely catalogued, stored, tracked and produced upon a detainees’ release, at all levels—state and federal, citizen and alien. Yet, the government has no system in place to keep track of, provide effective communication with, and promptly produce alien children. The unfortunate reality is that under the present system migrant children are not
accounted for with the same efficiency and accuracy as property. Certainly, that cannot satisfy the requirements of due process. See Santosky v. Kramer, 455 U.S. 745, 758-59 (1982) (quoting Lassiter v. Dept. of Soc. Services of Durham County, N.C., 452 U.S. 18, (1981)) (stating it is “‘plain beyond the need for multiple citation’ that a natural parent’s ‘desire for and right to the companionship, care, custody, and management of his or her children’ is an interest far more precious than any property right.”) (internal quotation marks omitted).

The lack of effective methods for communication between parents and children who have been separated has also had a profoundly negative effect on the parents’ criminal and immigration proceedings, as well as the childrens’ immigration proceedings. See United States v. Dominguez-Portillo, No:EP-17-MJ-4409-MAT, 2018 WL 315759, at *1-2 (W.D. Tex. Jan. 5, 2018) (explaining that criminally charged defendants “had not received any paperwork or information concerning the whereabouts or well-being of” their children). In effect, these parents have been left “in a vacuum, without knowledge of the well-being and location of their children, to say nothing of the immigration proceedings in which those minor children find themselves.” Id. at *14. This situation may result in a number of different scenarios, all of which are negative – some profoundly so. For example, “[i]f parent and child are asserting or intending to assert an asylum claim, that child may be navigating those legal waters without the benefit of communication with and assistance from her parent; that defendant, too, must make a decision on his criminal case with total uncertainty about this issue.” Id. Furthermore, “a defendant facing certain deportation would be unlikely to know whether he might be deported before, simultaneous to, or after their child, or whether they would have the opportunity to even discuss their deportations[.]” Id. Indeed, some parents have already been deported without their children, who remain in government facilities in the United States.10

10 See, e.g., Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 32 ¶ 16k, Ex. 36 ¶ 7a; Nelson Renteria, El Salvador demands U.S. return child taken from deported father,
The absence of established procedures for dealing with families that have been separated at the border, and the effects of that void on the families involved, is borne out in the cases of Plaintiffs here. Ms. L. was separated from her child when immigration officials claimed they could not verify she was S.S.’s mother, and detained her for expedited removal proceedings. That rendered S.S. “unaccompanied” under the TVPRA and subject to immediate transfer to ORR, which accepted responsibility for S.S. There was no further communication between the agencies, ICE and ORR. The filing of the present lawsuit prompted release and reunification of Ms. L. and her daughter, a process that took close to five months and court involvement. Ms. C. completed her criminal sentence in 25 days, but it took nearly eight months to be reunited with her son. She, too, had to file suit to regain custody of her son from ORR.

These situations confirm what the Government has already stated: it is not affirmatively reuniting parents like Plaintiffs and their fellow class members for purposes other than removal. Outside of deportation, the onus is on the parents, who, for the most part, are themselves in either criminal or immigration proceedings, to contact ORR or otherwise search for their children and make application for reunification under the TVPRA. However, this reunification procedure was not designed to deal with the present circumstances. (See Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 33 ¶¶ 6-9.) Rather, “ORR’s reunification process was designed to address the situation of children who come to the border or are apprehended outside the company of a parent or legal guardian.” (Id. ¶ 6.) Placing the burden on the parents to find and request reunification with their children under the circumstances presented here is backwards. When children are

separated from their parents under these circumstances, the Government has an affirmative obligation to track and promptly reunify these family members.

This practice of separating class members from their minor children, and failing to reunify class members with those children, without any showing the parent is unfit or presents a danger to the child is sufficient to find Plaintiffs have a likelihood of success on their due process claim. When combined with the manner in which that practice is being implemented, *e.g.*, the lack of any effective procedures or protocols for notifying the parents about their children’s whereabouts or ensuring communication between the parents and children, and the use of the children as tools in the parents’ criminal and immigration proceedings, (*see* Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 29 ¶¶ 8, 14), a finding of likelihood of success is assured. A practice of this sort implemented in this way is likely to be “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience,” *Lewis*, 523 U.S. at 847 n.8, interferes with rights “‘implicit in the concept of ordered liberty[,]’” *Rochin v. Cal.*, 342 U.S. 165, 169 (1952) (quoting *Palko v. State of Conn.*, 302 U.S. 319, 325 (1937)), and is so “‘brutal’ and ‘offensive’ that it [does] not comport with traditional ideas of fair play and decency.” *Breithaupt v. Abram*, 352 U.S. 432, 435 (1957).

For all of these reasons, the Court finds there is a likelihood of success on Plaintiffs’ due process claim.

**B. Irreparable Injury**

Turning to the next factor, Plaintiffs must show they are “‘likely to suffer irreparable harm in the absence of preliminary relief.’” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Winter*, 555 U.S. at 20). “‘It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.’” *Id.* (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks omitted). As explained, Plaintiffs have demonstrated the likelihood of a deprivation of their constitutional rights, and thus they have satisfied this factor.
The injury in this case, however, deserves special mention. That injury is the separation of a parent from his or her child, which the Ninth Circuit has repeatedly found constitutes irreparable harm. See *Leiva–Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011); *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (identifying “separated families” as an irreparable harm).

Furthermore, the record in this case reflects that the separations at issue have been agonizing for the parents who have endured them. One of those parents, Mr. U., an asylum seeker from Kyrgyzstan, submitted a declaration in this case in which he stated that after he was told he was going to be separated from his son he “felt as though [he] was having a heart attack.” (Reply in Supp. of Mot. for Class Cert., Ex. 21 ¶ 4.) Another asylum-seeking parent from El Salvador who was separated from her two sons writes,

The separation from my sons has been incredibly hard, because I have never been away from them before. I do not want my children to think that I abandoned them. [My children] are so attached to me. [One of my children] used to sleep in bed with me every night while [my other child] slept in his own bed in the same room…. It hurts me to think how anxious and distressed they must be without me.

(Reply in Supp. of Mot. for Class Cert., Ex. 24 ¶ 9.) And another asylum-seeking parent from Honduras described having to place her crying 18-month old son in a car seat in a government vehicle, not being able to comfort him, and her crying as the officers “took [her] son away.” (Reply in Supp. of Mot. for Class Cert., Ex. 25 ¶ 7.) There has even been a report that one father committed suicide in custody after being separated from his wife and three-year-old child. See Molly Hennessy-Fiske, *Honduran Migrant Who Was Separated From Family is Found Dead in Texas Jail in an Apparent Suicide*, L.A. TIMES (June 9, 2018, 5:35 PM), http://www.latimes.com/nation/la-na-border-patrol-suicide-20180609-story.html.

The parents, however, are not the only ones suffering from the separations. One of the *amici* in this case, Children’s Defense Fund, states,
there is ample evidence that separating children from their mothers or fathers leads to serious, negative consequences to children’s health and development. Forced separation disrupts the parent-child relationship and puts children at increased risk for both physical and mental illness. And the psychological distress, anxiety, and depression associated with separation from a parent would follow the children well after the immediate period of separation—even after eventual reunification with a parent or other family.

(ECF No. 17-11 at 3.) Other evidence before the Court reflects that “separating children from parents is a highly destabilizing, traumatic experience that has long term consequences on child well-being, safety, and development.” (ECF No. 17-13 at 2.) That evidence reflects:

Separation from family leaves children more vulnerable to exploitation and abuse, no matter what the care setting. In addition, traumatic separation from parents creates toxic stress in children and adolescents that can profoundly impact their development. Strong scientific evidence shows that toxic stress disrupts the development of brain architecture and other organ systems, and increases the risk for stress-related disease and cognitive impairment well into adult years. Studies have shown that children who experience such traumatic events can suffer from symptoms of anxiety and post-traumatic stress disorder, have poorer behavioral and educational outcomes, and experience higher rates of poverty and food insecurity.

(ECF No. 17-13 at 2.) And Martin Guggenheim, the Fiorello LaGuardia Professor of Clinical Law at New York University School of Law and Founding Member of the Center for Family Representation, states:

Children are at risk of suffering great emotional harm when they are removed from their loved ones. And children who have traveled from afar and made their way to this country to seek asylum are especially at risk of suffering irreversible psychological harm when wrested from the custody of the parent or caregiver with whom they traveled to the United States.

(Mem. in Supp. of Classwide Prelim. Inj., Ex. 17 ¶ 16.) All of this evidence, combined with the constitutional violation alleged here, conclusively shows that Plaintiffs and the
class members are likely to suffer irreparable injury if a preliminary injunction does not issue.

C. Balance of Equities

Turning to the next factor, “[t]o obtain a preliminary injunction, a plaintiff must also demonstrate that ‘the balance of equities tips in his favor.’” Hernandez, 872 F.3d at 995 (quoting Winter, 555 U.S. at 20). As with irreparable injury, when a plaintiff establishes “a likelihood that Defendants’ policy violates the U.S. Constitution, Plaintiffs have also established that both the public interest and the balance of the equities favor a preliminary injunction.” Arizona Dream Act Coalition v. Brewer, 757 F.3d 1053, 1069 (9th Cir. 2014).

Plaintiffs here assert the balance of equities weighs in favor of an injunction in this case. Specifically, Plaintiffs argue Defendants would not suffer any hardship if the preliminary injunction is issued because the Government “cannot suffer harm from an injunction that merely ends an unlawful practice[.]” Rodriguez v. Robbins, 715 F.3d 1127, 1145 (9th Cir. 2013); see also Arizona Dream Act Coalition, 757 F.3d at 1069 (quoting Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012)) (stating balance of equities favors “‘prevent[ing] the violation of a party’s constitutional rights.’”). When the absence of harm to the Government is weighed against the harms to Plaintiffs set out above, Plaintiffs argue this factor weighs in their favor. The Court agrees.

The primary harm Defendants assert here is the possibility that an injunction would have a negative impact on their ability to enforce the criminal and immigration laws. However, the injunction here—preventing the separation of parents from their children and ordering the reunification of parents and children that have been separated—would do nothing of the sort. The Government would remain free to enforce its criminal and immigration laws, and to exercise its discretion in matters of release and detention consistent with law. See EO §§ 1, 3(a) & (e) (discussing Flores v. Sessions, CV 85-4544); see also Comm. of Cent. Am. Refugees v. I.N.S., 795 F.2d 1434, 1439-40 (9th Cir. 1986) (stating “prudential considerations preclude[] interference with the Attorney General’s [exercise of] discretion” in selecting the detention facilities where aliens are to be
detained). It would just have to do so in a way that preserves the class members’ constitutional rights to family association and integrity. *See Rodriguez*, 715 F.3d at 1146 (“While ICE is entitled to carry out its duty to enforce the mandates of Congress, it must do so in a manner consistent with our constitutional values.”) Thus, this factor also weighs in favor of issuing the injunction.

**D. Public Interest**

The final factor for consideration is the public interest. *See Hernandez*, 872 F.3d at 996 (quoting *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009)) (“When, as here, ‘the impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district court grants the preliminary injunction.’”) To obtain the requested relief, “Plaintiffs must demonstrate that the public interest favors granting the injunction ‘in light of [its] likely consequences,’ i.e., ‘consequences [that are not] too remote, insubstantial, or speculative and [are] supported by evidence.’” *Id.* (quoting *Stormans*, 586 F.3d at 1139). “‘Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.’” *Id.* (quoting *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)).

This case involves two important public interests: the interest in enforcing the country’s criminal and immigration laws and the constitutional liberty interest “of parents in the care, custody, and control of their children[,]” which “is perhaps the oldest of the fundamental liberty interests recognized by” the Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Both of these interests are valid and important, and both can be served by the issuance of an injunction in this case.

As stated, the public’s interest in enforcing the criminal and immigration laws of this country would be unaffected by issuance of the requested injunction. The Executive Branch is free to prosecute illegal border crossers and institute immigration proceedings against aliens, and would remain free to do so if an injunction were issued. Plaintiffs do not seek to enjoin the Executive Branch from carrying out its duties in that regard.
What Plaintiffs do seek by way of the requested injunction is to uphold their rights to family integrity and association while their immigration proceedings are underway. This right, specifically, the relationship between parent and child, is “constitutionally protected,” Quilloin v. Walcott, 434 U.S. 246, 255 (1978), and “well established.” Rosenbaum v. Washoe Cty., 663 F.3d 1071, 1079 (9th Cir. 2011). The public interest in upholding and protecting that right in the circumstances presented here would be served by issuance of the requested injunction. See Arizona Dream Act Coalition, 757 F.3d at 1069 (quoting Valle del Sol Inc. v. Whiting, 732 F.3d 1006, 1029 (9th Cir. 2013) (“[I]t is clear that it would not be equitable or in the public’s interest to allow the state … to violate the requirements of federal law, especially when there are no adequate remedies available.”) Accordingly, this factor, too, weighs in favor of issuing the injunction.

III.

CONCLUSION

The unfolding events—the zero tolerance policy, EO and DHS Fact Sheet—serve to corroborate Plaintiffs’ allegations. The facts set forth before the Court portray reactive governance—responses to address a chaotic circumstance of the Government’s own making. They belie measured and ordered governance, which is central to the concept of due process enshrined in our Constitution. This is particularly so in the treatment of migrants, many of whom are asylum seekers and small children. The extraordinary remedy of classwide preliminary injunction is warranted based on the evidence before the Court. For the reasons set out above, the Court hereby GRANTS Plaintiffs’ motion for classwide preliminary injunction, and finds and orders as follows:

(1) Defendants, and their officers, agents, servants, employees, attorneys, and all those who are in active concert or participation with them, are preliminarily enjoined from detaining Class Members in DHS custody without and apart from their minor children, absent a determination that the parent is unfit or presents a danger to the
child, unless the parent affirmatively, knowingly, and voluntarily declines to be reunified with the child in DHS custody.\textsuperscript{11}

(2) If Defendants choose to release Class Members from DHS custody, Defendants, and their officers, agents, servants, employees, and attorneys, and all those who are in active concert or participation with them, are preliminary enjoined from continuing to detain the minor children of the Class Members and must release the minor child to the custody of the Class Member, unless there is a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child.

(3) Unless there is a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child:

(a) Defendants must reunify all Class Members with their minor children who are under the age of five (5) within fourteen (14) days of the entry of this Order; and

(b) Defendants must reunify all Class Members with their minor children age five (5) and over within thirty (30) days of the entry of this Order.

(4) Defendants must immediately take all steps necessary to facilitate regular communication between Class Members and their children who remain in ORR custody, ORR foster care, or DHS custody. Within ten (10) days, Defendants must provide parents telephonic contact with their children if the parent is not already in contact with his or her child.

\textsuperscript{11} “Fitness” is an important factor in determining whether to separate parent from child. In the context of this case, and enforcement of criminal and immigration laws at the border, “fitness” could include a class member’s mental health, or potential criminal involvement in matters other than “improper entry” under 8 U.S.C. § 1325(a), (see EO § 1), among other matters. Fitness factors ordinarily would be objective and clinical, and would allow for the proper exercise of discretion by government officials.
(5) Defendants must immediately take all steps necessary to facilitate regular communication between and among all executive agencies responsible for the custody, detention or shelter of Class Members and the custody and care of their children, including at least ICE, CBP, BOP, and ORR, regarding the location and well-being of the Class Members’ children.

(6) Defendants, and their officers, agents, servants, employees, attorneys, and all those who are in active concert or participation with them, are preliminarily enjoined from removing any Class Members without their child, unless the Class Member affirmatively, knowingly, and voluntarily declines to be reunited with the child prior to the Class Member’s deportation, or there is a determination that the parent is unfit or presents a danger to the child.

(7) This Court retains jurisdiction to entertain such further proceedings and to enter such further orders as may be necessary or appropriate to implement and enforce the provisions of this Order and Preliminary Injunction.

A status conference will be held on July 6, 2018, at 12:00 noon, to discuss all necessary matters. A notice of teleconference information sheet will be provided in a separate order.

IT IS SO ORDERED.

Dated: June 26, 2018

[Signature]

Hon. Dana M. Sabraw
United States District Judge
PENDING before the Court is Plaintiffs’ motion for class certification. Plaintiffs, on behalf of themselves and putative class members, allege the Government has a widespread practice or policy of separating migrant families, and placing the children in facilities for “unaccompanied minors.” Recent developments validate Plaintiffs’ allegations. Plaintiffs seek to certify a class of similarly situated individuals for whom injunctive relief can be entered prohibiting separation of migrant parents from their minor children without first determining they are unfit parents or otherwise present a risk of danger to their children, as well as an injunction requiring reunification of migrant parents who are returned to immigration custody upon completion of any criminal proceedings, absent a determination that the parent is unfit or presents a danger to the child.
On June 6, 2018, the Court entered an order finding Plaintiffs had stated a claim for violation of their substantive due process rights to family integrity under the Fifth Amendment to the United States Constitution based on claims that the Government had separated them from their minor children while Plaintiffs were held in immigration detention without a showing that they were unfit parents or otherwise presented a danger to their children. Ms. L. v. U.S. Immigration & Customs Enf’t, 302 F. Supp. 3d 1149, 2018 WL 2725736, at *9-12 (S.D. Cal. June 6, 2018). Since the issuance of that Order, the practice of family separation has intensified and become a matter of intense national debate.

The Attorney General of the United States announced a “zero tolerance” policy. Under that policy, all adults entering the United States illegally would be subject to criminal prosecution, and if accompanied by a minor child, the child would be separated from the parent. Over the ensuing weeks, hundreds of migrant children were separated from their parents, further stoking the flames of nationwide protest. On June 20, 2018, the President of the United States signed an Executive Order (“EO”) to “maintain family unity” by keeping migrant families together during criminal and immigration proceedings to the extent permitted by law, while maintaining “rigorous[]” enforcement of immigration laws. See Executive Order, Affording Congress an Opportunity to Address Family Separation § 1, 2018 WL 3046068 (June 20, 2018). On Saturday, June 23, 2018, the Department of Homeland Security (“DHS”) issued a “Fact Sheet” outlining the Government’s efforts to “ensure that those adults who are subject to removal are reunited with their children for the purposes of removal.”


2 See U.S. Dep’t of Homeland Sec., Fact Sheet: Federal Regulations Protecting the Confidentiality of Asylum Applicants (June 23, 2018),
Following issuance of the EO, a status conference was held on June 22, 2018, at which time Lee Gelernt and Bardis Vakili appeared for Plaintiffs, and Sarah Fabian and Samuel Bettwy appeared for Defendants. After hearing from counsel and considering the parties’ supplemental briefing, Plaintiffs’ motion for class certification is granted in part for the reasons set forth below.

I.

DISCUSSION\(^3\)

Plaintiff Ms. L. and her minor child S.S. arrived lawfully at one of our nation’s ports of entry seeking asylum. Ms. L. and her child were detained together for several days, and later “forcibly separated” by immigration officials without a determination that Ms. L. was unfit or presented a danger to her child. S.S., then six years old, was placed in a government facility for “unaccompanied minors” over a thousand miles away from Ms. L. Ms. L. and S.S. were separated for nearly five months.

Plaintiff Ms. C. and her minor child J. entered the United States illegally between ports of entry. Upon apprehension by a Border Patrol agent, Ms. C. made a claim for asylum. She was arrested, charged with misdemeanor illegal entry under 8 U.S.C. § 1325(a) (“criminal improper entry” under EO § 1), and served 25 days in custody. After serving her criminal sentence, Ms. C. was returned to immigration detention to contest removal and pursue her asylum claim. Ms. C.’s minor son was also placed in a government facility for “unaccompanied minors,” hundreds of miles away from his mother. Undisputed news reports reflect the two were reunited earlier this month, after being

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3 The factual background set out herein is abbreviated. A full discussion of the facts relevant to this lawsuit is set out in the Order granting Plaintiffs’ motion for classwide preliminary injunction filed concurrently herewith and Order granting in part and denying in part Defendants’ motion to dismiss. Ms. L., 2018 WL 2725736, at *1-3.
separated for over eight months. Plaintiffs allege Defendants failed to reunite Ms. C. and her son during this period of time even though Ms. C.’s fitness as a parent was never questioned by government officials. Plaintiffs do not challenge the initial separation of Ms. C. from her child, as the separation resulted from prosecution for illegal entry and placement in criminal custody. Rather, Ms. C. challenges the Government’s failure to reunify her with her son after she completed her 25-day criminal sentence and was returned to immigration detention.

Ms. L.’s claim is based on the initial separation from her child while in immigration detention; Ms. C.’s claim is based on the failure to reunite her with her child after serving her criminal sentence and being returned to immigration detention. Both claims focus on government conduct separating parents from minor children while the parent is detained pending immigration proceedings without a showing the parent is unfit or presents a danger to the child. Plaintiffs allege separation from their children under these circumstances


5 In their Supplemental Briefing, Plaintiffs point out that when a parent is prosecuted for illegal entry, separation is not required. “If the parent is being prosecuted but is nonetheless being held in a DHS facility, then there is no need to separate the family, because DHS can house families.” (Pls.’ Suppl. Br. at 8.) The EO in fact provides for “family unity” by directing DHS “to maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings[,]” to the extent permitted by law. EO § 3. This is a new development. Plaintiffs argue the confusion is the result of the “government’s shifting practice regarding the detention of parents facing criminal prosecution.” (Pls.’ Suppl. Br. at 8.) For purposes of defining the class, however, the Court will carve out parents who fall within the EO. EO § 2(a) (defining “Alien family”). The EO provides for “family unity” and detaining “family units” together, id. §§ 1, 3, so further relief may be unnecessary. The EO also employs its own standard for determining detention of alien families. Id. § 3(b). To avoid potential conflict with the standard employed by the EO and that used by the Court, the class definition will not include such individuals. (See Defs.’ Suppl. Br. at 3.) The Court reserves on other issues that might arise given these recent developments.
violates their right to family integrity under the Due Process Clause of the Fifth Amendment to the United States Constitution. In the Complaint, Plaintiffs alleged that hundreds of other migrant families had been subjected to the same treatment and that this had become a widespread practice of the current Administration. They cited numerous reports that the Government would soon adopt a formal national policy of separating migrant families and placing the children in government facilities for “unaccompanied minors.” The Government initially denied it had such a practice or policy, but has since distanced itself from that position in light of recent developments—including the zero tolerance policy which touted family separation.

Plaintiffs, on behalf of themselves and putative class members, request certification of the following class:

All adult parents nationwide who (1) are or will be detained in immigration custody by the Department of Homeland Security, and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, absent a demonstration in a hearing that the parent is unfit or presents a danger to the child.

(Am. Compl. ¶ 65; Mem. in Supp. of Mot. at 1.) Plaintiffs argue this proposed class meets the requirements of Federal Rule of Civil Procedure 23(a) and (b)(2). Defendants dispute these requirements are met. The only claim currently at issue and subject to certification is Plaintiffs’ due process claim.6 Plaintiffs’ pending motion for classwide preliminary injunction is addressed in a separate order.

A. Legal Standard

“The class action is ‘an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.’” Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 641, 667 (2011).
To qualify for the exception to individual litigation, the party seeking class certification must provide facts sufficient to satisfy the requirements of Federal Rule of Civil Procedure 23(a) and (b). Doninger v. Pacific Northwest Bell, Inc., 564 F.2d 1304, 1308-09 (9th Cir. 1977). “The Rule ‘does not set forth a mere pleading standard.’” Comcast Corp. v. Behrend, 569 U.S. 27, 33 (2013) (quoting Dukes, 564 U.S. at 350). “Rather, a party must not only ‘be prepared to provide that there are in fact sufficiently numerous parties, common questions of law or fact,’ typicality of claims of defenses, and adequacy of representation, as required by Rule 23(a). The party must also satisfy through evidentiary proof at least one of the provisions of Rule 23(b)[.]” Id. (quoting Dukes, 564 U.S. at 350) (internal citation omitted).

Federal Rule of Civil Procedure 23(a) sets out four requirements for class certification—numerosity, commonality, typicality, and adequacy of representation. A showing that these requirements are met, however, does not warrant class certification. The plaintiff also must show that one of the requirements of Rule 23(b) is met. Here, Plaintiffs assert they meet the requirements of Rule 23(b)(2).

Rule 23(b)(2) allows class treatment when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]” Fed. R. Civ. P. 23(b)(2). Because the relief requested in a (b)(2) class is prophylactic, enures to the benefit of each class member, and is based on accused conduct that applies uniformly to the class, notice to absent class members and an opportunity to opt out of the class is not required. See Dukes, 564 U.S. at 361-62 (noting relief sought in a (b)(2) class “perforce affect[s] the entire class at once” and thus, the class is “mandatory” with no opportunity to opt out).

The district court must conduct a rigorous analysis to determine whether the prerequisites of Rule 23 have been met. Gen. Tel. Co. v. Falcon, 457 U.S. 147, 161 (1982). It is a well-recognized precept that “the class determination generally involves considerations that are ‘enmeshed in the factual and legal issues comprising the plaintiff’s
cause of action.”” Coopers & Lybrand v. Livesay, 437 U.S. 463, 469 (1978) (quoting Mercantile Nat’l Bank v. Langdeau, 371 U.S. 555, 558 (1963)). However, “[a]lthough some inquiry into the substance of a case may be necessary to ascertain satisfaction of the commonality and typicality requirements of Rule 23(a), it is improper to advance a decision on the merits to the class certification stage.” Moore v. Hughes Helicopters, Inc., 708 F.2d 475, 480 (9th Cir. 1983) (citation omitted); see also Nelson v. United States Steel Corp., 709 F.2d 675, 680 (11th Cir. 1983) (plaintiff’s burden “entails more than the simple assertion of [commonality and typicality] but less than a prima facie showing of liability”) (citation omitted). Rather, the court’s review of the merits should be limited to those aspects relevant to making the certification decision on an informed basis. See Fed. R. Civ. P. 23 advisory committee notes. If a court is not fully satisfied that the requirements of Rule 23(a) and (b) have been met, certification should be refused. Falcon, 457 U.S. at 161.

B. Rule 23(a)

Rule 23(a) and its prerequisites for class certification—numerosity, commonality, typicality, and adequacy of representation—are addressed in turn.

1. Numerosity

Rule 23(a)(1) requires the class to be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1); Staton v. Boeing Co., 327 F.3d 938, 953 (9th Cir. 2003). The plaintiff need not state the exact number of potential class members; nor is a specific minimum number required. Arnold v. United Artists Theatre Circuit, Inc., 158 F.R.D. 439, 448 (N.D. Cal. 1994). Rather, whether joinder is impracticable depends on the facts and circumstances of each case. Id.

Here, Plaintiffs asserted in their motion that there were as many as 700 families that fell within the proposed class. In support of this assertion, Plaintiffs presented declarations from a number of attorneys that provide legal services to immigrant families in border States. (See Mem. in Supp. of Mot., Exs. 13-15.) Those attorneys declared they had seen hundreds of situations of children separated from their parents after being apprehended by DHS officials. (See id., Ex. 13 ¶ 4; Ex. 14 ¶¶ 3-5; Ex. 15 ¶ 2.) One of those attorneys also
stated separations were occurring even when there was no “substantiated reason to suspect that the adult and child are not in fact related, or reason to suspect that the child is in imminent physical danger from the adult[].” (Id., Ex. 14 ¶ 6;) (see also id., Ex. 15 ¶ 3) (stating “parents have been forcibly separated from their children and placed in detention for extended periods of time without any information regarding their whereabouts, safety, or wellbeing.”). This evidence is sufficient to show the numerosity requirement is met here. Accordingly, Plaintiffs have satisfied the first requirement of Rule 23(a).\(^7\)

2. Commonality

The second element of Rule 23(a) requires the existence of “questions of law or fact common to the class[].” Fed. R. Civ. P. 23(a)(2). This element has “been construed permissively,’ and ‘[a]ll questions of fact and law need not be common to satisfy the rule.’” Ellis v. Costco Wholesale Corp., 657 F.3d 970, 981 (9th Cir. 2011) (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998)). “However, it is insufficient to merely allege any common question[].” Id. Instead, the plaintiff must allege the existence of a “common contention” that is of “such a nature that it is capable of classwide resolution[].” Dukes, 564 U.S. at 350. As summarized by the Supreme Court:

"What matters to class certification ... is not the raising of common ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of commons answers."

\(^7\) Notably, Defendants do not challenge whether the numerosity requirement is met, and at the May 4, 2018 hearing on this motion, they did not dispute Plaintiffs’ approximation of the number of families that had been separated. Since the hearing, DHS has stated that “1,995 minors were separated from their ‘alleged adult guardians’ at the southern border in just over a month long period.” See Brian Naylor, DHS: Nearly 2,000 Children Separated from Adults at Border in 6 Weeks, NPR (June 16, 2018, 7:01 AM), https://www.npr.org/2018/06/16/620451012/dhs-nearly-2000-children-separated-from-adults-at-border-in-six-weeks. On June 23, 2018, DHS indicated in its Fact Sheet that as of June 20 it had 2,053 separated minors in HHS funded facilities. U.S. Dep’t of Homeland Sec., supra note 2.
Id. (quoting Richard A. Nagareda, Class Certification in the Age of Aggregate Proof, 84 N.Y.U. L. Rev. 97, 132 (2009)).

In this case, Plaintiffs assert there are a number of questions common to the class. First, they assert they are alleging the same legal claim, namely whether Defendants’ practice of separating putative class members from their minor children and continued separation without a hearing and determination that they are unfit parents or present a danger to their children violates their right to family integrity under the Due Process Clause. Second, Plaintiffs contend the facts underlying their claims are the same: each was detained with their child by government actors, who then separated them from their children, or failed to reunite them, without a showing they were unfit or presented a danger to the child. Third, Plaintiffs assert they suffered the same injury, namely separation from their children in violation of their constitutional rights. Fourth, Plaintiffs contend they are challenging the same government practice regarding separation of parents and children or the refusal to reunite parents and children absent a showing the parent is unfit or presents a danger to the child. Finally, Plaintiffs claim they are seeking the same relief: a declaration that the conduct at issue is unlawful, and injunctions (1) preventing the separation of such parents and children without a showing the parent is unfit or presents a danger to the child, and (2) requiring reunification of the families already separated absent similar findings.

Defendants argue these questions cannot be answered on a classwide basis because the circumstances surrounding each separation of parent and child are different. In support of this argument, Defendants point to the circumstances giving rise to the separations of Plaintiffs and their children in this case, which are indisputably different. Ms. L. was separated from her daughter because the Government allegedly could not confirm parentage (though a DNA test taken several months after Ms. L. was separated from her child confirmed the relationship), while Ms. C. was separated from her son when she was apprehended near the border, charged with illegal entry, and placed in custody pending resolution of her criminal case.
In addition, at oral argument Government counsel set forth another scenario that could result in family separation, namely parents with criminal history that prevents them from being released into the community along with their child or housed together in a detention center with other families. Obviously, these parents would be situated differently from Ms. L. and Ms. C., neither of whom presented this situation. Unlike with Ms. L. and Ms. C., the Government would have a legitimate interest in continuing detention of individuals who posed a flight risk or danger to the community or others in a family detention facility because of that person’s criminal history. A parent with some kind of communicable disease could also raise legitimate safety concerns.

Plaintiffs concede a parent with a communicable disease might be separately detained, but disagree that criminal history can serve as a generalized exception to the Government’s new policy of “family unity.” Criminal history comes in all gradations, from minor misdemeanors to violent felony offenses. Some types of criminal history would clearly justify separate detention of the parent, while other criminal history might not—and the exercise of governmental discretion to separately detain that individual might be challenged. Whether separate detention of such parents violates substantive due process could raise individualized inquiries.

In addition, Plaintiffs’ proposed class definition could include migrant families apprehended in the interior of the country. The number of such families is presently unknown and not part of the record before the Court. This group could include families present in the country for quite some time, with established family roots and connections. These parents also might have both citizen and alien children. The application of

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8 At oral argument on May 4, 2018, Government counsel pointed out that one of the declarations submitted by a putative class member involved a “mother who had a significant criminal history, so ICE [Immigration and Customs Enforcement] was unable to place her in the family residential center because … [such] centers are a very open setting. There is [sic] sort of pods. Families are housed together…. There is free movement. It is not a dententive setting.” (ECF No. 70, at 21-22.)
substantive due process to this potential group has not been briefed, and presents issues that Plaintiffs have indicated they are prepared to address at a later time.

The focus of the present litigation has always been on migrant families entering the United States at or between designated ports of entry. Most of these families are seeking asylum but not all. (See Am. Compl. ¶ 4 (“[A]lmost all of these individuals have fled persecution and are seeking asylum in the United States.”)). Thus, although Plaintiffs’ proposed class does not exclude parents with criminal history or communicable disease, or those in the interior of the country, the Court finds it appropriate to carve them out of the proposed class. See Wang v. Chinese Daily News, Inc., 737 F.3d 538, 546 (9th Cir. 2013) (stating Federal Rule of Civil Procedure 23 “provides district courts with broad authority at various stages in the litigation … to redefine … classes as appropriate.”) (citation omitted). Accordingly, the Court excepts from the class definition—without prejudice to redefining the class on a more fulsome record—parents with criminal history or communicable disease, or those apprehended in the interior of the country.9

As discussed, the focus of this litigation is on the Government’s practice of separating migrant parents and children without any showing the parent is unfit or presents a danger to the child, and the continued separation of migrant families without any showing the parent is unfit or presents a danger to the child even after the parents have completed their criminal proceedings and are returned to immigration detention. Those circumstances

9 At oral argument on May 4, 2018, Government counsel also argued that lack of “bed space” could cause family separation. At that time, the “total capacity in residential centers [was] less than 2,700[,]” according to counsel. (ECF No. 70, at 9.) And there was only one such center for migrant fathers and children, which has “84 or 86 beds.” (Id. at 43-44.) Recent events, however, have overtaken that argument. The Government is actively constructing or converting facilities, even military facilities, to manage the growing population of migrant families. The EO directs federal agencies to marshal resources to support family custody. See EO § 3(c) (“The Secretary of Defense shall take all legally available measure to provide to the Secretary [of Homeland Security], upon request, any existing facilities available for the housing and care of alien families, and shall construct such facilities if necessary and consistent with law.”).
are present in the cases of Ms. L. and Ms. C. Ms. L. lawfully arrived at a port of entry and was separated from her daughter for nearly five months without any showing she was unfit or presented a danger to her, and Ms. C.’s separation from her son continued even after she was returned to immigration custody and despite any showing she was unfit or presented a danger to him. The circumstances of Plaintiffs and their children in this case and the situations described in the declarations submitted in support of this motion are evidence there is a common practice at issue here, namely separating migrant parents and children and failing to reunite them without a showing the parent is unfit or presents a danger to the child. (See Mem. in Supp. of Mot., Exs. 12-15; Reply in Supp. of Mot., Exs. 21-26) (five declarations of parents arriving at designated point of entry, and one declaration of a parent apprehended between ports of entry). Whether that practice violates substantive due process is a question common to the class, and the answer to that question is “apt to drive the resolution of the litigation.” Dukes, 564 U.S. at 350 (quoting Nagareda, supra, at 132).

“[C]ommonality only requires a single significant question of law or fact[,]” Mazza v. Am. Honda Motor Co., Inc., 666 F.3d 581, 589 (9th Cir. 2012) (citing Dukes, 564 U.S. at 359), and that is particularly so where a suit “challenges a system-wide practice or policy that affects all of the putative class members.” Armstrong v. Davis, 275 F.3d 849, 868 (9th Cir. 2001). The Ninth Circuit’s decision in Parsons v. Ryan, 754 F.3d 657 (9th Cir. 2014), is instructive. In that case, the court was faced with a commonality question similar to the one presented here. That case involved a claim that certain policies and practices of the Arizona Department of Corrections (“ADC”) violated the Eighth Amendment’s proscription against cruel and unusual punishment. Id. at 662-63. The defendants in Parsons, similar to Defendants here, argued the commonality requirement was not met because the plaintiffs’ claims were simply “‘a collection of individual constitutional violations,’ each of which hinges on ‘the particular facts and circumstances of each case.’” Id. at 675 (quoting Defs.’ Reply Br. at 9-10). The Ninth Circuit disagreed. It found the defendants’ argument “rest[ed] upon a misunderstanding of the plaintiffs’ allegations.” Id. at 676. Contrary to the defendants’ interpretation of the claim, the court stated, “The
Complaint does not allege that the care provided on any particular occasion to any particular inmate (or group of inmates) was insufficient, but rather that ADC policies and practices of statewide and systemic application expose all inmates in ADC custody to a substantial risk of serious harm.” *Id.* (internal citation omitted). The court then went on to state:

These policies and practices are the “glue” that holds together the putative class …; either each of the policies and practices is unlawful as to every inmate or it is not. That inquiry does not require us to determine the effect of those policies and practices upon any individual class member (or class members) or to undertake any other kind of individualized determination.

*Id.* at 678.

Here, as in *Parsons*, Plaintiffs’ claims do not rest on the individual circumstances of each separation of parent and child. Rather, Plaintiffs are challenging the Government’s practice of separating migrant parents and children and keeping them separate without a showing the parent is unfit or presents a danger to the child. Under these circumstances, the reasoning of *Parsons* applies here, and that reasoning compels the same conclusion, namely that the commonality requirement is met.

3. Typicality

The next requirement of Rule 23(a) is typicality, which focuses on the relationship of facts and issues between the class and its representatives. “[R]epresentative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020. “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation and internal quotation marks omitted). The typicality requirement will occasionally merge with the commonality requirement, *Parsons*, 754 F.3d at 687, because “[b]oth serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named
plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Dukes*, 564 U.S. at 349 n.5.

Here, Plaintiffs rely on the arguments raised on commonality to support a showing of typicality, and Defendants rely on the arguments raised in response thereto to show the typicality requirement is also not met. For the reasons set out above, however, the Court finds Plaintiffs’ claims are typical of the claims of absent class members.

Both Plaintiffs were separated or remained separated from their children without any showing they were unfit or presented a danger to their child. By definition, each member of the proposed class will have been subject to this same practice. Furthermore, Plaintiffs’ claims are the same as those raised by absent class members, namely the Government’s practice of separating parents and children under the circumstances set out above violates their right to due process. Finally, the injuries suffered by the named Plaintiffs are the same as those suffered by members of the proposed class: separation from their children. *See Parsons*, 754 F.3d at 685 (finding typicality requirement met where named plaintiffs “allege ‘the same or [a] similar injury’ as the rest of the putative class; they allege that this injury is a result of a course of conduct that is not unique to any of them; and they allege that the injury follows from the course of conduct at the center of the class claims.”). Certainly, the claims of the named Plaintiffs and the claims of class members “are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Dukes*, 564 U.S. at 349 n.5. The typicality requirement is therefore met.

4. Adequacy of Representation

The final requirement of Rule 23(a) is adequacy. Rule 23(a)(4) requires a showing that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requirement is grounded in constitutional due process concerns; “absent class members must be afforded adequate representation before entry of a judgment which binds them.” *Hanlon*, 150 F.3d at 1020 (citing *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940)). In reviewing this issue, courts must resolve two questions: “(1) do
the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Id.* (citing *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)). The named plaintiffs and their counsel must have sufficient “zeal and competence” to protect the interests of the rest of the class. *Fendler v. Westgate-California Corp.*, 527 F.2d 1168, 1170 (9th Cir. 1975).

As to the named Plaintiffs, Defendants argue they are not adequate representatives of the proposed class because both Plaintiffs’ claims are moot and the Court lacks venue over Ms. C.’s claims. For the reasons set out in the Court’s Order on Defendants’ motion to dismiss, the Court rejects these arguments as a basis for finding Plaintiffs to be inadequate representatives. Rather, Plaintiffs have shown they do not have any conflicts of interest with other class members and that they will protect the interests of the class. Accordingly, Plaintiffs are adequate representatives for the class.

Plaintiffs have also demonstrated their counsel are adequate. There is no conflict between Plaintiffs’ counsel and the members of the proposed class, and counsel have demonstrated they will prosecute the case vigorously on behalf of the class. Accordingly, the requirement of Rule 23(a)(4) is met.

C. **Rule 23(b)**

Having satisfied the requirements of Rule 23(a), the next issue is whether Plaintiffs have shown that at least one of the requirements of Rule 23(b) is met. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614-15 (1997). Here, Plaintiffs assert they have met the prerequisites of certification for a class under Rule 23(b)(2).

Under Rule 23(b)(2), class certification may be appropriate where a defendant acted or refused to act in a manner applicable to the class generally, rendering injunctive and declaratory relief appropriate to the class as a whole. Fed. R. Civ. P. 23(b)(2). The parties agree:

The key to the (b)(2) class is “the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can
be enjoined or declared unlawful only as to all of the class members or as to none of them.” [citation omitted] In other words, Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member would be entitled to a different injunction or declaratory judgment against the defendant.

Dukes, 564 U.S. at 360.

Plaintiffs here argue this case is particularly suited for certification under Rule 23(b)(2) because they are presenting a civil rights challenge to a practice that applies to all members of the proposed class, and that practice can be declared lawful or unlawful as to the class as a whole. See Walters v. Reno, 145 F.3d 1032, 1046-47 (9th Cir. 1998) (stating Rule 23(b)(2) “was adopted in order to permit the prosecution of civil rights actions[,]” and is satisfied “if class members complain of a pattern or practice that is generally applicable to the class as a whole.”); see also Parsons, 754 F.3d at 686 (same).

Defendants assert individual inquiries would be necessary to determine who falls within the class definition, which precludes certification under Rule 23(b)(2). Defendants point out the proposed class only includes the time period “‘while a parent is in immigration custody, and not the period of separation while the parent is in jail for criminal conviction.’” (Opp’n to Mot. at 14) (quoting ECF No. 35-1, at 11.) Defendants argue the problem with Plaintiffs’ proposed class definition is found in the case of Ms. C.: “It is unclear at what point Ms. C. would become a member of Plaintiffs’ proposed class—whether at the point she was referred for prosecution by CBP [Customs and Border Protection], or later when she was released from criminal custody and detained by ICE in an immigration detention facility.” (Id.)

However, the problem posed, namely, when someone becomes a member of the class, is easily resolved. As Plaintiffs explain, a person becomes a member of the class when they are held in immigration detention without their children. (Reply Br. at 7.) Defendants are correct that this determination may involve some individualized inquiries,
but those inquiries do not detract from the “indivisible” nature of the claim alleged and the
relief sought in this case. *Dukes*, 564 U.S. at 360.

Contrary to Defendants’ argument, Plaintiffs have demonstrated that certification
under Rule 23(b)(2) is appropriate here. As stated above, the crux of this case is the
Government’s practice of separating migrant parents from their minor children and
continuing to separate them without any showing the parent is unfit or presents a danger to
the child. Based on the record before the Court, the Government has “acted ... in a manner
applicable to the class generally, rendering injunctive and declaratory relief appropriate to
the class as a whole[.]” Fed. R. Civ. P. 23(b)(2). A determination regarding whether the
practice of family separation and failure to reunify such families violates due process and
warrants injunctive relief would apply to each class member and drive resolution of the
litigation. Accordingly, Rule 23(b)(2) is satisfied.

II.
CONCLUSION AND ORDER

For these reasons, Plaintiffs’ motion for class certification is granted in part as to
Plaintiffs’ substantive due process claim. Specifically, the Court certifies the following
class under Federal Rule of Civil Procedure 23(b)(2), with the exceptions noted above and
as modified:

All adult parents who enter the United States at or between designated ports
of entry who (1) have been, are, or will be detained in immigration custody
by the DHS, and (2) have a minor child who is or will be separated from them
by DHS and detained in ORR custody, ORR foster care, or DHS custody,
absent a determination that the parent is unfit or presents a danger to the
child.10

10 As discussed in text, *infra*, the class does not include migrant parents with criminal
history or communicable disease, or those who are in the interior of the United States or
subject to the EO.
Plaintiffs are appointed as Class Representatives, and Counsel from the ACLU Immigrants’ Rights Project and the ACLU of San Diego and Imperial Counties are appointed as counsel for this Class pursuant to Federal Rule of Civil Procedure 23(g).

IT IS SO ORDERED.

Dated: June 26, 2018

Hon. Dana M. Sabraw
United States District Judge
All,

See below for guidance on prosecutions involving family units.

Updated Operational Guidance 2:

- Amending number 3 below, until further implementation guidance is received.

(from deleted text)
For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,

From: (b)(6);(b)(7)(C)
Sent: Wednesday, June 20, 2018 9:54 PM
To: BP Field Chiefs (b)(7)(E) BP Field Deputies (b)(7)(E)
Cc: MCALEENAN, KEVIN K (b)(6);(b)(7)(C) VITIELLO, RONALD D (USBP) PROVOST, CARLA (USBP) (b)(6);(b)(7)(C) LUCK, SCOTT A (USBP) (b)(6);(b)(7)(C) HUFFMAN, BENJAMINE C (b)(6);(b)(7)(C)
Subject: June 20, 2018 Executive Order – Updated Operational Guidance

Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.
V/r,

(b)(7)(E)

5.

(b)(7)(E)
Assistant Chief Patrol Agent
USBP El Paso Sector
Office
iPhone

Please see below.

Almost identical to our guidance with a few added tasks to reunify.

Ensure it’s sent to the field for implementation.

EPT LEOD please acknowledge receipt.

Thanks

Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.
Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. 

2. 

3. 

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. 

5. 

V/f,

[Signature]
ALCON:

Effective immediately the following actions are to be implemented/acted upon:

1. [Redacted]
2. [Redacted]
3. [Redacted]

Further guidance is forthcoming from HQ. In the interim please ensure that all field commanders and Supervisors are made aware and act accordingly. If you have any further questions, please contact Acting ACPA [Redacted] at [Redacted].

Presidential Executive Order
https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/

GC

Regards,
Gloria I. Chavez
Chief Patrol Agent
El Centro Sector
U.S. Border Patrol
(b)(6),(b)(7)(C)(office)
FW: Zero Tolerance Prosecution Initiative

Tuesday, August 28, 2018 3:47:13 PM

ELC CONOP - Prosecutions (V02).docx

From: [redacted]
Sent: Thursday, May 10, 2018 7:22 PM
To: [redacted]
Subject: FW: Zero Tolerance Prosecution Initiative

Attached is the approved ELC ConOp for the Attorney General/SecDHS-directed Zero Tolerance Initiative. This is not a new plan, but I wanted to make sure that you all have a copy of the actual conop. As discussed several times, the goal is 100% prosecutions.

1. 
2. 
3. 
4. 
5. 
6. 
7.
Thanks,
Executive Summary: Increase level of Border Security along the southwest border through consistent application of all legal authorities via consequence delivery.

Situation: In accordance with Attorney General Jeff Sessions’ “Zero Tolerance” memo and direction given by USBP HQ, El Centro Sector Border Patrol will begin a phased, aggressive prosecutorial effort. All adult individuals illegally entering the United States will be presented to the Office of the United States Attorney for prosecution under 8 USC 1325.

Mission: In agreement with the AUSA, ELC will increase the number of cases presented to the AUSA for prosecution to achieve the DHS/DOJ goal of 100% of cases being presented for prosecution.

Execution:

- **Management / Supervisor Intent:**
  1. **Purpose:** USBP HQ delivered a directive to all southwest border sectors to immediately increase prosecutions of individuals based on the capabilities of the local AUSA office and the federal courts. The goal of this directive is to create a phased approach where the AUSA and federal courts can accept 100% of all cases presented.
  2. **End State:** Guidance from the CPA has been delivered to all stations within the El Centro Sector directing the prosecution of all adults amenable to the 8 USC 1325 charge. ELC will initiate a phased approach resulting in 100% of all individuals amenable to prosecution will be presented for prosecution.

General Concept: ELC will also increase the number of cases presented to the AUSA outside of these priorities through a phased approach.

- **Reporting Requirements:** The following weekly reporting requirements have been identified:
  - Report requests from US Attorney or US Marshal offices for CBP resources to assist with implementation
  - Report the total number of prosecution referrals by sector
  - Report the percentage of referred prosecutions for each priority
  - Report the percentage of declinations for each priority
  - Report the total number of non-referred for prosecution by priority sub-categorized by reason
FYI

From: (b)(6);(b)(7)(C)
Sent: Friday, April 27, 2018 6:00 PM
To: EPT-LEOD (b)(7)(E) (b)(6);(b)(7)(C)
Cc: HULL, AARON A (b)(6);(b)(7)(C) CLEM, CHRIST (b)(6);(b)(7)(C)
Subject: FW: Zero Tolerance Prosecution Referrals

Please see instructions below. We should already be doing this.

From: (b)(6);(b)(7)(C)
Sent: Saturday, April 28, 2018 12:50:01 AM
To: SCOTT, RODNEY S; CHAVEZ, GLORIA I; PORVAZNIK, ANTHONY J; KARISCH, RODOLFO; HULL, AARON A; BOATRIGHT, ROBERT L; CHAVEZ, FELIX; (b)(6);(b)(7)(C) PADILLA, MANUEL JR; ORTIZ, RAUL L; (b)(6);(b)(7)(C) SELF, JEFFREY D; (b)(6);(b)(7)(C) VILLAREAL, ROY D
Cc: OPS EAST SECTOR; OPS WEST SECTORS; OPSCENTRALSECTORS; (b)(6);(b)(7)(C) HUDSON, RICHARD M; (b)(6);(b)(7)(C) USBP HQ Adjutants; LUCK, SCOTT A (USBP); PROVOST, CARLA (USBP)
Subject: Zero Tolerance Prosecution Referrals

Chiefs and Deputies,

(b)(7)(E) This guidance supersedes all local arrangements between your Sector Prosecution Unit and the US Attorney’s Office.

(b)(7)(E) As such, we anticipate there will be declinations based on a multitude of reasons. Please track these referrals and maintain them on a daily basis. We do not need your office to share these statistics immediately. We do anticipate a message asking you to share your reports tracking referrals near the end of the weekend or beginning of the work week.
Please let us know if there are any questions. Thank you in advance for your staff's diligence referring amenable subjects and tracking this activity.

Regards,

(Acting) Deputy Chief
Law Enforcement Operations Directorate - Ops
U.S Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229

office

cellular
MEMORANDUM FOR FEDERAL PROSECUTORS ALONG THE SOUTHWEST BORDER

FROM: THE ATTORNEY GENERAL

SUBJECT: Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)

On April 11, 2017, I issued a memorandum to all federal prosecutors entitled “Renewed Commitment to Criminal Immigration Enforcement,” in which I directed the prioritization of the prosecution of certain criminal immigration offenses. I further directed each United States Attorney’s Office along the Southwest Border to work with the Department of Homeland Security to develop guidelines for prosecuting offenses under 8 U.S.C. § 1325(a).

Those seeking to further an illegal goal constantly alter their tactics to take advantage of weak points. That means we must effectively respond with smart changes also. The recent increase in aliens illegally crossing our Southwest Border requires an updated approach. Past prosecution initiatives in certain districts—such as Operation Streamline—led to a decrease in illegal activities in those districts. We must continue to execute effective policies to meet new challenges.

Accordingly, I direct each United States Attorney’s Office along the Southwest Border—to the extent practicable, and in consultation with DHS—to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a). This zero-tolerance policy shall supersede any existing policies. If adopting such a policy requires additional resources, each office shall identify and request such additional resources.

You are on the front lines of this battle. I respect you and your team. Your dedication and insight into border reality is invaluable. Keep us informed, and don’t hesitate to give us suggestions for improvement. Remember, our goal is not simply more cases. It is to end the illegality in our immigration system.

This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
FOR IMMEDIATE RELEASE  
Friday, April 6, 2018

Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry

Attorney General Jeff Sessions today notified all U.S. Attorney’s Offices along the Southwest Border of a new “zero-tolerance policy” for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States by an alien. The implementation of the Attorney General’s zero-tolerance policy comes as the Department of Homeland Security reported a 203 percent increase in illegal border crossings from March 2017 to March 2018, and a 37 percent increase from February 2018 to March 2018—the largest month-to-month increase since 2011.

“The situation at our Southwest Border is unacceptable. Congress has failed to pass effective legislation that serves the national interest—that closes dangerous loopholes and fully funds a wall along our southern border. As a result, a crisis has erupted at our Southwest Border that necessitates an escalated effort to prosecute those who choose to illegally cross our border,” said Attorney General Jeff Sessions. “To those who wish to challenge the Trump Administration’s commitment to public safety, national security, and the rule of law, I warn you: illegally entering this country will not be rewarded, but will instead be met with the full prosecutorial powers of the Department of Justice. To the Department’s prosecutors, I urge you: promoting and enforcing the rule of law is vital to protecting a nation, its borders, and its citizens. You play a critical part in fulfilling these goals, and I thank you for your continued efforts in seeing to it that our laws—and as a result, our nation—are respected.”

On April 11, 2017, Attorney General Jeff Sessions announced a renewed commitment to criminal immigration enforcement. As part of that announcement, the Attorney General issued a memorandum to all federal prosecutors and directed them to prioritize the prosecution of certain criminal immigration offenses.

Today’s zero-tolerance policy further directs each U.S. Attorney’s Office along the Southwest Border (i.e., Southern District of California, District of Arizona, District of New Mexico, Western District of Texas, and the Southern District of Texas) to adopt a policy to prosecute all Department of Homeland Security referrals of section 1325(a) violations, to the extent practicable.

Attachment(s):
Download Zero-Tolerance Memorandum

Topic(s):
Immigration

Component(s):
Office of the Attorney General
Press Release Number:
18-417

Updated April 6, 2018
All,

Per the (A)PAIC, a little more specific direction regarding the attached and the below directive.

This will more than likely continue to evolve as the process moves along so be ready for changes as we go forward.

Remember, ambiguity is the rule. We will adjust and keep moving forward.

I am available for questions or concerns.

Thanks

From: (b)(6);(b)(7)(C)
Sent: Saturday, April 28, 2018 2:51:01 PM
To: ELC IML WC SOS FOS; ELC IML SUPERVISORS
Subject: FW: Zero Tolerance Prosecution Referrals

All.
Read attachments and message.
PAICs,

Please see the info below regarding zero tolerance prosecutions.

The Prosecutions department will track all prosecutions as required below.

Thanks,

(b)(6);(b)(7)(C)
Acting Division Chief
USBP El Centro Sector
(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Friday, April 27, 2018 8:05:56 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: FW: Zero Tolerance Prosecution Referrals

FYA please. Note the tracking piece.

From: (b)(6);(b)(7)(C)
Sent: Friday, April 27, 2018 4:50 PM
Subject: Zero Tolerance Prosecution Referrals

Chiefs and Deputies,

This guidance supersedes all local arrangements between your Sector Prosecution Unit and the US Attorney’s Office.

Please track these referrals and maintain them on a daily basis. We do not need your office to share these statistics immediately. We do anticipate a message asking you to share your reports tracking referrals near the end of the weekend or beginning of the work week.

Please let us know if there are any questions. Thank you in advance for your staff’s diligence referring amenable subjects and tracking this activity.

Regards,

(Acting) Deputy Chief
Law Enforcement Operations Directorate - Ops
U.S Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229

office
cellular
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FROM: THE ATTORNEY GENERAL

SUBJECT: Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)

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Those seeking to further an illegal goal constantly alter their tactics to take advantage of weak points. That means we must effectively respond with smart changes also. The recent increase in aliens illegally crossing our Southwest Border requires an updated approach. Past prosecution initiatives in certain districts—such as Operation Streamline—led to a decrease in illegal activities in those districts. We must continue to execute effective policies to meet new challenges.

Accordingly, I direct each United States Attorney’s Office along the Southwest Border—to the extent practicable, and in consultation with DHS—to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a). This zero-tolerance policy shall supersede any existing policies. If adopting such a policy requires additional resources, each office shall identify and request such additional resources.

You are on the front lines of this battle. I respect you and your team. Your dedication and insight into border reality is invaluable. Keep us informed, and don’t hesitate to give us suggestions for improvement. Remember, our goal is not simply more cases. It is to end the illegality in our immigration system.

This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
ATTORNEY GENERAL ANNOUNCES ZERO-TOLERANCE POLICY FOR CRIMINAL ILLEGAL ENTRY

Attorney General Jeff Sessions today notified all U.S. Attorney's Offices along the Southwest Border of a new "zero-tolerance policy" for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States by an alien. The implementation of the Attorney General's zero-tolerance policy comes as the Department of Homeland Security reported a 203 percent increase in illegal border crossings from March 2017 to March 2018, and a 37 percent increase from February 2018 to March 2018—the largest month-to-month increase since 2011.

"The situation at our Southwest Border is unacceptable. Congress has failed to pass effective legislation that serves the national interest—that closes dangerous loopholes and fully funds a wall along our southern border. As a result, a crisis has erupted at our Southwest Border that necessitates an escalated effort to prosecute those who choose to illegally cross our border," said Attorney General Jeff Sessions. "To those who wish to challenge the Trump Administration's commitment to public safety, national security, and the rule of law, I warn you: illegally entering this country will not be rewarded, but will instead be met with the full prosecutorial powers of the Department of Justice. To the Department's prosecutors, I urge you: promoting and enforcing the rule of law is vital to protecting a nation, its borders, and its citizens. You play a critical part in fulfilling these goals, and I thank you for your continued efforts in seeing to it that our laws—and as a result, our nation—are respected."

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Attachment(s):
Download Zero-Tolerance Memorandum

Topic(s):
Immigration

Component(s):
Office of the Attorney General
All,

With that being said, due to the current political environment and all of the issues being raised around the separation of families, if a family group is going to be separated, the reason needs to be clearly identified/justified and sent to me, I am sure there will be questions on any family unit that is separated, and I want to make sure we have the information when the questions start.

The duty Division Chief is always available for calls after hours also.

Thanks

Division Chief
Swanton Sector
Office
Cell

--Division Chief

PAICs,

Please read the email below and attachment above, which discusses the interim guidance on preliminary injunction in Ms. L. v. ICE, No. 18-428 (C.D. Cal. June 26, 2018). Forward this guidance to all agents at your station and respond back to me ASAP once this has been completed.

Thanks,

Acting Deputy Chief Patrol Agent
Swanton Sector
Ph:

CONFIDENTIALITY NOTICE: This e-mail, including any attachment, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Parts of this document may contain sensitive security information that is controlled under the provisions of 10 C.F.R. 1520. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

WARNING: Parts of this document or any attachments may be designated: FOR OFFICIAL USE ONLY/LAW ENFORCEMENT SENSITIVE (FOUO/LES) It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information. This information shall not be distributed beyond the original.

From: [b][6];(b)[7](C)
Sent: Wednesday, June 27, 2018 3:51 PM
To: BP Field Chiefs (b)[7](E) BP Field Deputies (b)[7](E)
Cc: PROVOST, CARLA (USBP) (b)[6];(b)[7](C) LUCK, SCOTT A (USBP) (b)[6];(b)[7](C) HUFFMAN, BENJAMINE C (b)[6];(b)[7](C) HUDSON, RICHARD M (b)[6];(b)[7](C)

Chiefs, Deputies,
Please see the attached guidance memo from Commissioner McAleenan to Chief Provost and AC Owen regarding the *Interim Guidance on Preliminary Injunction in Ms. L. v. ICE, No. 18-428* (C.D. Cal. June 26, 2018).

This memo and guidance is for immediate implementation.

Please provide an email that you have read, understand and disseminated the guidance to your agents for immediate implementation.

If you have any questions or concerns, please give me a call.

V/r,

[Redacted]

O: (b)(6); (b)(7)(C)
C: (b)(6); (b)(7)(C)
June 27, 2018

MEMORANDUM FOR: Carla L. Provost
Chief
U.S. Border Patrol

Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations

FROM: Kevin K. McAleenan
Commissioner


On June 26, 2018, the court granted plaintiffs’ request for a nationwide preliminary injunction, enjoining the government from separating parents and legal guardians, who are detained in Department of Homeland Security (DHS) custody, from their children in certain circumstances. This interim guidance provides initial direction on compliance with that court order.

- (b)(6)
- (b)(7)(E)
Any questions about how to comply with the court order should be raised through the appropriate chain of command for contact with local Office of Chief Counsel. This guidance will be updated as needed and appropriate.

cc: All Executive Assistant Commissioners and Assistant Commissioners
All,

Please see below and attached. Please ensure immediate implementation of this guidance.

In short- no 1325 referrals of FMUA in anything but circumstances outlined in this guidance.

Thanks,

[Signature]

Raul L. Ortiz
Deputy Chief Patrol Agent
Rio Grande Valley Sector

Office: (b)(6);(b)(7)(C)
Mobile: (b)(6);(b)(7)(C)
On June 26, 2018, the court granted plaintiffs' request for a nationwide preliminary injunction, enjoining the government from separating parents and legal guardians, who are detained in Department of Homeland Security (DHS) custody, from their children in certain circumstances. This interim guidance provides initial direction on compliance with that court order.
Any questions about how to comply with the court order should be raised through the appropriate chain of command for contact with local Office of Chief Counsel. This guidance will be updated as needed and appropriate.

cc: All Executive Assistant Commissioners and Assistant Commissioners
Chiefs, Deputies,

Please see the attached guidance memo from Commissioner McAleenan to Chief Provost and AC Owen regarding the *Interim Guidance on Preliminary Injunction in Ms. L. v. ICE, No. 18-428 (C.D. Cal. June 26, 2018)*.

This memo and guidance is for immediate implementation.

Please provide an email that you have read, understand and disseminated the guidance to your agents for immediate implementation.

If you have any questions or concerns, please give me a call.

V/r,
June 27, 2018

MEMORANDUM FOR: Carla L. Provost
Chief
U.S. Border Patrol

Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations

FROM: Kevin K. McAleenan
Commissioner

SUBJECT: Interim Guidance on Preliminary Injunction in
Ms. L. v. ICE, No. 18-428 (C.D. Cal. June 26, 2018)

On June 26, 2018, the court granted plaintiffs’ request for a nationwide preliminary injunction, enjoining the government from separating parents and legal guardians, who are detained in Department of Homeland Security (DHS) custody, from their children in certain circumstances. This interim guidance provides initial direction on compliance with that court order.
Any questions about how to comply with the court order should be raised through the appropriate chain of command for contact with local Office of Chief Counsel. This guidance will be updated as needed and appropriate.

cc: All Executive Assistant Commissioners and Assistant Commissioners
PAICs, please acknowledge receipt and immediate compliance with the below guidance.

June 20, 2018 Executive Order – Operational Guidance:

1. 
2. 
3. 
4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.

5. PAICs will immediately inform Havre Sector staff of any juvenile and/or family unit apprehensions.

(b)(6);(b)(7)(C)
Acting Chief Patrol Agent
Havre Sector Headquarters
Office (b)(6);(b)(7)(C)
Cell (b)(6);(b)(7)(C)
FYI...

Acting Deputy Chief Patrol Agent
Buffalo Sector
U.S. Border Patrol
Office: (b)(6);(b)(7)(C)
Mobile: (b)(6);(b)(7)(C)

Chief, Deputies,

Updated Operational Guidance 2:

- Amending number 3 below, until further implementation guidance is received.
For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,

From: [Redacted]
Sent: Wednesday, June 20, 2018 9:54 PM
To: BP Field Chiefs (b)(7)(E) BP Field Deputies (b)(7)(E)

Subject: June 20, 2018 Executive Order – Updated Operational Guidance

Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b)(7)(E)  
2. (b)(7)(E)  
3. (b)(7)(E)  
4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. (b)(7)(E)
5. (b)(7)(E)

V/r,
Chief, Deputies,

**Updated Operational Guidance 2:**

- Amending number 3 below, until further implementation guidance is received.

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,
Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. 

2. 

3. 

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.

5. 

V/r,
From: (b)(6); (b)(7)(C)
Sent: Tuesday, August 28, 2018 1:26 PM
To: (b)(6); (b)(7)(C)
Subject: FW: June 20, 2018 Executive Order – Updated Operational Guidance

(b)(6); (b)(7)(C)
Acting Chief Patrol Agent
Havre Sector Headquarters
U.S. Border Patrol
Office (b)(6); (b)(7)(C)
Cell (b)(6); (b)(7)(C)

From: (b)(6); (b)(7)(C)
Sent: Wednesday, June 20, 2018 7:58 PM
To: HUDSON, RICHARD M (b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C)
Subject: FW: June 20, 2018 Executive Order – Updated Operational Guidance

Havre Sector has received, understand and will comply.

(b)(6); (b)(7)(C)
(A) Chief Patrol Agent
Havre Sector
Office (b)(6); (b)(7)(C)
Cell (b)(6); (b)(7)(C)

Sent from iPhone

From: (b)(6); (b)(7)(C)
Sent: Wednesday, June 20, 2018 9:53:46 PM
To: BP Field Chiefs; BP Field Deputies
Cc: MCALEENAN, KEVIN K; VITIELLO, RONALD D (USBP); PROVOST, CARLA (USBP); LUCK, SCOTT A (USBP); HUDSON, RICHARD M; (b)(6); (b)(7)(C) HUFFMAN, BENJAMINE C; (b)(6); (b)(7)(C) HOWARD, CRINLEY S; SINGLETONE, RUYNARD R; FALK, (b)(6); (b)(7)(C) AJO

Subject: June 20, 2018 Executive Order – Updated Operational Guidance

Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.
Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.

2. (b)(7)(E)

3. (b)(7)(E)

4. (b)(7)(E)

5. (b)(7)(E)

V/r,
From: (b)(6);(b)(7)(C)
Sent: Tuesday, August 28, 2018 1:15 PM
To: (b)(6);(b)(7)(C)
Subject: FW: S1 Signed Action Memo Increasing Prosecutions
Attachments: Southwest Border Prosecutions 05042018.docx

Acting Chief Patrol Agent
Havre Sector Headquarters
U.S. Border Patrol
Office: (b)(6);(b)(7)(C)
Cell: (b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Friday, May 4, 2018 4:01 PM
To: BP Field Chiefs (b)(7)(E) BP Field Deputies (b)(7)(E)
Cc: PROVOST, CARLA (USBP) (b)(6);(b)(7)(C) LUCK, SCOTT A (USBP) (b)(6);(b)(7)(C) HUDSON, RICHARD M (b)(6);(b)(7)(C) HUFFMAN, BENJAMINE C (b)(6);(b)(7)(C) (AJO) (b)(6);(b)(7)(C)
Subject: FW: S1 Signed Action Memo Increasing Prosecutions

SWB Chief’s and Deputies,

Please see the attached, approved CONOP to develop a quickly scalable approach to achieve 100% immigration violation prosecution referrals for all amenable adults.

Border Patrol is authorized to implement increased Southwest Border Prosecutions, as outlined in the second attachment.

We will be hosting a teleconference call at 6:10 p.m. EST to discuss and answer any questions. The call in information will be out in a few minutes.

V/r,
(b)(6);(b)(7)(C)
Objective:
- Achieve increased level of Border Security along the southwest border through consistent application of all legal authorities via consequence delivery.

Key Messages: This effort is not new. Each day, those that violate our immigration laws are referred for prosecution. In order to ensure the sovereignty of our Nation and secure our borders, the Department of Justice and the Department of Homeland Security are maximizing their capabilities to deliver the appropriate consequences to violators. In order to break the cycle of those who seek to enter unlawfully, all amenable adults who violate 8 U.S.C. § 1325(a) will be referred for prosecution. This includes those adults who are accompanying children. We will not exempt adults who engage in this criminal activity, including those choose to put their children in harm’s way by crossing the border between the ports of entry.

Execution:
The southwest border sectors, under the direction of their Chief Patrol Agents (CPAs), will implement (b)(7)(E) 
- Sectors will provide localized, phased plans to (b)(6) 
  while recognizing that our partners will need time to adjust resources to achieve shared DHS and DOJ goals.
- CPAs will expand and maintain this prosecution initiative (b)(7)(E) 
- CPAs will consider DOJ request for Sector resources to support increased prosecutions on a case-by-case basis, in coordination with Headquarters LEOD. All requests for Chief Counsel resources will be referred to the Office of Chief Counsel.
- CPAs will maintain current operations in other (b)(7)(E) with respect to enforcement activities and prosecutions.
- All aliens referred for prosecution within each sector will be entered into the module, with reasons for declinations recorded accurately.

Prosecution Priorities in the following order:
1. (b)(7)(E) 
2. 

Authorized by: Associate Chief and Assistant Chiefs 
Approved by: LEOD Deputy Chief Richard Hudson
Southwest Border Prosecutions  
May 3, 2018  

Reporting Requirements: (weekly statistics)  
- Report requests from U.S. Attorney or U.S. Marshal offices for CBP resources to assist with implementation.  
- Report the number of apprehensions in targeted and non-targeted by sector.  
- Report the total number of prosecution referrals by sector for each priority in targeted and non-targeted by sector.  
- Report the percentage of referred prosecutions for each priority in targeted and non-targeted.  
- Report the percentage of declinations for each priority sub-categorized by reason.  
- Report the total number of non-referred (for prosecution) by priority sub-categorized by reason.  
- Any requests for reporting of prosecutions by Special Assistant United States Attorneys (SAUSAs) from the Office of Chief Counsel, or reporting on Chief Counsel SAUSA resources, should be referred to the Office of Chief Counsel.  

Metrics:  
- Total number of prosecutions – increase or decrease  
- Total number of apprehensions in relation to increase/decrease of prosecutions  
- Demographic shift of aliens entering illegally  
  - Number of OTMs entering illegally  
  - Number of family units entering illegally  
- Increase/decrease in presentations at the ports of entry  

Execution Timeline:  

Approved by: LEOO Deputy Chief Richard Hudson  

Authored by: Associate Chief [redacted] and Assistant Chiefs [redacted]
Acting Chief Patrol Agent
Havre Sector Headquarters
U.S. Border Patrol
Office (b)(6);(b)(7)(C)
Cell (b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Thursday, August 2, 2018 5:43 AM
To: BP Field Chiefs (b)(7)(E)
BP Field Deputies (b)(7)(E)
CC: PROVOST, CARLA (USBP)
HUFFMAN, BENJAMINE C (USBP)
(OC)(b)(6);(b)(7)(C)
USBP
LEOD Associate Chiefs (b)(6);(b)(7)(C)
Subject: RE: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION - UPDATED GUIDANCE

Chiefs,

Again, please confirm receipt of this email to (b)(6);(b)(7)(C) and I.

Thank you in advance for your patience and understanding.
Chief,

Please ensure this guidance is provided to all processing centers and stations that would be impacted by this guidance.

Please confirm receipt via a return e-mail to me, and if you have any issues with the guidance, please elevate immediately to HQ for intervention.
If you have any questions, please let me know and we will work with OCC to get you an answer if we cannot provide one immediately.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
United States Border Patrol Headquarters
(b)(6);(b)(7)(C) Office
(b)(6);(b)(7)(C) Cellular

(b)(6);(b)(7)(C)
Chiefs,

(b) (5)

(b) (5)

Please be prepared for late night direction and potential direction change.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters
From: "HUDSON, RICHARD M"
Date: 8/2/18 07:42 (GMT-05:00)
To: BP Field Chiefs (b)(5), (b)(7)(E), BP Field Deputies (b)(7)(E)
Cc: "LUCK, SCOTT A (USBP)" (b)(6);(b)(7)(C), "PROVOST, CARLA (USBP)" (b)(6);(b)(7)(C), "HUFFMAN, BENJAMINE C" (b)(6);(b)(7)(C), (OCC)" (b)(6);(b)(7)(C)

Subject: RE: Temporarily Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION - UPDATED GUIDANCE

Chiefs,

Again, please confirm receipt of this email to (b)(6);(b)(7)(C) and I.

Thank you in advance for your patience and understanding.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters
(b)(6);(b)(7)(C) office
(b)(6);(b)(7)(C) cellular
From: HUDSON, RICHARD M  
Sent: Tuesday, July 31, 2018 9:44 PM  
To: BP Field Chiefs  
Cc: LUCK, SCOTT A (USBP)  
BP Field Deputies (b)(7)(E)  
CARLA PROVOST (USBP)  
(b)(6);(b)(7)(C)  
HUFFMAN, BENJAMINE C. (USBP)  
(b)(6);(b)(7)(C)  
(b)(6);(b)(7)(C)  
(b)(6);(b)(7)(C) 
Subject: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION  
Importance: High

Chiefs,

Please ensure this guidance is provided to all processing centers and stations that would be impacted by this guidance.

Please confirm receipt via a return e-mail to me, Rich

If you have any issues with please elevate immediately to HQ for intervention.

If you have any questions, please let me know and we will work with OCC to get you an answer if we cannot provide one immediately.

VR

Rich

Richard M. Hudson  
Acting Chief  
Law Enforcement Operations Directorate  
United States Border Patrol Headquarters  
Office  
Cellular
From: [Redacted]
Sent: Tuesday, August 28, 2018 1:18 PM
To: [Redacted]
Subject: FW: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION - UPDATED GUIDANCE

 Acting Chief Patrol Agent
 Havre Sector Headquarters
 U.S. Border Patrol
 Office [Redacted]
 Cell [Redacted]

From: [Redacted]
Sent: Wednesday, August 8, 2018 4:59 PM
To: BP Field Chiefs [Redacted] BP Field Deputies [Redacted] [Redacted] [Redacted]
Cc: [Redacted] [Redacted] [Redacted] [Redacted]
LEOD Associate Chiefs

Subject: RE: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION - UPDATED GUIDANCE

Chiefs,

[Redacted]

Thanks again for your leadership and your flexibility.

VR

Rich

Richard M. Hudson
Chiefs,

This is now part of a court ordered stay.

I anticipate future permutations of this situation as the legal process continues to play out.

Appreciate your patience and flexibility.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters
Chiefs,

Please be prepared for late night direction and potential direction change.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters

--- Original message ---

From: "HUDSON, RICHARD M" (b)(6);(b)(7)(C)
Date: 8/2/18 07:42 (GMT-05:00)
To: BP Field Chiefs (b)(7)(E) BP Field Deputies (b)(7)(E)
Cc: "LUCK, SCOTT A (USBP)" (b)(6);(b)(7)(C) "PROVOST, CARLA (USBP)"
(b)(6);(b)(7)(C) "HUFFMAN, BENJAMINE C"
(b)(6);(b)(7)(C) "KOLLER, JULIE (OCC)"
(b)(7)(E)

Subject: RE: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION - UPDATED GUIDANCE
Again, please confirm receipt of this email to (b)(6);(b)(7)(C) and I.

Thank you in advance for your patience and understanding.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information or otherwise protected by law. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: HUDSON, RICHARD M
Sent: Tuesday, July 31, 2018 9:44 PM
To: BP Field Chiefs; BP Field Deputies
Cc: LUCK, SCOTT A (USBP); CARLA PROVOST (USBP); HUFFMAN, BENJAMINE C
Subject: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION
Importance: High

Chiefs,

(b)(5)
Please ensure this guidance is provided to all processing centers and stations that would be impacted by this guidance.

Please confirm receipt via a return e-mail to me, [b][6];[b][7](C) [b][6];[b][7](C) and [b][6];[b][7](C).

If you have any issues [b][5];[b][7](E), please elevate immediately to HQ for intervention.

If you have any questions, please let me know and we will work with OCC to get you an answer if we cannot provide one immediately.

VR

Rich

Richard M. Hudson
Acting Chief
Law Enforcement Operations Directorate
United States Border Patrol Headquarters
Office
Cellular

[cbp foia 000135]
From: (b)(6);(b)(7)(C) (RGV)
Sent: Tuesday, July 31, 2018 10:10 PM
To: RGV CPC PAIC; RGV CPC WC-SBPA; RGV OPS; RGV OPS SOSs
Cc: (b)(6);(b)(7)(C) (CAG); (b)(6);(b)(7)(C)
Subject: FW: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION

Please see below for immediate action. Let's ensure we track any of these we have, as well.

Any questions, please ask!

Thanks,

(b)(6);(b)(7)(C)
DC-RGV
(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Tuesday, July 31, 2018 8:02:54 PM
To: (RGV)
Cc: PADILLA, MANUEL JR
Subject: Fwd: Temporary Delay in Removal of Mexican Parents and Children - IMMEDIATE ACTION / FIELD NOTIFICATION

For action.

Sent from my iPhone

Begin forwarded message:

From: "HUDSON, RICHARD M" (b)(6);(b)(7)(C)
Date: July 31, 2018 at 8:43:40 PM CDT
To: BP Field Chiefs (b)(7)(E), BP Field Deputies (b)(7)(E)
Cc: "LUCK, SCOTT A (USBP)" (b)(6);(b)(7)(C), "PROVOST, CARLA (USBP)" (b)(6);(b)(7)(C), "HUFFMAN, BENJAMINE C" (b)(6);(b)(7)(C),
For immediate dissemination and muster discussion

PAICs: Please see the below Headquarters operational guidance for immediate dissemination to our field personnel and central processing teams; and for immediate implementation. I need confirmation that you have received and will implement the below guidance immediately.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. [Redacted]

2. [Redacted]

3. [Redacted]

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.
If you have any further questions, please contact our Sector Prosecutions team or Acting ACPA at

Regards,
Gloria I. Chavez
Chief Patrol Agent
El Centro Sector
U.S. Border Patrol

From: CHAVEZ, GLORIA I
Sent: Wednesday, June 20, 2018 4:54 PM
To: 
Cc: 
Subject: Zero Tolerance and Executive Order Guidance

ALCON:

Effective immediately the following actions are to be implemented/acted upon:

1. 

2. All efforts will be made to keep Family Units together.

3. 

Further guidance is forthcoming from HQ. In the interim please ensure that all field commanders and Supervisors are made aware and act accordingly. If you have any further questions, please contact Acting ACPA at https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/

President Executive Order

GC

Regards,
Gloria I. Chavez
Chief Patrol Agent
El Centro Sector
U.S. Border Patrol

Regards,
Gloria I. Chavez
Chief Patrol Agent
El Centro Sector
U.S. Border Patrol
Good evening,

This guidance supersedes all local arrangements between our Sector’s Prosecution Units and the US Attorney’s Office. This guidance is not new (reference April 6, 2018 memorandum from AG Sessions to Federal Prosecutors) to the US Attorney’s Office.

It is fully anticipated there will be declinations based on a multitude of reasons.

The Prosecutions Offices will track each referral and reason for declination for reporting purposes.

Please feel free to contact me or any of the Prosecutions SOS’s if you have questions. Thank you,

_____________________________
Assistant Chief Patrol Agent
Rio Grande Valley Sector

1 mobile
FW: Prosecution UPDATE: IMMEDIATE Implementation

Friday, June 8, 2018 2:29:00 PM

ALCON,

The CBP Transportation, Escort, Detention, and Search (TEDS) policy states in part that “CBP will maintain family unity to the greatest extent operationally feasible, absent a legal requirement or an articulable safety or security concern that requires separation.” USBP complies with this policy and strives to maintain the family unity of aliens while in our custody however, there are numerous situations that would require the separation of family units such as prosecution of the parent or legal guardian.

USBP will ensure all family units affected by separation are provided with meaningful information and contact numbers that will assist with reunification with their family when they leave USBP custody. Effective immediately, all sectors shall begin dispersing the attached separation notice to all family members that resulted in a separation.

Thank you,

Division Chief
Big Bend Sector

From: (b)(6);(b)(7)(C)
Sent: Thursday, June 07, 2018 8:32 PM
To: BBT_PAIC_DPAIC
Cc: BBT_TASKINGS
Subject: Prosecution UPDATE: IMMEDIATE Implementation

ALCON,

Please pass this information to your supervisory personnel for immediate implementation.

Please acknowledge receipt.

Division Chief
Big Bend Sector
Office
Cell
Policies and Procedures Involving Detained Parents and Legal Guardians

U.S. Immigration and Customs Enforcement’s (ICE) current policy and procedures address considerations when detaining and removing parents and legal guardians of minor children. These policies were first set out in the August 23, 2013 directive entitled *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities*, which has been replaced by the August 29, 2017 Directive entitled *Detention and Removal of Alien Parents or Legal Guardians*.

Current policies and procedures governing the intake, detention, and removal of parents and legal guardians in a number of ways, including:

- **PLACEMENT**: Making appropriate initial placement and transfer decisions for detained alien parents and legal guardians who are identified as parties in ongoing family court or child welfare proceedings.
- **FACILITATING PARTICIPATION IN FAMILY OR STATE COURT PROCEEDINGS**: Arranging for transportation to family court or child welfare hearings if the location is within a reasonable distance and when doing so would not be unduly burdensome or present security and/or public safety concerns. If transport is impracticable, identifying alternative means for parents to participate in hearings, such as through video or teleconference technologies.
- **PARENT-CHILD VISITATION**: In addition to following relevant ICE Detention Standards on visitation, facilitating parent-child visitation where required by a family or dependency court or a child welfare authority.
- **COORDINATING CARE OR TRAVEL OF CHILD**: Accommodating detainees’ efforts to make care arrangements for minor children in the U.S. Obtaining travel documents for detainees’ minor children to accompany them to the country of removal, or to reunite in country of removal.

**ICE Detention Standards**

**ALL VERSIONS OF ICE DETENTION STANDARDS REQUIRE:**

- **PHONE ACCESS**: Detainees are allowed to make direct or free phone calls to immediate family or others in personal or family emergencies or who otherwise demonstrate a compelling need (to be interpreted liberally).
- **VISITATION FOR MINORS**: Family members, including minor children, are allowed to visit relatives in detention. Where there is no provision for visits by minors at a facility, ICE will arrange for a visit with children, stepchildren, and foster children.
- **REQUESTS FOR TRANSFER**: ICE will consider a request for transfer, when possible, to a facility that allows such visitation. If the transfer is not approved, or until an approved transfer can be effected, ICE will continue to accommodate monthly visits.
- **VISITATION HOURS**: Each facility is required to set a visitation schedule based on detainee demand that should allow for 30 minutes minimum, and more generous limits when possible, especially for family members traveling significant distances. Visitations on weekends and holidays are required, and some facilities may allow visits by family members outside of normal visiting hours.

**Did You Know?**

The Performance Based National Detention Standards (Revised December 2016) state that facilities should try to facilitate contact visitation when possible, and should allow detainees to see their minor children as soon as possible after admission. Generous time allotments for visitation with minor children are recommended.

**Additional Resources**

- **CALL CENTER**: The Detention Reporting and Information Line (DRIL) is a toll-free service that provides a direct channel for detainees and stakeholders to communicate with ERO to answer questions and resolve concerns, including separation from a child. To reach the DRIL, call: 1-888-351-4024
- **LOCATING A PARENT**: The Online Detainee Locator System (ODLS) is a public system available on the internet that allows family members, legal representatives, and members of the public, to locate persons who are in ICE detention. To use ODLS, visit: https://www.ice.gov/locators.
- **WEBSITE**: For additional information on ICE Detention Standards visit: https://www.ice.gov/factsheets/facilities-pbnds.
- **EMAIL**: For more information on this topic, please submit inquiries to Parental.Interests@ice.dhs.gov

March 2018
Las Normas y Procedimientos que Involucran a los Padres que están Detenidos y a los Tutores Legales

Las normas y procedimientos actuales del Servicio de Inmigración y Control de Aduanas de Estados Unidos, (ICE, por sus siglas en inglés) se dirigen a las consideraciones que se toman cuando son detenidos o extraídos los padres y tutores legales de los hijos menores. Estas normas fueron establecidas el 23 de agosto del 2013 en la directiva titulada Como Facilitar los Intereses de los Padres durante el Curso de Actividades Civiles de Ejecución de Inmigración, el cual fue remplazado el 29 de agosto del 2017 con la Directiva titulada La Detención y Expulsión de Padres y Tutores Legales Extranjeros.

Las normas y procedimientos que rigen la aprehensión, detención y la expulsión de los padres y tutores legales de varias maneras, al incluir:

EMPLAZAMIENTO: Hacer el emplazamiento inicial y las decisiones de traslado para los padres y tutores legales extranjeros que están detenidos que han sido identificados como participantes en un caso jurídico familiar o en procedimientos de bienestar de menores.

FACILITAR LA PARTICIPACIÓN EN LOS PROCEDIMIENTOS JURÍDICOS FAMILIARES O ESTATALES: Hacer arreglos de transporte al juzgado familiar o a las audiencias de bienestar de menores si la ubicación está a una distancia razonable y al hacerlo no fuera excesivamente gravoso o que presentara problemas de seguridad y/o de seguridad pública. Si el transporte es impráctico identificar medios alternativos para que los padres puedan participar en las audiencias, tales como el uso de video o las tecnologías de teleconferencia.

VISITAS ENTRE PADRE E HIJO: Además de seguir las Normas de Detención de ICE sobre las visitas, facilitar las visitas de padre e hijo donde se requiera por un juzgado familiar o el juzgado de protección de menores o por la autoridad del bienestar de menores.

COORDINACIÓN DEL CUIDADO O VIAJE DEL MENOR: Asistir al detenido en los esfuerzos para hacer arreglos de cuidado para hijos menores que están en los Estados Unidos. Obtener documentos de viaje para los hijos menores de los detenidos para que los acompañen al país de expulsión o para que sean reunidos en el país de expulsión.

Normas de Detención de ICE

TODAS LAS VERSIONES DE DETENCION DE ICE REQUIEREN:

ACCESO A UN TELEFONO: Los detenidos tienen permiso de hacer llamadas directas o gratuitas a familia inmediata u a otros en casos de emergencia personal o familiar o que puedan demostrar una necesidad convincente (se puede interpretar libremente).

VISITAS PARA MENORES: Los familiares, incluyendo hijos menores, tienen permiso de visitar a sus familiares que están detenidos. Cuando no hay disposición de visita en alguna instalación, ICE organizará una visita con hijos, hijastros y niños de crianza.

SOLICITUD DE TRASLADO: ICE tomará en consideración una solicitud de traslado cuando sea posible a una instalación que permita dichas visitas. Si el traslado no es aprobado o hasta que el traslado aprobado se pueda efectuar, ICE continuará la facilitación de visitas mensuales.

HORARIO DE VISITAS: Cada instalación está obligada a imponer un horario de visitas basado en la demanda de los detenidos, se deberá permitir un mínimo de 30 minutos y límites más generosos cuando sea posible, especialmente para los familiares que viajan grandes distancias. El horario de visitas los fines de semana y los días festivos son obligatorios y algunas instalaciones pueden permitir las visitas de familia fuera del horario de visitas normal.

Recursos Adicionales

CENTRO DE LLAMADAS: La Línea de Reportes de Detención e Información (DLIR, por sus siglas en inglés) es un servicio gratuito que proporciona una vía directa para que los detenidos y las partes interesadas puedan comunicarse con ERO (Oficina de Detención y Deportación, por sus siglas en inglés) para contestar preguntas y resolver preocupaciones, incluyendo la separación de un niño. Para ponerse en contacto con DRIL, llame al: 1-888-351-4024.

COMO LOCALIZAR A UN PADRE: El Sistema de Localización de Detenidos en Línea (ODLS) es un sistema público disponible en Internet que permite a familiares, representantes legales y miembros del público, localizar a personas que están detenidas por ICE. Para usar ODLS, navegue al: https://www.ice.gov/locations.


¿Sabía Usted? Los Estándares Basados en el Rendimiento de Detención Nacionales (Actualizado en diciembre del 2016) establecen que las instalaciones deben tratar de facilitar visitas con contacto cuando sea posible, y deben permitir que los detenidos vean a sus hijos menores tan pronto como sea posible después de su ingreso. Se recomienda asignación de horarios de visita generosos para los hijos menores.
For compliance

ALCON,

Please review the below Executive Order drafted June 20, 2018, and continue to operate under this guidance until any updates or modifications are received.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b)(7)(E)

2. (b)(7)(E)

3. (b)(5), (b)(7)(E)

4. Take all appropriate, immediate measures to reunify separated children who remain in
CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.

5.

Respectfully,

(b)(6);(b)(7)(C), MEP
Acting Assistant Chief Patrol Agent
Laredo Sector
Office: (b)(6);(b)(7)(C)
GOV Cell: (b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Thursday, June 21, 2018 6:39 AM
To: LRT STATION COMMAND GMI (b)(7)(E) LRT SECTOR STAFF
GMI: (b)(7)(E)
Cc: LRT-Pross-Management (b)(7)(E) LRT-CPU MANAGEMENT -

Subject: FW: June 20, 2018 Executive Order – Updated Operational Guidance *****
(UPDATED)*****

FYSA

Initial EO operational guidance and update.

Respectfully,

(b)(6);(b)(7)(C)
Acting Assistant Chief Patrol Agent
Laredo Sector
GOV Cell: (b)(6);(b)(7)(C)

Sent from a mobile device
Update

Thank you,

(b)(6);(b)(7)(C)
Special Operations Supervisor
Combine Enforcement Unit
USBP Laredo Sector
Office: (b)(6);(b)(7)(C)
Gov: (b)(6);(b)(7)(C)

FYSA

Thank you,

(b)(6);(b)(7)(C)
(a) Deputy Chief Patrol Agent
Laredo Sector Border Patrol
(b)(6);(b)(7)(C)

Updated Operational Guidance 2:
• Amending number 3 below, until further implementation guidance is received.

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,

From: (b)(6);(b)(7)(C)
Sent: Wednesday, June 20, 2018 9:54 PM
To: BP Field Chiefs BP Field Deputies
Cc: MCALEENAN, KEVIN K (b)(6);(b)(7)(C) VITIELLO, RONALD D (USBP) (b)(6);(b)(7)(C) PROVOST, CARLA (USBP) (b)(6);(b)(7)(C) LUCK, SCOTT A (USBP) (b)(6);(b)(7)(C) \(\) HUDSON, RICHARD M (b)(6);(b)(7)(C) HUFFMAN, BENJAMINE C (b)(6);(b)(7)(C) AJO (b)(6);(b)(7)(C) HOOVER, CRINLEY S (b)(6);(b)(7)(C) SINGLETON, RUYNARD R (b)(6);(b)(7)(C) OCC (b)(6);(b)(7)(C)
Subject: June 20, 2018 Executive Order – Updated Operational Guidance

Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. \(\)
4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction.

5. [redacted]
FYI,

(b)(6);(b)(7)(C)
Acting Deputy Patrol Agent in Charge
U.S. Border Patrol
Laredo West Station
(b)(6);(b)(7)(C) Office
(b)(6);(b)(7)(C) Cell

From: [redacted]
Sent: Wednesday, June 20, 2018 5:48 PM
To: LRT STATION COMMAND GML (b)(7)(E)
Cc: LRT SECTOR STAFF GML (b)(7)(E); LRT-Pross-Management (b)(5)(E)
LRT-CPU MANAGEMENT (b)(7)(E)
Subject: (b)(5)
Importance: High

ALCON,

Please review the (b)(5) below related to the current Zero Tolerance Initiative as it applies to FMUAs

Respectfully,

(b)(6);(b)(7)(C), MEP
Acting Assistant Chief Patrol Agent
Laredo Sector
Office: (b)(6);(b)(7)(C)
GOV Cell: (b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Wednesday, June 20, 2018 5:44 PM
To: (b)(6);(b)(7)(C)
Subject: (b)(5)

(b)(5)
MEMORANDUM FOR: All Border Patrol Agents

FROM: Chief Patrol Agent
       Grand Forks Sector

SUBJECT: Interim Guidance on Preliminary Injunction in
         Ms. L. v. ICE, No. 18-428 (C.D. Cal. June 26, 2018)

Please see the memorandum from Kevin K. McAleenan, Commissioner, Customs and Border Protection, dated June 27, 2018, concerning a nationwide preliminary injunction enjoining the government from separating parents and legal guardians, who are detained in Department of Homeland Security custody, from their children in certain circumstances. The attached interim guidance provides initial direction on compliance with that court order.

Questions may be directed to Division Chief at (b)(6);(b)(7)(C).

Attachment
On June 26, 2018, the court granted plaintiffs' request for a nationwide preliminary injunction, enjoining the government from separating parents and legal guardians, who are detained in Department of Homeland Security (DHS) custody, from their children in certain circumstances. This interim guidance provides initial direction on compliance with that court order.
Any questions about how to comply with the court order should be raised through the appropriate chain of command for contact with local Office of Chief Counsel. This guidance will be updated as needed and appropriate.

cc: All Executive Assistant Commissioners and Assistant Commissioners
FYSA

From: BOATRIGHT, ROBERT L
Sent: Friday, April 27, 2018 6:52:02 PM
To: BBT TASKINGS
Subject: FW: Zero Tolerance Prosecution Referrals

Action item. Needs distribution now and we should have candidates stacked for Monday.

From: SCOTT, RODNEY S; CHAVEZ, GLORIA I; PORVAZNIK, ANTHONY J; KARISCH, RODOLFO; HULL, AARON A; BOATRIGHT, ROBERT L; CHAVEZ, FELIX; PADILLA, MANUEL JR; ORTIZ, RAUL; SELF, JEFFREY D; VILLAREAL, ROY D
Cc: OPS EAST SECTOR; OPS WEST SECTORS; OPSCENTRALSECTORS; USBP HQ Adjutants; LUCK, SCOTT A (USBP); PROVOST, CARLA (USBP)
Subject: Zero Tolerance Prosecution Referrals

Chiefs and Deputies,
This guidance supersedes all local arrangements between your Sector Prosecution Unit and the US Attorney’s Office. As such,

Please track these referrals and maintain them on a daily basis. We do not need your office to share these statistics immediately. We do anticipate a message asking you to share your reports tracking referrals near the end of the weekend or beginning of the work week.

Please let us know if there are any questions. Thank you in advance for your staff’s diligence referring amenable subjects and tracking this activity.

Regards,

(Acting) Deputy Chief
Law Enforcement Operations Directorate - Ops
U.S Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229
We will deal with certain exceptions, but those will be dealt with on a case by case basis.

Thank you,

Patrol Agent In Charge

Big Bend Sector

Ma'am,
From: (b)(6);(b)(7)(C)  
Sent: Friday, April 27, 2018 7:31 PM  
To: (b)(6);(b)(7)(C)  
(b)(6);(b)(7)(C)  
(b)(6);(b)(7)(C)  
Subject: FW: Zero Tolerance Prosecution Referrals

All,  

For compliance. Document as directed.  

Thank you,

Thank you,

Patrol Agent In Charge  
Big Bend Sector  
O: (b)(6);(b)(7)(C)  
C:

From: (b)(6);(b)(7)(C)  
Sent: Saturday, April 28, 2018 1:19:13 AM  
To: BBT_PAIC_DPAIC  
Cc: BBT TASKINGS; (b)(6);(b)(7)(C)  
Subject: FW: Zero Tolerance Prosecution Referrals

ALCON,  

Please see below and attached. Please ensure that all referrals and declinations are documented along with the reason.  

Thank you,

Division Chief  
Big Bend Sector  

From: BOATRIGHT, ROBERT L
Action item. Needs distribution now and we should have candidates stacked for Monday.

Chiefs and Deputies,

This guidance supersedes all local arrangements between your Sector Prosecution Unit and the US Attorney’s Office.

Please track these referrals and maintain them on a daily basis. We do not need your office to share these statistics immediately. We do anticipate a message asking you to share your reports tracking referrals near the end of the weekend or beginning of the work week.

Please let us know if there are any questions. Thank you in advance for your staff’s diligence referring amenable subjects and tracking this activity.

Regards,

(Acting) Deputy Chief
Law Enforcement Operations Directorate - Ops
U.S Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229
Please pass this information to your supervisory personnel for immediate implementation.

Please acknowledge receipt.

Division Chief
Big Bend Sector
Office
Cell
Thank you,

Assistant Chief Patrol Agent
Big Bend Sector

Hello gents,

Please read the Path Forward bullet below.

New Executive Order – June 20, 2018
Do not detain an alien family together when there is a concern that detention of an alien child with the child’s alien parent would pose a risk to the child’s welfare. EO Section 3 (b)

Additional Guidance
Will change over the next few days
Be Flexible
Err towards family unity

Path Forward – Big Picture

Direct questions to Division Chief

More to come as it becomes available.

Robert L. Boatright
Chief Patrol Agent
Big Bend Sector
United States Border Patrol
This message contains information intended only for the addressee named above. If you believe you have received this email in error, please notify the sender immediately.
All,

Please see updated guidance below for immediate implementation. Contact DC if you have any questions. Thank you.

Chief, Deputies,

**Updated Operational Guidance 2:**

- Amending number 3 below, until further implementation guidance is received.

For immediate update to the troops please. I apologize for the multiple emails. Please call if you have any questions. I respectfully request verification that you have received, understand and will implement immediately.

Please send verification to Deputy Division Chief Hudson and I please.

V/r,

[signoff]
Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief Richard Hudson and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

1. (b)(7)(E)

2. (b)(7)(E)

3. (b)(7)(E)

4. Take all appropriate, immediate measures to reunify separated children who remain in CBP custody with adult family members referred for prosecution when the adult is expected to return to CBP custody within a reasonable time period, after prosecution/conviction. (b)(7)(E)

5. (b)(7)(E)
Disregard my previous email regarding the El Centro Sector will begin the “Zero Tolerance” effort as directed by Attorney General Sessions and U.S. Border Patrol Headquarters.

Please be prepared for updated information and guidance throughout the weekend.

Any questions or concerns, please let us know.

Special Operations Supervisor
Interagency Coordination
Office
Cell
To all,

We started prosecutorial referrals for all amenable adults, to include adults that are part of family units. Thank you.

[Redacted]

Special Operations Supervisor
Del Rio Sector Asset Forfeiture Office
[Redacted] office
[Redacted] mobile
WC’s,

PAICs,

Please see the info below regarding zero tolerance prosecutions.

The Prosecutions department will track all prosecutions as required below.

Thanks,

Acting Division Chief
USBP El Centro Sector

FYA please.

From: (b)(6);(b)(7)(C)
Sent: Saturday, April 28, 2018 2:41 PM
To: (b)(6);(b)(7)(C)
Subject: FW: Zero Tolerance Prosecution Referrals

From: (b)(6);(b)(7)(C)
Sent: Saturday, April 28, 2018 2:27:05 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: FW: Zero Tolerance Prosecution Referrals

From: (b)(6);(b)(7)(C)
Sent: Friday, April 27, 2018 8:05:56 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: FW: Zero Tolerance Prosecution Referrals

FYA please.
Chiefs and Deputies,

This guidance supersedes all local arrangements between your Sector Prosecution Unit and the US Attorney’s Office.

Please track these referrals and maintain them on a daily basis. We do not need your office to share these statistics immediately. We do anticipate a message asking you to share your reports tracking referrals near the end of the weekend or beginning of the work week.

Please let us know if there are any questions. Thank you in advance for your staff’s diligence referring amenable subjects and tracking this activity.

Regards,

(Acting) Deputy Chief

Law Enforcement Operations Directorate - Ops

U.S Border Patrol

1300 Pennsylvania Ave, N.W.

Washington, DC 20229
On April 6, 2018, Attorney General Sessions issued a mandate to the U.S. Department of Justice to prosecute “all offenses referred for prosecution under section 1325(a).”

Please ensure timely notification of all pending prosecutions is made to the Prosecutions Department.

Any questions or concerns, please let us know.

Special Operations Supervisor
Interagency Coordination
Office
Cell
Thank you that completes the request as was already looped in. Thank you and your team.

Sir,

The following have been notified via telephone:

AUSA Texas US Marshal Service
New Mexico Marshal Service

Thanks,

From:
To:
Cc:
Subject: RE: Warning Order
Importance: High
Date: Friday, May 4, 2018 5:22 PM

Looping in and Thanks
From: (b)(6);(b)(7)(C)
Sent: Friday, May 4, 2018 5:22 PM
To: (b)(6);(b)(7)(C)
Subject: FW: Warning Order
Importance: High

FYI, as discussed with you over the phone.

Thank you,

Cell (b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Friday, May 04, 2018 5:08 PM
To: EPT-LEOD (b)(7)(E) EPT-PAIG (b)(7)(E)
Subject: Warning Order
Importance: High

All,

Good afternoon. Additional guidance will follow as soon as I can read through the emails and put something together for you. (b)(7)(E), we will begin prosecuting all adults, regardless of family status. (b)(7)(E)
All,

Stand down for now. More direction is being sent down the chain of command. We will go back to business as usual until we are told otherwise.

Thanks

---

All,

Per the (A)PAIC, a little more specific direction regarding the attached and the below directive.

This will more than likely continue to evolve as the process moves along so be ready for changes as we go forward.

Remember, ambiguity is the rule. We will adjust and keep moving forward.

I am available for questions or concerns.

Thanks

---
Sent: Saturday, April 28, 2018 2:51:01 PM
To: ELC IML WC SOS FOS; ELC IML SUPERVISORS
Subject: FW: Zero Tolerance Prosecution Referrals

All.
Read attachments and message.  

(b)(7)(E)

From: (b)(6);(b)(7)(C)
Sent: Saturday, April 28, 2018 2:27:05 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: FW: Zero Tolerance Prosecution Referrals

PAICs,

Please see the info below regarding zero tolerance prosecutions.

The Prosecutions department will track all prosecutions as required below.

Thanks,

Acting Division Chief
USBP El Centro Sector

From: (b)(6);(b)(7)(C)
Sent: Friday, April 27, 2018 8:05:56 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: FW: Zero Tolerance Prosecution Referrals

FYA please. Note the tracking piece.

From: (b)(6);(b)(7)(C)
Sent: Friday, April 27, 2018 4:50 PM
To: SCOTT, RODNEY S; CHAVEZ, GLORIA I; PORVAZNIK, ANTHONY J; KARISCH, RODOLFO; HULL, AARON A; BOATRIGHT,
Chiefs and Deputies,

This guidance supersedes all local arrangements between your Sector Prosecution Unit and the US Attorney's Office.

Please track these referrals and maintain them on a daily basis. We do not need your office to share these statistics immediately. We do anticipate a message asking you to share your reports tracking referrals near the end of the weekend or beginning of the work week.

Please let us know if there are any questions. Thank you in advance for your staff's diligence referring amenable subjects and tracking this activity.

Regards,

(Acting) Deputy Chief
Law Enforcement Operations Directorate - Ops
U.S Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229
All,
As mentioned, changes abound.

Thanks,

All,
Good evening. This afternoon, President Trump signed an Executive Order (EO) entitled “Affording Congress an Opportunity to Address Family Separation.”

As a result, we will immediately move toward compliance in how we process family units, among others.

Processing guidelines are as follows:

- (b)(7)(E)
- (b)(7)(E)
RE: UPDATE RE: Zero Tolerance Prosecutions

V/R,

Division Chief of Operational Programs
Del Rio Sector

Attached is the spreadsheet stations are required to track all apprehensions and dispositions.

Spreadsheet must be submitted to DRT-DIMT NLT 5:00 am daily with a cc to OO (do not submit to DRT PROS STAFF). First report is due on Sunday May 6, 2018, total numbers reported will be for Saturday May 5, 2018 (24 hours).

DIMT will review for data integrity and work with each station on any discrepancies.

Any questions please feel free to reach out to OO or myself.

Assistant Chief Patrol Agent
Del Rio Sector
From: [b](6);[b](7)(C)
Sent: Friday, May 04, 2018 6:08 PM
To: DRT-PAICS ; DRT-DPAICS
Cc: [b](6);[b](7)(C)
Subject: Zero Tolerance Prosecutions

All,

More information will be forthcoming from Prosecutions, but we will begin 8 USC 1325 prosecutorial referrals for all amenable adults, to include adults that are part of family units, [b](5). Please read the attached CONOP for further details on the efforts.

1. [b](7)(E)
2. [b](7)(E)
3. [b](7)(E)
4. [b](7)(E)
5. [b](7)(E)

Reporting is still pending, but we will need each station to email the DRT PROS STAFF mailbox concerning any adults. [b](7)(E).

Division Chief
Del Rio Sector

[b](6);[b](7)(C)
[b](6);[b](7)(C)
[b](6);[b](7)(C)
**UPDATE to the instruction sent May 8, 2018.**

When a FMUA separation occurs for the purposes of Prosecution, please ensure the below language is added to the very beginning of the narrative of the I-213. This will assist ICE/ERO efforts of reunification prior to repatriation of these individuals.

(BOLD and in CAPS)

Please let me know if you have any questions.

**UPDATE to the instruction sent May 8, 2018.**

When a FMUA separation occurs for the purposes of Prosecution, please ensure the below language is added to the very beginning of the narrative of the I-213. This will assist ICE/ERO efforts of reunification prior to repatriation of these individuals.

(BOLD and in CAPS)

Please let me know if you have any questions.
As you are all aware, Attorney General Jeff Sessions issued a memorandum referencing Zero Tolerance for immigration violations. The Secretary of Homeland Security has also given direction to pursue a prosecution initiative to achieve an end state of 100% prosecution in the southwest border sectors.

Additionally, when this separation occurs, you must add language to the narrative of the I-213 to indicate that the individual was accompanied by the child/parent (include name and A#) at the time of entry, and the parent will be referred for criminal prosecution. Notify local FOJC to confirm status of UAC's removal proceedings prior to removal.

This guidance is effective immediately. If you have any questions, feel free to contact ACPA TCA Prosecutions Unit, and the Tucson Coordination Center.

Thank you.

Assistant Chief Patrol Agent
Law Enforcement Operational Programs
Prosecutions/Asset Forfeiture/Detention
2430 South Swan Road
Tucson, AZ 85711
Direct ext.
Gov iPhone
Situation:

Tucson Sector (TCA) consists of nine (9) border patrol stations covering 262 linear border miles and a total of 90,000 square miles of Southern Arizona. TCA continues to experience unacceptable levels of cross border criminal activity. Thus far in Fiscal Year 18 (FY18), TCA has documented a 23% increase in apprehensions above that of FY17 (32,077 Vs. 25,988). TCA has also documented a 49% increase in other than Mexican (OTM) apprehensions in FY18 (12,714 Vs. 8,557). The total number of Family Unit Aliens (FMUA) apprehended in TCA has increased 69% in the same time frame (2,495 Vs. 1,480). These individuals were processed administratively and turned over to Enforcement and Removal Operations (ERO) for resolution through their administrative removal process.

When TCA implemented Operation Streamline (OSL) (now known as the Criminal Consequence Initiative (CCI)) in 2009, TCA referred all persons amenable to prosecution under 8 USC 1325. In 2016, the Federal District Court (FDC), in collaboration with the United States Attorney’s Office (USAO), imposed a limitation of 75 defendants on the CCI docket, citing resource limitations.

Exemptions to the TCA referral for prosecution procedure have been humanitarian in (b) (7)(E).

It should be noted that intelligence indicates the FMUA exemption is being exploited in order to avoid prosecution and circumvent immigration laws.

Historical statistics demonstrate that recidivism rates for those prosecuted under OSL/CCI decreased from FY09 through FY17 (16.9% Vs. 6.7%). This validates that criminal prosecution for 8 USC 1325 under CCI serves as a deterrent and is an impactful consequence for those seeking to illegally enter the United States.

Mission:

TCA will partner with the USAO, Office of Chief Counsel (CBP OCC), United States Marshalls Service (USMS) and the FDC to increase our prosecutions in a phased approach. Through a consistent application of all legal authorities, via consequence delivery, TCA will achieve an end state of 100% prosecution of all aliens amenable to prosecution under 8 USC 1325.
Execution:

Commander’s Intent:

**Purpose:** TCA will adjust current prosecutorial priorities, in a phased approach, to achieve 100% prosecution of all aliens amenable to prosecution under 8 USC 1325.

**End State:** TCA has achieved 100% prosecution of all aliens amenable to prosecution under 8 USC 1325.

Objectives:

- Implement a phased approach to achieve 100% prosecutorial referrals.
- Implement prosecutorial priorities for immediate inclusion into the prosecutorial initiative.
- Increase prosecutorial referrals, while maintaining operational enforcement gains throughout the TCA’s AOR.

General Concept of Operation:

In order to continue progress in securing the border, TCA will adjust current prosecutorial priorities, in a phased approach, based on current USAO, CBP OCC, USMC and FDC limitations, as outlined in the Southwest Border Prosecutions guidance document.

As part of the initial phase, TCA will evaluate each FMUA case independently to determine the best course of action. If TCA determines that the adult/parent will be referred for prosecution, the child’s classification will be converted to an Unaccompanied Alien Child (UAC). The UAC will then be referred to Enforcement and Removal Operations (ERO) for placement into the custody of Office of Refugee Resettlement (ORR).
Under this initiative, candidates for prosecution under 8 USC 1325 will be prioritized and referred in the following order:

It should be noted, in 2015 the FDC elected to use the Evo A. Deconcin Courthouse in Tucson, Arizona as the venue to hold naturalization ceremonies. Historically, these ceremonies were held at various venues of local significance in the greater Tucson, Arizona area. Additionally, these ceremonies were only scheduled every other Friday. Recently, the frequency has increased and for the next several months the naturalization ceremonies are scheduled on three Fridays out of each month.

Based on the forgoing,

Through the use of a standardized reporting process, TCA Sector prosecutions will ensure that all reporting requirements are met. TCA Prosecutions will collect, consolidate and distribute a weekly report to Sector command staff and USBP headquarters.
Please see the attached memorandum from Commissioner McAleenan entitled *Interim Guidance on Preliminary Injunction in Ms. L v. ICE, No. 18-428 (C.D. Cal. June 26, 2018).* This guidance provides initial direction on compliance on the recent court order governing separating families and legal guardians, who are detained in DHS custody, from their children in certain circumstances. Immediate implementation is required.

Respectfully,

Patrol Agent in Charge

Office:

Cell:
On June 26, 2018, the court granted plaintiffs' request for a nationwide preliminary injunction, enjoining the government from separating parents and legal guardians, who are detained in Department of Homeland Security (DHS) custody, from their children in certain circumstances. This interim guidance provides initial direction on compliance with that court order.

- *(b)(7)(E)*
- *(b)(7)(E)*
Any questions about how to comply with the court order should be raised through the appropriate chain of command for contact with local Office of Chief Counsel. This guidance will be updated as needed and appropriate.

cc: All Executive Assistant Commissioners and Assistant Commissioners
Gentlemen,

Please look up the contacts/procedures for [redacted] and send them out so everyone is aware. Also, please create an excel document on the sup drive where we can track declinations. At the very least we'll need the following:

Alien name, DOB, COC, file number, app location, date of entry, district contacted, AUSA declining. If there is anything else you feel is needed, please add.

Let me know if there are questions. Thx

Cc: [redacted]
O: [redacted]
Chiefs and Deputies,

This guidance supersedes all local arrangements between your Sector Prosecution Unit and the US Attorney's Office.

Please track these referrals and maintain them on a daily basis. We do not need your office to share these statistics immediately. We do anticipate a message asking you to share your reports tracking referrals near the end of the weekend or beginning of the work week.

Please let us know if there are any questions. Thank you in advance for your staff's diligence referring amenable subjects and tracking this activity.

Regards,

(Acting) Deputy Chief
Law Enforcement Operations Directorate - Ops
U.S Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229
I received this information via phone call and like I said, some written instruction is coming. So, please be prepared for the possibility that something is different than what I just wrote or there are other caveats. If the instructions are different, [b](5), [b](7)(E)

If you have any questions, please call.

Thanks,
Chiefs and Deputies,

This guidance supersedes all local arrangements between your Sector Prosecution Unit and the US Attorney's Office.

Please track these referrals and maintain them on a daily basis. We do not need your office to share these statistics immediately. We do anticipate a message asking you to share your reports tracking referrals near the end of the weekend or beginning of the work week.

Please let us know if there are any questions. Thank you in advance for your staff's diligence referring amenable subjects and tracking this activity.

Regards,

[Redacted]

(Acting) Deputy Chief
Law Enforcement Operations Directorate - Ops
U.S. Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229
Gents,

Read below and forward to your respective supervisors,

such, we anticipate there will be declinations based on a multitude of reasons. We will need to track these referrals. An excel spreadsheet has been created and has been placed in the share supervisor folder. This spreadsheet needs to be filled out for all referrals amenable to zero-tolerance. The zero-tolerance policy is to supersede any existing policies or arrangements between the Sector Prosecution Unit and the US Attorney’s Office.

Things to remember:

- 
- 
- 

Further guidance expected to be forthcoming early next week.

Watch Commander
U.S. Border Patrol
Yuma Sector
Office:
Email:
Zero tolerance email within the specified date range (forwarded)


Good Morning Gents,

Please read below email reference the Zero-Tolerance Prosecution Referrals.

We will need to track these referrals. An excel spreadsheet has been created and has been placed in the share supervisor folder. This spreadsheet needs to be fill out for all referrals amenable to zero-tolerance. The zero-tolerance policy is to supersede any existing policies or arrangements between the Sector Prosecution Unit and the US Attorney's Office.

Things to remember:

-
Further guidance expected to be forthcoming early next week.
MEMORANDUM FOR FEDERAL PROSECUTORS ALONG THE SOUTHWEST BORDER

FROM: THE ATTORNEY GENERAL

SUBJECT: Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)

On April 11, 2017, I issued a memorandum to all federal prosecutors entitled “Renewed Commitment to Criminal Immigration Enforcement,” in which I directed the prioritization of the prosecution of certain criminal immigration offenses. I further directed each United States Attorney’s Office along the Southwest Border to work with the Department of Homeland Security to develop guidelines for prosecuting offenses under 8 U.S.C. § 1325(a).

Those seeking to further an illegal goal constantly alter their tactics to take advantage of weak points. That means we must effectively respond with smart changes also. The recent increase in aliens illegally crossing our Southwest Border requires an updated approach. Past prosecution initiatives in certain districts—such as Operation Streamline—led to a decrease in illegal activities in those districts. We must continue to execute effective policies to meet new challenges.

Accordingly, I direct each United States Attorney’s Office along the Southwest Border—to the extent practicable, and in consultation with DHS—to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under section 1325(a). This zero-tolerance policy shall supersede any existing policies. If adopting such a policy requires additional resources, each office shall identify and request such additional resources.

You are on the front lines of this battle. I respect you and your team. Your dedication and insight into border reality is invaluable. Keep us informed, and don’t hesitate to give us suggestions for improvement. Remember, our goal is not simply more cases. It is to end the illegality in our immigration system.

This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
FOR IMMEDIATE RELEASE

Friday, April 6, 2018

ATTORNEY GENERAL ANNOUNCES ZERO-TOLERANCE POLICY FOR CRIMINAL ILLEGAL ENTRY

Attorney General Jeff Sessions today notified all U.S. Attorney’s Offices along the Southwest Border of a new “zero-tolerance policy” for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States by an alien. The implementation of the Attorney General’s zero-tolerance policy comes as the Department of Homeland Security reported a 203 percent increase in illegal border crossings from March 2017 to March 2018, and a 37 percent increase from February 2018 to March 2018—the largest month-to-month increase since 2011.

“The situation at our Southwest Border is unacceptable. Congress has failed to pass effective legislation that serves the national interest—that closes dangerous loopholes and fully funds a wall along our southern border. As a result, a crisis has erupted at our Southwest Border that necessitates an escalated effort to prosecute those who choose to illegally cross our border,” said Attorney General Jeff Sessions. “To those who wish to challenge the Trump Administration’s commitment to public safety, national security, and the rule of law, I warn you: illegally entering this country will not be rewarded, but will instead be met with the full prosecutorial powers of the Department of Justice. To the Department’s prosecutors, I urge you: promoting and enforcing the rule of law is vital to protecting a nation, its borders, and its citizens. You play a critical part in fulfilling these goals, and I thank you for your continued efforts in seeing to it that our laws—and as a result, our nation—are respected.”

On April 11, 2017, Attorney General Jeff Sessions announced a renewed commitment to criminal immigration enforcement. As part of that announcement, the Attorney General issued a memorandum to all federal prosecutors and directed them to prioritize the prosecution of certain criminal immigration offenses.

Today’s zero-tolerance policy further directs each U.S. Attorney’s Office along the Southwest Border (i.e., Southern District of California, District of Arizona, District of New Mexico, Western District of Texas, and the Southern District of Texas) to adopt a policy to prosecute all Department of Homeland Security referrals of section 1325(a) violations, to the extent practicable.

Attachment(s):
Download Zero-Tolerance Memorandum

Topic(s):
Immigration

Component(s):
Office of the Attorney General
Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry | OPA | Department of Justice

Press Release Number:
18-417

Updated April 6, 2018
From: (b)(6);(b)(7)(C)
Sent: Monday, April 30, 2018 2:35 PM
To: WELLTON SUPERVISOR MAILING LIST
Subject: FW: (Action) Zero Tolerance Prosecution Referrals

Updated written guidance and may differ, thank you.

I received this information via phone call and like I said, some written instruction is coming. So, please be prepared for the possibility that something is different than what I just wrote or there are other caveats. If the instructions are different, [redacted].

If you have any questions, please call.

Thanks,

[redacted]
Chiefs and Deputies,

This guidance supersedes all local arrangements between your Sector Prosecution Unit and the US Attorney’s Office.

Please track these referrals and maintain them on a daily basis. We do not need your office to share these statistics immediately. We do anticipate a message asking you to share your reports tracking referrals near the end of the weekend or beginning of the work week.

Please let us know if there are any questions. Thank you in advance for your staff’s diligence referring amenable subjects and tracking this activity.

Regards,

(Acting) Deputy Chief
Law Enforcement Operations Directorate - Ops
U.S Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229

Office
Cellular
FYSA gents.

R/S,

For Action
Chiefs and Deputies,

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Regards,

(b)(5), (b)(6); (b)(7)(C)
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Law Enforcement Operations Directorate - Ops
U.S. Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229
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Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry

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Topic(s):
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Component(s):
Office of the Attorney General
Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry | OPA | Department of Justice

Press Release Number:
18-417

Updated April 6, 2018
Below are some quick notes regarding the newest Executive Order. FAMU are not to be separated.

1. 
2. 
3. 

Special Operations Supervisor
Interagency Coordination
El Centro Sector
Office
Cell
ALCON:

Effective immediately the following actions are to be implemented/acted upon:

1. 
2. 
3. 

Further guidance is forthcoming from HQ. In the interim please ensure that all field commanders and Supervisors are made aware and act accordingly. If you have any further questions, please contact Acting ACPA at [redacted] at [redacted].

Presidential Executive Order

https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/

GC

Regards,
Gloria I. Chavez
Chief Patrol Agent
El Centro Sector
U.S. Border Patrol
(b)(6);(b)(7)(C) (office)
(b)(5), (b)(7)(E)
(b)(5), (b)(7)(E)
(b)(5), (b)(7)(E)